

MUTUAL NON-DISCLOSURE AGREEMENT

This MUTUAL NON-DISCLOSURE AGREEMENT (the "**Agreement**") dated as of _____,
(the "**Effective Date**"), by and between _____, a
_____ corporation with its principle place of business at

(**Customer**) and SP Marketplace Holdings Inc., a California corporation with business offices located at 11354 Pleasant Valley RD. #102, Penn Valley, CA 95946 ("**SP Marketplace**"). Customer and Company shall hereinafter be referred to individually as a "**Party**" and collectively as the "**Parties.**"

- 1. Introduction** The Parties desire to exchange certain information for the purposes of implementing SP Marketplace's products on the Customer's SharePoint site. In order to facilitate the exchange of such information and in order for the Parties to receive from each other, either orally or in writing, such information under terms that will protect the Proprietary and proprietary nature of such information, the Parties have entered into this Agreement.
- 2. Definitions** The term "**Proprietary Information**" shall mean all information disclosed by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), that is clearly marked as Proprietary or proprietary or which, under the circumstances surrounding disclosure, ought to be treated as Proprietary by the Receiving Party. Proprietary Information includes, without limitation, all business strategies, financial information, methodologies and processes, and forecasts.

The following disclosures shall be considered Proprietary Information as defined in this Agreement: If Proprietary Information is disclosed orally or visually, and the Disclosing Party identifies it as Proprietary at the time of disclosure and then reduces it to writing, marks it as Proprietary and delivers it to the Receiving Party within fifteen days (15) days of the non-written disclosure; or if Proprietary Information is disclosed by electronic transmission (e.g. facsimile, electronic mail, etc.) in either human readable form or machine readable form and the Disclosing Party marks it electronically as proprietary within the electronic transmission, such marking to be displayed in human readable form along with any display of the Proprietary Information; or if Proprietary Information is disclosed by delivery of an electronic storage medium or memory device and the Disclosing Party marks the storage medium or memory device itself as containing Proprietary Information and electronically marks the stored information as Proprietary, such marking to be displayed in human readable form along with any display of the Proprietary Information. Therefore, all information that exists on the Customer's SharePoint site, including any sub sites of same, should be considered Proprietary and to be covered by the terms of this NDA.

- 3. Obligations** In consideration of the Disclosing Party's disclosure of Proprietary Information to the Receiving Party, the Receiving Party agrees with respect to the Proprietary Information received from the Disclosing Party that it: (a) will maintain such Proprietary Information in the strictest confidence; (b) will not disclose, transfer or otherwise make available any of such Proprietary Information to any third party; (c) will not,

directly, indirectly or in concert with any person, use the Proprietary Information for any purpose other than in accordance with Section 1; and (d) make only as many copies of tangible Proprietary Information as are necessary for its use under the terms hereof, and each such copy will be marked with the same proprietary notices that appear on the originals. The Receiving Party shall take reasonable measures to protect the Proprietary Information of the other Party, which measures shall not be less than the measures taken to protect the Receiving Party's own Proprietary information. Proprietary Information of the Disclosing Party may be provided to the Receiving Party's employees only on a need-to-know basis and, prior to providing such provision, the Receiving Party must have already in place or obtain an appropriate agreement from each such employee, which agreement shall provide that the employee shall maintain the confidentiality of such Proprietary Information. The Receiving Party will promptly provide the Disclosing Party with reasonable access to such agreements upon the Disclosing Party's request. The Receiving Party's obligations set forth in this Section 3 with respect to each item of Proprietary Information shall terminate three (3) years from the date that the Disclosing Party first discloses such Proprietary Information to the Receiving Party.

