**NON-DISCLOSURE AGREEMENT**

THIS NON-DISCLOSURE AGREEMENT is made on the \_\_\_\_\_\_\_\_\_\_\_\_\_ day of ­\_\_\_\_\_\_\_\_\_\_\_\_\_ 2012 between Participants:

**Mr Damien Tsui, 6 Citadel Crescent, Castle Hill NSW 2154, Australia (Founder)**

and

**Tony Nguyen, 39 Wallace St, Sefton NSW 2154, Australia (Co-Founder)**

of **Sonic Punch Studio (Company).**

**OPERATIVE PART**

**1. Obligations of Confidence**

1.1 All Participants under this Agreement acknowledges that the Confidential Information is valuable to the Company. In consideration for Confidential Information to be provided and shared between the Participants for the Express Purpose, all Participants accepts and agrees to be bound by the terms of this Agreement.

1.2 All Participants must, subject to the terms of this Agreement, comply with the following obligations at all times:

(a) All Participants must keep the Confidential Information secret and preserve its confidential nature and must not use Confidential Information for any purpose other than the Express Purpose.

(b) All Participants must not disclose or permit the disclosure of the information to any person other than their Representative(s) who:

(i) need to know the information for the Express Purpose; and

(ii) before disclosure, have been directed by the Participants to keep confidential all Confidential Information of the Discloser and are bound by obligations of confidentiality to the Participants no less stringent than those set out by this Agreement.

(c) All Participants must protect the Confidential Information against unauthorized access, use or disclosure by:

(i) implementing effective security measures against unauthorized copying, use or disclosure of the Company’s Confidential Information and against damage to or destruction of the Company’s Confidential Information;

(ii) keeping the Company’s Confidential Information under the Participants’ control;

(iii) taking reasonable steps to ensure, at all times, that each person to whom the Participants discloses Confidential Information in accordance with this Agreement, complies with its confidentiality obligations;

(iv) immediately notifying the other Participant of any actual or suspected unauthorized copying, access to, use or disclosure of the Company’s Confidential Information, and must take any reasonable action regarding the same as mutually agreed between all Participants; and

(v) providing such assistance in relation to any proceedings that the Participants, under mutual agreement, may take against any person for unauthorized copying, access to, use or disclosure of the Company’s Confidential Information.

(d) All Participants must use best endeavours to protect the Confidential Information against unauthorized publication, access, use or disclosure, must immediately notify the other Participant of any unauthorized access to, use or disclosure of the information, and must comply with any reasonable direction, as mutually agreed upon by all Participants, in relation to the protection of the information.

**2. Permitted Disclosure**

All Participants may disclose Confidential Information when required to do so by law or other regulatory authority. In the event that such disclosure is required, all Participants must:

2.1 notify the other Participant;

2.2 give the other Participant a reasonable opportunity to take any steps that the Participant considers necessary to protect the confidentiality of the relevant Confidential Information; and

2.3 notify the person to whom the Confidential Information is to be disclosed that the Confidential Information is the Confidential Information of the Disclosure.

**3. Confidential Information**

3.1 The Confidential Information remains the property of the Company at all times notwithstanding the dissolution of the Company and is shared between all Participants on a basis agreed upon by the Participants. In the event of the dissolution of the Company all Participants shall hold rights to withhold their share of Confidential Information unless requested in writing to be transferred over to the other Participant via transaction.

3.2 To the extent permitted by law, the Company makes no express or implied representations or warranties in relation to the Confidential Information, including the completeness or accuracy of any information provided. To the maximum extent permitted by law, the Company shall have limited liability for any loss or damage suffered by any person using, disclosing, relying or acting on any information disclosed by the Company or any of its Representatives. Nothing in this Agreement will be taken to limit the terms which may be included in any future agreement between the Participants in respect of a transaction arising from the Express Purpose.

**4. Period of Confidentiality**

4.1 The Confidential Information disclosed by the Company and its Participants will remain strictly confidential for five (5) years from the time of the execution of this Agreement, notwithstanding the dissolution of the Company. All Participants must not disclose any Confidential Information other than to a related company, agent, academic, student or contractor of the Company who has agreed to be bound by the terms of this Agreement.

**5. Privacy**

5.1 To the extent any Confidential Information within the Company contains Personal Information, all Participants must not use or disclose or otherwise handle such Personal Information other than for the Express Purpose and must comply with the Privacy Law including without limitation implementing reasonable measures to ensure the security of any Personal Information obtained.

5.2 All Participants must

(a) ensure that reasonable measures are followed in relation to the collection, use, disclosure, storage, transfer or handling of Personal Information arising from this Agreement including in relation to complaints received by an individual concerning the use, disclosure, storage, transfer or handling of Personal Information arising from this Agreement; and

(b) promptly inform the other Participant in writing of any complaint received concerning the use, disclosure, storage, transfer or handling of Personal Information arising from this Agreement.

**6. General Provisions**

6.1 The Participants’ obligation in this Agreement continue to apply other than to the extent that the Participants mutually agrees in writing to release one another from any such obligations or to the extent that any information is no longer confidential. Confidential Information will not be confidential to the extent that it is expressly identified as not being Confidential Information either in the definition of Confidential Information or in written agreement between the Participants.

6.2 The Participants are under limited liability against any claim, liability, loss, damage or expense (including legal costs) that the Company incurs or suffers directly or indirectly as a result of a breach of this Agreement by any one of the Participants under this Agreement or any of their Representatives, any authorized disclosure or use by a person who received Confidential Information from any of them or a breach of any Privacy Law.

6.3 The Participants acknowledges that any breach of this Agreement may result in damage to the Company and agrees that the Company (or the remainder thereof) is entitled to enforce its rights by seeking specific performance or injunction proceedings as monetary damages may not be sufficient relief.

6.4 This Agreement supersedes all prior agreements, written or oral, between all Participants under this Agreement relating to the subject matter of this Agreement. The Agreement may not be changed, modified or discharged, in whole or part, except by a subsequent Agreement in writing signed by both Participants of the Company.

6.5 The furnishing of Confidential Information hereunder will not constitute or be construed as a grant of any implied right or a covenant not to sue or forbearance from any other right of action (except as to permitted activities hereunder), by the Company or individual Participant under any of the Company’s patents or other intellectual property rights.

6.6 A failure by either Participant to enforce a right under this Agreement is not a waiver of that right or any other right.

6.7 If any provision of this Agreement is wholly or partly void, invalid or otherwise unenforceable or judged to go beyond what is reasonable in the circumstances and necessary to protect the legitimate commercial interest of a party that provision will be deemed eliminated or modified to the extent necessary to make the balance of this Agreement and that provision or part enforceable or reasonable, as the case may be.

**7. Governing Law**

7.1 This Agreement is governed by the law of New South Wales, Australia. The Participants/parties submit to the non-exclusive jurisdiction of its courts and courts of appeal to them. The Participants/parties will not object to the exercise of jurisdiction by those courts on any basis.

**8. Term and Termination of Agreement and Continuation of Clauses**

8.1 This Agreement will commence as of the effective date specified above and will continue until terminated earlier by either party, with written notice of termination to the other party. Upon expiration or termination of this Agreement, both Participants will immediately cease any and all disclosures or uses of Confidential Information and all such information created within the Company.

**9. No Fiduciary Relationship**

9.1 The parties acknowledge and agree that noting in this Agreement creates or is intended to create any fiduciary relationship between the parties. No form of joint venture, partnership, agency or trust is created as a result of this Agreement or the acts contemplated under it.

**10. Definitions**

10.1 In this Agreement the following definitions apply:

**“Confidential Information” –** any information provided or otherwise obtained by either Participant or any of its Representatives, whether obtained before or after the execution of this Agreement, in connection with the Express Purpose or the Company in any way.

Confidential Information of the Company might include, but not limited to:

(a) business plans, methods and practices;

(b) personnel, customers and suppliers;

(c) inventions, processes, methods, products, patent applications and other proprietary rights; or

(d) specifications, drawings, sketches, 3D models, samples, proprietary tools, proprietary computer programs, technical information or other related information;

Confidential Information does not include information which is:

(a) publicly known;

(b) disclosed to the receiving Participant without restriction by a third party and without any breach of confidentiality by the third party; or

(c) developed independently by the other party without reliance on any of the Confidential Information.

**“Express Purpose” –** The purpose set out as the following:

To engage all Participants to develop a selected range of products for the Company in relation to the Company’s core and ancillary intellectual property, technologies and products. Any other activities, job scope or work related to or in line with the Company’s intellectual property and/or products will also form part of this Express Purpose.

**“Personal Information”** has the same meaning as in *the Privacy Act 1988 (Cth)*

**Privacy Law –** any legislation, statutory instruments and any other enforceable codes or guidelines regulating the collection, use and/or disclosure of Personal Information that applies to any of the parties or to this Agreement.

**Representative –** any director, officer, employee, agent, contractor, financier, or professional adviser of a party.

**Executed as a Deed:**

**Executed** by

Founder: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Damien Tsui

6 Citadel Crescent, Castle Hill NSW 2154, Australia

**Executed** by

Co-Founder: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Tony Nguyen

39 Wallace St, Sefton NSW 2154, Australia

**This Agreement is Signed and Executed in the presence of:**

Witness: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name of Witness: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**This Agreement is Signed and Executed in the presence of:**

Witness: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name of Witness: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_