

MESSAGING AND OPTICS STRATEGIST Loren Weisman



LOREN WEISMAN/FSG NON-DISCLOSURE AGREEMENT AND CONFIDENTIALITY NOTICE.

THIS MUTUAL NON-DISCLOSURE AGREEMENT (the "Agreement") dated _____ is made and entered into by and between by Loren T. Weisman, a Messaging & Optics Strategist as well as the Fish Stewarding Group, FSG Messaging and Optics, and all their respective divisions organized and existing under the laws of the State of South Carolina with Loren Weisman presently residing in the State of Utah at _____

, and _____, a Company having its principal place of business

at _____ by _____, its _____.

The forgoing parties are referred to herein as the "Parties" or in the singular as a "Party".

WHEREAS, each Party desires to disclose to the other, on a confidential basis, certain information ("Confidential Information" as more specifically defined below) for the purpose or purposes of exploring potential joint opportunities (whether through meetings, discussions or electronic communications), teaming, negotiating and establishing contracts or other agreements between the Parties and performing under those contracts or agreements (the "Purpose" or the "Purposes"), which information the Disclosing Party deems to be non-public, proprietary, confidential, and/or business-sensitive;

WHEREAS, the Parties will allow such access only if their Confidential Information is protected pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and conditions contained herein, the Parties agree as follows:

1.

Definitions.

- 1.1. "Confidential Information" means all information, of any nature (including proprietary information) and in any form, whether written, oral or recorded, transmitted electronically or other similar manner, including information or material related to or in respect of business operations, customers, partners, finances, pricing and pricing data, prospects, plans, or affairs of the Disclosing Party, as well as (a) confidential trade secrets, intellectual property (including but not limited to software, technology, developments, innovations, concepts, ideas, plans, drawings, sketches, specifications, materials, data, documentation, inventions, knowledge and know-how, business methods), and other proprietary information, and (b) all notes, analyses, compilations, studies or other documents prepared by or on behalf of recipient Party, which contain or are based upon the foregoing clause (a), that has been/is disclosed by the Disclosing Party to the Receiving Party prior to or after the date hereof, or that becomes known to the Receiving Party as a consequence of its relationship or access to the Disclosing Party, which information is either designated in writing by the Disclosing Party or by appropriate stamp or legend as confidential or specifically designated orally by a



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representative of the Disclosing Party as confidential prior to making an oral disclosure and such confidential oral disclosure is follow-up by a written communication confirming the Parties understanding that the oral disclosure contained Confidential Information with a description of such information. Both Parties acknowledge that Confidential Information may include information disclosed by a Party, which is the proprietary and/or confidential information of such Party's affiliates, partners, shareholders or beneficial owners.

- 1.2. "Disclosing Party" means the party who discloses Confidential Information to another party.
- 1.3. "Receiving Party" means the party who receives Confidential Information from the Disclosing Party.

2. Confidentiality.

- 2.1. The Receiving Party shall maintain all Confidential Information in strict confidence and shall not use any Confidential Information in any manner except for the Purpose or Purposes. Except as provided in this Agreement, the Receiving Party shall not use, or disclose in any manner to any third party, Confidential Information without the prior express, written consent of the Disclosing Party.
- 2.2. Access to and use of Confidential Information shall be restricted to those employees and persons within the Receiving Party's organization with a need to use the information to perform services specifically requested by one Party of the other in order to fulfil the purpose of this Agreement or the agreement, if any, in connection with which the Parties have entered into this Agreement. The Receiving Party's consultants may be included within the meaning of "persons within the Receiving Party's organization", provided that such consultants have executed a nondisclosure or confidentiality agreement no less stringent than this Agreement and subject to the provisions of paragraph (c) of this section.
- 2.3. The Receiving Party shall
 - (1) *inform such employees or persons of the confidential nature of the information and their duty to treat such information in accordance with this Agreement, and*
 - (2) *use the same degree of care in handling and safeguarding Confidential Information that it uses in handling and safeguarding its own Confidential Information.*
- 2.4. If an expressly stated purpose of this Agreement involves the Receiving Party submitting a proposal to the U.S. Government, the Receiving Party may disclose Proprietary Information to the U.S. Government on a confidential basis provided that the Receiving Party ensures such Proprietary Information contains the restrictive legend stated in the Federal Acquisition Regulation (FAR) § 52.215-1(e). Disclosures of Proprietary



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Information to the U.S. Government for any purpose other than those contemplated by FAR § 52.215-1(e) shall be subject to further written agreement between the Parties.

