DPS PROFESSIONAL SERVICES CORP

MUTUAL NON-DISCLOSURE AGREEMENT

This **MUTUAL NON-DISCLOSURE AGREEMENT** (the “**Agreement**”) is entered into as of

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“**Effective Date**”) by and between **DPS PROFESSIONAL SERVICES CORP**,

a United States corporation with its principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, NY, USA (“DPS”), and

(company name) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with its principal place of business at:

(address) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“ Company ”)

A. The parties intend to discuss and possibly pursue a business transaction or working relationship.

B. In consideration of the mutual promises and covenants contained in this Agreement and the

mutual disclosure of confidential information to each other, the parties hereto agree as follows:

**1. Definitions**

Either party may disclose Confidential Information and Confidential Material (“DPS”), or receive

Confidential Information and Confidential Material (“Company”).

**2. Confidential Information and Confidential Materials**

(a) “Confidential Information” means non-public information that DPS designates as being confidential

or which, under the circumstances surrounding disclosure ought to be treated as confidential.

“Confidential Information” includes, without limitation, any oral, written, graphic or machine-readable

information, technical data or know-how, product plans, products, developments, inventions,

processes, designs, drawings, software, game concepts and content, computer codes, business

plans, agreements with third parties, services, customers, marketing or finances, notes, analyses,

compilations, studios or other documents relating to released or unreleased DPS business policies or

practices, and information received from others that DPS is obligated to treat as confidential.

Confidential Information disclosed to Company by any DPS subsidiary and/or agent is covered by this

Agreement.

(b) Confidential Information shall not include any information that: (i) is or subsequently becomes

publicly available without Company’s breach of any obligation owed DPS; (ii) became known to

Company prior to DPS’s disclosure of such information to Company; (iii) became known to Company

from a source other than DPS other than by breach of an obligation of confidentiality owed to DPS; or

(iv) is independently developed by Company.

(c) “Confidential Material” shall mean all tangible materials containing Confidential Information,

including without limitation, written or printed documents and computer disks or tapes, whether

machine or user readable; and shall be deemed included in any reference hereinafter to “Confidential

Information”.

DPS Professional Services Corp / Company

Page 1 of 4 Page 1 of 4

**3. Restrictions**

(a) Company shall not disclose any Confidential Information to third parties for three (3) years

following the date of its disclosure by DPS to Company, except to Company’s consultants as

provided below. However, Company may disclose Confidential Information in accordance with

judicial or other governmental order, provided Company shall give DPS reasonable notice prior to

such disclosure and shall comply with any applicable protective order or equivalent.

(b) Company shall take reasonable security precautions, at least as great as the precautions it takes

to protect its own confidential information, to keep confidential the Confidential Information.

Company may disclose Confidential Information only to Company’s employees or consultants on a

need-to-know basis. Company will have executed or shall execute appropriate written agreements

with its employees and consultants sufficient to enable it to comply with all the provisions of this

Agreement.

(c) Confidential Information may be disclosed, reproduced, summarized or distributed only in

pursuance of Company’s business relationship with DPS, and only as otherwise provided hereunder.

Company agrees to segregate all such Confidential Information from the confidential information of

others in order to prevent co-mingling.

(d) Company may not reverse-engineer, decompile, or disassemble any software disclosed to

Company.

**4. Rights and Remedies**

(a) Company shall notify DPS immediately upon discovery of any unauthorized use or disclosure of

Confidential Information, or any other breach of this Agreement by Company, and will cooperate with

DPS in every reasonable way to help DPS regain possession of the Confidential Information and

prevent its further unauthorized use.

(b) Company shall return all originals, copies, reproductions and summaries of Confidential

Information at DPS’s request, or at DPS’s option, certify destruction of same.

(c) Company acknowledges that monetary damages may not be a sufficient remedy for unauthorized

disclosure of Confidential Information and that DPS shall be entitled, without waiving any other rights

or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent

jurisdiction.

