

## **CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

This Confidentiality and Non-Disclosure Agreement (“Agreement”) is made and entered into effective \_\_\_\_\_, 2013, by and between Ronald Gonzales on behalf of Smarttcadd, Lipa City, 4217 Philippines (the “Company”) and \_\_\_\_\_ residing at \_\_\_\_\_ on behalf of itself and its affiliates (“Recipient”). Capitalized terms shall have the meanings given in Section 1.

### **RECITALS:**

A. Concurrently with the execution of this Agreement, Smarttcadd and Recipient are entering into business discussions pursuant to which Smarttcadd, its employees, consultants, agents, legal counsel, accountants and other advisers (collectively, “Disclosing Persons”) may from time to time disclose Confidential Information of Smarttcadd to Recipient.

B. Smarttcadd desires to protect its Confidential Information from unauthorized use, disclosure or copying.

NOW, THEREFORE, in consideration of the premises and covenants contained herein and as an inducement to Smarttcadd to disclose Confidential Information to Recipient, the parties agree as follows.

### **1. DEFINITIONS**

1.1 “Confidential Information” means any and all technical and non-technical information, whether in oral, written, graphic, machine-readable, tangible or intangible form, relating to Smarttcadd business plan and model, and/or to current, future, or proposed products, services or other business activities of Smarttcadd, its suppliers and/or licensors, including, but not limited to, trade secrets, knowledge, formulas, design details and specifications, engineering, sources of supply, processes, production and manufacturing methods and secrets, merchandising methods and trade information, computer code (source code and object code), hardware configurations, algorithms, inventions, patent applications, know-how, products, equipment, computer programs, customer lists, agreements with third parties, forms, price lists, financial statements, business forecasts and projections, marketing and business plans, information relating to customers, potential customers, and other information regarding the financial or business affairs of Smarttcadd, its suppliers and/or licensors. Confidential Information does not include information which (i) becomes generally available to the public other than as a result of unauthorized disclosure or use by Recipient or a Permitted Recipient, (ii) was already in possession of Recipient on a non-confidential basis prior to its disclosure by a Disclosing Person, (iii) becomes available to Recipient on a non-confidential basis from a source other than a Disclosing Party, provided that the disclosing person is lawfully in possession of such Confidential Information and under no obligation of confidentiality to Smarttcadd or any third party or (iv) is approved in writing by Smarttcadd for Recipient to use or disseminate free of any ongoing obligations hereunder.

1.2 “Disclosing Persons” means Smarttcadd, its employees, consultants, agents, legal counsel, accountants and other advisers.

1.3 “Permitted Recipients” means Recipient’s employees and consultants that are listed in Exhibit A attached hereto. Recipient may add additional persons to Exhibit A only with written consent by Smarttcadd. Recipient shall allow access to only such Confidential Information as a Permitted Recipient has a reasonable need to know to allow Recipient to perform its obligations hereunder.

**2. Non-Disclosure Obligations.** During the terms of this Agreement and at all times thereafter, Recipient and each Permitted Recipient covenants and agrees that Recipient and such Permitted Recipient shall:

2.1 not disclose Confidential Information to any person or entity other than to Permitted Recipients;

2.2 not use Confidential Information for any purpose other than solely for evaluating a potential business relationship with Smarttcadd;

2.3 not make copies, including, without limitation, photocopies, photographs, drawings, or electronic copies, or otherwise duplicate any documents or other materials provided by a Disclosing Party that comprise or contain Confidential Information;

2.4 treat confidentially all documents and materials containing or referring to any Confidential Information and confirm that all such documents and materials in its possession or control is marked in a manner that discloses that it contains Confidential Information of Smarttcadd and is subject to confidentiality obligations;

2.5 promptly notify Smarttcadd in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information which may come to the attention of Recipient or a Permitted Recipient;

2.6 notify Smarttcadd in writing at least fifteen (15) days prior to using, disclosing or copying information that would be considered Confidential Information but for the provisions of clauses (i) through (iii) in the definition of Confidential Information, and allow Smarttcadd a reasonable opportunity prior to any use or disclosure by Recipient or any Permitted Recipient to seek a protective order or other legal protection should Smarttcadd notify Recipient within such fifteen day notice period that Smarttcadd considers the information to be Confidential Information and subject to the terms of this Agreement;

2.7 Any violation of the terms of this Agreement by a Permitted Recipient or other person or entity receiving Confidential Information from Recipient shall constitute a breach by Recipient of this Agreement.

If Recipient or any Permitted Recipient receives a subpoena or court or governmental order to produce any Confidential Information or if Recipient or a Permitted Recipient otherwise determines that Recipient or a Permitted Recipient is legally required to disclose or produce any Confidential Information in its possession or control, (a) Recipient or such Permitted Recipient

shall (a) promptly notify Smarttcadd in writing of such required disclosure, (b) allow Smarttcadd a reasonable opportunity to seek a protective order or other relief to prevent, restrict and/or limit such disclosure and cooperate with Smarttcadd in seeking any such relief, (c) disclose only that portion of the Confidential Information that is legally required to comply with the subpoena, order or other disclosure requirement.

