Confidentiality & Non-Circumvention Agreement

This Confidentiality & Non-circumvention Agreement (the “Agreement”) is made between XYZ Corp. (“XYZ”) on the one hand, and 123 Inc., and its principals and agents (“123 Inc.”) on the other hand. XYZ and 123 Inc. are each sometimes referred to as a “Party” and together as “Parties.”

1. The Parties wish to discuss and explore a project involving XYZ and an entity or entities (including individuals) to be introduced by 123 Inc. involving a retail concept [described as___________________] (the “Project”). As part of this discussion and exploration, XYZ may disclose some of its proprietary, confidential, and trade secret information, including without limitation financial information and business strategies; and 123 Inc. may disclose the details of its proposed project and the identities of individuals and entities with interest in pursuing the Project. To allow these discussions to take place in a frank and open manner, each Party agrees to the following limitations, conditions and covenants:

2. Confidential Information. 123 Inc., on behalf of itself and any other individual or entity it introduces to XYZ for purposes of discussing the Project (the “123 Inc. Invitees”), acknowledges that in the course of the Project or discussions, 123 Inc. and the 123 Inc. Invitees may learn or become aware of valuable information belonging to XYZ which is not generally known to the public, including among other things, product information, trade secrets, know-how, business plans and strategies, financial data, and business relationships belonging to XYZ (“Confidential Information”), and that but for this Agreement, 123 Inc. and the 123 Inc. Invitees would have no right to receive any disclosure of, or to use, any portion of the Confidential Information in any manner whatsoever.

3. Use. 123 Inc., on behalf of itself and the 123 Inc. Invitees, will not use Confidential Information belonging to XYZ for any purpose whatsoever except as required for the discussions among the Parties about the Project.

4. Disclosure. 123 Inc., on behalf of itself and the 123 Inc. Invitees, shall limit disclosure of the Confidential Information to its employees and then only to those employees who need to receive the Confidential Information to further the Project or discussions of the Project and only upon carrying out sufficient precautions to maintain confidentiality including: obtaining appropriate commitments and enforceable confidentiality agreements from such employees, to prevent such employees from disclosing to others or using the Confidential Information except on a need to know basis for the Project or discussions of the Project.

5. Documents. All documents of any kind furnished pursuant or relating to the Project or discussions of the Project shall remain the property of the
Party furnishing such documents and each of the Parties shall return all documents and all copies of them to the owner upon request. Each Party shall keep all such documents and copies secure and control access to them, while they are in its possession or control.

6. **Noncircumvention.** For a period of two years from the date of this agreement, XYZ will not make any deal with, or otherwise become involved in any transaction similar to the Project with, the 123 Inc. Invitees without the permission of 123 Inc..

7. **Term.** The 123 Inc. and 123 Inc. Invitees duties and obligations to maintain the confidentiality of the Confidential Information shall last indefinitely, regardless of any other term of this Agreement. The XYZ duties and obligations regarding Noncircumvention set forth in Paragraph 6 shall last for the term stated therein. To the extent other duties and obligations arise under this Agreement, this Agreement shall be effective during the life of the discussions regarding the Project, or two (2) years from the date this Agreement, whichever comes first, unless the Parties otherwise agree in writing.

8. **Breach.** Each of the Parties agrees that remedies at law may be inadequate to protect against breach of this agreement, and hereby consents to the granting of injunctive relief, whether temporary, preliminary or final, in favor of the other Party without proof a actual damages. The Parties understand that this provision does not waive other actions or remedies.

9. **Governing Law/Dispute Resolution:** All matters affecting this Agreement, including the negotiation and validity thereof, are to be governed by, and interpreted and construed in accordance with, the laws of the State of California applicable to contracts executed in and to be performed in that State. It is agreed that any dispute between the Parties arising out of or in any way touching upon the subject matter of (or negotiation of) this Agreement shall be resolved, on an expedited basis, first by non-binding mediation, with a mediator to be selected by the joint agreement of the parties, and with both parties sharing the costs of the mediation equally. Should mediation be unsuccessful in resolving the dispute, then the dispute shall be resolved by binding arbitration in the City of Los Angeles pursuant to the provisions of California Code of Civil Procedure Sections 1280 through 1294.2, as presently enacted (Title 9) (except to the extent inconsistent with the terms of this Agreement, in which case this Agreement supersedes those statutes.) The arbitrator shall have the authority to award costs and attorney's fees to the prevailing party; however, the parties agree that the arbitrator shall have no authority to award punitive damages or other exemplary damages of any kind, and each party has been advised to seek counsel concerning the possible waiver of certain rights otherwise available as a consequence of such agreement. A court sitting in the location of the arbitration or any other court
having jurisdiction may enter judgment in accordance with any resulting award. The prevailing party in any arbitration shall also be entitled to recover costs of collection of any resulting Award or judgment, including reasonable attorney's fees. A party may apply to any Court of competent jurisdiction for equitable remedies in aid of such arbitration, including temporary, preliminary and/or permanent injunctive relief.

10. **Entirety of Agreement**: If any portion of this agreement is deemed to be invalid or unenforceable, this Agreement shall be considered as if such provision had not been part of it. This Agreement sets forth the entire understanding of the Parties regarding its subject matter. It shall be interpreted under the laws of the State of California.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the undersigned Parties hereby agree to this contract.

Dated this ____ day of June, 2003.

**XYZ Corp.**

By: 
Its: 

**123 Inc.**

By: 
Its: