

NON-DISCLOSURE AGREEMENT

This Mutual Non Disclosure Agreement (this "**Agreement**") is made and entered into as of the later of the two dates set forth below (the "**Effective Date**") by and between the undersigned parties (each a "**Party**" and collectively, the "**Parties**").

RECITALS:

WHEREAS, in connection with a proposed business opportunity (the "**Purpose**"), the Parties desire to share and exchange certain information that is non-public, confidential or proprietary in nature.

IN CONSIDERATION of the respective covenants and agreements hereinafter contained and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) it is hereby agreed as follows:

1. **Definitions.** For purposes of this Agreement, the following terms have the following meanings:

(a) "**Confidential Information**" means all non-public, confidential or proprietary information, data, documents, agreements, files and other materials disclosed before, on or after the Effective Date, by either Party (a "**Disclosing Party**") to the other Party (a "**Recipient**") or its Representatives, whether disclosed orally or disclosed or stored or accessed in written, electronic or other form or media, which is disclosed or otherwise furnished by the Disclosing Party or its Representatives, including all analyses, notes, compilations, reports, forecasts, studies, samples, statistics, summaries, interpretations and other documents prepared by or for the Recipient or its Representatives which contain or otherwise reflect, are based on, or are generated or derived from in whole or in part such information, data, documents, agreements, files or other materials, whether or not marked, designated or otherwise identified as "confidential," including, without limitation:

- (i) information concerning the Disclosing Party's and its affiliates' and their customers', suppliers' and other third parties', past, present and future business affairs including, without limitation, finances, supplier information, services, customer information, products, organizational structure and internal practices, forecasts, sales and other financial results, records and budgets, and business, marketing, development, sales and other commercial strategies;
- (ii) matters of a technical nature such as business models, trade secrets or systems (whether currently in use or proposed), techniques, modes of operation, devices, data, formulas, software, machine readable code, html pages, inventions (whether or not such inventions have been protected by patent, copyright, trademark or industrial design registrations), patents, trademarks and copyrighted material (whether registered or not) and other intellectual property, ideas, discoveries, designs, know-how, show-how, proposals, presentations, development information, specifications, background research information, blueprints, models,

research subjects, methods, results, reports, technical data sheets and similar material;

- (iii) third-party confidential information included with, or incorporated in, any information provided by the Disclosing Party to the Recipient or its Representatives; and
- (iv) other information that would reasonably be considered non-public, confidential or proprietary given the nature of the information and the Disclosing Party's business.

The term "Confidential Information" as used herein shall not include information that:

- (i) at the time of disclosure, is or becomes generally available to and known by the public (other than as a result of its disclosure directly or indirectly by the Recipient or its Representatives in violation of this Agreement);
- (ii) is or becomes available to the Recipient or its Representatives from a source other than the Disclosing Party or its Representatives, provided that such source, to the Recipient's knowledge, was not and is not bound by a confidentiality agreement regarding the Disclosing Party or its affiliates, or otherwise prohibited from disclosing such information to the Recipient or its Representatives by a legal, contractual or fiduciary obligation;
- (iii) was already known by or in the possession of the Recipient or its Representatives as established by documentary evidence, before being disclosed by or on behalf of the Disclosing Party pursuant to this Agreement; or
- (iv) has been or is independently developed by the Recipient or its Representatives as established by documentary evidence, without violating any of its obligations under this Agreement or use of or reference to, in whole or in part, any of the Disclosing Party's Confidential Information.

(b) **"Person"** means any individual, partnership (whether general, limited or limited liability), corporation, association, trust or other entity.

(c) **"Representatives"** means, as to any Person, such Person's affiliates, and its and their respective directors, officers, employees, general partners, shareholders, agents and consultants (including lawyers, financial advisors and accountants).

Other terms not specifically defined in this Section 1 shall have the meanings given to them elsewhere in this Agreement.