On termination of this Agreement, Recipient and each Permitted Recipient will (i) promptly return, or cause to be returned, to Smarttcadd all materials that Smarttcadd or any Disclosing Person has provided pursuant to this Agreement, including (but not limited to) all materials containing or referring to Confidential Information and all copies of such materials in its possession or control, and (ii) if any Confidential Information is integrated with Recipient's or a Permitted Recipient's documents or media (e.g. computer drives), Recipient and each Permitted Recipient will destroy or erase such documents and media and Recipient shall certify in writing to EDEC Digital Forensics. within twenty (20) days after termination of this Agreement that all required destruction or erasure of documents and media have been carried out.

**3. Injunctive Relief.** Recipient and each Permitted Recipient agrees that, in view of the unique nature of the Confidential Information and the irreparable loss that could be sustained by Smarttcadd in the event of the unauthorized disclosure, copying or use of Confidential Information, Smarttcadd will be irreparably damaged and will not have an adequate remedy at law in the event that the terms of this Agreement are violated, and therefore agrees that Smarttcadd shall be entitled to injunctive relief, including specific enforcement, to enforce the provisions of this Agreement, in addition to any other remedy to which Smarttcadd may be entitled at law. Recipient and each Permitted Recipient agrees that if any action should be brought by Smarttcadd in equity to enforce any of the provisions of this letter, neither Recipient nor a Permitted Recipient shall raise the defense that there is an adequate remedy at law.

**4. Indemnity.** Recipient agrees to indemnify and hold harmless Smarttcadd from and against all liabilities, claims, damages, costs and expenses (including reasonable legal fees and expenses) arising out of or in connection with any breach by Recipient or any Permitted Recipient of any obligation hereunder.

**5. Disclaimer.** No rights or obligations other than those expressly set forth herein are to be implied from this Agreement. In particular, no license is hereby granted directly or indirectly with respect to any patent, copyrighted material, mask work, design rights, know-how, trade secret, trademarks or service mark, any other intellectual property rights or any other Confidential Information of Smarttcadd. This Agreement does not require either party to enter into or maintain any business relationship with the other. The parties shall act as, and at all time, be independent contractors, and nothing contained in this Agreement shall be construed to create or imply a joint venture, partnership, principal, agent or employment relationship between or among Smarttcadd and Recipient or any Permitted Recipient.

**6. Publicity.** Neither party shall disclose to any third party or parties the existence of any other discussions between the parties regarding other business relationships, except with the prior written consent of the other party.

**7. Expiration; Termination; Survival of Obligation.** The term of this Agreement shall be for two (2) years, unless extended in writing by mutual agreement of the parties. No information or materials that are first provided by Smarttcadd to Recipient after the term of this Agreement shall be subject to the terms of this Agreement. Following the term of this Agreement, the rights and obligations of the parties under this Agreement shall survive and continue in perpetuity with respect to all information and materials made available Smarttcadd to Recipient during the term of this Agreement and shall bind Smarttcadd, Recipient and each Permitted Recipient and their respective legal representatives, successors and permitted assigns.

**8. Miscellaneous.**

8.1 Assignment. No party shall voluntarily or by operation of law assign, hypothecate, transfer, license, or otherwise transfer or encumber all or any part of its rights, duties, or other interests in this Agreement or the proceeds thereof (collectively, Assignment), without the other party's prior written consent, which consent shall not be unreasonably withheld or delayed; provided, however, that no such consent shall be required for any assignment by a party to such party's successor in interest in connection with a merger, acquisition, reorganization or transfer of all or substantially all of a party's stock, assets or business. Any attempt to make an Assignment in violation of this provision shall be a material default under this Agreement and any Assignment in violation of this provision shall be null and void

8.2 Attorneys' Fees. If any party to this Agreement shall bring any action, suit, counterclaim, appeal, or mediation for any relief, declaratory or otherwise, to enforce the terms hereof or to declare rights hereunder (collectively, an Action), the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees and costs incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling, or award (collectively, a Decision) granted therein, all of which shall be deemed to have accrued on the commencement of such Action and shall be paid whether or not such Action is prosecuted to a Decision. Any Decision entered in such Action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such Decision.

8.3 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between each of the parties of at least one set of counterparts. The parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

8.4 Entire Agreement. This writing constitutes the entire agreement of the parties with respect to the subject matter hereof. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter. This Agreement may be modified only by written agreement signed by all parties.

8.5 Notices. Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery (including delivery by messenger or by overnight courier service), by email or by certified mail, return receipt requested, addressed as follows:

Notice shall be effective upon receipt or refusal of delivery by the intended recipient, as evidenced by the records of the messenger or delivery service or by mechanical confirmation of successful email transmission, provided that if such transmission is confirmed on a non-business day or later than 5:00 p.m. local time at the Recipient's location, receipt shall be deemed to have been given at 9 a.m. on the following business day. Either party may, by notice to the other, specify a different address or facsimile number for notice purposes.

8.6 Governing Law. This Agreement shall be governed by and construed according to the laws of the Republic of the Philippines, without reference to principles of choice of law thereof.

IN WITNESS WHEREOF, a duly authorized representative of each party hereto has executed this agreement.

Smarttcadd

Recipient

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

By: \_\_\_\_\_

Name: Ronald Gonzales

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

Title: General Manager

Title: \_\_\_\_\_

Signature:

Signature:

\_\_\_\_\_

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