- 4. Excluded Information** This Agreement shall not apply to any Proprietary Information which the Receiving Party can demonstrate by credible evidence: (a) is independently developed by the Receiving Party without the use of Proprietary Information of the Disclosing Party; (b) is or becomes publicly available through no wrongful act or breach of this Agreement by the Receiving Party; (c) was previously known by the Receiving Party without any obligation to hold it in confidence; (d) is approved for release by written authorization of the Disclosing Party, but only to the extent of and subject to such conditions as may be imposed in such written authorization; or (e) is required to be disclosed in order to comply with applicable law or regulation or with any requirement imposed by judicial or administrative process or any governmental or court order; provided, however, that, in the event of a disclosure pursuant to Section 4(e), the Receiving Party provides the Disclosing Party with prior written notice of such obligation, so that the Disclosing Party may seek an appropriate protective order or take other protective measures.
- 5. No Grant of Rights** The Disclosing Party's Proprietary Information and all rights in it shall remain the Disclosing Party's sole property. The Receiving Party recognizes that the disclosure of Proprietary Information by the Disclosing Party shall not be construed as granting any rights, by license or otherwise, concerning any Proprietary Information, except as may be explicitly created by this Agreement. Neither Party has any obligation to disclose Proprietary Information to the other Party.
- 6. Non-Exclusive Remedies** If the Receiving Party becomes aware of an unauthorized disclosure of the Disclosing Party's Proprietary Information, the Receiving Party shall immediately report the disclosure to the Disclosing Party, assist the Disclosing Party in limiting the resulting infringement of its rights, and cooperate in prosecuting any claims against third parties for unauthorized use. The Receiving Party acknowledges that the unauthorized disclosure, use or disposition, whether actual or threatened, of any Proprietary Information would cause irreparable harm and significant injury to the Disclosing Party, the scope of which would be difficult to ascertain. The Receiving Party agrees, therefore, that the Disclosing Party has the right to obtain an immediate injunction, without the necessity of posting bond even if otherwise required, against any breach, threatened breach or attempted breach of this Agreement, in addition to any other remedies that may be available at law or in equity, including without limitation, the

recovery of expenses, costs and attorney's fees arising out of such breach, threatened breach or attempted breach.

- 7. Return of Proprietary Information** Within fifteen (15) days following a request by the Disclosing Party, the Receiving Party shall return to the Disclosing Party all or any portion of the Proprietary Information it has in its possession, including all copies thereof, or if so directed by the Disclosing Party, destroy all such Proprietary Information. The Receiving Party shall certify in writing to the Disclosing Party that all Proprietary Information has been returned or destroyed, as applicable.
- 8. Term and Termination** The term of this Agreement shall commence as of the Effective Date and continue for the longer of: (i) a period of three (3) years, and (ii) a period lasting until SP Marketplace is no longer actively engaged in providing services to Customer, unless earlier terminated as set forth in this Section 8. Either Party may terminate this Agreement at any time upon thirty (30) days written notice to the other Party; provided, however, that the obligations set forth in Section 3 shall survive, with respect to Proprietary Information disclosed prior to the termination date, for the term set forth therein.
- 9. Disclaimer of Warranties** SP Marketplace warrants its product in accordance with the Return Policy and Support Policy identified on their website, www.spmarketplace.com.
- 10. No Partnership or Joint Venture Formed** The exchange of Proprietary 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.
- 11. Export Compliance** Each Party shall comply with the applicable United States' export laws and regulations for any technical data exchanged under this Agreement.
- 12. Governing Law** This Agreement shall be governed by the laws of the State of California (exclusive of the conflict of law rules thereof).
- 13. Waiver and Severability** No failure by either Party to exercise any rights arising from a default by the other Party shall impair that right or constitute a waiver of it. The validity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision hereof, which shall remain in full force and effect.
- 14. Entire Agreement; Amendment** The parties agree that disclosure of information to Receiving Party is not a waiver of any applicable privilege or protection at law. Although Receiving Party is an independent contractor and the Disclosing party is not Receiving Party's employer, Receiving Party agrees that its role is functionally equivalent to roles executed by Disclosing Party's employees such that Receiving Party must hold inviolate the Attorney-Client Privilege, Work-Product Protection, or any other protection at law to which the Disclosing Party is subject. This Agreement contains the entire understanding between the Parties and supersedes any prior understanding and agreements among them respecting the subject matter hereof. No amendment to this Agreement shall be valid unless set forth in writing and signed by both Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

SP Marketplace Holdings Inc.

By: _____

By: _____

Signature

Signature

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____