

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (this “*Agreement*”) is by and between (i) Biz Incubate LLC (together with its parent, subsidiary and affiliate companies, the “*Company*”), and (ii) _____ together with its parent, subsidiary and affiliate companies, the “*Other Party*”). For purposes of this Agreement, whenever one of the parties discloses Confidential Information (as defined below) to the other party, it shall be referred to as “*Disclosing Party*”; and whenever one of the parties receives Confidential Information from the other party, it shall be referred to as “*Recipient*”.

Recitals

WHEREAS, the parties are desirous of discussing a potential business relationship (the “*Potential Business Relationship*”); and

WHEREAS, in connection with Recipient’s evaluation of the Potential Business Relationship, each of the parties has provided and/or may in the future provide to the other party and its Representatives (as defined below) certain proprietary and confidential information regarding Disclosing Party’s business, and Disclosing Party desires Recipient to keep such information confidential and to abide by certain restrictions on its use; and

WHEREAS, in consideration of the disclosure of such Confidential Information, Recipient is willing to keep such Confidential Information confidential in accordance with the terms and conditions set forth in this Agreement.

Agreement

NOW THEREFORE, in consideration of the covenants and agreements contained in this Agreement, and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties hereto agree as follows:

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

(a) “*Confidential Information*” shall mean any and all information, whether or not marked as confidential and whether disclosed prior to, on or after the date of this Agreement, that shall be disclosed to Recipient regarding Disclosing Party or its customers, vendors or business partners or potential customers, vendors or business partners or the business, operations, finances, technologies, services or products of Disclosing Party or its customers, vendors or business partners or potential customers, vendors or business partners, including without limitation: any commercial, financial or

technical information; information regarding technologies, know-how, inventions (whether patented or patentable and whether reduced to practice), techniques, developments, processes, methods, specifications, trade secrets; products and product designs; formula information; software programs, software code, software logic, documentation, schematics and other technology-related information; ideas, blue prints, designs and artwork for all types of (including without limitation internet-related) marketing, advertising, public relations and commerce; potential product labeling and marking ideas; all materials, including, without limitation, documents, drawings,

samples, sketches and designs; customer base(s) and sourcing information; advertising strategies, plans and results; marketing, business plans, activities, business opportunities, contracts, names of suppliers, customers, strategic partners, sources, costs; projections and results; all communications between either party; and other private, confidential and/or proprietary information relating to Disclosing Party or its customers, vendors or business partners or potential customers, vendors or business partners or their respective businesses, all whether disclosed in writing, orally, by electronic mail, graphic format or by inspection of tangible objects (including without limitation documents, prototypes or samples and including summaries or other compilations prepared by Recipient using Confidential Information).

(b) “**Representatives**” of a party shall mean each of the parents, subsidiaries, affiliates, directors, officers, partners, managers, shareholders, members, employees, attorneys, accountants, agents and advisors of such party and of such party’s affiliates.

2. Confidentiality. Recipient shall maintain the Confidential Information, and the fact that discussions regarding a Potential Business Relationship have occurred or are ongoing, in strict and absolute confidence at all times, and shall not, directly or indirectly, disclose, expose or make available the Confidential Information, in whole or in part, to any person or entity, except: (a) as may be expressly authorized in writing by Disclosing Party; or (b) to Recipient’s Representatives who need to know such information as necessary solely for the evaluation of the Potential Transaction; provided, however, that: (i) any Representatives to whom the Confidential Information is intended to be disclosed are bound by a confidentiality undertaking that requires the preservation of the confidentiality of the Confidential Information on terms no less stringent than the terms contained herein; and (ii) Recipient has advised each Representative, before he or she receives access to Confidential Information, of his or her obligations under this Agreement. Recipient shall take such reasonable measures as required to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information, which at a minimum shall include those measures that it takes to protect its own information of a proprietary and confidential nature.

3. Use Restrictions. Except as may be expressly agreed to in writing by Company, Recipient and its Representatives shall not, and shall not attempt to, directly or indirectly: (a) use or otherwise exploit or derive any benefit from the Confidential Information other than solely for the evaluation and negotiation of the Potential Transaction; (b) directly or indirectly reverse engineer, decompile, disassemble or analyze any samples or other tangible objects provided by Company or its Representatives which in any way relate to the Confidential Information; or (c) cause, induce or assist any third party to do any of the foregoing. Recipient also agrees not to use or disclose any Confidential Information in violation of federal

or state securities or insider trading laws.

4. Responsibility for Representatives. Recipient shall take all reasonable steps to ensure compliance by its Representatives with the terms of this Agreement, and will be responsible to Disclosing Party in the event that any of its Representatives do or omit to do anything which, if done or omitted to be done by Recipient, would constitute a breach of Recipient's obligations under this Agreement.

5. Exceptions. The obligations of confidentiality and non-use set forth herein shall not extend to any portion of such information, which Recipient can demonstrate by documentary evidence:

(a) was, or subsequently became through no fault of Recipient or anyone on its behalf, generally available to the public; or

(b) was known to Recipient or its Representatives prior to the first disclosure by Disclosing Party; or

(c) has been lawfully and rightfully obtained by Recipient or its Representatives from a third party having, to the best knowledge of Recipient or its Representatives (as applicable), the right to make such disclosure and provided that such information is so provided to Recipient without restrictions as to use or disclosure; or

(d) was independently developed by Recipient without any use of Disclosing party's Confidential Information; or

(e) was required to be disclosed pursuant to an order of a court of competent jurisdiction or by applicable law or regulation (or valid administrative, congressional, or other subpoena, civil investigative demand or similar process); provided, however, that (i) such disclosure is made only to the extent Recipient is legally required to do so; and (ii) Recipient provides Disclosing Party with adequate prior written notice of such legal requirement and, to the extent possible, with the opportunity to oppose the disclosure or obtain a protective order at Disclosing Party's expense.

6. Request to Return Confidential Information. Recipient shall, immediately upon written demand by Disclosing Party, (i) return or destroy any and all documents and other tangible materials containing Confidential Information of Disclosing Party, and destroy any internal documents or computer files that contain such Confidential Information, such that no such Confidential Information shall remain with Recipient, and (ii) upon request of Disclosing Party, certify in writing, that it has complied with the obligations set forth in this paragraph; provided, however, that Recipient shall not be required to delete or return any system backup media, such as copies of any computer records or files containing Confidential Information, which have been created pursuant to automatic archiving or back-up procedures on secured central storage servers and which cannot be deleted or returned.

7. Non-Solicitation. For a period of five (5) years following the date hereof, Recipient will not

directly or indirectly hire or engage, or solicit for employment or engagement, any employees or independent contractors of Disclosing Party who first became known to Recipient, or with whom Recipient had contact, in connection with its evaluation of the Potential Business Relationship; provided, however, that Recipient shall not be precluded from soliciting, hiring or engaging any such person or organization which has been terminated from its relationship with Disclosing Party for at least six (6) months prior to commencement of employment or engagement discussions between Recipient and such person.

8. Non-Circumvention. Recipient shall not circumvent or attempt to circumvent either the specific terms or the general intent of this Agreement.

9. Term. Recipient's confidentiality and non-use obligations with respect to any Confidential Information shall expire ten (10) years from the later of (i) the date of this Agreement or (ii) the date of disclosure of such Confidential Information; provided, however, that all portions of the Confidential Information which fall within the definition of a "trade secret," as that term is defined under applicable state law, shall remain subject to the obligations in this Agreement as long as such information remains a trade secret entitled to protection under applicable law.

10. No Warranties. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". DISCLOSING PARTY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS OR PERFORMANCE OF ANY

CONFIDENTIAL INFORMATION. DISCLOSING PARTY SHALL NOT BE LIABLE, IN ANY MANNER, AS A RESULT OF RECIPIENT'S USE OF OR RELIANCE ON SUCH INFORMATION. Recipient acknowledges and agrees that Recipient will make its own independent evaluation of the Potential Transaction and will not be relying on Disclosing Party or any of its Representatives to make such determination. Recipient further agrees not to, and hereby waive any right Recipient may have to, pursue any claim, action, suit or proceeding against Disclosing Party or any of its Representatives arising from or relating to the provision by Disclosing Party or its Representatives to Recipient and Recipient's Representatives of the Confidential Information or the information contained therein. Nothing in this Agreement shall affect any representations, warranties, covenants or other agreements made or obligations created under any definitive agreement pertaining to the Potential Transaction, including without limitation any representation or warranty therein with respect to the Confidential Information.

