

MUTUAL NON-DISCLOSURE AND NON-CIRCUMVENT AGREEMENT

This Non-Disclosure Agreement is entered into this ____ day of _____, 200_ (*"Effective Date"*), by and between _____, having its principal place of business at _____ and Local Heroes, Inc., a Delaware corporation having its principal place of business at 1640 Tiburon Blvd Suite 4, Tiburon, California.

In consideration of the mutual promises and covenants contained in this Agreement, the parties hereto agree as follows:

1. Confidential Information

(a) *"Confidential Information"* means any proprietary information that is disclosed by Disclosing Party (defined herein) to Receiving Party (defined herein) and identified as confidential or proprietary at the time of disclosure, or, if disclosed orally, which is identified as confidential or proprietary at the time of disclosure and such designation is confirmed in writing no later than thirty (30) days after such disclosure. Confidential information includes, without limitation, all proprietary information which relates to Disclosing Party's business (including without limitation, business plans, financial data, customer information, marketing plans, etc.), technology (including without limitation, technical drawings, designs, schematics, algorithms, technical data, product plans, research plans, software, etc.), products, services, trade secrets, know-how, formulas, processes, ideas, and inventions (whether or not patentable) and which should be reasonably understood by Receiving Party as the confidential or proprietary information of Disclosing Party.

(b) Confidential Information shall not include any information that Receiving Party can document: (i) is or falls into the public domain without fault of Receiving Party; (ii) Receiving Party can show by written documentation was in its possession without any obligation of confidentiality prior to receipt thereof from Disclosing Party; (iii) is independently developed by Receiving Party without reference to the Confidential Information; or (iv) is obtained by Receiving Party from a third party without any obligation of confidentiality to Disclosing Party.

2. Nondisclosure Obligations

(a) Confidential Information of each party (*"Disclosing Party"*) shall be used by the other party (*"Receiving Party"*) solely for the purpose of evaluating whether or not the parties wish to enter into a business transaction. For a period of five (5) years following the date of disclosure by Disclosing Party, Receiving Party shall hold Disclosing Party's Confidential Information in confidence and shall not use or disclose Disclosing Party's Confidential Information without the prior written consent of Disclosing Party, which consent shall not be unreasonably withheld. Receiving Party shall take all reasonable measures to protect the Confidential Information of Disclosing Party from falling into the public domain or the possession of persons other than those persons authorized to have any such Confidential Information, which measures shall include the highest degree of care that Receiving Party utilizes to protect its own information of a similar nature, but in no event less than a reasonable degree of care.

(b) Nothing in this Agreement shall prohibit Receiving Party from disclosing Confidential Information of Disclosing Party if legally required to do so by judicial or governmental order or in a judicial or governmental proceeding (*"Required Disclosure"*); provided that Receiving Party shall (i) give Disclosing Party reasonable notice of such Required Disclosure prior to disclosure; (ii) cooperate with Disclosing Party in the event that it

elects to contest such disclosure or seek a protective order with respect thereto, and/or (iii) in any event only disclose the exact Confidential Information, or portion thereof, specifically requested by the Required Disclosure.

3. General Provisions

(a) All Confidential Information of Disclosing Party is and shall remain the property of Disclosing Party. Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise, either express, implied or by estoppels, to any Confidential Information of Disclosing Party, or under any patent, copyright, trademark or trade secret of Disclosing Party. Disclosing Party does not make any representation or warranty with respect to the non-infringement of third party patents, copyrights, trademarks or trade secrets with respect to its respective Confidential Information.

(b) ALL CONFIDENTIAL INFORMATION FURNISHED UNDER THIS AGREEMENT IS PROVIDED BY DISCLOSING PARTY "AS IS, WITH ALL FAULTS." DISCLOSING PARTY DOES NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE ACCURACY, COMPLETENESS, PERFORMANCE, MERCHANTABILITY, FITNESS FOR USE, NONINFRINGEMENT OR OTHER ATTRIBUTES OF ITS CONFIDENTIAL INFORMATION.

(c) Immediately upon (i) the decision by either party not to enter into the transaction or agreement contemplated by the parties hereto, or (ii) written request by Disclosing Party at any time, Receiving Party shall return to Disclosing Party all copies or extracts of Disclosing Party's Confidential Information, in any medium, or certify, in writing by an authorized officer of Receiving Party, the destruction of the same to Disclosing Party.

(d) Receiving Party shall not assign or transfer this Agreement or any of its rights hereunder or delegate any of its obligations hereunder (except by merger, acquisition, or operation of law) without the prior written consent of the other party, which consent shall not be unreasonably withheld. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties, their permitted successors and permitted assigns.

(e) Receiving Party shall not remove, export or re-export from the United States any Confidential Information of the other party or any direct product thereof.

(f) Nothing in this Agreement shall be construed to require Disclosing Party to disclose any Confidential Information to Receiving Party or to negotiate or enter into any business transaction with Receiving Party.

(g) The parties are independent contractors. Nothing in this Agreement or in the activities contemplated by the parties hereunder shall be deemed to create an agency, partnership, employment or joint venture relationship between the parties. Neither party's officers or employees, agents or contractors shall be deemed officers, employees, agents or contractors of the other party for any purpose. Each party shall be deemed to be acting solely on its own behalf and has no authority to incur obligations or perform any acts or make any statements on behalf of the other party. Neither party shall represent to any person or permit any person to act upon the belief that it has any such authority from the other party.

(h) Any notice under this Agreement shall be in writing and shall be effective only if it is delivered by hand or mailed, certified or registered mail, postage prepaid, return receipt requested, addressed to the appropriate party at its address set forth on the first page of this Agreement. Any such notice shall be effective only upon actual receipt by the party to be notified.

(i) This Agreement shall be construed and governed by the laws of the State of California, without giving effect to its conflicts of law principles. The parties hereby submit to the personal jurisdiction of, and agree that any legal proceeding with respect to or arising under this Agreement shall be brought solely in, the state courts of the State of California for the County of [San Francisco] or the United States District Court for the [Northern District] of California, if such court has subject matter jurisdiction. If any legal action or proceeding is commenced in connection with any dispute arising under, relating to or otherwise concerning this Agreement, the prevailing party, as determined by the court, shall be entitled to recover its attorneys' and experts' fees and all costs and necessary disbursements actually incurred in connection with such action or proceeding.

(j) Receiving Party acknowledges and agrees that due to the unique nature of Disclosing Party's Confidential Information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach may allow Receiving Party or third parties to unfairly compete with Disclosing Party resulting in irreparable harm to Disclosing Party and, therefore, that upon any such breach or any threat thereof, Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever remedies it might have at law. Receiving Party will notify Disclosing Party in writing immediately upon the occurrence of any such unauthorized release or other breach of which it is aware.

(k) [Receiving Party agrees to comply with the U.S. Foreign Corrupt Practices Act (regarding among other things, payments to government officials) and all export laws, restrictions, national security controls and regulations of the United States or other applicable foreign agency or authority, and not to export or re-export, or allow the export or re-export of any Confidential Information or any direct product thereof, (i) in violation of any such restrictions, laws or regulations, or (ii) without all required licenses and proper authorizations, to Cuba, Libya, North Korea, Iran, Iraq, or Rwanda or to any Group D: 1 or E: 2 country (or any national of such country) specified in the then current Supplement No. 1 to part 740 of the U.S. Export Administration Regulations (or any successor supplement or regulations).]

(l) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior understanding and agreements between and among them respecting the subject matter hereof. It shall not be modified except by a written agreement signed by both parties. No delay, failure or waiver of either party's exercise or partial exercise of any right or remedy under this Agreement shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect. More than one counterpart of this Agreement may be executed by the parties hereto, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives effective as of the Effective Date.

LOCAL HEROES, INC.

By:

By: _____

Name: Richard Trieber

Name: _____

Title: Founder/President

Title: _____