# Mutual NDA

This Confidentiality and Mutual Non-Disclosure Agreement (the “Agreement”) is entered into to be effective as of the date of the first signature below, by and between \_\_xxx\_ and ZAG Interactive LLC., a Connecticut corporation with an address at 148 Eastern Boulevard, Suite 201, Glastonbury, CT 06033.

WHEREAS, each party to this Agreement possesses information which is non-public, confidential and/or proprietary in nature (as described in more detail as “Confidential Information,” below) related to certain technology and business activities; and

WHEREAS, each party in possession of the Confidential Information (the “Disclosing Party”) desires to disclose some of its Confidential Information to the other party (the “Receiving Party”) subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the promises made herein, the receipt of certain Information, and other good and valuable consideration, the parties agrees as follows:

1. “Confidential Information” as used in this Agreement shall mean any information or material that is proprietary to the Disclosing Party and is marked or otherwise clearly designated as “Confidential,” “Proprietary,” or with a similar legend. Without limiting the foregoing, the following shall be presumed to be Confidential Information, if disclosed:
   1. Marketing plans/information and business development plans, new product ideas, “trade secrets,” price and cost data, pricing and billing policies, forecast assumptions and volumes;
   2. Information relating to the disclosing party’s proprietary rights prior to any public disclosure thereof, including but not limited to, proprietary intellectual property and information which include, techniques, design, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulas related to the current, future, and proposed products and service, and includes, without limitation, their respective information concerning research, working notes, experimental work, development, design details and specifications, technical and engineering data, financial information, works of authorship, improvements, production data, test data and test results, the status and details of research and development of products and services, ideas, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights, trademarks, service marks and trade secrets);
   3. Internal personnel and financial information, including all organizational charts and statements along with notes to financial statements and related information;
   4. Vendor names and other vendor information, purchasing and internal cost information, internal service and operational manuals, and the manner and methods of conducting the disclosing party’s business;
   5. Names of customers and their contracts with the disclosing party, data provided by customers, and the type, quantity and specifications of products and services purchased, leased, licensed or received by customers from the disclosing party;
   6. All computer software of any type or in any stage of actual or anticipated research and development and all programs and program modules, design specifications (including, but not limited to, design notes, annotations, documentation, flow charts, coding sheets, and other related documents), source code, object code and loan modules, programming, program patches and system designs;
   7. All notes pertaining to and copies of any portion of the Confidential Information described in this Agreement or any work or product that incorporates all or any portion thereof, or is derived there from.

Confidential Information shall not include information that (i) is now or later becomes generally known or publicly available (other than as a result of a breach of this Agreement); (ii) is independently developed by the Receiving Party, as evidenced by records of the Receiving Party, (iii) the Receiving Party lawfully obtains from any third party who has lawfully obtained such information; (iv) has been published or generally disclosed or made available to the public by the Disclosing Party. The Receiving Party shall bear the burden of showing that any of the foregoing exclusions apply to any information or materials.

1. The Receiving Party shall handle, use, treat and utilize Confidential Information received from the Disclosing Party in a manner consistent with the following:
   1. It shall hold all such Confidential Information in strict confidence;
   2. It shall use the Confidential Information only for the purpose of (i) evaluating the possibility of forming a joint business relationship or other commercial arrangement between the parties concerning the subject matter of such Confidential Information, and (ii) if and when such relationship if formed by a written agreement, furthering the purpose and intent expressly stated in such written agreement;
   3. It shall reproduce the Confidential Information only to the extent necessary for the purposes hereof;
   4. It shall not disclose such Confidential Information to any third party, including, but not limited to, a parent, subsidiary or any other affiliate of the Receiving Party, or any manufacturer or independent contractor, without prior written approval of the Disclosing Party. In addition, with respect to any equipment, component, software or other items delivered by the Disclosing Party to the Receiving Party, the Receiving Party shall not reverse engineer, disassemble, decompile or otherwise analyze the physical construction of, any such items. Each party agrees to attempt to limit its disclosure of information made to the other party to that information which is reasonably necessary to serve the limited purposes of the disclosures made, and to limit dissemination and disclosure of said information to only those individuals, officers, agents and employees who reasonably have a need to know said information.

Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information in response to a valid order of a court or other governmental body in the United States or any political subdivision thereof, but only to the extent of and for the purposes of such order; provided, however, that the Receiving Party shall first notify the Disclosing Party in writing of the order and permit the Disclosing Party to seek an appropriate protective order. Notwithstanding the foregoing, Confidential Information may be disclosed to the Receiving Party’s attorneys, accountants and business advisors upon notice to the Disclosing Party for the purpose of assisting the Receiving Party in evaluating the material provide the said professional agrees to be bound by the terms of the NDA and the Confidential Information shall be returned to the Receiving Party after the evaluation services.

