

# Non-Disclosure



# Agreement



## MUTUAL CONFIDENTIALITY AGREEMENT

(Non-Disclosure Agreement - NDA)

This Agreement, dated and effective as of \_\_\_\_\_, is made and entered into by and between Alpha Genesis Networks and \_\_\_\_\_.

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The parties agree as follows:

### Section 1. Definitions

**"Confidential Information"** means any trade secrets or other information of Discloser that is not generally available to the public, whether of a technical, business or other nature (including, without limitation, the relationship between the parties, and information relating to Discloser's technology, software, products, services, designs, methodologies, business plans, finances, marketing plans, customers, prospects or other affairs), that is disclosed to Recipient during the Disclosure Period and that Recipient knows or has reason to know is confidential, proprietary or trade secret information of Discloser. Confidential Information also includes any information that has been made available to Discloser by third parties that Discloser is obligated to keep confidential. Confidential Information does not include any information that: (a) is or was acquired by Recipient from a third party and is not subject to an unexpired obligation to such third party restricting Recipient's use or disclosure thereof; (b) is independently developed by Recipient without reliance upon or use of any of the Confidential Information; or (c) is or has become generally publicly available through no fault or action of Recipient.

**"Confidential Materials"** means any document, email, CD, disk, Flash drive, tape, writing or other tangible item that contains any Confidential Information, whether in printed, handwritten, coded, magnetic or other form and whether delivered by Discloser or made by Recipient.

**"Discloser"** means a party that discloses any of its Confidential Information to the other party under this Agreement.

**"Disclosure Period"** means the period of time beginning with the date of this Agreement and ending ten (10) days after either party gives the other written notice ending the Disclosure Period.

**"Recipient"** means a party that receives any Confidential Information from the other party under this Agreement.

### Section 2. Confidentiality

**2.1** Confidential Information and Confidential Materials are made available to Recipient solely for the purpose of pursuing a business relationship between the parties. Recipient will not use, disclose, disseminate or distribute any Confidential Information or Confidential Materials for any other purpose without the prior written consent of Discloser. Without limitation of the foregoing, Recipient will not use any Confidential Information or Confidential Materials to design, develop, provide or market any product or service that would compete with any product or service of Discloser.

**2.2** Recipient will protect any Confidential Information and Confidential Materials from any unauthorized use, disclosure, copying, dissemination or distribution. Without limitation of the foregoing, Recipient will: (a) make the Confidential Information and Confidential Materials



available only to those of its employees, agents and other representatives who have a need to know the same for the purpose specified in Section 2.1, who have been informed that the Confidential Information and Confidential Materials belong to Discloser and are subject to this Agreement, and who have agreed or are otherwise obligated to comply with this Agreement; (b) not disclose the Confidential Information to any third party; (c) make or copy the Confidential Materials only as reasonably required for the purpose specified in Section 2.1; (d) not deliver, distribute, display, demonstrate or otherwise make available the Confidential Materials to any third party except as provided in clause (a) above; (e) not reverse engineer, decompile or disassemble any computer program included in such Confidential Materials; and (f) not remove or obliterate markings (if any) on Confidential Information indicating its proprietary or confidential nature.

**2.3** Notwithstanding Section 2.2, Recipient may disclose or produce any Confidential Information or Confidential Materials if and to the extent required by any discovery request, subpoena, court order or governmental action, provided that Recipient gives Discloser reasonable advance notice of the same (e.g., so as to afford Discloser a reasonable opportunity to appear, object and obtain a protective order or other appropriate relief regarding such disclosure).

**2.4** All Confidential Information and Confidential Materials are the property of Discloser. This Agreement will not be interpreted or construed as granting any license or other right under any patent, copyright, trademark, trade secret or other proprietary right. Recipient will hold all Confidential Materials in trust for Discloser and will promptly destroy them or deliver them to Discloser upon the earlier of Discloser's request or when they are no longer needed for the purpose described in Section 2.1. Upon Discloser's request, Recipient will certify in writing its destruction of such Confidential Materials.

**2.5** Recipient will comply with any and all applicable laws relating to the use, disclosure, copying, dissemination and distribution of any Confidential Information or Confidential Materials (including, but not

limited to, any and all laws relating to Discloser's proprietary rights or the export of any technical data included in such Confidential Information).

### **Section 3. Miscellaneous**

**3.1** Discloser warrants that it has the right to make the Confidential Information and Confidential Materials available to Recipient as provided for herein and subject to this Agreement. Discloser does not make any other representation or warranty, express or implied, with regard to any Confidential Information and Confidential Materials. Without limitation of the foregoing, the Confidential Information and Confidential Materials are made available under this Agreement "**AS IS,**" **with all defects, errors and deficiencies, and without any representation or warranty as to completeness or accuracy.**

**3.2** In the event of any breach of this Agreement, Discloser may suffer irreparable harm and have no adequate remedy at law. In such event or the threat of any such event, Discloser will be entitled (in addition to any and all other remedies) to injunctive relief, specific performance and other equitable remedies without proof of monetary damages or the inadequacy of other remedies, and without necessity of posting a bond or other security.

**3.3** The prevailing party will be entitled (in addition to any and all other remedies) to recover any and all costs and expenses (including, without limitation, reasonable attorneys' fees) that it may incur in connection with any legal action to enforce this Agreement or to recover damages or other relief on account of any breach of this Agreement.

**3.4** The protections afforded to the Confidential Information and Confidential Materials under this Agreement are in addition to, and not in lieu of, the protections afforded under any applicable trade secrets laws, including the Uniform Trade Secrets Act.



**3.5** This Agreement will be interpreted, construed and enforced in accordance with the laws of the State of California without regard to its choice of law principles to the contrary. Each party hereby irrevocably consents to the jurisdiction and venue of any state or federal court located in San Diego, North County, California, with regard to any legal or equitable action or proceeding relating to this Agreement.

**3.6** This Agreement will not be construed as an obligation by either party to enter into a contract,

subcontract, or other business relationship.

**3.7** This Agreement may not be amended, except by a writing signed by both parties.

**3.8** This Agreement may be executed in counterparts, and signatures exchanged by facsimile or other electronic means are effective for all purposes hereunder to the same extent as original signatures.

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**Alpha Genesis Networks**

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

Print Name: James L. Lainé

Title: President, CEO

7589A Saranac Avenue

La Mesa, CA 991942

\_\_\_\_\_  
Company Name

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

Print Name: \_\_\_\_\_

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

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_