



NON-DISCLOSURE AGREEMENT

This Non-disclosure Agreement (this “Agreement”) is dated as of _____, _____, between Flomio, Inc., a Delaware corporation having a principal place of business at 7171 Bay Dr., Suite 9, Miami Beach, Florida, 33141 (“Flomio” or “Disclosing Party”), and

Company name: _____ (“Company” or “Receiving Party”)

Address: _____

Place of incorporation: _____

Flomio and Company hereby agree as follows:

- Confidential Information.** As used in this Agreement, “Confidential Information” means all information of the Disclosing Party that is not generally known to the public, whether of a technical, business or other nature (including, without limitation, Trade Secrets (as defined below), know-how and information relating to the technology, customers, business plans, promotional and marketing activities, finances and other business affairs of the Disclosing Party), that is disclosed by the Disclosing Party to the Receiving Party or that is otherwise learned by the Receiving Party in the course of its discussions or business dealings with, or its physical or electronic access to the premises or systems of, the Disclosing Party, and that has been identified as being proprietary and/or confidential or that by the nature of the circumstances surrounding the disclosure or receipt ought to be treated as proprietary and confidential. Confidential Information also includes all information concerning the existence and progress of the parties’ dealings. A “Trade Secret” means information, without regard to form, including, but not limited to, technical or nontechnical data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, discoveries, developments, designs, financial data, financial plans, product plans, technical documentation and specifications, or lists of actual or potential customers or suppliers that: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who could obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
- Use and Ownership of Confidential Information.** The Receiving Party, except as expressly provided in this Agreement, will not disclose Confidential Information to anyone without the Disclosing Party’s prior written consent. In addition, the Receiving Party will not use, or permit others to use, Confidential Information for any purpose other than for the purposes expressly intended by this Agreement. The Receiving Party will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Confidential Information, including, at a minimum, those measures it takes to protect its own confidential information of a similar nature. All Confidential Information will remain the exclusive property of the Disclosing Party, and the Receiving Party will have no rights, by license or otherwise, to use the Confidential Information except as expressly provided herein.
- Exceptions.** The provisions of Section 2 will not apply to any information that: (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been known to the Receiving Party prior to its receipt from the Disclosing Party; (iii) is rightfully received from a third party who did not acquire or disclose such information by a wrongful or tortious act; or (iv) can be shown by documentation to have been developed by the Receiving Party without reference to any Confidential Information.
- Residual Knowledge.** The Receiving Party will not use, for its own benefit (except as authorized herein) or the benefit of any third party, the residual knowledge derived solely from the Disclosing Party’s Confidential Information. The term “residual knowledge” means information in



intangible form, which may be retained by persons who have had access as authorized herein to the Confidential Information, including ideas, concepts, know-how or techniques that the Receiving Party knows or should have reason to believe were derived solely from Confidential Information of the Disclosing Party.

5. **Disclosures to Courts and Governmental Entities.** If the Receiving Party becomes legally obligated to disclose Confidential Information by any court or governmental entity with jurisdiction over it, the Receiving Party will give the Disclosing Party prompt written notice to allow the Disclosing Party to seek a protective order or other appropriate remedy. Such notice must include, without limitation, identification of the information to be so disclosed and a copy of the order. The Receiving Party will disclose only such information as is legally required and will use its reasonable best efforts to obtain confidential treatment for any Confidential Information that is so disclosed.
6. **Compliance with Laws; Exportation/Transmission of Confidential Information.** The Receiving Party will comply with all applicable federal, state, and local statutes, rules and regulations, including, but not limited to, United States export control laws and regulations as they currently exist and as they may be amended from time to time.
7. **Receiving Party Personnel.** The Receiving Party will restrict the possession, knowledge, development and use of Confidential Information to its employees, agents, subcontractors and entities controlled by or controlling it (collectively, "Personnel") who have a need to know Confidential Information in connection with the purposes set forth in Section 2. The Receiving Party's Personnel will have access only to the Confidential Information they need for such purposes. The Receiving Party will ensure that its Personnel comply with this Agreement and will promptly notify the Disclosing Party of any breach of this Agreement. The Receiving Party will be responsible for any breach of this Agreement by its Personnel.
8. **Return of Confidential Information.** Upon the Disclosing Party's written request, the Receiving Party promptly will return or destroy (or, in the case of electronic embodiments, permanently delete and erase) all tangible material embodying Confidential Information (in any form and including, without limitation, all summaries, copies and excerpts of Confidential Information) in its possession or under its control.
9. **Injunctive Relief.** The Receiving Party acknowledges that disclosure or use of Confidential Information in violation of this Agreement could cause irreparable harm to the Disclosing Party, for which monetary damages may be difficult to ascertain or an inadequate remedy. The Receiving Party therefore agrees that the Disclosing Party will have the right, in addition to its other rights and remedies, to injunctive relief for any violation of this Agreement without posting bond, or by posting bond at the lowest amount required by law.
10. **Limited Relationship.** This Agreement will not create a joint venture, partnership or other formal business relationship or entity of any kind, or an obligation to form any such relationship or entity. Each party will act as an independent contractor and not as an agent of the other party for any purpose, and neither will have the authority to bind the other.
11. **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.
12. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the parties relating to the matters discussed herein and supersedes all prior oral and written understandings with respect to any information disclosed or received under this Agreement. This Agreement may be amended or modified only with the mutual written consent of the parties.



13. **Term and Termination.** This Agreement is intended to cover Confidential Information disclosed by the Disclosing Party prior or subsequent to the date of this Agreement. Unless otherwise earlier terminated, this Agreement automatically will expire five (5) years from the date first written above; provided, however, that the Receiving Party's obligations with respect to Confidential Information received prior to termination or expiration will survive for three (3) years following the expiration or termination of this Agreement, and will continue with respect to Trade Secrets for as long as such Trade Secrets qualify as such under the laws of the State of Florida.
14. **Nonwaiver.** Any failure by the Disclosing Party to enforce the Receiving Party's strict performance of any provision of this Agreement will not constitute a waiver of the Disclosing Party's right to subsequently enforce such provision or any other provision of this Agreement.
15. **No Warranty.** The Receiving Party acknowledges that Confidential Information may still be under development, or may be incomplete, and that such information may relate to products that are under development or are planned for development. THE DISCLOSING PARTY MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH ANY CONFIDENTIAL INFORMATION THAT IT DISCLOSES IN CONNECTION WITH THIS AGREEMENT. The Disclosing Party accepts no responsibility for any expense, losses or action incurred or undertaken by the Receiving Party as a result of the Receiving Party's receipt or use of Confidential Information.
16. **Governing Law and Miscellaneous.** This Agreement will be governed by internal laws of the State of Florida, without reference to its choice of law rules. The parties submit to and agree that the exclusive jurisdiction and venue for any proceedings arising from this Agreement shall be the state and federal courts located in Miami, Florida. This Agreement, may be executed in counterpart copies, and, in the absence of an original signature, faxed signatures will be considered the equivalent of an original signature. If a provision of this Agreement is held invalid under any applicable law, such invalidity will not affect any other provision of this Agreement that can be given effect without the invalid provision. Further, all terms and conditions of this Agreement will be deemed enforceable to the fullest extent permissible under applicable law, and, when necessary, the court is requested to reform any and all terms or conditions to give them such effect.

The parties have executed this Agreement on the date first written above.

FLOMIO, INC.

By: _____

Print Name: _____

Title: _____

COMPANY: _____

By: _____

Print Name: _____

Title: _____