

## Confidential

### Project Member Pre-Incorporation Agreement

THIS PROJECT MEMBER PRE-INCORPORATION AGREEMENT is made as of the 14th day of January 2022 between:

Amiya Sekhar, a U.S. citizen, having his residence address at 89 Needham Street, Apt 2118, Newton Highlands, MA 02461 ("Sekhar") email: amiyasekhar@gmail.com.

AND.

John Nydam, a U.S. citizen, having his residence address at 52 Beverly Road, Wellesley, MA 02481 email: jnydam@me.com.

Both Sekhar and Nydam are also to be known individually as a "Member" and together as "Members".

WHEREAS the Members have agreed to form a limited liability company ("Company") in the future which will take forward the development and commercialization of the Nightclub App as described in this Agreement.

WHEREAS, Sekhar has put forward the idea of a social bottle-service cost-splitting application and website applicable to night clubs("Nightclub App") and will contribute the marketing, name, any applicable trademarks, tradenames and/or copyrights, promotion and business development matters to the Company as well as assisting Nydam in the technical aspects described below.

WHEREAS, Nydam will contribute via a license and/or oversee (any contractors, or hired contributors) all technical, programming and other and technological contributions and development in order to develop the software required for the Nightclub App to go live online and on the Apple App Store (initially, and later for the Android platform).

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

#### **1. Ownership Rights, Responsibilities, and Duties of the Members**

1.1 Ownership and Licenses. Sekhar will own all rights to the name of the Nightclub App (currently called "NightTable") and shall provide the Company with an exclusive royalty free license to use such name(s) and other intellectual property of Sekhar developed in connection with the Nightclub App for use in Nightclubs as described in Exhibit 1.

Nydam will own all rights to all programming, coding, and other software development materials produced for the Nightclub App and will contribute a royalty free license to such intellectual property to the Company solely for use in connection with the Nightclub App for use in Nightclubs as described in Exhibit 1.

1.2 Responsibilities. Sekhar will be responsible for finding growth opportunities, creating plans to capitalize on such opportunities and overseeing overall business development, in addition to assisting with technical aspects of the business such as website and app development. Raise equity capital and related financing from external investors once the Nightclub App is launched successfully, and a corporate structure is incorporated.

Nydam will be responsible for the technical aspects of the business such as website and app development and overseeing such activities with the understanding that completion of the programming and/or technical work may involve hiring contractors to perform some of the work and that the costs of such work shall be borne by the Company or shared equally between the Members but both Members must agree to incur such costs.

While roles of the Members are different, both will consult with each other and collaborate for the overall growth and success of the company.

Notwithstanding the forgoing provisions, neither Member will be liable to the Company or the other Member if such Member's activities are not successful or if such Member terminates this Agreement in accordance with Section 3 or the other provisions of this Agreement.

1.3 Company Formation. The Members will work in good faith together to form the Company as soon as reasonably practical.

1.4 Company Ownership. Each Member shall initially have 50% of the membership interests in the Company. With respect to any new capital or members, each of Sekhar and Nydam will be diluted equally and proportionately (pro rata). No investor or new member shall be provided any equity in the Company without the approval of both Sekhar and Nydam. In addition, the Members agree that, regardless of any new members or new investment, until an operating agreement is agreed to between the Members, all Company decisions shall require the consent of both Sekhar and Nydam.

1.5 Insurance. The Company will obtain appropriate and adequate insurance to protect the Members and the business against potential consumer-related or other

liabilities.

## **2. Confidentiality, Non-Disclosure, and Non-Circumvention**

2.1 The Members shall keep all details of the Nightclub App confidential and only disclose such details to others, pursuant to suitable non-disclosure agreements or as otherwise mutually agreed.

2.2 Neither Member shall circumvent the other, or the Company, with respect to the intellectual property dedicated to the Nightclub App as referenced in this Agreement or the commercialization of the Nightclub App as described in Exhibit 1. Each Member shall use his commercially reasonable efforts to pursue the purposes of this Agreement. Notwithstanding the forgoing, nothing in this Agreement shall prohibit either Member from using his intellectual property related to the Nightclub App for purposes other than those described in Exhibit 1 as applying to the Nightclub App.

## **3. Term, Effectiveness and Termination.**

3.1 This Agreement shall benefit and be binding on the Members, their respective successors and any permitted assignee, and shall be effective as of the date first set forth above.

3.2 Either Member may terminate this Agreement by giving thirty (30) days prior notice in writing to the other Member. The ownership rights of the Members (whether terminating Member or non-terminating Member) shall not be affected by the termination of this Agreement and the Members shall retain ownership of their respective intellectual property in the event of such termination.