(d) DPS may visit Company’s premises, with reasonable prior notice and during normal business

hours, to review Company’s compliance with the terms of this Agreement.

**5. Miscellaneous**

DPS Professional Services Corp / Company

Page 2 of 4 Page 2 of 4

(a) All Confidential Information is, and shall remain the property of DPS. By disclosing information to

Company, DPS does not grant any express or implied right to Company to or under DPS patents,

copyrights, trademarks, or trade secret information.

(b) Unless otherwise expressly agreed to by the parties in a separate written agreement:

(1) Confidential Information provided under this Agreement is provided “as is” without warranty of any

kind;

and

(2) Company agrees that neither DPS nor its suppliers shall be liable for any damages whatsoever

relating to Company’s use of such Confidential Information.

(c) The terms of confidentiality under this Agreement shall not be construed to limit either party’s

rights to independently develop or acquire products without use of the other party’s Confidential

Information. Further, either party shall be free to use for any purpose the residuals resulting from

access to or work with such Confidential Information, provided that such party shall maintain the

confidentiality of the Confidential Information as provided herein. The term “residuals” means

information in non-tangible form, which may be retained by persons who have had access to the

Confidential Information, including new ideas, concepts, know-how, or techniques contained therein.

Neither party shall have any obligation to limit or restrict the assignment of such persons or to pay

royalties for any work resulting from the use of the residuals. However, the foregoing shall not be

deemed to grant to either party a license under the other party’s copyrights or patents.

(d) This Agreement constitutes the entire agreement between the parties with respect to the subject

matter hereof. It shall not be modified except by a written agreement dated subsequent to the date of

this Agreement and signed by both parties. None of the provisions of this Agreement shall be

deemed to be waived by any act or acquiescence on the part of the DPS, its agents, or employees,

but only by an instrument in writing signed by an authorized officer of DPS. No waiver of any provision

of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on

another occasion.

(e) The exchange of Confidential Information between the parties is not and does not create a

partnership, joint venture, or other form of legal entity or business enterprise. Any business

relationship between the parties will be governed by a separate agreement.

(f) If either party employs attorneys to enforce any rights arising out of or relating to this Agreement,

the prevailing party shall be entitled to recover reasonable attorney’s fees. This Agreement shall be

construed and controlled by the laws of the Country of United States, regardless of the laws or rules that

might otherwise govern under the principles of conflicts of laws thereof. In the event of the bringing of

any action or suit by a party against the other party arising out of or relating to this Agreement, the

exclusive jurisdiction and venue for resolving such disputes shall be the state and courts located in

New York, United States.

DPS Professional Services Corp / Company

Page 3 of 4 Page 3 of 4

Each party hereby irrevocably consents to the personal and exclusive jurisdiction and venue of such

courts.

(g) Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of

and be binding upon the parties, their successors and assigns.

(h) If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal,

invalid or unenforceable, the remaining provisions shall remain in full force and effect.

(i) All obligations created by this Agreement shall survive change or termination of the parties’

business relationship.

**6. Suggestions and Feedback**

Either party may from time to time provide suggestions, comments or feedback to the other party

with respect to Confidential Information provided originally by the other party (hereinafter called

“Feedback”). Both parties agree that all Feedback is and shall be entirely voluntary and shall not,

absent separate agreement, create any confidentiality obligation for the Company. However, the

Company shall not disclose the source of the Feedback without the providing party’s consent.

Feedback shall be clearly designated as such and, except as otherwise provided herein, each party

shall be free to disclose and use such Feedback as it sees fit, entirely without obligation of any kind

to the other party. The foregoing shall not, however, affect either party’s obligations hereunder with

respect to Confidential Information of the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

**DPS PROFESSIONAL SERVICES CORP** **Company**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: (Sign)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Place & Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Place & Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DPS Professional Services Corp / Company

Page 4 of 4 Page 4 of 4