NON-DISCLOSURE AGREEMENT

This AGREEMENT is made and entered into as of the \_\_\_th day of \_\_\_\_\_\_\_, 201\_\_ (the “Effective Date”), by and between **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, an [individual/ limited liability company/corporation] [resident/principal place of business] of [state] (**“**Creator**”**) and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,** an [individual/ limited liability company/corporation] [resident/principal place of business] of [state] whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Recipient”).

WHEREAS, Creator desires to disclose to Recipient Proprietary Information (as defined below) relating to a business concept (the “Concept”) developed by Creator for the purpose of discussing the commercialization of Creator’s Concept (the “Purpose”).

Creator and Recipient agree as follows:

1. Creator and Recipient each agree to keep in confidence and prevent the disclosure to any person(s) outside their respective organizations or any person(s) within their organizations not having a need to know, all information received from the other which would reasonably be understood to be proprietary-in-nature including but not limited to: the details of the Concept, any trade secret, mock-ups, samples, instructions, know-how, inventions, documentation, schematics, procedures, contracts, business plans, methods of doing business, information, knowledge, data, processes, techniques, designs, drawings, works in progress, engineering, manufacturing, marketing, financial, sales, supplier, customer, employee, investor, or business information, whether in oral, written, graphic or electronic form pertaining to the Creator’s Concept (hereafter “Proprietary Information”) and Recipient will not use the Proprietary Information for purposes other than the Purpose. However, neither party will be liable for disclosure or use of any Proprietary Information if the same is:

a. In the public domain at the time of disclosure, or is subsequently made available to the general public without restriction by the disclosing party.

b. Known to the receiving party at the time of disclosure without restrictions in its use or independently developed by the receiving party, and there is adequate documentation to demonstrate either condition.

c. Used or disclosed inadvertently despite the exercise of the same degree of care that each party takes to preserve or safeguard its own proprietary information.

d. Used or disclosed with the prior written approval of the disclosing party.

e. Disclosed without restriction to the receiving party from a source other than the disclosing party.

If any portion of either Creator or Recipient’s Proprietary Information falls within any one of the above exceptions, the remainder will continue to be subject to the foregoing prohibitions and restrictions. Recipient hereby acknowledges that the Creator’s Proprietary Information, including the Concept, constitutes valuable trade secrets of Creator. Recipient agrees to use its best efforts to keep Creator’s Proprietary Information confidential and to assure that no Proprietary Information or any part thereof is disclosed to any person other than employees of Recipient who have a need to know and who have been advised of the confidential nature of the Proprietary Information. Recipient shall be liable for any improper disclosure of the Proprietary Information by its employees.

2. No specific item of Proprietary Information shall be deemed to be within any one of the foregoing exceptions merely because such item is embraced by more general information that is within such exception.

1. Prior to disclosure of Proprietary Information to any employee, each party shall fully advise such employee that he or she is required to hold in confidence all information and that such information, is not to be disclosed to persons outside of his or her organization or to any co-employee not directly concerned with furthering the Purpose. The parties shall maintain between themselves and their officers, employees and consultants duly binding agreements by such persons as may be necessary to fulfill their obligations under this Agreement.
2. The failure of the Creator at any time or times to demand strict performance by the Recipient of the terms, covenants, or conditions set forth in this Agreement shall not be construed as a continuing waiver or relinquishment thereof, and the Creator may at any time demand strict and complete performance of such terms, covenants, and conditions.
3. Nothing in this Agreement shall be construed to convey to the Recipient any right, title, interest or copyright in any of the Creator’s Proprietary Information, or any license to use, sell, exploit, copy or further develop any such Proprietary Information. Recipient acknowledges that the Creator’s Concept and Creator’s Proprietary Information and all copyrights and other intellectual property rights with respect thereto, are and will at all times be the property of Creator unless otherwise agreed upon by the Creator and Recipient in writing.

6. Upon termination of the discussions and/or business relationship between Creator and the Recipient, the Recipient shall deliver promptly to Creator any and all Proprietary Information in its possession or under its control, except as Creator by prior express written permission or agreement has agreed that the Recipient may retain.

7. This Agreement merges all prior discussions and is the entire understanding and agreement of the parties relating to the protection of Proprietary Information; neither party shall be bound by any additional or other representation, condition, or promise except as subsequently set forth in a writing signed by the party to be bound.

8. The validity and interpretation of this Agreement shall be governed by the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_. All disputes hereunder shall be resolved in the applicable state or federal courts of \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

RECIPIENT CREATOR

BY: BY:

 Name: Name:

 Title: Title: