

# TV Ad Swap

## NON- DISCLOSURE, NON-COMPETE AND NON-SOLICITATION CONFIDENTIALITY AGREEMENT

This Non-Disclosure, Non-Compete and Non-Solicitation Agreement (“Agreement”) is entered into and effective this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, (“Effective Date”) by and between Rank Above Others, LLC (“RAO”) and \_\_\_\_\_ (“Receiver”), (RAO and Receiver are collectively referred to as “Parties”), and is made with respect to the following recitals and agreements:

WHEREAS the Parties desire to exchange and examine proprietary and confidential information (the “Confidential Information” as defined below) relating to “TVAdSwap.com” (may also be abbreviated as “TVAS”) concept, strategies, plans, execution and operations in order to explore a possible business relationship and/or maintain an ongoing business relationship between the Parties; and

WHEREAS the Parties are willing to mutually disclose their respective Confidential Information on the terms and conditions set forth in this Agreement.

THEREFORE, for mutual promises and covenants of the Parties as hereinafter recited, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Receiver acknowledges that any Confidential Information of RAO which has or will come into possession or knowledge of such party during the course of this Agreement constitutes trade secrets and the confidential property of RAO.
2. Under this Agreement, the term “Confidential Information” shall mean, but not be limited to, any and all information (whether disclosed or received in written, electronic, digital, visual or oral form) which one party (“Receiver”) receives, obtains, or otherwise gains access to from RAO or any of RAO’s affiliates, related entities, indirect or direct subsidiaries (“Affiliates”), and/or agents, servants, employees, directors, officers, members, consultants, advisors, and/or attorneys (“Representatives”) which concerns RAO and its business as well as RAO’s exploration, discussions and negotiations concerning the potential, proposed or actual business relationship or association with the Receiver. Confidential information shall further include but not be limited to, each of the Parties’ respective know-how, trade secrets, copyrights, trademarks, service marks, patents, documentation, any and all proposed and/or actual business plans, any and all proposed and/or actual technical plans, transactions, products, services, training materials, brochures, checklists, webinars, letters, customer lists, client lists, supplier

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- lists, participating provider lists, systems and systems architecture, software, software architecture, websites, proprietary techniques or website look and feel information, licensing, employer and consumer information, salaries, business management lists, employment agreements, pricing information, reimbursement schedules, purchasing or sales agreements, advertising methods and assets, organizational information, sources of funds, assets, finances, financing, management, management agreements, proprietary business and/or management methods and protocols, managed care agreements, marketing information, marketing strategy, distribution process, production information, plans and protocols, fee schedules, drawings, templates, artwork, manuals, models, reports, designs, specifications, calculations, product data and ideas, processes, app concepts or development ideas, prototypes, cost and other financial information, market research, sales projections/forecast, estimates, pricing, pricing programs, suppliers, domain names owned and/or licensed by and/or used by each party in connection with the operation of its business, and other proprietary knowledge, materials and information. Confidential Information shall also include, but not be limited to, any reports, analyses, data, notes, evaluations, studies, summaries or information derived, generated or prepared from the Confidential Information. Confidential Information shall also include any and all information that the Parties are exploring, entering into, or maintaining a business relationship.
3. Receiver agrees: (a) to hold all Confidential Information in strict confidence; (b) to treat Confidential Information with at least the same care and precaution that the Receiver affords to its most confidential, valuable and secret information, and protect such Confidential Information according to the standards appropriate for the entertainment and advertising industry; (c) not to make use of such Confidential Information for any purpose other than evaluating a potential or existing business relationship with RAO; (d) not to make copies of Confidential Information or reduce a description of Confidential Information to writing or electronic or digital form without RAO's prior written consent; (e) if applicable and necessary, to release such Confidential Information only to its Affiliates and/or Representatives who legitimately need to know and require such information, and appropriately notify such Representative to whom any disclosure of Confidential Information is made that such disclosure is made in confidence and that the Confidential Information must be kept in strict confidence by the Representative; (f) not to derive any commercial or personal benefit (whether direct or indirect) from Confidential Information exclusive of the other party; (g) not to reverse engineer any Confidential Information; and (h) not to release or disclose such Confidential Information to any

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other person or entity who is not a party to this Agreement (“Non-Party”) without the prior, written consent of RAO, in which event the party to this Agreement wishing to disclose or release such Confidential Information to a Non-Party shall require the Non-Party to execute this Agreement.

4. Each party shall remain solely and completely responsible and liable for any breach of this Agreement or disclosure of Confidential Information caused by any of their respective current or former Representatives and/or Affiliates.
5. Notwithstanding the above Receiver acknowledges and agrees that RAO may provide such Confidential Information to those of RAO’s Affiliates as RAO may deem necessary, in the sole and absolute discretion of RAO, in order for RAO to reinsure a portion of the risk of this transaction, to meet RAO’s obligations, and/or as otherwise needed by RAO in its normal course of business, but only as to the Confidential Information required to complete a business process. (Examples of situations in which RAO may deem it necessary to provide Confidential Information to an Affiliate may include, but not be limited to negotiating, creating, or using Carrier commission schedules, or rate schedules for use in other Agreements.)
6. Each party retains all rights, titles and interests to its respective Confidential Information. No patent, copyright, trademark or other proprietary right, title, interest, and/or license in the Confidential Information is granted by a party under this Agreement or by providing Confidential Information to a party under this Agreement.
7. The obligations and duties of each party under this Agreement shall survive the termination of this Agreement.
8. The obligations and duties of the Parties with respect to the protection and disclosure of Confidential Information shall be perpetual, but do not extend to any information relating to the Confidential Information of either party which: (a) is already known to the Receiver (as shown in documentation existing prior to receipt of the Confidential Information); (b) is or becomes publicly known through no wrongful act of the Receiver; (c) is disclosed to the Receiver by a third person or not known by the Receiver to be bound by any obligation of non-disclosure; (d) is approved for release by written authorization of RAO; (e) is independently developed by the Receiver without reference to the Confidential Information; or (f) is required to be disclosed pursuant to any governmental rule, law, regulation or

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- other order, or by any other legal process or authority having the force of law, or other order or requirement of a court, governmental agency or body having jurisdiction over any party, or the requirements of a national securities exchange (“Required Disclosure”) which is disclosed in accordance with the next section of this Agreement. The Receiver shall have the burden of proving any of the above exceptions.
9. In the event that a Receiver may be required to disclose Confidential Information as part of a Required Disclosure, said Receiver shall (a) provide prompt notice to RAO of any such request or requirement (unless precluded from doing so by law, court order or governmental rule or regulation) in order for RAO to seek a protective order or any other appropriate remedy to protect RAO’s Confidential Information; or (b) consult with RAO in order to resist or narrow the scope of such Required Disclosure. If the Receiver is unable to provide such notice to RAO, then the Receiver shall use its reasonable best efforts permissible under law to prevent, protect and limit the amount of Confidentiality Information from the Required Disclosure by filing the appropriate action and/or response in the appropriate court or forum.
  10. After any termination of this Agreement, the termination of the discussions between the parties regarding a possible relationship between the Parties, the termination of an existing or ongoing relationship between the Parties, or upon request of RAO, the Receiver shall return to RAO within fourteen (14) days all originals and copies of any and all written, electronic, digital and tangible Confidential Information received from RAO, and further destroy all Confidential Information disclosed in electronic and/or digital format. The Receiver will also destroy any and all reports, analyses, data, notes, evaluations, studies, summaries or information generated or derived from the Confidential Information. Upon request of RAO, the Receiver shall certify that it has complied with this provision.
  11. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same document. This Agreement may be executed by facsimile, email scan, transfer via online web communications which shall be deemed an original, valid and binding on the Parties hereto. Furthermore, a facsimile copy or digital transfer of this Agreement and any signatures hereon shall be considered for all purposes as originals.

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12. The Parties agree that the obligations and duties under this Agreement shall survive the termination of this Agreement, and that during the term of this Agreement and for a period of three (3) years following the termination of this Agreement, Receiver shall not:
- (a) Directly hire, employ, encourage or solicit any employee, employer, partner, friend, family, agent, servant, broker, independent consultant, vendor or supplier who is currently employed by or engaged in a contract with RAO or who has left RAO's employment or contractual engagement within the preceding twelve (12) months, to become employed with or otherwise affiliated with it (hiring such an employee due to the employee's response to non-targeted, general advertising is an exception to this Non-solicitation clause);
  - (b) Attempt to circumvent RAO or solicit, contact or induce each RAO's suppliers, vendors, brokers, or customers in order to sell, purchase, or provide any products and/or services to or from RAO's customers or suppliers which are the subject of this Agreement or the Confidential Information protected herein or which are already being sold, purchased or provided to said customers and/or suppliers; or
  - (c) Disclose or utilize Confidential Information for the purpose of sabotage or personal gain, creating similar solutions or operate any business in the entertainment and advertising industry with an end-product similar or exactly as disclosed in any documents, digital files, orally or visually through any means possible within the United States of America.
13. Receiver acknowledges and agrees that RAO may suffer irreparable for which monetary damages would not be sufficient remedy and any remedy at law for a breach or threatened breach of the provisions herein would be inadequate to protect the interests of RAO hereto in such Confidential Information and, in recognition of this fact, in the event of a breach or threatened breach by Receiver hereto of any of the provisions herein, it is agreed that RAO herein shall be entitled to seek equitable relief in the form of specific performance, a temporary restraining order, a temporary or permanent injunction, or any other equitable remedy which may be available. Receiver agrees to waive, and use its reasonable best efforts to cause its Representatives to waive, any requirement for the securing or posting of bond in connection with such a remedy. No remedy herein conferred is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or existing

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at law or in equity or by statute or otherwise.

14. The Receiver expressly agree that this Agreement has been negotiated and executed in, and shall be governed and controlled by, the laws, statutes and decisions of the State of Texas as to interpretation, enforcement, validity, construction, effect and in all other respects, without reference to applicable conflict of laws principles. EACH PARTY, IN ORDER TO INDUCE THE OTHER PARTY TO ACCEPT THIS AGREEMENT AND TO DISCLOSE THE CONFIDENTIAL INFORMATION PROTECTED HEREIN, EXPRESSLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING DIRECTLY, INDIRECTLY OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT OR THE CONFIDENTIAL INFORMATION SHALL BE LITIGATED IN THE CIRCUIT COURT OF VICTORIA, TEXAS, OR THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS. EACH PARTY HEREBY CONSENTS AND SUBMITS TO SAID JURISDICTION AND VENUE, AND ACKNOWLEDGES THAT THE PARTIES HAVE HAD SUFFICIENT CONTACTS WITH THE STATE OF TEXAS FOR PURPOSES OF IN PERSONAM AND SUBJECT MATTER JURISDICTION. EACH PARTY FURTHER WAIVES ANY RIGHTS TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT OR THE CONFIDENTIAL INFORMATION.

- a) **Arbitration.** In order to settle any dispute between the Parties, any controversy or claim arising out of or relating to this contract, or any related agreements, representations, acts or omissions, shall be settled by arbitration in accordance with the rules of the American Arbitration Association (the "AAA Rules"), except as such rules may be modified herein. The Arbitrator shall be selected by the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall include but not be limited to, the determination by the arbitrator of the scope of arbitration and the arbitrability of controversies or claims. The Parties acknowledge and agree that the transactions contemplated by this Agreement substantially impact interstate commerce as that term is used in the Federal Arbitration Act, 9 U.S.C. §1, et seq., and under Texas law. The site of such arbitration shall be Victoria, Texas. The Parties agree and understand that they choose arbitration instead of litigation to resolve disputes. The Parties further understand that they have a right or opportunity to litigate disputes through a court, but they prefer to resolve their disputes through arbitration. The Parties voluntarily and knowingly waive any right they have to a jury trial. The decision of the arbitrator shall be final and binding on the Parties, and

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access to a judicial forum is foreclosed, except to enforce an arbitral decision. The Parties agree and understand that all disputes arising under case law, statutory law, and all other laws including, without limitation, all contract, tort, and property disputes, whether or not such disputes arise under or are related to this Agreement, will be subject to binding arbitration in accordance with this Agreement. The Receiver agrees and understands that RAO shall have all powers provided by law and this Agreement. These powers shall include all legal and equitable remedies, including, without limitation, money damages, declaratory relief, and injunctive relief. RAO shall determine which portion of the fees and expenses charged by the arbitrator shall be paid by Receiver. Notwithstanding the above, RAO hereby reserve the right to file suit in the Court of Victoria County, Texas for purposes of seeking declaratory and/or injunctive relief for any dispute with respect to the confidentiality provisions of this Agreement or any other Agreement between RAO and Receiver. Any and all attorneys' fees incurred by RAO in any litigation or arbitration process for the enforcement of any provision of this Agreement shall be paid by the Receiver.

15. If any arbitration, litigation, or other legal proceeding occurs between the Parties relating to this Agreement, RAO shall be entitled to recover (in addition to any other relief awarded or granted) its reasonable costs and expenses, including attorneys' fees incurred in the proceeding. It is understood and agreed by the Parties hereto that this Section shall survive termination of this Agreement and that Receiver shall be solely responsible and liable for the acts, omissions and breaches of its Affiliates and Representatives.
16. Notwithstanding any provision of this Agreement to the contrary, each party acknowledges and agrees that furnishing of its Confidential Information is not intended to and does not restrict a Receiver's ability to do the following: (a) carry on existing business activities; (b) enter into new lines of business; (c) develop or market new products and/or services; or (d) otherwise expand their business operations; so long as undertaking any of these activities does not require the use of Confidential Information or violate the terms of this Agreement.
17. This Agreement can be modified only by a written document executed by all Parties. This Agreement is binding upon, and shall inure to the benefit of, the heirs, representatives, successors, and assigns of the Parties. Neither party may assign,

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transfer or convey its rights or obligations under this Agreement.

18. If any provision of this Agreement, or any portion thereof, is held to be invalid or unenforceable, then the remainder of this Agreement shall remain in full force and effect.
19. The Parties do not intend that any agency, joint venture or partnership relationship be created by them by this Agreement or the disclosure of Confidential Information, and nothing in this Agreement shall be construed to suggest that the Parties are Representatives, Affiliates, partners, or joint-venturers with or of one another.

**IN WITNESS WHEREOF, the Receiver hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year indicated on page one of this agreement with RAO with each Party's legal entity name and contact information as presented below.**

**Rank Above Others, LLC**  
1908 N Laurent St, Suite 265  
Victoria, TX 77901  
800-498-7134

**Receiver Name:**

**Address:**

**Phone:**

X

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Company:  
Title:

**RECEIVER INITIALS: \_\_\_\_\_**