

1 John P. Makin, State Bar No. 88853
2 jmakin@gpsllp.com
3 Greenan, Peffer, Sallander & Lally LLP
4 6111 Bollinger Canyon Road, Suite 500
5 San Ramon, CA 94583
6 Telephone: 925.866.1000
7 Fax: 925.830.8787

8 David P.R. Symes, OSB No. 96135
9 david.symes@ogletreedeakins.com
10 (*Pro Hac Vice Admission Pending*)
11 James M. Barrett, OSB No. 011991
12 james.barrett@ogletreedeakins.com
13 (*Pro Hac Vice Admission Pending*)
14 Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
15 The KOIN Center
16 222 SW Columbia Street, Suite 1500
17 Portland, OR 97201
18 Telephone: 503.552.2140
19 Fax: 503.224.4518

20 Attorneys for Plaintiff
21 BLACKHAWK NETWORK, INC.

22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

18 BLACKHAWK NETWORK, INC., an
19 Arizona corporation,
20
21 Plaintiff,
22
23 v.
24
25 GIFTANGO LLC, a Delaware limited
26 liability company, and GIFTANGO
27 CORPORATION, an Oregon corporation,
28
29 Defendants.

Case No. 4:13-cv-00874-SI

CORRECTED
[PROPOSED] TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE

Date: March 8, 2013
Time: 9:00 a.m.

Assigned to Hon. Susan Illson

Action filed: February 26, 2013
Trial date: None Set

1 **[PROPOSED] TEMPORARY RESTRAINING ORDER**

2 Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Local Rule 65-1,
3 Plaintiff's application for a temporary restraining order and an order to show cause why a
4 preliminary injunction should not issue came before this Court for consideration on March 8,
5 2013. Upon consideration of the application, and for good cause shown:

6 IT IS HEREBY ORDERED as follows:

7 The Court finds that Plaintiff has demonstrated a substantial likelihood of success on the
8 merits of its claims that Defendants are in breach and/or threatened breach of the Mutual
9 Nondisclosure Agreement ("MNDA"), attached hereto as Appendix A. The Court further finds
10 that Plaintiff has demonstrated that, without an order from this Court, it will suffer irreparable
11 harm. Accordingly, the Court finds that a temporary restraining order and order to show cause
12 why a preliminary injunction should not issue is in the public interest.

13 The Court orders the following relief:

14 1. Defendants and their affiliates and members are enjoined from disclosing
15 plaintiff's Confidential Information, as that term is defined in paragraph 2 of the attached
16 MNDA, to any person not authorized to receive that Confidential Information, including but not
17 limited to Giftango, LLC's parent corporation, InComm Holdings, Inc.;

18 ~~2. Defendants and their affiliates are enjoined from continuing to possess plaintiff's~~
19 ~~Confidential Information that they received under the MNDA and are ordered to immediately~~
20 ~~return to plaintiff and/or destroy that Confidential Information and to provide written~~
21 ~~certification to plaintiff of such return and/or destruction;~~

22 3. No security is required in this matter; and

23 4. This Order and all supporting pleadings and papers shall be served upon
24 Defendants by March 4, 2013.

25 //

26 //

27 //

1 **ORDER TO SHOW CAUSE**

2 Defendants and each of them are hereby ordered to appear before the Court at
3 9:00 o'clock AM / PM on March 8, 2013, to show cause why this order
4 should not be extended until the conclusion of this litigation. Courtroom #10, 19th Fl., 450 Golden Gate
Ave., San Francisco, CA 94102.

5 Dated: 3/4, 2013.

6 By: 
7 United States District Judge

8 Opposition to TRO due: 3/6/13 at noon.
9 Reply to TRO due: 3/7/13 at noon.

APPENDIX A

MUTUAL NONDISCLOSURE AGREEMENT

THIS MUTUAL NONDISCLOSURE AGREEMENT ("this Agreement") is made and entered into as of November 21, 2011, between Blackhawk Network, Inc. ("Blackhawk") and Giftango Corporation, an Oregon corporation ("Company").

1. Purpose. The parties wish to explore a business opportunity of mutual interest and, in connection with this opportunity and the resulting business relationship, if any, each party may disclose to the other certain confidential technical and business information which the disclosing party ("Disclosing Party") desires the receiving party ("Receiving Party") to treat as confidential.

2. Confidential Information.

a. "Confidential Information" means any information disclosed by either party to the other party either directly or indirectly, in writing, orally, or by inspection of tangible objects (including without limitation documents, prototypes, samples, plant and equipment), whether or not designated as "Confidential", "Proprietary" or some similar designation, including without limitation the existence of this Agreement and the fact of discussions about this highly confidential business relationship; and also may include information disclosed to a Disclosing Party by third parties.

b. Confidential Information shall not, however, include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the Disclosing Party; (ii) becomes publicly known and made generally available after disclosure by the Disclosing Party to the Receiving Party through no action or inaction of the Receiving Party; (iii) is already legally in the possession of the Receiving Party at the time of disclosure by the Disclosing Party as shown by the Receiving Party's files and records immediately prior to the time of disclosure; (iv) is obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information, as shown by documents and other competent evidence in the Receiving Party's possession.

3. Non-use and Non-disclosure.

a. Each party agrees not to use any Confidential Information of the other party for any purpose except (i) to evaluate and engage in discussions concerning a potential business relationship between the parties and, (ii) to the extent the parties enter into a business relationship, as provided in the definitive agreement executed in connection with such relationship. Each party agrees not to disclose any Confidential Information of the other party to third parties or to any of the Receiving Party's employees, except to those persons (including parents, subsidiaries or affiliates), who are required to have the information for the permissible uses set forth above. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder.

b. In the event any Confidential Information is required to be disclosed by a party under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, or by a demand or information request from an executive or administrative agency or other governmental authority, the party requested or required to disclose such Confidential Information shall, unless prohibited by the terms of a subpoena, order, or demand, promptly notify the other party of the existence, terms and circumstances surrounding such demand or request, shall consult with the other party on the advisability of taking legally available steps to resist or narrow such demand or request, and, if disclosure of such Confidential Information is required, shall exercise its reasonable best efforts to narrow the scope of disclosure and obtain an order or other reliable assurance that confidential treatment will be accorded to such Confidential Information. To the extent

DAKamuson 11-28-11

the Receiving Party is prohibited from notifying the Disclosing Party of a subpoena, order or demand, by the terms of same, the Receiving Party shall exercise its reasonable efforts to narrow the scope of disclosure.

4. Maintenance of Confidentiality. Each party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own most highly confidential information. Neither party shall make any copies of the Confidential Information of the other party unless the same are previously approved in writing by the other party. Each party shall reproduce the other party's proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in or on the original.

5. No Obligation. Nothing herein shall obligate either party to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the business opportunity.

6. No Warranty. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING THE ACCURACY OR COMPLETENESS OF ITS CONFIDENTIAL INFORMATION.

7. Return of Materials. All documents and other tangible objects containing or representing Confidential Information of a Disclosing Party, and all copies thereof, which are in the possession of any Receiving Party, shall be and remain the property of the Disclosing Party and shall be promptly returned upon the expiration of the term of this Agreement or when otherwise requested by the Disclosing Party. Each Receiving Party shall return to the Disclosing Party all Confidential Information disclosed by the Disclosing Party pursuant hereto, in each case together with all copies, summaries and extracts thereof. All electronic copies (including data on computer hard drives, floppy disks, CD-ROMs, tapes, or other media) of Confidential Information of a Disclosing Party shall be and remain the property of such Disclosing Party and shall, upon written request of that Disclosing Party, be promptly returned to it or, at its sole option, destroyed. Upon return or destruction, the Receiving Party shall certify in writing that all such copies have been returned to such Disclosing Party or destroyed.

8. No License. Nothing in this Agreement is intended to grant any rights to either party under any patent, mask work right or copyright of the other party, nor shall this Agreement grant the Receiving Party any rights in or to the Confidential Information of the Disclosing Party except as expressly set forth herein.

9. Term. The obligations of each Receiving Party hereunder shall survive until such time as all Confidential Information of the Disclosing Party disclosed hereunder becomes publicly known and made generally available through no action or inaction of the Receiving Party.

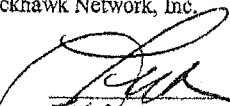
10. Remedies. Each party agrees that any violation or threatened violation of this Agreement may cause irreparable injury to the other party, entitling the other party to seek injunctive relief in addition to all legal remedies.

11. Conflict with Definitive Agreement. To the extent that any terms contained in a definitive agreement entered into between the parties at or following the effective date hereof in connection with the establishment of a business relationship are inconsistent with any terms hereof, the terms of such definitive agreement shall control.

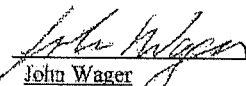
12. Miscellaneous. This Agreement shall bind and inure to the benefit of the parties hereto and their respective parents, subsidiaries, affiliates, successors and assigns. This Agreement shall be governed by the laws of the State of California, without reference to conflict of laws principles. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and neither party shall have any obligation, express or implied by law, with respect to trade secret or proprietary information of the other party.

except as set forth herein. The failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both parties hereto.

Blackhawk Network, Inc.

By: 
Name: TERY LLACH
Address: 5918 Stoneridge Mall Rd.
Pleasanton, CA 94588
Title: CMD
Phone: 925-226-9028
Fax: 925-226-9083

Giftango Corporation

By: 
Name: John Wager
Address: 735 SW 20th Place, Suite 120
Portland, Oregon 97205
Title: General Counsel
Phone: (877) 443-8264
Fax: (877) 443-2198

**Addendum to
Mutual Non-Disclosure Agreement**

This Addendum amends the Mutual Non-Disclosure Agreement with an Effective Date of November 21, 2011 (the "**Agreement**") between Blackhawk Network, Inc., ("Blackhawk") and Giftango Corporation, an Oregon corporation, ("Giftango"). This Addendum shall be effective on the 25th of September 2012 (the "**Addendum Date**").

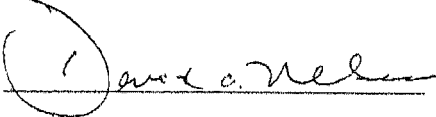
The parties agree as follows:

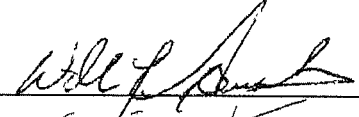
The Purpose of the Agreement shall be modified to include discussions concerning a possible strategic transaction and Confidential Information will be modified to include any trade secrets, knowledge, data or any proprietary or confidential information related to such transaction.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be signed by duly authorized officers or representatives as of the Addendum Date.

GIFTANGO CORPORATION

BLACKHAWK NETWORK, INC.

By: 
Name: David Nelson
Title: CEO
Date: 9/27/12

By: 
Name: William J. Tauscher
Title: CEO
Date: 9/27/12

M. Perreche 11/23/12