



## CONFIDENTIAL DISCLOSURE AGREEMENT

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ between \_\_\_\_\_ having its principal place of business at \_\_\_\_\_ ("Submitter") and GAME (Great American Merchandise and Events) having its principal place of business at 16043 North 82<sup>nd</sup> Street, Scottsdale, Arizona 85260-1800 (the "Company").

WHEREAS Submitter represents that it owns as confidential certain information, including but not limited to designs, structures and prototypes, relating to the submission of a product proposal described in detail as follows (making specific reference to all elements considered by Submitter to be original, novel and proprietary):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ("Confidential Information"); and

WHEREAS the Company is in the business of manufacturing and selling consumer products; and

WHEREAS Submitter desires to disclose to the Company the Confidential Information and the Company desires to review the Confidential Information to evaluate whether to pursue a license from Submitter;

NOW, THEREFORE, in consideration of the mutual promises made herein, the parties agree as follows:

1. Submitter represents and warrants that it is the sole owner of and/or has the unrestricted right to disclose all information it provides hereunder to Company, free of claims or rights of any third parties. Submitter acknowledges that Company's consent to evaluate the product proposal and to accept the submission of Confidential Information is not an acknowledgment by Company that the product proposal is original, novel or proprietary or that the information is in fact confidential to Submitter.
2. The Company accepts the Confidential Information for the sole purpose of evaluating the product proposal for license. All information intended by Submitter to be protected under this Agreement shall be in writing and clearly marked as "Confidential Information" at the time of disclosure or within fifteen (15) days thereafter. Oral disclosures summarized in writing, transmitted to Company and labeled as "Confidential Information" within fifteen (15) days thereafter, but not otherwise, shall also be covered by this Agreement.
3. The Company shall have no obligation to keep confidential or refrain from using any of the Confidential Information which the Company can show was known to the Company prior to disclosure by Submitter; was or becomes known to the public or generally available to the public through no act of the Company contrary to this Agreement; is or was disclosed by Submitter to any third party without obligation to maintain confidentiality; is or was independently developed by the Company or one of its divisions or affiliates; is received in

good faith by the Company from a third party and is not subject to an obligation of confidentiality owed by that third party to Submitter; or is required to be disclosed in a judicial or governmental proceeding.

4. Submitter acknowledges that the Company receives numerous submissions that may be similar or identical to the Confidential Information, and the adoption by the Company of any alternative submission (as opposed to the Confidential Information submitted by Submitter) may be due to market conditions at the time such alternative submission is received and/or the positioning of the submission by the party making it, as well as to any inherent merit of the submission or other cause for Company's selection, which may be made by Company in its sole discretion. Selection by the Company of alternative submissions shall be without obligation to Submitter. Company shall be free to pursue, either alone or together with third parties, technology, products, inventions or concepts similar or identical to the Submitter's product proposal, subject only to the obligations Company has assumed with respect to Confidential Information. The fact that Company produces a product similar or identical to the Submitter's product proposal shall not be construed as or imply a breach of this Agreement.
5. In maintaining the confidentiality of the Confidential Information, Company's sole obligation shall be to exercise the same degree of care as it does in maintaining the confidentiality of its own confidential and proprietary information. Submitter acknowledges and agrees that in connection with such evaluation, Company may disclose Confidential Information to its agents and affiliated entities, and to third party manufacturers who may be called upon to provide services in the event that a license agreement is consummated. Company shall not be liable for any inadvertent or third-party disclosure or use of the Confidential Information.
6. Company may provide Submitter with information relating to the business or operations of Company or its customers or vendors, including but not limited to marketing plans, pricing or cost information and manufacturing vendors or processes, or recommendations or advice with respect to the submission ("Company Information"). Without limitation, Submitter agrees to keep confidential all Company Information, to refrain from disclosing any Company Information to any third party without Company's prior consent, and to use such Company Information solely for the purpose of assisting Company in its evaluation of the Submitter's product proposal.
7. Company will have no obligation to Submitter with respect to the product proposal or any information provided by Submitter other than those relating to Confidential Information set forth herein. Without limiting the generality of the foregoing, Company shall have no obligation to develop, market or sell the product proposal unless and until such time as Company and Submitter enter into a License Agreement which shall set forth any such obligations, nor shall Company have any obligation to explain or justify its decision to not enter into a License Agreement which decision shall be made in Company's sole discretion. No License Agreement between the parties shall be effective unless in writing and executed by authorized representatives of both parties.
8. The obligation imposed by this Agreement upon Company shall remain in effect for two (2) years from the date of first submission hereunder of the respective Confidential Information by Submitter. This Agreement may be terminated by either party upon written notice to the other with or without cause, provided that such termination shall not affect obligations with respect to Confidential Information or Company Information disclosed prior to such termination.
9. The parties do not intend that this Agreement create an agency or partnership relationship between them. This Agreement represents and expresses the entire Agreement of the parties and supercedes all prior agreements. Any amendment or modification of any provision must

be in writing and executed by both parties. If any provision or part of any provision of this Agreement is void for any reason, it shall be severed without affecting the validity of the balance of the Agreement.

10. The laws of the State of Arizona govern this Agreement, and any dispute between the parties shall be determined only by a court of competent jurisdiction located in Phoenix, Arizona.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**SUBMITTER**

**GAME (Great American Merchandise and Events)**

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

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

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

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

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

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