3. Exceptions.

The obligations set forth in section 2 of this Agreement shall not apply to information, which is:

- 3.1. Already known to or otherwise in the possession of the Receiving Party at the time of receipt from the Disclosing Party and which was not so known or received in violation of any confidentiality obligation;
- 3.2. Publicly available or otherwise in the public domain prior to disclosure by the Disclosing Party;
- 3.3. Rightfully obtained by the Receiving Party from any third party without restriction and without breach of any confidentiality obligation by such third party;
- 3.4. Developed by the Receiving Party independent of any disclosure hereunder, as evidenced by written records and not in violation of this Agreement; or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information.

4. Court Order or Governmental Action.

Notwithstanding any other terms or conditions of this Agreement, the Receiving Party may disclose Proprietary Information to satisfy a legal demand by a court of competent jurisdiction or U.S. Governmental action; provided, however, that the Receiving Party shall first advise the Disclosing Party prior to the disclosure so that the Disclosing Party has the opportunity to seek appropriate relief from the court or Governmental order, and provided further that the Receiving Party shall disclose only that portion of the Proprietary Information which is legally required to be disclosed and request confidential treatment of the Proprietary Information by the court or Governmental entity.

5. Term.

This Agreement shall become effective upon its execution by both Parties as of the date written above (the "Effective Date") and shall apply to all information exchanged by the Parties during the period of one (1) year following the Effective Date (the "Term"). The Term may be extended by mutual written agreement between the Parties. Either Party may terminate the Term of this Agreement at any time by providing thirty (30) days written notice to the other. Notwithstanding any such termination or expiration of this Agreement, to the extent this Agreement is appended to any other agreement between the Parties hereto for the purpose of governing the disclosure of information thereunder or relating thereto, this Agreement shall be coterminous with such other agreement and the term hereof shall be extended so as to expire at the same time as such other agreement to which it is or becomes appended. Notwithstanding the above, the provisions concerning non-disclosure of Proprietary Information received under this Agreement shall in all



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cases survive the expiration or termination of this Agreement and remain in effect for a period of five (5) additional years after expiration or termination of this Agreement.

6. No License.

Notwithstanding the disclosure of any Confidential Information by the Disclosing Party to the Receiving Party, the Disclosing Party shall retain title thereto and to all intellectual property and proprietary rights therein. Nothing in this Agreement shall be construed as granting the Receiving Party whether expressly, by implication, estoppel, or otherwise, any license or any right to use any Confidential Information received from the Disclosing Party, or use any patent, trademark, or copyright now or hereafter owned or controlled by the Disclosing Party. The Receiving Party shall not reverse engineer, disassemble, or decompile, or allow others to reverse engineer, disassemble, or decompile any Confidential Information provided to it.

7. Limited Warranty.

The Disclosing Party warrants that it has the lawful right to transmit or otherwise furnish the Confidential Information disclosed pursuant to this Agreement. The Disclosing Party makes no representation or warranty as to the adequacy, completeness, accuracy, patentability, fitness for a particular purpose, sufficiency, or freedom from defect of any Proprietary Information. The Disclosing Party shall not be liable for damages of whatever kind as a result of the Receiving Party's reliance on or use of Confidential Information.

8. No Further Commitment/Obligation.

Neither Party shall have the right or authority to contract for or in the name of, or otherwise obligate the other Party in any way. This Agreement shall not obligate a Party to enter into any contract or subcontract or to purchase anything from the other Party. This Agreement shall not be construed to recognize or create a teaming agreement, joint venture, partnership, or other formal business or agency relationship. Unless expressly stated otherwise herein, each Party shall bear its own costs and expenses incurred in complying with this Agreement.

9. Return of Confidential Information.

All Confidential Information disclosed pursuant to this Agreement is considered loaned for use solely in connection with the agreement or other arrangement in connection with which this Agreement has been entered into by the Parties. All Confidential Information in tangible or electronic form of expression, which has been disclosed to or thereafter created, whether by copy or reproduction, by the Receiving Party shall be and remain the property of the Disclosing Party. All such Confidential Information and any and all copies and reproductions thereof shall be destroyed, within 15 days of written request by the Disclosing Party. In the event of such requested destruction, the Receiving Party shall provide to the Disclosing Party written certification of compliance therewith within 15 days of such written request.

10. Export Control.

The Proprietary Information furnished to the Receiving Party may include United States origin technical data. Accordingly, the Receiving Party is responsible for complying with, and warrants to the Disclosing Party that it will comply with, all U.S. export regulations, including the



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International Traffic in Arms Regulations (Title 22, C.F.R. Parts 120-130), the Export Administration Regulations (Title 15, C.F.R. Parts 730-774), and any other U.S. Government regulation applicable to the export, re-export, or disclosure of such controlled technical data (or the products thereof) to Foreign Nationals, whether within or without the U.S., including those employed by, or otherwise associated with, the Receiving Party. The Receiving Party shall obtain the Disclosing | Party's written consent prior to submitting any request for authority to export any such technical data.

11. Classified Information.

Any U.S. Government classified information provided to the Receiving Party shall be handled in accordance with the Department of Defense Industrial Security Manual for Safeguarding Classified Information (DoD 5220.22-M) or the National Industrial Security Program Operating Manual (NISPO), their supplements, and other applicable U.S. Government security regulations.

12. Notices.

Any notice under or in connection with this Agreement sent to the respective parties at the addresses set out on the first page of this Agreement (or to such other address that may be designated by a Party from time to time in accordance with this Section) shall be deemed to have been delivered:

(a) when delivered by hand (with written confirmation of receipt);

(b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested);

(c) on the date sent by facsimile or email (with confirmation of transmission) or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must.

13. Inconsistent Legends.

This Agreement shall control in lieu of and notwithstanding any proprietary or restrictive legend or statements inconsistent with this Agreement, which may be printed on or associated with any particular information disclosed pursuant to this Agreement.

14. Cumulative Obligations.

Each Party's obligations hereunder are in addition to, and not exclusive of, any and all of its other obligations and duties to the other Party, whether express, implied, in fact or in law.

15. Bankruptcy.

The obligation not to disclose Confidential Information shall not be affected by bankruptcy, receivership, assignment, attachment or seizure proceedings, whether initiated by or against a Receiving Party, nor by the rejection of any agreement between the Parties, by a Trustee of a Receiving Party in bankruptcy, or by a Receiving Party as a debtor in possession, or the equivalent of any of the foregoing under local law.



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16. Counterparts.

This Agreement may be executed in several counterparts, each of which shall be deemed an original. Said counterparts shall together constitute one and the same Agreement, binding all of the Parties hereto, notwithstanding that all of the Parties are not signatory to the original or to the same counterpart. The Parties also agree that an electronic/PDF or facsimile copy of a Party's signature may be accepted and shall be binding on the Party who provided the electronic/PDF or facsimile signature.

17. Waiver.

Any failure by any Party to enforce the other Party's strict performance of any provision of this Agreement shall not constitute a waiver of its rights to subsequently enforce such provision or any other provision of this Agreement.

18. Attorney Fees.

If any legal action arises under this Agreement, the prevailing Party shall be entitled to recover all court costs and reasonable actual attorney's fees.

19. Governing Law.

This Agreement shall be subject to, and construed in accordance with, the laws of the State of South Carolina, USA without giving effect to the principles of conflict of laws thereof. All lawsuits of legal actions that are brought under this Agreement shall only be brought in the United States US District Court 300 East Washington Street Greenville, SC 29601 or if such court does not have proper diversity or federal question jurisdiction then the proper local courts of Greenville County, South Carolina. Each Party hereby irrevocably submits to the personal jurisdiction of any of the foregoing courts. Any provision of this Agreement which is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable shall not affect the validity of any other provision hereof, and this Agreement shall be deemed to be amended as necessary to delete such illegal, invalid, or unenforceable provision.

20. Entire Agreement.

This Agreement: (a) contains the entire understanding between the Parties with respect to the safeguarding of Confidential Information; (b) supersedes all prior communications and understandings with respect thereto; and (c) shall inure to the benefit of and be binding upon all parent, subsidiary, affiliated, and successor organizations of the Parties.

21. Breach.

The Parties understand and agree that Confidential Information will be disclosed in reliance upon the agreements made herein. Any breach of any provision hereof by a Party will cause irreparable harm and damage to the non-breaching Party. The Parties hereby expressly agree that the non-breaching Party shall be entitled to the remedies of injunction, specific performance and other equitable relief to prevent a breach of any provision of the Agreement. This provision shall



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not be construed, however, as a waiver of any other rights that a Party may have for damages or other relief.

22. **Modification.**

This Agreement may not be modified in any manner, except by written amendment duly executed by the authorized representatives of each of the Parties hereto.

23. **Assignment.**

Neither Party, without the advance written consent of the other, may assign this Agreement to any unrelated third Party. This Agreement shall be binding upon and inure to the benefits of the Parties and upon their respective legal representatives, successors and permitted assigns.

24. **English Language.**

In the event this Agreement is interpreted into a non-English language, the Parties agree that the English version shall prevail if the two versions are inconsistent.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

DISCLOSING PARTY

Company: _____

By (Name): _____

Its (role): _____

Signature: _____

RECEIVING PARTY

Company: FISH STEWARDING GROUP/ FSG MESSAGING AND OPTICS / AND OTHER DIVISIONS

By: LOREN WEISMAN

Its: MESSAGING AND OPTICS STRATEGIST AND PRIVATE CONTRACTOR

Signature: _____

