**Confidentiality and Non-Disclosure Agreement**

This Confidentiality and Non-Disclosure Agreement (this "Agreement") is made effective as of \_\_\_\_\_\_\_\_\_\_\_, by and between Zingtree Inc. (hereinafter “Inventor”), whose address is 1911 Broadway St., Redwood City, CA regarding Inventor’s disclosure of certain intellectual property, information and ideas, and Evaluator’s review, use and treatment thereof.

1. **Purpose of this Agreement**. Inventor and Evaluator have entered into this Agreement so that Evaluator can utilize the Confidential Information provided by Inventor pursuant to Exhibit A, and as described herein, including all intellectual property, information and other related ideas, to properly assess and evaluate Inventor’s invention for, among other things, practical feasibility, capital requirements, product development, production costs, marketing, and other related considerations.
2. **Consideration**. Consideration for this Agreement includes the mutually beneficial covenants and agreements by the parties as set out herein.
3. **Term of Agreement**. This Agreement is effective as of the date first above written, and shall continue until this Agreement is terminated by either party. A party may terminate this Agreement by providing written notice to the other party, and all obligations hereunder will terminate at that time, excepting that the obligation to treat all Confidential Information as confidential shall continue for a period of three years from the effective date hereof.
4. **Confidential Information**. The information that Inventor may disclose to Evaluator consists of all that information shown on the attached Exhibit A which is by reference incorporated into this Agreement and made a part hereof. In addition, there may be other and ancillary information that Inventor also discloses to the Evaluator, before or after the effective date of this Agreement, which is pertinent to Inventor’s intellectual property, information and ideas. All such information is collectively referred to herein as the "Confidential Information". Confidential Information will not include, and the Evaluator’s obligation to maintain the confidentiality of the Confidential Information will not apply, where any of the following exists:
   1. the Confidential Information was already in the Evaluator possession before disclosure by the Inventor, and such was received by the Evaluator without obligation of confidence.
   2. the Confidential Information is developed independently by the Evaluator.
   3. the Confidential Information is or becomes publicly available without breach of this Agreement.
   4. the Confidential Information is rightfully received by the Evaluator from a third party without an obligation of confidence.
   5. the Confidential Information is disclosed by the Evaluator with the written consent of the Inventor.
   6. the Confidential Information is released in accordance with a valid order of a court or governmental agency. The foregoing notwithstanding, the Evaluator must first notify the Inventor of any such order immediately upon the Evaluator receiving it. And the Evaluator also must make a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production.
5. **Title to Confidential Information**. Title to the Confidential Information and all related materials and documentation the Inventor deliverers to the Evaluator will remain with the Inventor. Within seven (7) working days of Inventor’s request, Evaluator will return all Confidential Information to Inventor including, but not limited to, copies or facsimiles thereof, models or mockups, computer programs, codes, sketches, drawings, flowcharts, notes, reports and all other works made by Evaluator during the evaluation process of the invention.
6. **Evaluator Obligations**.
   1. Treatment of Confidential Information. The Evaluator agrees to treat the Confidential Information as secret or confidential if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the Inventor, other Evaluator or potential Evaluator with the Inventor, or individuals or organizations about whom the Inventor keeps information. By way of example but not by way of limitation, information should be treated as confidential if it includes any proprietary documentation, materials, flow charts, codes, software, computer instructions, techniques, models, information, diagrams, know-how, trade secrets, data, business records, or marketing information.
   2. Non-Disclosure. The Evaluator agrees not to disclose any Confidential Information to third parties and to use it solely for the purpose described in the introductory provisions of this Agreement. The Evaluator will restrict circulation of the Confidential Information within its organization and then only to people in the Evaluator organization that have a need to know the Confidential Information for the purpose described in the introductory provisions of this Agreement.
   3. Liability for Disclosure. The Evaluator will be liable for the disclosure of such information whether the disclosure is intentional, negligent, or accidental, unless otherwise provided below. The Evaluator will not be liable for any unintentional disclosure of the Confidential Information that results despite the Evaluator exercise of at least the same degree of care as it normally takes to safeguard its own secrets. This exception to the Evaluator’s liability for disclosure of the Confidential Information will not apply if the Evaluator procedures are not reasonable given the nature of the Confidential Information or if the disclosure nevertheless results in liability to the Inventor.
   4. Incorporation of Confidential Information in Work Product. The Evaluator will not incorporate any portion of any Confidential Information into any work or product, other than a work product that will be delivered to the Inventor for the Inventor’s sole use. Also, the Evaluator will have no proprietary interest in any of the Confidential Information.
   5. Employees of Evaluator. Evaluator will cause all individuals in its organization who have access to any Confidential Information to be legally bound to the same burdens of confidentiality and non-use as the Evaluator.
   6. The Evaluator will return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Agreement.
7. **Entire Agreement**. This Agreement is the entire agreement between the parties with respect to the subject matter and supersedes any previous statements or agreements, whether oral or written.
8. **Representations**. Inventor makes no representations, either expressly or impliedly as to the adequacy, sufficiency, completeness, correctness or lack of defect of any kind, including any patent, trademark or copyright infringement that may result from the use of the Confidential Information.
9. **Further Agreements**. In the event that Evaluator finds the Invention is worthy of being patented, copyrighted, trademarked, developed and marketed, Inventor and Evaluator may negotiate an additional agreement to define all their respective rights regarding the actions specified in the paragraph.
10. **Notices**. Any notices or delivery required in this Agreement will be deemed completed when hand-delivered, delivered by agent, or seven (7) days after being placed in the post, postage prepaid, to the parties at the addresses contained in this Agreement or as the parties may later designate in writing. For any notice under this Agreement to be effective it must be made in writing and sent to the address of the appropriate party first appearing above, unless such party has notified the other party, in accordance with the provisions of this section, of a new mailing address.
11. **Agreement Binding**. This Agreement will be binding upon and inure to the benefit of the respective successors and assigns of the Inventor and the Evaluator; however, this Agreement may not be assigned or otherwise transferred by either party in whole or part without the prior written consent of the other party to this Agreement.
12. **Amendments**. No amendment or modification of any provision of this Agreement will be effective unless it is in writing and signed by both parties.
13. **Strict Performance**. The failure of either party to demand strict performance by the other party of any of this Agreement will not be a waiver or relinquishment of any rights under this Agreement. And either party may at any later time demand strict and complete performance by the other party of the Agreement.
14. **Severability**. If any provision of this Agreement is held by a court of competent jurisdiction to be Evaluator to law, the remaining provisions of this Agreement will remain in full force and effect to the extent that such does not create an absurdity.
15. **Construction**. This Agreement will be construed in accordance with the plain meaning of its language and neither for nor against the drafting party. And the headings used herein are for the sole sake of convenience and will not be used to interpret any section.
16. **Governing Law**. This Agreement will be governed by the laws of the State of Delaware unless otherwise agreed in writing by the parties hereto.

To show their agreement, the parties have signed this Agreement on the dates shown below.

**Evaluator Inventor**

By:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: Tom Mayes

On Behalf Of: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ On Behalf of Zingtree Inc.

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_          Date: \_\_\_\_\_\_\_\_\_\_\_

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