Confidentiality Agreement
AGREEMENT dated (Day of the week, DD MM YYYY)

PARTIES

Huhu Studios whose registered office is located at 20 Goodall Road, Snells Beach 0920, New Zealand and:

INTRODUCTION

Each party is prepared to disclose to the other party information that it regards as confidential and which the other party may use for the purpose of exploring potential options for business dealings or arrangements between the parties ("Permitted Purpose") on the terms and conditions of this Agreement. Nothing in this Agreement, however, commits either party to entering into such business dealings or arrangements.

AGREEMENT

1. DEFINITIONS

1.1 In this Agreement:

“Agreement” means this agreement;

“Confidential Information” means:

(a) all information of whatever kind or nature that the Recipient obtains from the Discloser, whether or not the information is:

(i) in tangible or documented form;

(ii) marked or identified as being proprietary to or under the control of the Discloser; or

(iii) obtained before, on or after the date of the Agreement;

(b) all notes, records or copies of such information made by the Recipient; and

(c) the fact that discussions are taking place between the parties;

“Discloser” means the party disclosing Confidential Information to the Recipient under this Agreement;

“Improvement” means any development, modification or improvement to or other invention made by the Recipient relating to the Confidential Information;

“Protective Application” means any application for patents, designs or other form of intellectual property protection concerning Improvements;

“Recipient” means the party receiving Confidential Information from the Discloser under this Agreement; and

“Restricted Person” means any director or employee of the Recipient who needs to know the Confidential Information to carry out the Permitted Purpose.

2. RECIPIENT’S OBLIGATIONS

2.1 Undertakings: The Recipient will:

(a) hold and maintain all Confidential Information in strict confidence and as a trade secret of the Discloser;

(b) not use any of the Confidential Information for any purpose other than the Permitted Purpose as directed by the Discloser;

(c) not disclose, or permit the disclosure of, the Confidential Information to any person other than a Restricted Person, provided that such Restricted Person has entered into legally binding confidentiality obligations to the Recipient on terms equivalent to those set out in this Agreement (and such obligations extend to the Confidential Information);

(d) not copy, electronically store, or otherwise duplicate any Confidential Information;

(e) effect and maintain adequate security measures to safeguard the Confidential Information from access or use by unauthorised persons; and

(f) ensure, if requested by the Discloser, that any Restricted Person signs and delivers to the Discloser a confidentiality undertaking and acknowledgement in favour of the Discloser.

(g) No other party, other than the Restricted Person, is permitted access to any Confidential Information without the express permission, in writing from the Discloser and a suitable signed NDA duly received beforehand.

2.2 Responsibility: The Recipient will be responsible for ensuring that all Restricted Persons comply with the provisions of this Agreement.

2.3 Exceptions to obligations: The provisions of clause 2.1 will not apply to Confidential Information that the Recipient can demonstrate:
(a) was, before its receipt by the Recipient from the Discloser, in the possession of the Recipient and at its free disposal;

(b) is independently acquired or developed by the Recipient without breaching any of the Recipient’s obligations under this Agreement and without use of the Confidential Information;

(c) is subsequently disclosed to the Recipient, without any obligations of confidence, by a third party who has not derived it directly or indirectly from the Discloser;

(d) is or becomes generally available to the public through no act or default of the Recipient or any of its employees, agents, or contractors; or

(e) is required to be disclosed to the courts of any competent jurisdiction, or to any government regulatory agency or financial authority, provided that the Recipient will:

   (i) immediately inform the Discloser that such a requirement has arisen; and

   (ii) at the Discloser’s request seek to persuade the court, agency, or authority to have the information treated in a confidential manner (where this is possible under the court’s, agency’s or authority’s procedures).

2.4 Continuing obligations: The Recipient’s obligations under clause 2 will continue in full force and effect until the Confidential Information enters the public domain other than directly or indirectly through the Recipient’s default, or the default of any Restricted Person. The release of part of the Confidential Information by the Discloser will not of itself cause the Recipient’s undertakings under this Agreement to cease. Further, the Agreement is binding upon the heirs, executors, administrators and other legal representatives of the Recipient and will be for the benefit of the Discloser, its successors and assigns.

3. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

3.1 The Discloser will retain sole ownership of all Confidential Information and all intellectual property rights in the Confidential Information. The Recipient acknowledges and agrees that:

(a) except as expressly provided in this Agreement, neither the signing of this Agreement nor the furnishing of any Confidential Information under this Agreement will be construed as granting to the Recipient any interest in, licence to or right to use any Confidential Information or any intellectual property rights in the Confidential Information, for the Recipient’s own benefit or for the benefit of any other person;

(b) all Improvements and all intellectual property rights in them will be owned exclusively by the Discloser; and

(c) to the extent that any Improvements and the intellectual property rights in them do not on their creation vest in the Discloser but vest in the Recipient, the Recipient will hold such Improvements and intellectual property rights on trust for the Discloser. The Recipient will at any time, upon the reasonable request of the Discloser and at the Recipient’s expense, ensure all documents necessary to confirm such ownership of the Improvements and intellectual property rights in them, or to file a Protective Application or to defend such Protective Application, are appropriately executed by the Recipient and/or its relevant agents, employees and contractors.

4. RETURN OF CONFIDENTIAL INFORMATION

4.1 Return: At the Discloser’s written request, the Recipient will promptly, at the Discloser’s election, return to the Discloser or destroy or erase, or procure the destruction or erasure of, any or all of the Confidential Information.

4.2 Certificate: Upon the return to the Discloser or destruction (as the case may be) of all such Confidential Information, the Recipient will provide to the Discloser a certificate stating that the Confidential Information returned or destroyed comprises all the Confidential Information in the Recipient’s and any Restricted Person’s possession or control.

5. NO IMPLIED RIGHTS

5.1 This Agreement will not be construed to require the Discloser to disclose any Confidential Information to the Recipient. No warranty or representation, express or implied, is given as to the accuracy, efficacy, completeness or
6. REMEDY

6.1 The parties acknowledge that monetary damages alone may be an inadequate remedy for breach of the Recipient’s obligations under this Agreement. In addition to any other remedy that may be available in law or equity, the Discloser may be entitled to interlocutory injunctive relief to prevent a breach of this Agreement and to compel specific performance of this Agreement.

7. GENERAL

7.1 No assignment: Neither party may assign, transfer, novate or subcontract this Agreement or any rights or obligations under this Agreement, without the prior written consent of the other party.

7.2 Waiver: No failure or delay by either party in exercising any right, power or privilege under this Agreement will operate as a waiver of such right, power or privilege. No single or partial exercise will preclude any other or further exercise or the exercise of any right, power or privilege under this Agreement.

7.3 Entire agreement: This Agreement constitutes the entire agreement and understanding between the parties. This Agreement supersedes any previous written or oral agreements or understandings between the parties in relation to the Confidential Information.

7.4 Counterparts: This Agreement may be executed in any number of counterparts (including facsimile copies) all of which, when taken together, will constitute one and the same instrument. A party may enter into this Agreement by executing any counterpart.

7.5 Governing law: This Agreement will be subject to and construed and interpreted in accordance with the laws of New Zealand and will be subject to the non-exclusive jurisdiction of the Courts of New Zealand.

SIGNED – by authorised signatories

Hulu Studios

Signature :

Name of authorised signatory :

(Recipient Specified)

Signature :

Name of authorised signatory :