

**PRIVILEGED & CONFIDENTIAL  
ATTORNEY WORK PRODUCT  
SUBJECT TO COMMON INTEREST PRIVILEGE  
COMMON INTEREST AGREEMENT**

This Common Interest Agreement, dated as of December 7, 2016 (the "Agreement"), is entered into by and between the undersigned counsel on behalf of themselves and their respective clients (collectively, the "Parties") in connection with pending and potential claims by or against Elizabeth, Inc., Elizabeth Holdings, Inc., and Elizabeth Technologies PLC (collectively, "Elizabeth") relating to Robert Brevelle, Fred Ortiz, and Jorge Torres-Cartagena, including but not limited to the litigations currently pending/filed in the Superior Court of the State of California, County of Santa Clara (the "California Actions," Nos. 1-15-CV-276239 & 16-CV-302975) (the pending and potential claims by or against Elizabeth, including but not limited to the California Actions, are collectively referred to herein as the "Litigation"), for the purpose of memorializing and further certain common legal interests between the Parties with respect to the Litigation and otherwise.

**WHEREAS**, the Parties are in negotiations concerning the acquisition of Elizabeth Technologies PLC by [Tom] (the "Acquisition") and have consulted and retained their respective undersigned counsel for the purpose of finalizing for the acquisition;

**WHEREAS**, [Tom] has issued a formal indicative offer letter;

**WHEREAS**, the Parties reasonably anticipate that, following the Acquisition, [Tom] may acquire or succeed to Elizabeth's claims in the Litigation and/or may be added as a defendant in the Litigation;

**WHEREAS**, the Parties have determined that it is reasonably necessary to share certain Common Interest Information (as defined below) relating to the Litigation in order to further the interests of all Parties in finalizing negotiations for the Acquisition and to accomplish the purposes for which the Parties' counsel have been consulted and retained;

**WHEREAS**, the Parties thus have and continue to share a mutuality of interest with respect to the Litigation and wish to continue to cooperate with one another and continue, if they so choose, to share certain Common Interest Information in confidence to the extent permitted by law to preserve, protect, and advance the Parties' common legal interests with regard to the Litigation;

**WHEREAS**, the Parties continue to wish to preserve, to the maximum extent possible, any work product or other discovery or evidentiary privileges (including, but not limited to, the attorney-client privilege, attorney-work-product doctrine and common interest doctrine) that they may have relating to the Litigation and to continue to provide a means of sharing among the Parties certain information relating to the Litigation and the Parties' common legal interests with respect thereto;

**NOW THEREFORE**, the Parties agree as follows:

## **ARTICLE I DEFINITIONS**

*Section 1.1. General.* Terms defined elsewhere in this Agreement shall, unless otherwise indicated, have the meanings ascribed thereto.

*Section 1.2. "Common Interest Information"* includes, but is not limited to, drafts of pleadings and briefs, legal memoranda, documents, financial information, oral and written communications, recordings, attorney work product, material provided to or prepared by any consultant or expert retained by any Party, tactics, strategy, evaluation, analysis, and any other material of whatever nature relating to the Litigation, and excludes: (i) materials that are not privileged or protected by the attorney-client privilege, attorney work product doctrine or any other privilege, protection or immunity, (ii) any documents and materials which otherwise are publicly available or that have been publicly disclosed other than through a breach of this Agreement, and (iii) the existence and substance of this Agreement.

## **ARTICLE II COMMON INTEREST INFORMATION**

*Section 2.1. Sharing of Common Interest Information.* The Parties have shared and a Party may, but is not obligated to, share such Common Interest Information as the Party deems appropriate and consistent with law with (a) the Parties and (b) the Parties' officers, directors, employees, advisors, attorneys, agents (including but not limited to consultants and experts retained by the Parties and the Parties' insurers for the Litigation) and permitted assignees for the uses permitted hereunder so long as such officer, director, employee, advisor, attorney, agent or assignee is informed by the Party receiving Common Interest Information of the confidential nature of the Common Interest Information and is obligated to hold and treat the Common Interest Information in accordance with the provisions of this Agreement. Each Party reserves the right to determine what Common Interest Information it will share (and under what circumstances), and no obligation or duty to share any such Common Interest Information is created by this Agreement. Information shared by a Party has been without and shall be without any representation or warranty by such Party as to the accuracy or completeness of such information in any respect. In addition, each Party is free under this Agreement to undertake independent investigative or discovery efforts. All Common Interest Information shared prior or subsequent to the execution of this Agreement between or among the Parties with respect to the Litigation and all Common Interest Information derived from any Common Interest Information so shared shall be deemed subject to the terms of this Agreement.

*Section 2.2. Confidential Treatment.* Each of the Parties shall receive and hold in confidence any Common Interest Information previously disclosed to or shared with it and/or disclosed to or shared with it in the future, by or from another Party to this Agreement and agrees to use the Common Interest Information so disclosed solely for purposes of the Litigation and, subject to the provisions of this Agreement, to take steps reasonably necessary to maintain the privileged and confidential nature of the Common Interest Information. Except as expressly set

forth in this Agreement, or as required by law, regulation or any regulatory, judicial, or administrative body having jurisdiction over any Party or any Party's auditors, no Party shall disclose such Common Interest Information to any person or entity other than a Party hereto or those persons identified in Section 2.1 hereof without the express written consent of the original disclosing Party. However, nothing herein shall restrict a Party's disclosure of Common Interest Information that that Party itself has generated.

*Section 2.3. Preservation of Privileges.* All Common Interest Information that is privileged or protected as to any of the Parties hereto shall remain privileged or protected when communicated to other Parties or other persons identified in Section 2.1 in accordance with all law recognizing the privileges and protections accorded the undertakings in the common prosecution of litigation or the exchange of information necessary to effectuate an effective prosecution and/or defense as agreed to herein. The Parties acknowledge and agree that they have not waived and do not, either by their prior sharing of Common Interest Information, or by entering into this Agreement, or by their action or conduct pursuant to this Agreement, waive, or intend to waive, in whole or in part, any attorney-client, or other privilege, any work product protection, or any other immunity or protection from disclosure that a Party or counsel may be entitled to claim. Each Party expressly agrees that it shall not claim or assert that the sharing of any Common Interest Information pursuant to this Agreement shall constitute a waiver of any such privilege, immunity, or protection by any other Party to this Agreement. Nothing in this Agreement shall be deemed to create any privilege, immunity, or protection in any Common Interest Information or to waive, modify or otherwise impact any waiver, in whole or in part, of any privilege, immunity, or protection based on any act or omission committed outside the scope of this Agreement.

*Section 2.4. Compelled Disclosure.* If Tom or its counsel receives a motion, a court or arbitrator's order, a subpoena or other legally enforceable request (collectively "Legal Process") from any person or entity seeking production or discovery of any Common Interest Information provided to Tom by Elizabeth or the counsel of Elizabeth, Tom or its counsel, shall promptly notify counsel for Elizabeth in writing and shall not produce any said Common Interest Information without first permitting Elizabeth or its counsel the opportunity to protect its interests by motion in an appropriate forum, except to the extent that such notification is either prohibited by law or has been given and an order issued by a court of competent jurisdiction requires Tom or its counsel to produce or permit discovery of Common Interest Information before Elizabeth has been able to obtain an order of a court of competent jurisdiction relieving Tom from the obligations of such Legal Process. Subject to the provisions of this Agreement, the obligations of confidentiality and nondisclosure shall be continuous and non-terminating, except by consent of the original disclosing Party, and shall survive the termination or conclusion, in whole or in part, of the Litigation or any other claim, action, or dispute arising out of or relating to the Litigation, as well as any termination or withdrawal by a Party from this Agreement.

*Section 2.5. Reservation of Rights.* The sharing of Common Interest Information, previous to or subsequent to the execution of this Agreement, shall not prevent any Party from asserting any claim against any other Party with respect to the Litigation or any other matter. In any action, including the Litigation, involving any such claim, Common Interest Information shall not be deemed an admission of any Party. Nothing in this Agreement shall be construed as

limiting the rights of any Party: (a) to disclose its own information, including its own Common Interest Information, as it deems appropriate; or (b) to provide written or oral comments to the Court, or other court or tribunal, as appropriate, by motion or any other procedure concerning such Party's views on any aspect of the Litigation.

### ARTICLE III WITHDRAWAL OR TERMINATION OF AGREEMENT

*Section 3.1. Withdrawal.* A Party may withdraw from this Agreement at any time upon written notification, served by email, facsimile, or hand delivery on counsel for the other Parties. A Party shall withdraw from this Agreement upon written notification, served by email, facsimile, or hand delivery on counsel for the other Parties when a Party concludes that its legal interests are no longer aligned with the other Parties. The withdrawing Party and its counsel (and any person to whom the withdrawing Party or its counsel has disseminated Common Interest Information pursuant to the terms of this Agreement) shall: (a) remain bound by this Agreement; (b) continue to be obligated to maintain at all times the privileged and confidential nature of all Common Interest Information communicated to that Party; and (c) redact, destroy or return to counsel for the Party that disclosed the information all Common Interest Information, including, but not limited to, all documents and records that contain, reflect or reveal any such Common Interest Information; provided, however, that to the extent the Common Interest Information exists in whole or in part on computer backup tapes or other not readily accessible media used for disaster recovery or similar purposes, information from such media does not need to be restored for purposes of destroying or returning Common Interest Information to the designating Party, but such retained information shall continue to be treated in accordance with this Agreement; and provided further that subsection (c) of this provision shall not apply to the withdrawing Party's counsel so long as the withdrawing Party's counsel represents one or more other Parties to this Agreement. Such withdrawal shall not constitute a waiver of any privileges applicable to any Common Interest Information disclosed prior to the withdrawing Party's withdrawal. Nothing in this provision, however, shall prevent a Party (or its counsel) from retaining Common Interest Information filed with the Court in the Litigation, or prevent a Party's counsel from retaining its own work product that incorporates or refers to Common Interest Information.

*Section 3.2. Nature of Agreement.* In the event that a Party is no longer involved in the Litigation: (a) this Agreement shall continue to be binding on such Party (and its counsel) and such Party's obligation to protect the confidentiality of all Common Interest Information shall continue; and (b) such Party (and its counsel) shall to the extent permitted by law, redact, destroy or return to the Party that disclosed the information all Common Interest Information, including, but not limited to, all documents and records that contain, reveal or reflect any such Common Interest Information; *provided, however,* that to the extent the Common Interest Information exists in whole or in part on computer backup tapes or other not readily accessible media used for disaster recovery or similar purposes, information from such media does not need to be restored for purposes of destroying or returning Common Interest Information to the Designating Party, but such retained information shall continue to be treated in accordance with this Agreement; and provided further that subsection (b) of this provision shall not apply to the Party's counsel so long as the Party's counsel represents one or more other

Parties to this Agreement. Nothing in this provision, however, shall prevent a Party (or its counsel) from retaining Common Interest Information filed with the Court in the Litigation, or prevent a Party's counsel from retaining its own work product that incorporates or refers to Common Interest Information.

#### ARTICLE IV MISCELLANEOUS

*Section 4.1. Specific Performance.* The Parties expressly acknowledge and agree that no adequate remedy is available at law for breach of this Agreement and that, in addition to any other remedies available, performance of this Agreement may be specifically ordered or a breach hereof may be enjoined, or both.

*Section 4.2. Consent to Jurisdiction.* Each Party hereto expressly consents to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California, with respect to any and all matters, claims and disputes arising under or related to this Agreement. Nothing herein shall be deemed an admission by any Party that it is subject to personal jurisdiction in California in the Litigation or a waiver of any defense of personal jurisdiction in the Litigation.

*Section 4.3. Governing Law.* The Parties and their counsel agree that the laws of the State of California shall apply with respect to all issues that may arise concerning this Agreement, without regard to the principles of conflicts of law thereof.

*Section 4.4. Severability.* In the event any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not be affected or impaired thereby.

*Section 4.5. No Third-Party Beneficiaries.* This Agreement is not intended to, and shall not, create rights in any person or entity not a party hereto.

*Section 4.6. Additional Parties.* Additional parties may be added to this Agreement with written notice to counsel for all Parties, absent objection within three business days of receipt of such notice, by transmitting a copy of this Agreement with an executed and dated signature block identifying the law firm, counsel of record, and parties represented by the law firm to all Parties.

*Section 4.7. Counterparts.* This Agreement may be executed in separate counterparts (which may include counterparts delivered by facsimile or electronic transmission) and all of said counterparts taken together shall be deemed to be an original and shall be binding on the Party who signed the counterpart and all of which together shall constitute a single agreement.

*Section 4.8. Integration.* This Agreement constitutes the complete agreement between the Parties with respect to the subject matter hereof, and supersedes all other agreements between the Parties with respect to the subject matter hereof. This Agreement may not be amended, supplemented or modified except by a written instrument executed by the all remaining Parties to this Agreement.

*Section 4.9. Prior Agreements.* This Agreement does not render invalid or ineffective any prior common interest agreements or other oral or written agreements or understandings between or among any of the Parties concerning the confidentiality of any information exchanged between or among them. Going forward, the terms of this Agreement shall be deemed to memorialize such prior agreements or understandings and shall be controlling with respect to Common Interest Information pertaining to the Litigation.

*Section 4.10. No Fiduciary Relationship.* Participation in this Agreement creates no attorney-client or other fiduciary relationship for any purpose. Each undersigned counsel understands that it is his or her sole responsibility to represent his or her respective client(s) and that none of the other signatories to this Agreement has in any way assumed any such responsibility as to another counsel's client(s). Except as may otherwise be provided by law or applicable ethical standards, the participation in, or the transmission or receipt of any Common Interest Information pursuant to, this Agreement shall not disqualify any signatory or any law firm of any signatory from accepting any other future engagement.

*Section 4.11. No Conflict of Interest.* Except as may otherwise be provided by applicable law or ethical standards, in the event that, in the Litigation or in any related or unrelated action, investigation, inquiry or proceeding, any client or employee of any client of any of the undersigned counsel becomes a witness who may be called upon to provide evidence concerning the client of any other undersigned counsel, or in any way undertakes any act or position that may be construed to be adverse to such other clients (including but not limited to appearance as a witness adverse to clients of any undersigned counsel), nothing in this Agreement shall be deemed to create a conflict of interest nor shall any Party hereto argue that under this Agreement such a conflict of interest exists so as to require the disqualification of any counsel. Except as may otherwise be provided by applicable law or ethical standards, no undersigned counselor law firm of any undersigned counsel shall be disqualified from examining or cross-examining any client of any of the undersigned counsel who testifies at any proceeding, whether under grant of immunity or otherwise, or from taking any other act in any litigation, because of such counsel's participating in this Agreement or because such counsel has been privy to Common Interest Information pursuant to this Agreement. Each counsel signatory to this Agreement has specifically advised his or her client(s) of this paragraph.

*Section 4.12. Litigation.* In any litigation between or among the Parties, no Party may use any Common Interest Information received pursuant to this Agreement other than its own against another Party.

*Section 4.13. Successors and Assigns.* This Agreement shall inure to the benefit of, and shall be binding upon, each Party and its respective agents, successors and assigns.

*Section 4.14. UK Takeover Panel.* The Parties agree that, if the UK Takeover Panel determines that any provision of this agreement that requires Elizabeth to take or not to take action, whether as a direct obligation or as a condition to any other person's obligation (however expressed), is not permitted by Rule 21.2 of the Takeover Code, that provision shall have no effect and shall be disregarded.

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