1. Each party agrees that, without the prior written consent of the other party, it will not make use of, disseminate, or in any way disclose any Confidential Information of the other party to any person, firm or business, or that discussions or negotiations concerning a possible transaction involving the parties; provided that either party may make such disclosure if it has received the written opinion of its counsel that such disclosure must be made by it in order that it not commit a violation of law.
2. Each party agrees that it shall not publish any review, notice or other report containing any of the other party’s Confidential Information prior to obtaining written permission from the Disclosing Party to disclose such Confidential Information in the manner contemplated. Upon publication after receipt of written permission, the published information shall cease to be treated as Confidential Information hereunder but only to the extent that it is actually disclosed. Without prior written consent, any review, notice or other report published by either party shall be limited to information which is not Confidential Information.
3. Each party agrees to safeguard and secure in a manner that limits access to only those specifically assigned to this work with limited access as defined above and return to the Disclosing Party any and all materials comprising or containing Confidential Information, together with any copies that may have been made promptly upon the request of the Disclosing Party or, if not earlier requested, promptly after the purpose(s) for which they were furnished has been accomplished or abandoned (at least with respect to the Receiving Party).
4. This Confidentiality and Mutual Non-Disclosure Agreement shall not be assignable by either party, and neither party may delegate its duties hereunder, without the prior written consent of the other party, which consent may be granted or denied in the sole discretion of the non-assigning party. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, successors and permitted assigns.
5. The parties hereby understand, acknowledge and agree that the provisions of this Confidentiality and Mutual Non-Disclosure Agreement shall be binding on each of the parties specified herein and each such party’s officers, directors, employees, attorneys and advisors. The parties further agree that each party shall be responsible for any breach of this Confidentiality and Mutual Non-Disclosure Agreement by any of its officers, directors, employees, attorneys or advisors and agrees, at its sole expense, to take all reasonable measures (including but not limited to court proceedings) to restrain its officers, directors, employees, attorneys and advisors from any prohibited or unauthorized disclosure or use of the Confidential Information.
6. Nothing in this Confidentiality and Mutual Non-Disclosure Agreement shall be construed as creating any obligation on the part of any party to disclose any Confidential Information whatsoever. Nothing in this Confidentiality and Mutual Non-Disclosure Agreement shall be construed as granting any license or any other rights with respect to either party’s proprietary rights or Confidential Information.
7. Nothing contained in this Confidentiality and Mutual Non-Disclosure Agreement shall be construed as creating a joint venture, partnership or other form of business association between the parties, nor shall it be construed to create any obligation or expectation on the part of either party to enter into a business relationship with the other party, or an obligation to refrain from entering into a business relationship with any third party. Except as specified herein, no party shall have the right, power or implied authority to create any obligation or duty, express or implied, on behalf of any other party hereto.
8. Each party understands and acknowledges that such Confidential Information has been developed or obtained by the other party by the investment of significant time, effort and expertise, and that such Confidential Information provides such party with a significant competitive advantage in its business. Each party understands and agrees that in the event of a breach of its obligations hereunder, the non-breaching party may seek a permanent injunction in order to prevent or restrain such breach by the breaching party and any and all persons acting directly or indirectly with the breaching party. None of the remedies set forth above shall in any way limit either party’s remedies available at law or in equity for such breach. If the event of litigation relating to this Confidentiality and Mutual Non-Disclosure Agreement, if a court of competent jurisdiction determines that either party or any of its officers, directors, employees, attorneys or advisors have breached any of the terms hereof, then such party shall be liable for damages and pay to the other party the reasonable legal costs, including without limitation attorney’s fees, incurred by such other party in connection with the litigation, including any appeal there from.
9. This Confidentiality and Mutual Non-Disclosure Agreement sets forth the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes all other oral or written representations and understandings. The formation, interpretation and performance of this contract shall be governed by the laws of the State of Connecticut, excluding its choice of law rules. This Confidentiality and Mutual Non-Disclosure Agreement may be amended or modified only in writing signed in advance by authorized representatives of each of the parties.
10. This Confidentiality and Mutual Non-Disclosure Agreement may be executed in two or more counterparts, each of which shall be deemed to be original, but all of which together shall constitute one and the same agreement.
11. This Confidentiality and Mutual Non-Disclosure Agreement shall survive and remain in effect until expressly terminated in writing and signed by both parties thereto.

Each of the parties warrants and represents that it has carefully read and understands this Confidentiality and Mutual Non-Disclosure Agreement and each acknowledges receipt of a copy hereof. Each person has the authority to enter into this Confidentiality and Mutual Non-Disclosure Agreement on behalf of the person, form or corporation, if any, listed below.

IN WITNESS WHEREOF, the respective duly authorized representatives of the parties have executed this Confidentiality and Mutual Non-Disclosure Agreement as of the dates set forth below.

**ZAG Interactive LLC xxxxxx**

Signature: Signature:

Name: Larry Miclette Name:

Title: President/CEO Title:

Date: 08/14/2019 Date: