

## MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (“*Effective Date*”), by and between HeyScottie, Inc. and \_\_\_\_\_. 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 one party (“*Disclosing Party*”) to the other party (“*Receiving Party*”) which relates to the Disclosing Party’s business (including without limitation, business plans, financial data, customer information, marketing plans, etc.), trade secrets, technology (including without limitation, technical drawings, designs, schematics, algorithms, technical data, product plans, research plans, software, etc.), products, services, know-how, formulas, processes, ideas, and inventions (whether or not patentable) and which should be reasonably understood by the Receiving Party as the confidential or proprietary information of the Disclosing Party.

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

### **2. Non Disclosure Obligations**

(a) Confidential Information of a Disclosing Party shall be used by the Receiving Party solely for the purpose of evaluating whether or not the Receiving Party wishes to enter into a business transaction with the Disclosing Party and shall not be used for any other purpose. Each party shall hold the other party’s Confidential Information in strictest confidence at all times in perpetuity and shall not disclose the other party’s

Confidential Information without the prior written consent of such other party, whose consent may be withheld at such other party’s sole discretion. Each party may disclose the other party’s Confidential Information to such party’s employees on a need-to-know basis provided that such party shall have executed appropriate written agreements with its employees to ensure compliance with all the provisions of this Agreement. Each party agrees to take all reasonable measures to protect the Confidential Information of the other 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 such 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 either party from disclosing Confidential Information of the other party if legally required to do so by judicial or governmental order or in a judicial or governmental proceeding (“*Required Disclosure*”); provided that the disclosing party shall (i) give the other party prompt notice of such Required Disclosure prior to disclosure; (ii) cooperate with the other 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 a Disclosing Party is and shall remain the property of the 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 estoppel, to any Confidential Information of a Disclosing Party,

or under any patent, copyright, trademark or trade secret of the Disclosing Party. Neither party makes 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 THE DISCLOSING PARTY "AS IS, WITH ALL FAULTS." NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE ACCURACY, COMPLETENESS, PERFORMANCE, MERCHANTABILITY, FITNESS FOR USE, NONINFRINGEMENT OR OTHER ATTRIBUTES OF ITS RESPECTIVE 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) request by the Disclosing Party at any time, the Receiving Party shall return to the Disclosing Party all copies or extracts of the Disclosing Party's Confidential Information, in any medium, or certify, in writing by an authorized officer of the Receiving Party, the destruction of the same to the Disclosing Party.

(d) Neither party may assign or transfer this Agreement or any of its rights hereunder or delegate any of its obligations hereunder (whether by merger, operation of law or in any other manner) without the prior written consent of the other party, whose consent may be withheld at such party's sole discretion. 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) Nothing contained in this Agreement shall be construed (i) to limit either party's right to independently develop or acquire products without the use or benefit of the other party's Confidential Information, (ii) as obligating either party to purchase or provide products from or to the other party, (iii) to require either party to disclose or receive Confidential

Information of the other party. Nothing in this Agreement shall be construed to require either party to negotiate or enter into any business transaction with the other party and any such business transaction shall be governed solely by its applicable written agreement entered into by the parties if, when and as executed by the parties.

(f) 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 any person or permit any person to act upon the belief that it has any such authority from the other party.

(g) 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.

(h) 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 Santa Clara or the United States District Court located in Santa Clara County, California, if such court has subject matter jurisdiction.

(i) Each party acknowledges and agrees that due to the unique nature of the 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 the Receiving Party or third parties to unfairly compete with the Disclosing Party resulting in irreparable harm to the Disclosing Party and, therefore, that upon any such breach or any threat thereof, the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever remedies it might have at law. The Receiving Party will notify the Disclosing Party in writing immediately upon the occurrence of any such unauthorized release or other breach of which it is aware.

(j) 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.

(k) 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.

(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.

(m) 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.

**HeyScottie, Inc.**

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

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

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

[ \_\_\_\_\_ ]

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

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

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