

**EB-5 New York State, LLC**  
**a New York limited liability company**

**Confidentiality and Non-Disclosure Agreement**

This Confidentiality and Non-Disclosure Agreement (this “Agreement”) is entered into as of this \_\_\_ day of \_\_\_\_, 20\_\_, by \_\_\_\_\_, an individual (“Investor”), who is a prospective immigrant investor in a New York limited liability company (the “LLC”) in furtherance of the US EB-5 Regional Center program, in favor of LLC and its Managing Member, EB-5 New York State, LLC a New York limited liability company (“EB5NYS”).

**WHEREAS**, in connection with the proposed investment by the Investor in the LLC, EB5NYS or the LLC, or both, anticipate disclosing certain confidential information to the Investor concerning the business of EB5NYS and/or the LLC; and

**WHEREAS**, EB5NYS and the LLC wish to protect the information disclosed to the Investor against any unauthorized use and any unauthorized or uncontrolled disclosure.

**NOW THEREFORE**, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Investor agrees as follows:

A. As used throughout this Agreement, the term “Confidential Information” means any and all information provided to the Investor, including any representatives of the Investor, by EB5NYS, the LLC and/or any authorized persons, relating to (a) the offering of units of limited liability company interests in the LLC, including, without limitation, the LLC’s Confidential Private Placement Memorandum, Subscription Agreement, and Operating Agreement, (b) any investment that is the subject of such Private Placement Memorandum and (c) the business of EB5NYS or the LLC, or both, including, without limitation, any and all information relating to EB5NYS’s and/or the LLC’s immigrant investor program, sample agreements and contracts, budgets, financial information and projections, plans, files, reports and other information provided to or obtained by the Investor and/or the Investor’s representatives pertaining to the business of EB5NYS or the LLC, or both. “Confidential Information” shall also include, without limitation, information pertaining to other investors of the LLC, suppliers, products, services, methods of doing business, procedures, marketing, strategies, business plans and other information relating to EB5NYS or the LLC, or both, whether provided orally, visually in writing, or in any other medium. All information that is disclosed to the Investor or to which the Investor obtains access, whether originated by EB5NYS, the LLC or others, shall be presumed to be Confidential Information.

B. The Investor understands that unauthorized disclosure or use, whether intentional or unintentional, of any of the Confidential Information would be detrimental to EB5NYS and the LLC. Accordingly, the Investor agrees:

1. Not to disclose to any third party the object and scope of the discussions between the Investor, EB5NYS and/or the LLC, except as required by law or as may be necessary to enforce the terms hereof;
2. Not to use any of the Confidential Information for any purpose other than for, or in connection with, the evaluation by the Investor of an investment in the LLC;

3. To maintain all of the Confidential Information in confidence and not to disclose any portion of the Confidential Information to any person or entity not authorized hereunder without the prior written consent of EB5NYS;

4. That any dissemination of Confidential Information shall be only in connection with the evaluation of the Investor becoming an investor in the LLC, and shall be only to the Investor's agents or representatives who have a need to know said Confidential Information in order for the Investor to carry out proper purposes and responsibilities related to the Investor's evaluation of the Investor becoming an investor in the LLC and who have been advised of the confidential nature of such information. Further, the Investor shall cause his agents and representatives who have access to the Confidential Information to comply with the terms and provisions of this Agreement in the same manner as the Investor is bound hereby, with the Investor remaining responsible for the actions and disclosures of such representatives; and

5. That, upon termination of the discussions between the Investor, EB5NYS and/or the LLC, or upon the request of EB5NYS or the LLC, all records, any compositions, articles, documents and other items which contain, disclose and/or embody any Confidential Information (including, without limitation, all copies, reproductions, summaries and notes of the contents thereof), regardless of the person causing the same to be in such form, shall be returned to EB5NYS, and the Investor will certify in writing that the provisions of this paragraph have been complied with; and

6. That the obligations set forth in this Agreement are perpetual.

C. The obligations pursuant to Section B above shall not apply to information which: (1) is or becomes a part of the public domain through no act or omission of the Investor; (2) can be shown to be already possessed by the Investor as of the date of disclosure, except that all Confidential Information provided to the Investor prior to the date hereof shall be deemed Confidential Information to which the obligations pursuant to Section B shall apply; or (3) has been made available to the Investor on a non-confidential basis by a third party having a right to do so.

D. In the event that the Investor or the Investor's representatives receives a request to disclose all or any part of the Confidential Information under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction or by a governmental body, the Investor agrees to: (1) immediately notify EB5NYS of the existence, terms and circumstances surrounding such a request, so that EB5NYS may seek an appropriate protective order and/or waive the Investor's compliance with the provisions of this Agreement; and (2) if disclosure of such Confidential Information is required in the opinion of EB5NYS's counsel, to the extent possible cooperate with EB5NYS in obtaining reliable assurances that confidential treatment will be accorded to the disclosed Confidential Information.

E. The Investor acknowledges that the Confidential Information is the property of EB5NYS and/or the LLC and the disclosure of the Confidential Information to Investor does not convey any right, title or license in the Confidential Information to the Investor. The Investor shall not appropriate the Confidential Information to his own use or to the use of any third party and shall only use the Confidential Information for the exclusive benefit of EB5NYS and the LLC.

F. It is further understood and agreed that no failure or delay by EB5NYS or the LLC in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

G. The termination of the discussions or relationship between the Investor, EB5NYS and/or the LLC shall not relieve the Investor and his agents and representatives of the obligations of nonuse or nondisclosure hereunder or the obligation to return or destroy certain materials, and such obligations shall survive the termination of the discussions or relationship between the Investor, EB5NYS and/or the LLC.

H. The Investor agrees that money damages would not be sufficient remedy for any breach of this Agreement, and EB5NYS and the LLC shall be entitled to enforce this Agreement by injunctive and other available relief, including without limitation specific performance. The Parties hereby further agree that any Party seeking equitable relief in connection with the application or issuance of such relief shall not be required to post a bond or other security.

I. This Agreement shall be governed by and construed and interpreted in accordance with the substantive laws of the State of New York, United States. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. All obligations and rights of the parties expressed herein shall be in addition to, and not in limitation of, those provided by applicable law. This Agreement may be modified or waived only by a separate writing by the (a) Investor and (b) EB5NYS and/or the LLC expressly so modifying or waiving such. This Agreement may be executed by facsimile. Any disputes arising out of this Agreement shall exclusively be venued in federal or state district court in the State of New York, County of Erie, and the Investor hereby consents to the jurisdiction of such court. The Investor may not assign any of its obligations hereunder. Subject to the preceding sentence, this Agreement shall be binding upon the parties hereto and their successors and assigns.

J. The information is provided by EB5NYS and the LLC to Investor "AS IS". Neither EB5NYS nor the LLC shall have any liability to Investor arising out of or related to the Confidential Information.

**IN WITNESS WHEREOF**, the Investor acknowledges his or her agreement to the foregoing as of the date first set forth above by execution.

**"INVESTOR"**

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]