

# THE COLLECTIVE

LET'S RETHINK DIFFERENT TOGETHER

## MUTUAL NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement (the "Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016 (the "Effective Date"), between The Collective Concept LLC., a Colorado corporation (hereinafter referred to as "The Collective" or "The Company"), and \_\_\_\_\_, principal offices located at \_\_\_\_\_ (hereinafter referred to as the "Receiving Party").

### 1. BACKGROUND

The Company and The Collective, LLC (the "parties") intend to engage in discussions and negotiations concerning the possible establishment of a business relationship between them. In the course of such discussions and negotiations and in the course of any such business relationship, it is anticipated that each party will disclose or deliver to the other party and to the other party's directors, officers, employees, agents or advisors (including, without limitation, attorneys, accountants, consultants, bankers, financial advisors and members of advisory boards) (collectively, "Representatives") certain of its trade secrets or confidential or proprietary information for the purposes of enabling the other party to evaluate the feasibility of such business relationship and to perform its obligations and exercise its rights under any such business relationship that is agreed to between the parties (the "Purposes"). The parties have entered into this Agreement in order to assure the confidentiality of such trade secrets and confidential or proprietary information in accordance with the terms of this Agreement. As used in this Agreement, the party disclosing Proprietary Information (as defined below) is referred to as the "Disclosing Party"; the party receiving such Proprietary Information is referred to as the "Recipient".

### 2. PROPRIETARY INFORMATION

As used in this Agreement, the term "Proprietary Information" shall mean all trade secrets or confidential or proprietary information designated as such in writing by the

Disclosing Party, whether by letter or by the use of an appropriate proprietary stamp or legend, prior to or at the time any such trade secret or confidential or proprietary information is disclosed by the Disclosing Party to the Recipient. Notwithstanding the foregoing, information which is orally or visually disclosed to the Recipient by the Disclosing Party, or is disclosed in writing without an appropriate letter, proprietary stamp or legend, shall constitute Proprietary Information if (i) it would be apparent to a reasonable person, familiar with the Disclosing Party's business and the industry in which it operates, that such information is of a confidential or proprietary nature the maintenance of which is important to the Disclosing Party or if (ii) the Disclosing Party, within 30 days after such disclosure, delivers to the Recipient a written document or documents describing such Proprietary Information and referencing the place and date of such oral, visual or written disclosure and the names of the Representatives of the Recipient to whom such disclosure was made. In addition, the term "Proprietary Information" shall be deemed to include: (a) any notes, analyses, compilations, studies, interpretations, memoranda or other documents prepared by the Recipient or its Representatives which contain, reflect or are based upon, in whole or in part, any Proprietary Information furnished to the Recipient or its Representatives pursuant hereto; and (b) the existence or status of, and any information concerning, the discussions between the parties concerning the possible establishment of a business relationship.

### **3. SCOPE OF AGREEMENT**

This Agreement shall apply to all Proprietary Information disclosed between the parties hereto, whether before, on or after the date hereof.

### **4. USE AND DISCLOSURE OF PROPRIETARY INFORMATION**

The Recipient and its Representatives shall use the Proprietary Information of the Disclosing Party only for the Purposes and such Proprietary Information shall not be used for any other purpose without the prior written consent of the Disclosing Party. Without limitation of the foregoing, the Recipient shall not cause or permit reverse engineering of any Proprietary Information or decompilation or disassembly of any software programs which are part of the Proprietary Information. The Recipient and its Representatives shall hold in confidence, and shall not disclose any Proprietary Information of the Disclosing Party; provided, however, that (i) the Recipient may make any disclosure of such information to which the Disclosing Party gives its prior

written consent; and (ii) any of the Proprietary Information may be disclosed by the Recipient to its Representatives who need to know such information in connection with the Purposes, or to prospective investors, lenders or acquirors as part of their due diligence investigations, and in each case who are informed of the confidential nature of such information and of the terms of this Agreement. In any event, the Recipient shall be responsible for any breach of this Agreement by any of its Representatives or such parties, and agrees, at its sole expense, to take reasonable measures to restrain its Representatives and such parties from prohibited or unauthorized disclosure or use of the Proprietary Information. Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not prohibit the Recipient from disclosing Proprietary Information of the Disclosing Party to the extent required in order for the Recipient to comply with applicable laws and regulations, provided that the Recipient provides prior written notice of such required disclosure to the Disclosing Party and takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure.

## 5. LIMITATION ON OBLIGATIONS

The obligations of the Recipient specified in Section 4 shall not apply, and the Recipient shall have no further obligations, with respect to any Proprietary Information to the extent the Recipient can demonstrate that such Proprietary Information:

- A. is generally known to the public at the time of disclosure or becomes generally known without the Recipient or its Representatives violating this Agreement;
- B. is in the Recipient's possession at the time of disclosure;
- C. becomes known to the Recipient through disclosure by sources other than the Disclosing Party without such sources violating any confidentiality obligations to the Disclosing Party; or
- D. is independently developed by the Recipient without reference to or reliance upon the Disclosing Party's Proprietary Information.