3.3 If the Company is not formed by June 30, 2022, then either Member may elect to terminate this Agreement with written notice (email acceptable) to the other Member. In the event the Nightclub App is not operating and in commerce by June 30, 2023, then the Members agree that this Agreement shall be automatically terminated and each Member retains the rights to all of such Member's intellectual property and all licenses granted to the Company shall be terminated. In addition, if the Company has been formed, the Members agree to dissolve the Company upon such event.

3.4 This Agreement shall terminate upon the Members executing an operating agreement for the Company.

**4. Complete Agreement.** This Agreement contains the entire Agreement between the Members with respect to the contents hereof and supersedes all prior agreements and understandings between the Members with respect to such matters whether written or oral. Neither this Agreement nor any term or provision thereof may be changed, waived, discharged or amended in any manner other than by any instrument in writing, signed by the Member

against which the enforcement of the change, waiver, discharge or amendment is sought.

**5. Counterparts.** This Agreement may be executed in two or more counterparts and will include an exhibit specifying details of Nightclub App Project, and all of which shall be an original but all of which shall constitute one Agreement.

**6. Governing Law, Jurisdiction, Mediation, and Arbitration**

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter shall be governed and construed in exclusively accordance with the laws of the Commonwealth of Massachusetts.

In the event of a dispute arising out of or relating to this Agreement, including any question regarding its existence, validity or termination, the Members shall first seek settlement of that dispute by mediation conducted in Boston, Massachusetts with a mutually agreeable mediator. If the dispute is not settled by mediation within ninety (90) days of the commencement of the Mediation, or such further period as the Parties shall agree in writing, the dispute shall be referred to and finally resolved by arbitration conducted in Boston, Massachusetts by a single arbitrator under the rules of the American Arbitration Association (the "AAA"). The language used in the Mediation and in the Arbitration shall be English. The governing law of the Agreement shall be the substantive laws of the Commonwealth of Massachusetts. The decision of the Arbitrator shall be final and binding on each of the Parties.

**7. Severability.** Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under the applicable law. If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.


**8. Confidentiality.** All the Members hereby agree to maintain the terms of this Agreement in strict confidence. Each Member undertakes that it shall not at any time during this Agreement and for a period of two (2) years after the termination of this Agreement, disclose to any person any confidential information concerning the business, affairs, clients or any information relating to the Nightclub App or any of its projects or group companies. Each Member may disclose the other Member's confidential information to its employees, officers, representatives or advisers who need to know such information for the purpose of exercising the Member's rights or carry out its obligations under or in connection with this Agreement. Each Member shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause and as may be required by law, or court of competent jurisdiction or any

governmental regulatory authority. No Member shall use the other Member's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

**9. Liability.** Except for breaches of any of the intellectual property provisions or non-circumvention provisions, neither Member shall have any liability to the other Member, the Company, or otherwise, for the success or failure of the efforts described in this Agreement, the Company or the Nightclub App including but not limited to as a result of either Member terminating this Agreement, or any failure to reach market, obtain technical/software functionality, obtain investors or going commercial.

**10. Notices.** Notices may be sent via US Mail (shall be deemed delivered five (5) business days after mailing), overnight or express delivery (deemed delivered when delivery proof has been provided by courier) or via email (deemed delivered when email receipt has been confirmed).

This Agreement has been entered into as of the date first set forth above.

DocuSigned by:  
  
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Amiya Sekhar

DocuSigned by:  
  
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John Nydam

## Exhibit 1

The “Nightclub App” is a mobile application which facilitates the problem and scenario of many individuals waiting in line at nightclubs who wish to avoid the line, join tables, and split costs with other like-minded individuals. The scope of this mobile application pertains exclusively to night clubs, ultraclubs, and gentlemen’s clubs, (clubs where people go to socialize and entertain themselves with food and beverages) (“Nightclubs”) but not any other type of venue such as restaurants, steakhouses, coffee shops, sports facilities, or any other entertainment venue(s).

For clarity, a restaurant shall not be considered a Nightclub and the presence of a bar or intermittent/occasional entertainment in a restaurant shall not cause such facility to be classified as a Nightclub. For example and illustrative purposes, facilities similar to the Capital Grille, Boston Chops, Papi Steak, Applebee’s, Chili’s, Tiger Mama (Boston Thai restaurant), Kashmir (Boston Indian restaurant), P.J. Whelihan’s Pub (and facilities in the PJW Restaurant Group), etc. shall not be considered Nightclubs and are not within the scope of this mobile application.