11. No Further Discussions Required. This Agreement imposes no obligation on either party to proceed with any discussions or transaction between the parties hereof or to enter any the Potential Transaction or any other business transaction or relationship whatsoever with each other nor does it create any obligation for Disclosing Party to disclose any Confidential Information to Recipient. Any such commitment (and any agreement to provide such a commitment) shall be the subject of a separate writing signed by the parties, and on such terms and subject to such conditions as the parties may agree at the time.

12. No Licenses Granted. Nothing in this Agreement nor the exchange of Confidential Information between the parties will imply the grant of any rights or licenses under any patent, copyright, or trade secret.

13. Non-Exclusive Obligations. The termination of the confidentiality and non-use obligations as provided above shall not be construed as releasing Recipient from any obligations under applicable law to which it may otherwise be bound (i.e., regardless of the execution of this Agreement). Recipient's obligations hereunder are in addition to, and not exclusive of, any and all of its other obligations and duties to Disclosing Party, whether express, implied, and in fact or in law.

14. Notices. All notices required or permitted under this Agreement shall be in writing and shall be deemed to have been given (a) in the case of personal delivery, on the date of such delivery or refusal of delivery, (b) in the case of delivery by electronic mail, on receipt of confirmation that the transmission of the electronic mail has been successful, (c) in the case of mailing by a nationally-recognized express courier service, if sent by next-day delivery providing receipt of delivery, on the business day following the date of such mailing, or (d) in the case of registered or certified mailing, postage and charges prepaid, return receipt requested, on the fourth business day following the date of such mailing, in each case addressed to the other party at the address set forth on the signature page hereto, or at such other address or addresses as either party shall designate to the other in accordance with this paragraph.

15. Miscellaneous.

(a) Remedies. Recipient agrees that any violation or threatened violation of this Agreement may cause irreparable injury to Disclosing Party for which monetary damages may be difficult to ascertain or an inadequate remedy. Recipient therefore agrees that Disclosing Party will have the right, in addition to its other rights and remedies, to injunctive relief for any violation or threatened violation of this Agreement (without the necessity of posting any bond or other security and regardless of the existence or absence of any legal remedies or the sufficiency thereof). In the

event of a breach, Recipient will pay any attorneys' fees and disbursements, court fees and other costs incurred by Disclosing Party in connection with the enforcement of this Agreement.

(b) Severability; Enforceability. If any provision of this Agreement shall be determined to be illegal or unenforceable, the remaining provisions shall remain effective and enforceable to the greatest extent permitted by law. In the event the extent and/or duration of one or more of the obligations hereunder exceeds and/or extends the duration allowed by law, such obligation shall be deemed to be the maximum extent or duration allowed by law.

(c) Amendments; Waivers. This Agreement may not be amended or modified nor any of its provisions waived except in writing and duly executed by both parties. The failure by Disclosing Party to require performance or to enforce any right shall in no manner affect Disclosing Party's right at a later

time to enforce the same and in no way be construed to be a waiver of such right by Disclosing Party.

(d) Entire Agreement; Definitive Agreements. This Agreement constitutes the entire agreement between the parties with respect to the disclosure of Confidential Information. Nothing in this Agreement shall affect any representations, warranties, covenants or other agreements made or obligations created under any definitive agreement pertaining to the Potential Transaction, including without limitation any representation or warranty therein with respect to the Confidential Information.

(e) Assignments; Binding. Recipient may not assign or otherwise transfer this Agreement without the prior written consent of Disclosing Party; provided, however, that either party may assign or transfer this Agreement in connection with a merger, sale of substantially all its equity or assets or other such corporate reorganization. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties hereto and their successors and assigns.

(f) Governing Law; Jurisdiction. This Agreement, its validity, performance and breach, shall be governed and construed in accordance with the laws of the State of California, without regard to principles of conflicts of laws. Recipient consents to the jurisdiction and venue of the state and federal courts located in San Diego California, and agrees to waive all objections to personal jurisdiction, venue and forum non conveniens. Notwithstanding the foregoing, Disclosing Party shall retain the right to institute proceedings including interlocutory and/or injunctive relief in any relevant territory.

(g) Counterparts; Electronic Signatures. The parties may execute this Agreement in counterparts, each of which is deemed an original, but all of which together constitute one and the same agreement. Signatures on this Agreement that are transmitted by e-mail or other electronic means will be treated as original signatures.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have affixed their signatures to this Mutual Non-Disclosure Agreement as of:

Date

Company:
BIZ INCUBATE LLC

Timothy J Ramon

Timothy J Ramon
Founder and CEO

Other Party:

Name

Company

Title

Signature