## 6. OWNERSHIP OF PROPRIETARY INFORMATION

The Recipient agrees that it shall not receive any right, title or interest in, or any license or right to use, the Disclosing Party's Proprietary Information or any patent, copyright, trade secret, trademark or other intellectual property rights therein, by implication or otherwise. Each of the parties hereto represents, warrants and covenants that the trade secrets which it discloses to the other party pursuant to this Agreement have not been stolen, appropriated, obtained or converted without authorization.

## **7. RETURN OF PROPRIETARY INFORMATION**

- A. The Recipient shall, upon the written request of the Disclosing Party, return to the Disclosing Party all Proprietary Information received by the Recipient or its Representatives from the Disclosing Party (and all copies and reproductions thereof). In addition, the Recipient shall destroy: (i) any notes, reports or other documents prepared by the Recipient which contain Proprietary Information of the Disclosing Party; and (ii) any Proprietary Information of the Disclosing Party (and all copies and reproductions thereof) which is in electronic form or cannot otherwise be returned to the Disclosing Party.
- B. Alternatively, upon written request of the Disclosing Party, the Recipient shall destroy all Proprietary Information received by the Recipient or its Representatives from the Disclosing Party (and all copies and reproduction thereof) and any notes, reports or other documents prepared by the Recipient which contain Proprietary Information of the Disclosing Party.
- C. Notwithstanding the return or destruction of the Proprietary Information, the Recipient and its Representatives will continue to be bound by their obligations of confidentiality and other obligations hereunder. The Recipient's legal counsel may retain one copy of the Disclosing Party's Proprietary Information for archival purposes only. If either of the parties are required to disclose any Proprietary Information in a legal proceeding, the Receiving Party will give The Disclosing Party prompt written notice of such requirement and cooperate with The Receiving Party for it to seek a protective order or other appropriate remedy. In the event that such protective order or other remedy is not obtained, the Receiving Party or its Representatives will disclose only that portion of the Proprietary Information which, upon the advice of the Receiving Party's counsel and after notifying the Disclosing party is legally required to be disclosed.

- D. If either of the parties are required to disclose any Proprietary Information in a legal proceeding, the Receiving Party will give The Disclosing Party prompt written notice of such requirement and cooperate with The Receiving Party for it to seek a protective order or other appropriate remedy. In the event that such protective order or other remedy is not obtained, the Receiving Party or its Representatives will disclose only that portion of the Proprietary Information which, upon the advice of the Receiving Party's counsel and after notifying the Disclosing party is legally required to be disclosed.

## **8. TERMINATION**

The non-use and non-disclosure obligations set forth in Sections 2 and 4 shall last until the occurrence of a limitation event in Section 5. All other obligations under this Agreement shall terminate five (5) years from the Effective Date.

## **9. MISCELLANEOUS**

- A. This Agreement supersedes all prior agreements, written or oral, between the parties relating to the subject matter of this Agreement. This Agreement may not be modified, changed or discharged, in whole or in part, except by an agreement in writing signed by the parties.
- B. This Agreement will be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns.
- C. This Agreement shall be construed and interpreted in accordance with the internal laws of the State of Illinois, without giving effect to the principles of conflicts of law thereof.
- D. The provisions of this Agreement are necessary for the protection of the business and goodwill of the parties and are considered by the parties to be reasonable for such purpose. The Recipient agrees that any breach of this Agreement will cause the Disclosing Party substantial and irreparable injury and, therefore, in the event of any such breach, in addition to other remedies which may be available, the Disclosing Party shall have the right to specific performance and other injunctive and equitable relief.

- E. The confidentiality obligations imposed by this Agreement shall continue with respect to a particular item of Proprietary Information until the fifth anniversary of the disclosure of such Proprietary Information to Recipient pursuant to this Agreement; provided, however, that the confidentiality obligations imposed by this Agreement with respect to source code included in the Proprietary Information shall continue in perpetuity.
- F. For the convenience of the parties, this Agreement may be executed by facsimile and in counterparts, each of which shall be deemed to be an original, and both of which taken together, shall constitute one agreement binding on both parties.

IN WITNESS WHEREOF, the parties hereto have executed the Confidentiality Agreement as of the day and year first set forth above.

**The Collective Concept**

**The Receiving Party**

SIGNATURE: \_\_\_\_\_  
FRED MARSHALL

SIGNATURE: \_\_\_\_\_  
NAME

Title: Chief Executive Officer (C.E.O.)

Title:

