



## Non-Disclosure & Non-Circumvention Agreement

This Non-Disclosure and Non-Circumvention Agreement is entered into as of:

Effective Date: \_\_\_\_\_

between Madolyn Sylke aka: Grace and Larry Oliver Duffy of **BioPonic Earth, LLC** at

8073 White Mountain Lake Rd., Show Low, AZ, 85901 and

(Print Name)

\_\_\_\_\_

at

\_\_\_\_\_

representing all associates, employees and independent contractors who are working with the above signed Recipient on a Food Forever Farm Project.

### Summary

1. BioPonic Earth, LLC has developed certain Confidential Information (as defined in Section 1 of the Agreement below) that is proprietary to BioPonic Earth, LLC and that BioPonic Earth, LLC believes has substantial value for commercial exploitation.

2. BioPonic Earth, LLC is willing to disclose the Confidential Information to the Recipient for the limited purpose of owning and operating a custom BioPonic Earth Food Forever Farm subject to the terms and conditions, set for in this Agreement.

Initials: \_\_\_\_\_ Date: \_\_\_\_\_

Initials: \_\_\_\_\_ Date: \_\_\_\_\_

## **Agreement**

### **1. Definition of Confidential Information:**

For purposes of this Agreement, the term “Confidential Information” means all information disclosed to the Recipient by or on behalf of BioPonic Earth, LLC either directly or indirectly and either in writing or orally, relating to: the BioPonic Earth, LLC Proprietary Agri-Tech and Licensing Agreement. Confidential Information shall include, without limitation, all information contained in the: “Licensing Agreement”, “How To Operate A Food Forever Farm Manual”, the “How A Food Forever Farm Works Manual” or implied from said Manuals, the “BioPonic Earth Business Plan, Part 1”, the “License Agreement describing the Proprietary Agri-Tech Intellectual Property”. These proprietary Intellectual Properties together constitute a Food Forever Farm including: the Water Enhancement Technology (WET) System, the Aquaheat (AH) System, the Dilution Solution (DS) System, the Seedling Incubation Table (SIT), the Solids Separation Biofiltration System (SSBS) and the Nitrate Activator System (NAS). Despite the foregoing, Confidential Information does not include: (1) information already in possession of the Recipient at the time of BioPonic Earth, LLC’s disclosure; (2) information that is now or later becomes part of the public domain, unless such information becomes part of the public domain as a result of any action or inaction on the part of the Recipient; or (3) information received by the Recipient from a third party, unless such third party has been directed by BioPonic Earth, LLC to retain such information on a confidential basis.

### **2. Use of Confidential Information**

The Recipient shall use the Confidential Information exclusively for the purpose of: evaluating potential business relationships and opportunities with BioPonic Earth, LLC and shall not disclose any Confidential Information to any third party excepting employees, associates and independent contractors of the Recipient who have been described on page 1 of this Agreement and are bound by their affiliation with the Recipient by the terms of this Agreement. Disclosure of the Confidential Information to a bank that is considering a loan application in this regard or government agency that provides grants is allowed, given prior notice of such Disclosure first be given in writing to BioPonic Earth, LLC. The Recipient shall in no way be prevented from teaching about Aquaponics and/or Nitraponics, which together constitute BioPonics, in a formal or

informal setting with the exception of sharing specific information regarding BioPonic Earth LLC's afore listed proprietary Intellectual Property and other proprietary information revealed in the above specified Licensing Agreement, Manuals and Business Plan

### **3. Non-Circumvention**

In consideration of BioPonic Earth, LLC's disclosure of the Confidential Information, the Recipient shall not at any time prior to the date immediately preceding the 20th anniversary date of this Agreement, attempt in any manner to commercially exploit the proposed business concepts and plans of BioPonic Earth, LLC or any of the Confidential Information without BioPonic Earth, LLC's prior written consent, that may be given or withheld by BioPonic Earth, LLC in its sole discretion. BioPonic Earth, LLC acknowledges that innovative hydroponics, aquaponics and nitraponics food growing technology has been in use for many years; and does not claim to have exclusive ownership of any technology that has already entered the public domain nor will BioPonic Earth, LLC claim to have been commercially exploited if other types of hydroponic, aquaponic or nitraponic technology is used by the Recipient.

### **4. Ownership & Return of Confidential Information**

The Recipient acknowledges that the Recipient has no Ownership or proprietary rights in the Confidential Information. Upon BioPonic Earth, LLC's request, the Recipient shall immediately return to BioPonic Earth, LLC all Confidential Information provided to it, and shall retain no materials relating thereto, including copies of, notes on, or abstracts of, any Confidential Information.

### **5. Further Agreements**

Nothing contained in this Agreement shall be deemed, by implication or otherwise, to convey to the Recipient any rights in any Confidential Information, nor shall this Agreement be deemed a commitment of any kind by either BioPonic Earth, LLC or the Recipient to enter into any further Agreements with each other with respect to any Confidential Information.

### **6. General Provisions**

#### **6.1 Independent Contractors.**

The relationship between both parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to give either party the power to direct and control the day-to-

day activities of the other. Neither party is an agent, representative or partner of the other party. Neither party shall have any right, power or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such relationship upon either party.

## **6.2 Governing Law & Jurisdiction.**

This Agreement shall be governed by and construed under the laws of the state of Arizona, without reference to conflict of law principles. The parties hereby expressly consent to the jurisdiction and venue of the federal and state courts within the state of Arizona. Each party hereby irrevocably consents to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such party at its address set forth in the preamble of this Agreement, such service to become effective thirty (30) days after such mailing.

## **6.3 Entire Agreement.**

This Agreement constitutes the entire Agreement between both parties concerning this transaction, and replaces all previous communications, representations, understandings, and Agreements, whether verbal or written between the parties to this Agreement or their representatives. No representations or statements of any kind made by either party, which are not expressly stated in this Agreement, shall be binding on such parties.

## **6.4 All Amendments in Writing.**

No waiver, amendment or modification of any provisions of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom such waiver, amendment or modification is sought to be enforced. Furthermore, no provisions in either party's purchase orders, or in any other business forms employed by either party will supersede the terms and conditions of this Agreement.

## **6.5 Notices.**

Any notice required or permitted by this Agreement shall be deemed given if sent by registered mail, postage prepaid with return receipt requested, addressed to the other party at the address set forth in the preamble of this Agreement or at such other address for which such party gives notice hereunder. Delivery shall be deemed effective three (3) days after deposit with postal authorities.

**6.6 Costs of Legal Action.**

In the event any action is brought to enforce this Agreement, which 6.8 specifies, will be arbitration if either party so requests, then each party will be responsible for its own attorney fees and both parties will divide court costs or arbitration costs equally. This is known as the American Rule, which stipulates that each party pays only their own attorneys fees, regardless of whether they win or lose.

**6.7 Inadequate Legal Remedy.**

Both parties understand and acknowledge that violation of their respective covenants and Agreements may cause the other irreparable harm and damage, that may not be recovered at law, and each agrees that the other’s remedies for breach may be in equity by way of injunctive relief, as well as for damages and any other relief available to the non-breaching party, whether in law or in equity.

**6.8 Arbitration.**

Any dispute relating to the interpretation or performance of this Agreement shall be resolved at the request of either party through binding arbitration as long as the damages are less than \$10,000. Arbitration shall be conducted in the state of Arizona, in accordance with the then-existing rules of the American Arbitration Association. Judgment upon any award by the arbitrators may be entered by any state or federal court having jurisdiction. Both parties intend that this Agreement to arbitrate be irrevocable.

**6.9 Delay is Not a Waiver.**

No failure or delay by either party in exercising any right, power or remedy under this Agreement, except as specifically provided in this Agreement, shall operate as a waiver of any such right, power or remedy.

**6.10 Force Majeure.**

In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of any Act of God, strike, fire, flood, governmental acts, orders or restrictions, Internet system unavailability, system malfunctions or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence of the non-performing party (a “Force Majeure Event”), the party who has been so affected shall give notice immediately to the other party and shall use its reasonable best efforts to resume performance. Failure to meet due dates resulting from a Force Majeure Event shall extend such due dates for a reasonable period. However, if the period of

nonperformance exceeds sixty (90) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been affected may, by giving written notice, terminate this Agreement effective immediately upon such notice or at such later date as is therein specified.

**6.11 Assignability & Binding Effect.**

Except as expressly set forth within this Agreement, neither party may transfer or assign, directly or indirectly, this Agreement or its rights and obligations hereunder without the express written permission of the other party, not to be unreasonably withheld; provided, however, that both parties shall have the right to assign or otherwise transfer this Agreement to any parent, subsidiary, affiliated entity or pursuant to any merger, consolidation or reorganization, provided that all such assignees and transferees agree in writing to be bound by the terms of this Agreement prior to such assignment or transfer. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

**6.12 Non-Assignability & Binding Effect.**

Except as otherwise provided for within this Agreement, neither party may assign any of its rights or delegate any of its obligations under this Agreement to any third party without the express written permission of the other. Any such assignment is deemed null and void.

**6.13 Certain Sections Invalid.**

If any provisions of this Agreement are held by a court of competent jurisdiction to be invalid under any applicable statute or rule of law, they are to that extent to be deemed omitted and the remaining provisions of this Agreement shall remain in full force and effect.

**6.14 Headings.**

The titles and headings of the various sections and sections in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or place any construction upon or on any of the provisions of this Agreement.

**6.15 Survival of Certain Provisions.**

The warranties and the indemnification and confidentiality obligations set forth in this Agreement shall survive the termination of the Agreement by either party for any reason.

**Understood, Agreed & Approved**

We have carefully reviewed this contract and agree to and accept all of its terms and conditions. We are executing this Agreement as of the Effective Date defined in the preamble between BioPonic Earth,LLC and:

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Recipient

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BioPonic Earth, LLC Owners/Founders