



MUTUAL CONFIDENTIALITY & NONDISCLOSURE AGREEMENT

This Mutual Confidentiality & Nondisclosure Agreement is made effective _____, by **The Advertising Research Foundation**, with its principal place of business located 432 park Avenue South, New York, 10016 (“**The ARF**”); and, _____ with its principal place of business at _____ (“_____”).

WHEREAS, each party to this Agreement possesses confidential and/or proprietary information not generally available to the public including without limitation intellectual property, trade secrets, pending and granted patents, systems, designs, plans, technology, methodologies, processes, software, applications, business strategies, marketing ideas and plans, pricing, supplier and customer lists, contact information for mailing purposes, know-how, databases, material identified as proprietary or confidential, and anything else that might be construed as proprietary or confidential in nature (“**INFORMATION**”);

WHEREAS, each party in possession of **INFORMATION** (the “**Disclosing Party**”) desires to disclose **INFORMATION** to the other party (the “**Receiving Party**”);

NOW, THEREFORE, in consideration of the promises made herein, the parties agree as follows:

1. Permitted Use. The Receiving Party shall handle, use and treat the Disclosing Party’s **INFORMATION** as follows: a) hold all **INFORMATION** received from the Disclosing Party in strict confidence, using at least the same degree of care as the Receiving Party uses to protect its own **INFORMATION** of a like nature, but no less than a reasonable degree of care, to prevent unauthorized use or disclosure of the **INFORMATION**; b) use such **INFORMATION** only for the purpose of: (i) evaluating the possibility of forming a business relationship with the other party concerning such **INFORMATION**, and (ii) if such relationship is formed, furthering the purpose and intent of that agreement; c) reproduce such **INFORMATION** only to the extent necessary for such purpose; d) restrict disclosure of such **INFORMATION** to its employees, consultants and independent contractors who need to know, and advise them of the obligations assumed herein; and e) except as otherwise specifically permitted herein, not disclose such **INFORMATION** to any third party, without prior written approval of the Disclosing Party. The parties agree that they are responsible for any disclosure of **INFORMATION** by any of their employees, consultants or independent contractors. The parties further agree they will not disclose the existence, nature or terms of this Agreement to any third party without the other party’s prior written

consent. In addition, the Receiving Party shall not reverse engineer, disassemble, decompile, or otherwise analyze the physical construction of any equipment, component, software, or other **INFORMATION** received from the Disclosing Party.

The restrictions on the Receiving Party’s use and disclosure of **INFORMATION** shall not apply to **INFORMATION** which the Receiving Party can demonstrate:

- i. was or has become generally available to the public without breach of this Agreement;
- ii. at the time of disclosure, was known to the Receiving Party, or is later disclosed to Receiving Party free of restriction, as evidenced by documentation in the Receiving Party’s possession;
- iii. was independently developed by the Receiving Party without use of **INFORMATION** of the Disclosing Party;
- iv. was approved for release by written authorization of the Disclosing Party, but only to the extent of and subject to any conditions of such written authorization; or
- v. was disclosed in response to a valid order of a court or other governmental body in the United States, 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.

2. Designation. **INFORMATION** shall be subject to the restrictions of Section 1 if: (i) it was in writing or other tangible form and marked as proprietary or confidential when disclosed; (ii) under similar circumstances a reasonable person would know to treat it as confidential; or (iii) it was not disclosed in tangible form, but was identified as confidential or proprietary at the time of disclosure. The parties agree to use reasonable efforts to summarize the content of oral disclosures of **INFORMATION** in writing but failure to do so shall not affect the nature of the **INFORMATION** if such **INFORMATION** was identified as confidential or proprietary when disclosed.

3. Disclosure to Affiliates. This Agreement does not permit the Receiving Party to disclose **INFORMATION** to any third party. Notwithstanding, the Receiving Party may disclose **INFORMATION** to its

affiliate(s) only to the extent necessary to fulfill the purpose of the Agreement. Nothing contained herein shall permit the Receiving Party to disclose any INFORMATION to any affiliate(s) or any third party that has a competing commercial interest with that of the Disclosing Party.

4. No License or Representations. No license to either party's name or any trademark, patent, copyright, or any other intellectual property right is either granted or implied by this Agreement, including, but not limited to, any license to make, use or sell any product embodying any INFORMATION. No representation, warranty or assurance is made by either party with respect to the non-infringement or trademarks, patents, copyrights, or any other intellectual property right.

5. Return of Information. All INFORMATION shall remain the sole property of the Disclosing Party. Upon written request (the "Request") by the Disclosing Party at any time, the Receiving Party shall: (i) turn over to the Disclosing Party all INFORMATION, all documents or media containing the INFORMATION, and any and all copies or extracts thereof, or (ii) destroy the INFORMATION, and any and all copies or extracts thereof, and provide the Disclosing Party with written certification of such destruction signed by an authorized representative of the Receiving Party. Notwithstanding the foregoing, each party acknowledges that the Receiving Party shall not be required to return to the Disclosing Party or destroy those copies of the Disclosing Party's INFORMATION that (A) reside on the Receiving Party's backup, disaster recovery or business continuity systems, or (B) that the Receiving Party is obligated by applicable law and/or industry and/or governmental regulations to retain. The Receiving Party agrees that, following its receipt of the Request, it shall neither retrieve nor use the Disclosing Party's INFORMATION for any purpose other than those specified in clauses (A) and (B) above.

6. Term and Termination. This Agreement shall continue in full force and effect for two (2) years from the effective date above and thereafter, will automatically, renew for consecutive one year terms unless a party notifies the other in writing that it does not wish to renew. Either party may terminate this agreement for any reason on ten (10) days written notice to the other.

7. Notice. Any notice or other communication required under this Agreement shall be sent by registered or certified mail, postage prepaid, return receipt requested, or by courier, addressed to the other party at its address set forth in the signature block below.

8. Remedies. The Receiving Party acknowledges and agrees that due to the unique nature of the INFORMATION, there may be no adequate remedy at law for a breach by the Receiving Party of its obligations hereunder. The Receiving Party further acknowledges that any such breach may allow the Receiving Party or third parties to unfairly compete with the Disclosing Party resulting in irreparable harm to the Disclosing Party and, therefore, upon any such breach or any threat thereof, the Disclosing Party shall be entitled to seek appropriate equitable relief in addition to whatever remedies it may have at law. In the event either party brings an action to enforce or protect any of its rights under this Agreement, the prevailing party shall be entitled to recover, in addition to its damages, its reasonable attorney's fees and costs incurred in connection therewith.

9. Representations and Warranties. Each party hereby represents and warrants to the other party that (a) it has all requisite corporate power and authority (or if a party is not a corporation, sufficient power and authority under its organizational documents or agreements) to enter into this Agreement and to carry out the obligations herein, (b) the execution, delivery, and performance of this Agreement have been duly authorized by all requisite corporate (or, as applicable, other entity) action on the part of such party, and (c) this Agreement has been duly executed and delivered by such party and (assuming the due authorization, execution, and delivery hereof by the other party) is a valid and binding obligation of such party and enforceable against it in accordance with its provisions. The parties understand that nothing herein requires either party to proceed with any proposed transaction or relationship in connection with which INFORMATION may be disclosed.

10. Governing Law. This Agreement shall be governed by the laws of the State of New York without regard to conflicts of laws provisions thereof. The parties hereby consent to the exclusive jurisdiction of the courts of New York, and stipulate that venue for any dispute arising under this Agreement shall be in Rochester, New York. If applicable, this Agreement may be executed in counterparts or by facsimile, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

11. Severability. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining portions hereof shall remain in full force and effect.



12. General. This Agreement supersedes all prior discussions and writings with respect to the subject matter hereof, and constitutes the entire agreement between the parties with respect to the subject matter hereof. Notwithstanding the foregoing, in the event of a conflict between the terms of this Agreement and the terms of a written agreement between the parties with respect to a particular business transaction, the terms of the latter shall

govern with respect to the matters expressly within its scope. No waiver or modification of this Agreement will be binding upon either party unless made in writing and signed by a duly authorized representative of each party and no failure or delay in enforcing any right will be deemed a waiver. The headings to the Paragraphs of this Agreement are included merely for reference and shall not affect the meaning of the language included therein.

IN WITNESS WHEREOF, authorized representatives of the parties have placed their hands and seals hereto as of the date above mentioned.

The Advertising Research Foundation

Signature: _____
Print: _____
Title: _____
Date Signed: _____

Signature: _____
Print: _____
Title: _____
Date Signed: _____