2. Obligations of Confidentiality, Non-Disclosure and Non-Use. Each of the Parties shall:

(a) keep the Confidential Information of the other Party strictly confidential protect and safeguard the confidentiality of all of the Confidential Information of the other Party with at least

the same degree of care as the Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;

(b) Other than as permitted herein, the Recipient will not, directly or indirectly, without the prior written consent of the Disclosing Party (which consent may be arbitrarily withheld) disclose, publish, reproduce or otherwise disseminate or communicate the Confidential Information, and it will direct its Representatives not to permit, cause or acquiesce in such disclosure or other dissemination or communication of the Confidential Information, all in any manner whatsoever, in whole or in part

(c) not use the Confidential Information of the other Party, or permit it to be accessed or used, for any purpose other than the Purpose or any related transactions between the Parties;

(d) without the prior written consent of the other Party, not disclose or permit its Representatives to disclose any Confidential Information to any Person except:

- (i) if required by law or order or pursuant to any requirement or process of any legal or governmental authority, but only in accordance with Section 5; or
- (ii) to its Representatives, to the extent necessary to permit such Representatives who need to know the Confidential Information to assist the Party in relation to the Purpose and for no other purpose provided, the Party shall:
 - (A) inform its Representatives of the confidential nature of the Confidential Information;
 - (B) be responsible for any breach of this Agreement by any of its Representatives;
 - (C) use commercially reasonable controls to prevent unauthorized use or disclosure of the Confidential Information (but in any event no less than the degree of care and control that the Party uses to protect its own confidential information of similar importance);
 - (D) promptly notify the other Party of any unauthorized use or disclosure of the Confidential Information in breach of this Agreement of which the Party has become aware; and
 - (E) fully cooperate with the other Party in any effort undertaken by the other Party to enforce its rights related to any such unauthorized disclosure.

3. **Further Confidentiality Obligations.** Except as required by law or order or pursuant to any requirement or process of any legal or governmental authority (in which case the disclosure must be made in accordance with Section 5), neither Party shall, nor shall it permit any of its Representatives to, without the prior written consent of the other Party, disclose to any Person: (a) the contents of this Agreement; or (b) any terms, conditions or other matters or arrangements that are being discussed or negotiated in relation to the Confidential Information or the Purpose (collectively, the "**Purpose Information**").

4. **No Representations or Warranties.** Each of the Parties understands and agrees that neither Party nor any of its Representatives: (a) has made or makes any representation or warranty, expressed or implied, as to the accuracy or completeness of its Confidential Information; or (b) shall have any liability to the other Party relating to or resulting from the use of the Confidential Information of a Party or any errors therein or omissions therefrom.

5. **Disclosure Required.** If a Party or any of its Representatives is required to disclose the other Party's Confidential Information or Purpose Information, by law or order or pursuant to any requirement or process of any legal or governmental authority, the Party shall make commercially reasonable efforts to provide the other Party: (a) to the extent legally permitted, prompt prior written notice of such requirement or process so that the other Party may seek, at its sole cost and expense, an appropriate protective order or other remedy; and (b) cooperation with and reasonable assistance to the other Party, at the other Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other remedy or limitations on disclosing. If, after providing such notice and assistance as required herein, such protective order or other remedy is not obtained, the Party (or the Party's Representatives to whom such requirement is directed) shall furnish only that portion of the other Party's Confidential Information or Purpose Information which is so required to be disclosed and, upon the other Party's request, use its commercially reasonable efforts to preserve the privileged nature or confidentiality of the other Party's Confidential Information or Purpose Information and obtain assurances that confidential treatment will be accorded the other Party's Confidential Information or Purpose Information so disclosed.

6. **Parties' Representations and Warranties.** Each of the Parties represents and warrants that: (a) the performance of its obligations and the disclosure of confidential information to the other Party herein does not and will not violate any other contract or obligation to which the Party is a party, including covenants not to compete and confidentiality and non-disclosure agreements; and (b) the performance of its obligations and the disclosure of confidential information to the other Party herein will not infringe, violate or misappropriate the intellectual property rights of any third party and the Party has not received any communication, and no action has been instituted, settled or, to the Party's knowledge, threatened that alleges any such infringement, violation or misappropriation.

7. **Return or Destruction of Confidential Information.** Upon the expiration of this Agreement, or at any time upon a Party's written request, the other Party and its Representatives shall promptly return or destroy all of the Party's Confidential Information (including all copies, reports, analyses, extracts, notes or other reproductions created using the Party's Confidential Information) to the Party and if destroyed, certify in writing to the Party that such Party's Confidential Information (including any Confidential Information held electronically) has been destroyed. Notwithstanding the foregoing, a Party may retain any copies of the other Party's Confidential Information, regardless of whether such copies are in original form: (a) included in any materials that document a decision not to proceed with a transaction with the other Party, or otherwise to cease discussions or negotiations with the other Party; (b) as may be required to comply with any applicable laws to which the Party is subject; or (c) that are maintained as archive copies on the Party's disaster recovery or information technology backup systems. Such copies will be destroyed upon the normal expiration of the Party's backup files. The Parties shall continue to be bound by the terms and conditions of this Agreement with respect to such Confidential Information retained in accordance with this Section 7.

