

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (“Agreement”) is made as of the date of the last signature below, between OpenGate Entertainment, LLC, and its Affiliates (“OG”), and _____, and its Affiliates (“Partner”). OG and Partner are each a “Party” to this Agreement.

1. **Purpose.** The Parties wish to discuss a business opportunity or opportunities (“Business Opportunity”), and in connection with such, either Party may disclose (each such Party, a “Disclosing Party” or “Discloser”) to the other Party (the “Receiving Party” or “Recipient”) certain Confidential Information that the Disclosing Party desires the Receiving Party to treat as confidential.

2. **Definitions.**

2.1 “Affiliate” or “Affiliated” means any entity that directly or indirectly controls, is controlled by, or is under common control with a Party, where “control” means the ownership of more than fifty percent (50%) of the voting stock, shares or interests of such entity.

2.2 “Confidential Information” means all information disclosed by the Disclosing Party hereunder that should reasonably be understood by the Recipient, because of legends or other markings, the circumstances of disclosure, or the nature of the information itself, to be proprietary and confidential to the Disclosing Party, an Affiliate of the Discloser, a client of the Disclosing Party, or another third party, and includes information relating to the Discloser’s business, including, without limitation, business plans, proposals, forecasts, financial data, company and prospect lists and information, personnel data, contract information, properties, methods of operation, software (including, without limitation, source code, specifications, interfaces, data, works-in-process, prototype and test versions, design documents and documentation), trade secrets, inventions, discoveries, know-how, and other intellectual property. “Confidential Information” also includes, but is not limited to, confidential information that was disclosed by Discloser to Recipient prior to the date hereof as well as the items set forth in any Appendix attached to this Agreement. Confidential Information may be disclosed in written or other tangible form (including as recorded on magnetic, optical or other storage media) or by electronic, oral, visual or other means. Confidential Information will not, however, include any information that the Receiving Party can demonstrate (a) was publicly known and made generally available in the public domain prior to the time of disclosure to the Receiving Party by the Disclosing Party; (b) became publicly known and made generally available after disclosure to the Receiving Party by the Disclosing Party through no action or inaction of the Receiving Party; or (c) was in the possession of the Receiving Party, without confidentiality restrictions, at the time of disclosure by the Disclosing Party, as shown by the Receiving Party’s files and records.

2.3 “Employees” means a Party’s full- and part-time employees, officers and directors, representatives, agents, owners, consultants and contractors that are hired by a Party

and whose employment responsibilities include assisting with the specific Business Opportunity covered by this Agreement.

3. **Non-use and Nondisclosure.** The Receiving Party will not use any Confidential Information for any purpose except to evaluate and engage in discussions concerning matters related to the Business Opportunity. The Receiving Party will not disclose any Confidential Information to third parties or to Employees of the Receiving Party, except to those Employees who are required to have the Confidential Information in order to evaluate or engage in discussions concerning the contemplated business relationship or to execute on the Business Opportunity. The Receiving Party will not reverse engineer, disassemble, or decompile any prototypes, software, or other tangible objects that embody the Disclosing Party's Confidential Information and that are provided to the Receiving Party under this Agreement.

4. **Maintenance of Confidentiality.** The Receiving Party will use its reasonable commercial efforts to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. Without limiting the foregoing, the Receiving Party will take at least those measures that the Receiving Party takes to protect its own commercial confidential information. Prior to any disclosure of Confidential Information to its Employees, the Receiving Party will instruct such Employees that they are bound by the terms of this Agreement. The Receiving Party will not make any copies of Confidential Information unless approved in writing by the Disclosing Party. The Receiving Party will reproduce the Disclosing Party's proprietary rights notices on all approved copies. The Receiving Party will immediately notify the Disclosing Party in the event of any unauthorized use or disclosure of the Confidential Information.

5. **No Obligation.** Nothing in this Agreement will obligate the Disclosing Party or the Receiving Party to proceed with any transaction or business relationship between them, and each Party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the Business Opportunity at any time without notice to the other Party.

6. **No Warranty.** All Confidential Information is provided "as is." The Disclosing Party makes no warranties, express, implied, or otherwise, regarding the accuracy, completeness, or performance of the Confidential Information.

7. **Return of Materials.** All documents and other tangible objects containing or representing Confidential Information and all copies thereof will be and remain the property of the Disclosing Party. Upon the Disclosing Party's request, the Receiving Party will (a) promptly deliver to the Disclosing Party all Confidential Information, without retaining any copies, and (b) promptly destroy analyses, studies, and other documents prepared based on the Confidential Information, without retaining copies.

8. **No License.** Nothing in this Agreement is intended to grant any rights to the Receiving Party under any patent, copyright, trade secret, or other intellectual property right of

the Disclosing Party, nor will this Agreement grant the Receiving Party any rights in or to the Confidential Information, except as expressly set forth in this Agreement.

9. **Duration of Agreement.** This Agreement will remain effective until such time as the Parties mutually terminate the Agreement in writing or from two (2) years of the execution date below. If the Parties enter into a contractual relationship relating to the Business Opportunities and that relationship extends beyond two (2) years from the execution date below, this Agreement shall remain in full effect until the expiration or termination of the contractual relationship.

10. **Duration of Obligations.** Notwithstanding the duration of the Agreement, as provided for in paragraph 9 above, the obligations in this Agreement regarding non-disclosure of Confidential Information will survive until such time as all the Disclosing Party makes the Confidential Information publicly known or the Confidential Information is made generally available through no action or inaction of the Receiving Party.

11. **Miscellaneous.**

11.1 **Authority to Contract.** Each Party hereby represents and warrants that it has the legal right and authority to enter into and perform its obligations under this Agreement.

11.2 **Assignment; Subcontracting.** This Agreement will bind and inure to the benefit of the Parties and their successors and assigns. No assignment or transfer of this Agreement will be made without the Parties' prior written approval.

11.3 **Choice of Law.** This Agreement will be governed by the laws of the State of Illinois, United States of America, without reference to conflict of laws principles.

11.4 **Entire Agreement.** This document contains the entire agreement between the Parties with respect to the subject matter of this Agreement.

11.5 **Waiver.** Any failure to enforce any provision of this Agreement will not constitute a waiver of that provision or of any other provision. If any provision of this Agreement is held unenforceable, then such provision will be modified to reflect the Parties' intentions. All remaining provisions of the Agreement shall remain in full force and effect.

11.6 **Remedies.** The Parties' obligations under this Agreement are of a unique character that gives them particular value. Therefore, breach of any of such obligations will result in irreparable and continuing damage to the other Party for which there will be no adequate remedy at law. In the event of such breach, the non-breaching Party will be entitled to injunctive relief and/or a decree for specific performance, and such other and further relief as may be proper, including monetary damages if appropriate.

11.7 **Headings.** Headings within this Agreement are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer.

11.8 Amendment and Execution. This Agreement may not be amended, nor any obligation waived, except by a writing signed by the Parties. This Agreement may be executed in two or more counterparts, each of which is deemed to be an original, but all of which constitute the same agreement. This Agreement shall be binding between any Party that shall execute the document below, and failure of any other Party to execute the Agreement shall in no way alter, limit or affect the obligations entered into between any signatory Party or Parties.

In witness whereof, the Parties hereto have executed this Agreement as of the last date indicated below.

For OpenGate Entertainment, LLC

For Partner

By: Mike Anderson
Name: Mike Anderson
Title: Co-Founder & Managing Partner
Date: June 9, 2020

By: _____
Name:
Title:
Date:

APPENDIX OF CONFIDENTIAL INFORMATION