

## Mutual Nondisclosure Agreement

This Mutual Nondisclosure Agreement (this "**Agreement**") is made and entered into as of the date set forth below (the "**Effective Date**") by and between **Interactive Marketing Solutions Corporation**, a Connecticut corporation located at 777 Summer Street, Suite 502, Stamford, CT 06901 and **CLIENT COMPANY NAME AND ADDRESS**. The parties hereto sometimes are collectively referred to herein as the "**Parties**" and individually as a "**Party**". The Parties may be discussing or evaluating a possible business transaction (the "**Transaction**"). In connection with these discussions and the Transaction, each Party may disclose or has disclosed, certain Confidential Information (as hereinafter defined) that it desires to be used only for the limited purpose for which disclosed. As a result, the Parties hereby agree as follows:

**1. Confidential Information.** The Party disclosing confidential information hereunder is hereinafter referred to as the "**Disclosing Party**" and the Party receiving confidential information hereunder is hereafter referred to as the "**Receiving Party**". For purposes of this Agreement, "Disclosing Party" includes affiliates of a Party who disclose Confidential Information to the Receiving Party regarding the Transaction. As used in this Agreement, "**Confidential Information**" means information not known to the public, whether of a technical, business or other nature that relates to the Transaction or that, although not related to such Transaction, is nevertheless disclosed as a result of the Parties' discussions in that regard, and that should reasonably have been understood by the Receiving Party, because of (i) legends or other markings, (ii) the circumstances of disclosure or (iii) the nature of the information itself, to be proprietary and confidential to the Disclosing Party. Confidential Information includes the substance of the Parties' discussions and all third party information that the Disclosing Party is obligated to keep confidential. Confidential Information may be disclosed in written or other tangible form (including information in computer software or held in electronic storage media) or by oral, visual or other means. In particular, business processes and marketing strategies are considered Confidential Information.

**2. Use of Confidential Information.** The Receiving Party, except as expressly provided in this Agreement, shall not disclose the Disclosing Party's Confidential Information to anyone without the Disclosing Party's prior written consent. The Receiving Party shall not use, or permit others to use, Confidential Information for any purpose other than pursuit and evaluation of the Transaction. The Receiving Party shall protect such Confidential Information from disclosure to others, using the same degree of care used to protect its own confidential or proprietary information of like importance, but in any case using no less than a reasonable degree of care.

**3. Exceptions.** The provisions of Section 2 shall not apply to any information that (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been known to the Receiving Party without confidentiality restrictions at the time of its receipt from the Disclosing Party; (iii) is rightfully received from a third party who did not acquire or disclose such information by a wrongful or tortious act, or in breach of a confidentiality restriction; (iv) is independently developed by the Receiving Party; or (v) is identified by the Disclosing Party in writing as no longer proprietary or confidential.

**4. Disclosures Required by Law.** The Receiving Party may disclose Confidential Information to the extent required by law or court order. However, where permitted by law, the Receiving Party shall give the Disclosing Party prompt notice of such disclosure to allow the Disclosing Party a reasonable opportunity to obtain a protective order and shall provide reasonable assistance to the Disclosing Party (at the Disclosing Party's expense) in seeking such a protective order.

**5. Ownership of Confidential Information.** All Confidential Information disclosed under this Agreement (including information in computer software or held in electronic storage media) shall remain the exclusive property of the Disclosing Party, and the Receiving Party shall have no rights, by license or otherwise, to use the Confidential Information except as expressly provided herein or in the Transaction. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise conveyed by this Agreement with respect to Confidential Information or other information.

**6. No Warranty or Obligation to Proceed.** Confidential Information is provided "AS IS" and no warranties of any kind are given by either Party with respect to the accuracy, appropriateness or completeness of information provided to the other. With respect to the Confidential Information, only those representations and warranties which are made in a final definitive written agreement regarding the Transaction, when, as and if executed, and subject to such limitations and restrictions as may be specified therein, will have any legal effect. The Parties agree that, unless and until a final definitive written agreement with respect to any transaction relating to disclosures under this Agreement is completed, neither Party shall be under any legal obligation of any kind whatsoever with respect to such a transaction by virtue of this Agreement or any written or oral expression with respect to such a transaction by any of their respective directors, officers, employees, agents, advisors, or contractors thereof, except, in the case of this Agreement, for the matters specifically agreed to herein.

**7. Return of Confidential Information.** The Receiving Party promptly shall return or destroy the portions of all tangible material embodying Confidential Information (in any form and including, without limitation, all summaries, copies and excerpts of Confidential Information and all electronic media or records containing or derived from Confidential Information) upon the Disclosing Party's written request. At the Disclosing Party's option, the Receiving Party shall provide written certification of its compliance with this Section 7.

**8. Injunctive Relief.** The Receiving Party acknowledges that Confidential Information is unique and valuable, and that disclosure or use of Confidential Information in violation of this Agreement could cause irreparable harm to the Disclosing Party for which monetary damages may be difficult to ascertain or be an inadequate remedy. Therefore, the Parties agree that in the event of a breach or threatened breach of confidentiality, the Disclosing Party shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach or anticipated breach without the necessity of posting a bond. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of monetary damages.

**9. Cumulative Obligations.** Each Party's obligations hereunder are in addition to, and not exclusive of, any and all of its other obligations and duties to the other Party, whether express or implied, in fact or in law.

**10. Amendment.** This Agreement may be amended or modified only with the mutual written consent of the Parties.

**11. Scope; Termination.** The term of this Agreement shall continue for a term of one year (the "**Term**"); provided, however, that either Party may terminate the Agreement at any time during the Term with written notice. Except to the extent superseded by a subsequent agreement, the rights and obligations of the Parties with respect to Confidential Information shall survive the termination or expiration of this Agreement for a period of three (3) years from the effective date of such termination or expiration; provided that the Parties' obligations with respect to Confidential Information that constitutes trade secrets under applicable law shall survive for a longer period until the date such Confidential Information ceases to be a trade secret.

**12. Assignment.** Neither party may assign all or any portion of its rights or obligations under this Agreement to any third party without the prior written consent of the other party to this Agreement. Notwithstanding the foregoing, a Party may assign all or any portion of its rights and obligations under this Agreement to any affiliate of a Party and/or to any successor by way of

merger or consolidation or in connection with the sale or transfer of all or substantially all of its business and assets relating to this Agreement without the consent of the other party to this Agreement, provided that (a) the assigning Party gives prompt written notice of such assignment to the other party and (b) without the written consent of the non-assigning party, no such assignment shall release assigning Party from any of its obligations under this Agreement.

**13. Nonwaiver.** Any failure by either Party to enforce the other Party's strict performance of any provision of this Agreement shall not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

**14. Governing Law; Etc.** This Agreement shall be governed by internal laws of the State of Connecticut without regard to its choice of law provisions, and may be executed in counterpart copies and by facsimile or electronically. If a provision of this Agreement is held invalid under any applicable law, such invalidity shall not affect any other provision of this Agreement that can be given effect without the invalid provision. Further, all terms and conditions of this Agreement shall be deemed enforceable to the fullest extent permissible under applicable law, and when necessary, the court is requested to reform any and all terms or conditions to give them such effect.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement, which shall be effective as of \_\_\_\_\_.

**CLIENT CORPORATION NAME**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**INTERACTIVE MARKETING SOLUTIONS CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_