8. **Remedies.** Each Party acknowledges and agrees that monetary damages would not be a sufficient remedy for any breach of this Agreement by such Party or its Representatives and

that in addition to all other remedies it may be entitled to (which neither Party waives by the exercise of any rights hereunder), the non-breaching Party shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach or threatened breach, and the Parties hereby waive any requirement for the securing or posting of any bond or other security. Each Party agrees that it will pay any costs, fees and expenses, including legal fees, that the non-breaching Party may incur in enforcing this Agreement.

9. No Waiver of Privilege. To the extent that any of a Party's Confidential Information includes materials subject to solicitor-client privilege, litigation privilege or similar protections or privileges, that Party and its affiliates do not waive, and shall not be deemed to have waived or diminished, its solicitor-client privilege, litigation privilege or similar protections and privileges as a result of disclosing any of that Party's Confidential Information (including Confidential Information related to pending or threatened litigation) to the other Party or any of its Representatives.

10. Term and Termination. The term of this Agreement shall commence on the Effective Date and terminate on that date which is eighteen (18) months after the Effective Date. Notwithstanding anything to the contrary herein, each Party's rights and obligations under this Agreement shall survive the expiration or termination of this Agreement for a period of three (3) years from the date of such expiration or termination, even after the return or destruction of each Party's Confidential Information by the other Party.

11. No Transfer of Rights, Title or Interest. Each Party hereby retains its entire right, title and interest, including all intellectual property rights and all other rights, in and to all of its Confidential Information. Any disclosure of such Confidential Information hereunder shall not be construed as an assignment, grant, option, licence or other transfer of any such right, title or interest whatsoever to the other Party or any of its Representatives. Each Party specifically acknowledges and agrees that the other Party's Confidential Information is and shall remain the exclusive property of that Party and that it has no right, title or interest in or to the Confidential Information of the other Party. All of the Confidential Information which is disclosed to or otherwise comes into the possession or under the control of the Recipient shall be received and held by the Recipient in trust solely for the Discloser notwithstanding the Recipient's right to use it for the Permitted Purpose.

12. Governing Law. This Agreement shall be governed by the laws of the Province of Alberta and the federal laws of Canada applicable therein. The parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Alberta for any actions, suits, litigation or proceedings arising out of or relating to the enforcement of this Agreement.

13. Entire Agreement. This Agreement sets forth the entire agreement between the Parties regarding the Confidential Information and all other subject matters set forth herein, and supersedes all prior and contemporaneous negotiations, understandings, representations and warranties and agreements between the Parties (both written and oral) with respect to such subject matters. No provision of this Agreement may be amended, modified, waived or changed unless made in writing and signed by the Parties.

14. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

15. Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by any Party without the prior written consent of the non-assigning Party. Any purported assignment without such consent shall be null and void and unenforceable. No assignment shall relieve the assigning Party of any of its obligations hereunder.

16. Waivers. No waiver by any Party of any of the provisions hereof is effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different nature, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

17. Cumulative Remedies. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

18. Headings. The headings in this Agreement are inserted for convenience or reference only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision of this Agreement.

19. Successors and Assigns. This Agreement is for the sole benefit of the Parties hereto and their respective affiliates, subsidiaries and parent companies and each of their respective successors and permitted assigns and is binding upon the Parties, and their respective affiliates, subsidiaries and parent companies and their respective successors and permitted assigns.

20. No Third-Party Beneficiaries. Nothing herein, express or implied, is intended to or shall confer upon any other Person or entity, other than the Parties, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

21. Counterparts. This Agreement may be executed in any number of counterparts and by each Party on separate counterparts. Each counterpart is an original and all counterparts taken together constitute one and the same instrument. A counterpart may be delivered by facsimile, email attachment (of a PDF document), or other electronic means, which shall be as effective as hand delivery of the original executed counterpart.

- SIGNATURE PAGE FOLLOWS -

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

NAPKIN INC.

[COUNTERPARTY NAME]

Per:

Name: _____
Matt Liberto

I have the authority to bind the corporation

Name: _____

I have the authority to bind the corporation