

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Mutual Confidentiality and Non-Disclosure Agreement and Assignment of Intellectual Property Rights ("**Agreement**") dated January 29, 2014 (the "**Effective Date**") is between (a) Sandy Creek Capital, LLC, a Texas limited liability company, having an address of 18515 Aldine Westfield, Houston, TX 77073, ("**Sandy Creek**"), and (b) Arrows Up, Inc., an Illinois, having an address of 450 Crossen Avenue, Elk Grove Village, IL 60007 (the "**Company**"). Sandy Creek and the Company are collectively referred to herein as the "**Parties**" and each individually as a "**Party**," and references to Sandy Creek and the Company shall include their respective affiliates.

WHEREAS, the Parties desire to engage in confidential discussions related to the development and internal modifications of a standard Ten or Twenty Foot Equivalent Unit ("**TEU**"), or such other standard measurement, to accommodate the storage, manipulation and delivery of sand, and the unique processes that Sandy Creek will employ to efficiently deliver logistics solutions for their customers utilizing sand in their business, and the possible creation of a new TEU or modify an existing one for Company under a contract manufacturing agreement, collectively, the "**Sand Storage and Logistics Concept**").

WHEREAS, in connection with those discussions, it may be necessary or desirable for a Party (the "**Disclosing Party**") to provide one or more of the other Parties (each, a "**Receiving Party**") with information relating to the business of the Disclosing Party, which the Disclosing Party regards as Confidential Data (as defined below) solely for the purpose of evaluating the possibility of entering into a potential business arrangement between the Parties and, upon agreement between the Parties, entering into a business arrangement between the Parties (the "**Purpose**"); and

WHEREAS, the commitments to confidentiality contained in this Agreement are a condition to each Party's willingness to engage in the contemplated business discussions.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and intending to be bound legally hereby, the Parties hereto agree as follows:

1. **Definition of Confidential Data.** "**Confidential Data**" means (1) any information or data (whether or not marked as "Confidential") of or related to the Disclosing Party, or the respective businesses of the Disclosing Party (including, without limitation, with respect to Sandy Creek as the Disclosing Party, information or data related to the Sand Storage and Logistics Concept), which is conveyed, communicated, or otherwise disclosed by the Disclosing Party to the Receiving Party either directly or indirectly, formally or informally, in writing, orally, or by inspection of tangible objects, including, without limitation, commercial, contractual or financial information, know-how, designs, drawings, reports, technical specifications, pricing information, marketing information, inventions and ideas, trade secrets, materials, notes, summaries, formulas, processes, prototypes, developments, photographs, plans, sketches, diagrams, models, specifications, samples, studies, findings, engineering, financial models, listings, and ideas (collectively, the "**Disclosed Materials**"); and (2) any and all information otherwise obtained, directly or indirectly, formally or informally, by the Receiving Party through inspection, review, or analysis of the Disclosed Materials. Confidential Data shall also include information of a third party that is in the possession of the Disclosing Party and is disclosed to the Receiving Party under this Agreement. In addition, Confidential Data shall include all annotated or

unannotated notes, summaries, analyses, compilations, extracts, results, studies, reports, or other documents prepared by the Receiving Party in connection with its review or analysis of the Disclosed Materials.

2. **Obligations of Nonuse.** The Receiving Party agrees to safeguard, defend, and not use any Confidential Data of the Disclosing Party for any purpose except to perform tasks for the Purpose. Unless expressly permitted in writing by the Disclosing Party, the Receiving Party shall not reverse engineer, disassemble, modify, or decompile any prototypes, software, formulas, or other tangible objects that embody the Confidential Data and that are provided to the Receiving Party under this Agreement. Notwithstanding the foregoing, however, nothing herein shall prevent Sandy Creek from disclosing to any third party the Sand Storage and Logistics Concept, or any Related Inventions (as defined below). The Receiving Party shall promptly notify the Disclosing Party of any use or disclosure of Confidential Data in violation of this Agreement of which the Receiving Party becomes aware, but no later than three (3) business days after the time at which the Receiving Party becomes aware of such misuse or unauthorized disclosure.

3. **Mutual Obligations of Confidentiality.** In consideration of the disclosure of Confidential Data, the Receiving Party agrees that the Confidential Data shall be kept strictly confidential and shall not be sold, traded, published, or otherwise disclosed, in whole or in part, to anyone in any manner whatsoever, including by means of photocopy, reproduction, or electronic dissemination, without the Disclosing Party's prior written consent, except as provided in Section 5 below. In addition the Receiving Party shall take all measures necessary to safeguard, defend, and protect the secrecy of, and avoid disclosure and unauthorized use of, the Confidential Data. Without limiting the foregoing, the Receiving Party shall use a high degree of care and take at least those measures that it takes to prevent the unauthorized use, dissemination, or publication of its own confidential data or trade secrets with a similar high degree of care. The Receiving Party shall fully cooperate with the Disclosing Party and shall perform all acts requested by the Disclosing Party, without any expense to the Disclosing Party, in defense of the Disclosing Party's proprietary rights in the Confidential Data. Further, the Receiving Party agrees not to copy the Confidential Data, in whole or in part, except upon the Disclosing Party's prior written approval. For all such authorized copies, the Receiving Party shall reproduce the Disclosing Party's proprietary rights notices on any such authorized copies in the same manner in which such notices were set forth in or on the original.

4. **Ownership and Improvements.** The Company acknowledges that all Confidential Data disclosed by Sandy Creek (including without limitation, all information related to the concept, design, specifications, know-how, and invention of the Sand Storage and Logistics Concept), whether such information is a trade secret, patentable, in the process of being patented, or otherwise, has been developed by Sandy Creek and is the sole property of Sandy Creek. The Company agrees that (A) any suggestions, improvements, changes, modifications, derivative work, addition, enhancement, update, new version, adaptation, revision, or additional inventions relating to Sandy Creek's Confidential Data, in any form or medium, whether tangible or intangible, whatsoever developed or made by Company at any time, including all underlying or resultant intellectual property therein (the "Improvements"), (B) any inventions, processes, devices, or other property of the Company that include any Improvements, and (C) any inventions, processes, devices, or other property of the Company that may be developed through, or arise from, the discussions contemplated under this Agreement (the matters described in items (A), (B), and (C) of this Section 4 are herein collectively referred to as the "Related Inventions"), shall be owned solely and exclusively by Sandy Creek. Accordingly, the Company hereby assigns all worldwide rights in and to the Related Inventions, and the Company shall promptly disclose to Sandy

Creek any such Related Inventions and agrees to execute any document or instrument necessary in order to effect any such assignment. Further, after expiration or termination of this Agreement, the Company agrees that it will not endeavor to create any Related Inventions without Sandy Creek's prior written consent.

5. Permitted Disclosures.

5.1 The Receiving Party may disclose the Confidential Data without the Disclosing Party's prior written consent only to the extent the Receiving Party is able to establish, by clear and convincing evidence, that such information:

- (a) is already known to 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;
- (b) is already in the possession of the public or becomes available to the public other than through the act or omission of the Receiving Party;
- (c) is obtained by the Receiving Party from a third party lawfully in possession of such information at the time it is acquired by the Receiving Party and without a breach of such third party's obligations of confidentiality; or
- (d) is independently developed by the Receiving Party without reference to or reliance upon the Confidential Data provided by the Disclosing Party under this Agreement, as shown by documents and other competent evidence in the Receiving Party's possession.

The burden of proof shall be on the Receiving Party to establish by clear and convincing evidence the existence of facts giving rise that any of the foregoing exceptions to the Receiving Party's obligations of confidentiality apply. Further, specific disclosures made hereunder shall not be deemed to be subject to any of the above exceptions merely because they are embraced by general disclosures in the public knowledge or literature or disclosures in the possession of the Receiving Party. Any combinations of features disclosed hereunder shall not be deemed subject to the above exceptions merely because individual features are in the public knowledge or literature or in the possession of the Receiving Party. Further, notwithstanding the foregoing exceptions, the Company shall not disclose any information related to the Sand Storage and Logistics Concept without obtaining the prior written consent of Sandy Creek.

5.2 The Receiving Party may disclose the Confidential Data upon signed written permission of the Disclosing Party to an Affiliated Company (as hereinafter defined); provided that (1) the Affiliated Company is bound by obligations of non-use, non-disclosure, and confidentiality governing the Confidential Data having terms and conditions at least as protective of the Confidential Data as those expressed in this Agreement, (2) the Receiving Party certifies and guarantees in writing that the Affiliated Company will adhere to the terms and conditions of this Agreement, and (3) such disclosure is on a "need to know" basis and is strictly limited to that disclosure which is necessary to accomplish the Receiving Party's tasks for the Purpose. Affiliated Company shall mean, with respect to a Party, any company or legal entity which:


- (a) controls, either directly or indirectly, such Party; or

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- (b) is controlled, either directly or indirectly, by such Party; or
- (c) is directly or indirectly controlled by a company or entity, which directly or indirectly controls such Party.

"Control" means the right to exercise fifty percent (50%) or more of the voting rights in the appointment of the directors of a company, or, in the case of a non-incorporated entity, the right to determine the outcome of any vote taken by the highest ranking decision making body of such entity.

5.3 The Receiving Party may disclose the Confidential Data upon signed written permission of the Disclosing Party to (1) employees, officers, and directors of the Receiving Party; (2) employees, officers, and directors of an Affiliated Company; (3) any professional consultant or agent retained by the Receiving Party for the purpose of evaluating the Confidential Data; or (4) any bank financing Receiving Party's participation in the potential business relationship including any professional consultant retained by the bank for the purpose of evaluating the Confidential Data (the matters described in Items (1), (2), (3), and (4) of this Section 5.3 are herein sometimes collectively referred to as "Authorized Third Persons" and individually, an "Authorized Third Person"); provided that:

- (a) each such Authorized Third Person has a clear need to know the Confidential Data and is required to have such Confidential Data in order for the Receiving Party to perform tasks for the Purpose;
- (b) each such Authorized Third Person has been apprised in writing of this Agreement and the Receiving Party's obligations hereunder;
- (c) each such Authorized Third Person has signed a non-use, non-disclosure, and confidentiality agreement governing the Confidential Data having terms and conditions at least as protective of the Confidential Data as those expressed in this Agreement prior to the disclosure of Confidential Data to any such Authorized Third Person (the "Authorized Third Person NDA"); and
- (d) the Receiving Party shall transmit a copy of each such Authorized Third Person NDA to the Disclosing Party by the means provided under Section 16.

In the event that the Receiving Party is notified that an employee, officer, or director of the Receiving Party or of an Affiliated Company (each individually, an "Employee") that has received Confidential Data from the Disclosing Party has left (or is planning to leave) the Receiving Party to work for a third party, the Receiving Party hereby agrees to notify the Disclosing Party promptly, and to cooperate fully with the Disclosing Party, at no cost to the Disclosing Party, if the Disclosing Party deems it necessary to pursue legal recourse against the former Employee to protect the Confidential Data. Any misappropriation of Confidential Data by an Employee or former Employee is a material breach of this Agreement and shall entitle the Disclosing Party to seek indemnification under Section 10 of this Agreement.

5.4 If the Receiving Party is required under applicable law or by a governmental order, decree, regulation or rule to disclose any of the Confidential Data, or the fact that such information has been made available to the Receiving Party, or that discussions or negotiations between the Parties are taking place, the Receiving Party shall provide the Disclosing Party prompt notice so that the Disclosing

Party may seek a protective order or other appropriate remedy or waive, to the extent necessary, compliance with the provisions of this Agreement prior to the Disclosing Party's disclosure.

6. Terms and Termination. The obligations of the Receiving Party under this Agreement shall survive (even if this Agreement is terminated by the Parties) until such time as all Confidential Data of the Disclosing Party disclosed hereunder becomes publicly known and made generally available through no action or inaction of the Receiving Party. Upon termination or expiration of this Agreement, the Receiving Party shall return all Confidential Data in its possession or within its control to the Disclosing Party, or alternatively, with the Disclosing Party's prior written consent, the Receiving Party shall destroy such Confidential Data and shall certify in writing to the Disclosing Party the time and data that all such Confidential Data was destroyed. Further, upon termination or expiration of this Agreement, the Receiving Party shall not thereafter manufacture, use, sell, or distribute any product that includes any of the features, designs, technical information, know-how, or Confidential Data of the Disclosing Party.

7. Receipt and Return of Confidential Data.

7.1 All Confidential Data disclosed by a Party under this Agreement is and shall remain the property of the Disclosing Party. Upon receipt of Disclosed Materials or any other documents or other tangible objects containing or representing Confidential Data, whether or not marked as "Confidential," the Receiving Party agrees to mark all such materials as "Confidential" and agrees to certify in writing to the Disclosing Party the time and data that such materials were received and that such materials were marked as "Confidential."

7.2 The Disclosing Party may demand the return of the Confidential Data (including Disclosed Materials and any other documents or other tangible objects containing or representing any Confidential Data) at any time upon giving written notice to the Receiving Party. Within thirty (30) days of receipt of such notice, the Receiving Party shall return all of the original Confidential Data and shall destroy any copies or reproductions (both written and electronic) in its possession and in the possession of persons to whom it was disclosed pursuant to Section 5, except that the legal department or outside counsel of the Receiving Party may retain one complete set of such materials for the sole purpose of monitoring its obligations hereunder.

8. Representations, Warranties, and Acknowledgements.

8.1 Each of the Parties represents and warrants that: (1) This Agreement is a legal and valid obligation binding upon such Party and enforceable in accordance with its terms, and the execution, delivery, and performance of this Agreement by such Party does not conflict with any agreement, instrument, or understanding, oral or written, to which it is a party or by which it is bound, or violate any law or regulation of any court, governmental body, or administrative or other agency having jurisdiction over it; and (2) It has the right to enter into and sign this Agreement.

8.2 Except as specifically set forth in this Agreement, the Receiving Party hereby represents and warrants that it will not, and it will not permit any of its affiliates, employees, or others over which it has control, to directly or indirectly make use, either in part or in whole, of any Confidential Data, whether or not marked as "Confidential," received from the Disclosing Party under this Agreement, for any purpose, including but not limited to, the production of products or the provision on services.

8.3 The Receiving Party hereby acknowledges and agrees that any and all use or disclosure of Confidential Data other than that specifically permitted under this Agreement is a misuse of the Confidential Data and a material breach of this Agreement.

9. **DISCLAIMER OF OTHER WARRANTIES AND LIABILITIES.** THE DISCLOSING PARTY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE QUALITY, ACCURACY, OR COMPLETENESS OF THE CONFIDENTIAL DATA DISCLOSED HEREUNDER, AND THE RECEIVING PARTY UNDERSTANDS AND AGREES THAT THE CONFIDENTIAL DATA IS PROVIDED ON AN "AS IS" BASIS AND EXPRESSLY ACKNOWLEDGES THE INHERENT RISK OF ERROR IN THE ACQUISITION, PROCESSING, AND INTERPRETATION OF THE AFOREMENTIONED CONFIDENTIAL DATA AND THE RISK OF ERROR IN THE ASSUMPTIONS WHICH ARE USED IN ANY ECONOMIC ANALYSIS. THE DISCLOSING PARTY MAKES NO WARRANTIES OF ANY KIND, SPECIFIC, IMPLIED, OR ORAL. THE DISCLOSING PARTY SPECIFICALLY DISCLAIMS ANY WARRANTY WITH REGARD TO MERCHANTABILITY OR FITNESS OF PURPOSE OF ANY PARTICULAR ITEM OF INFORMATION OR FOR ANY DISCLOSED MATERIALS FURNISHED UNDER THIS AGREEMENT. THE DISCLOSING PARTY HEREBY DISCLAIMS ANY AND ALL LIABILITY, AND THE DISCLOSING PARTY, ITS AFFILIATED COMPANIES, THEIR OFFICERS, DIRECTORS, AND EMPLOYEES SHALL HAVE NO LIABILITY WHATSOEVER UNDER THIS AGREEMENT, INCLUDING ANY LIABILITY FOR DIRECT, INDIRECT, CONSEQUENTIAL, OR SPECIAL DAMAGES, CLAIMS FOR LOST PROFITS, CLAIMS FOR BUSINESS INTERRUPTIONS, OR THIRD-PARTY CLAIMS RELATED TO THE CONFIDENTIAL DATA OF SUCH DISCLOSING PARTY.

10. **Damage and Relief.**

10.1 The Receiving Party acknowledges and agrees that a breach or threatened breach of this Agreement by Receiving Party or by any Authorized Third Person will cause irreparable injury to the Disclosing Party and that money damages will not provide an adequate remedy for such breach or threatened breach of this Agreement. Accordingly, the Receiving Party hereby agrees and acknowledges that upon the occurrence of any event of breach or threatened breach of this Agreement by the Receiving Party or by any Authorized Third Person, in addition to seeking money damages and other legal relief, the Disclosing Party will be entitled, without the requirement of posting a bond or other security (if legally permissible), to equitable relief, including injunctive relief that prevents breach of this Agreement, and specific performance. The Disclosing Party's rights under this Agreement are cumulative, and the Disclosing Party's exercise of one right shall not waive the Disclosing Party's right to assert any other legal remedy.

10.2 The Receiving Party hereby agrees to indemnify and hold harmless the Disclosing Party, its successors, and assigns against any and all losses, liability, damages, and expenses, including without limitation, reasonable attorney's fees, expert witness fees, expenses, lost profits, costs, and direct, indirect, consequential, and special damages that the Disclosing Party may incur as a result of a breach or threatened breach of this Agreement by the Receiving Party or by any Authorized Third Person.

11. **No Right or License.** The Parties recognize and agree that the Disclosing Party may not be able to disclose some of the Confidential Data that it has in its possession and that disclosure of such Confidential Data may be conditioned upon obtaining the consent of third parties. The Disclosing Party may, at its sole discretion, seek to obtain such consent. In the event of any disclosure by the Disclosing Party of Confidential Data that it did not have a right to disclose whereupon there is a claim for damages, breach of contract, or other similar claim, the Disclosing Party shall defend, indemnify and hold the Receiving Party harmless from such claim(s). Except for the limited right to use granted in

Section 2 and Section 5 hereof, no right to use the Confidential Data is granted to the Receiving Party hereunder, and the Disclosing Party shall have no liability other than that stated herein with respect to the Receiving Party's use of any information or data, whether confidential or otherwise, furnished by the Disclosing Party under this agreement. No license either expressed or implied, under any patent, copyright, trade secret, or other intellectual property rights is granted hereunder.

12. Relationship of the Parties. No agency, partnership, fiduciary relationship, joint venture or other joint relation is created between the Parties by this Agreement. Neither Party has the authority to bind the other Party or to incur any obligation on its behalf.

13. No Obligation to Proceed. Unless otherwise expressly stated in writing, any prior or future proposals or offers made in the course of the Parties' discussions are implicitly subject to all necessary management and government approvals and may be withdrawn by either Party at any time. The Parties are under no obligation to proceed with any business relationship. Any agreement to have a business relationship between the Parties will exist only when such agreement is in writing, has received all necessary corporate approvals and has been duly executed by authorized representatives of the Parties. Each Party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the Purpose.

14. No Publicity. Except as explicitly allowed pursuant to this Agreement or otherwise authorized by both Parties in writing, neither Party shall publicly announce or disclose the existence of this Agreement, its terms or conditions, or any of the discussions between the Parties, or advertise or release any publicity regarding this Agreement. This Agreement, and the terms and conditions therein, shall be considered Confidential Data.

15. Governing Law and Forum. This Agreement and all claims related to it, its execution, or the performance of the Parties under it, shall be governed by and interpreted in accordance with the laws of the State of Texas excepting any law or rule thereof, which would apply the laws of any other jurisdiction. Each Party agrees that any dispute regarding this Agreement or the matters contemplated hereby shall be litigated only in the federal or state courts located in Harris County, Texas, and each Party agrees that it shall not commence any legal proceeding against the other Party in any court or before any other authority. Each Party hereby submits to the exclusive jurisdiction of the federal or state courts located in Harris County, Texas, and each Party hereby waives any objection to the jurisdiction of such courts.

16. Notices and Correspondence. Upon execution of this Agreement, the Parties hereby agree to mail or email a complete, accurate, and legible copy of this Agreement to the addresses below. All notice or correspondence required under or contemplated by this Agreement shall be delivered by hand or courier or sent to the Parties by certified mail, return receipt requested, at the addresses set forth below, and such notices shall be effective upon the actual receipt of such notices by the other Party:

If to the Company:

Company Name: Arrows Up, Inc.
Address: 450 Crossen Avenue, Elk Grove Village, IL 60007
Attn: John Allegritti
Email: cia@arrowsupinc.com

If to Sandy Creek:

Address: 18515 Aldine Westfield
Houston, TX 77073
Attn: John Oren
Email: jroren@pinchflatbed.com

17. Assignment. The Company may not assign or transfer its rights or obligations under this Agreement without the prior written consent of Sandy Creek. This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors, heirs, legal representatives, and permitted assigns.

18. Breach. Failure to observe or abide by the terms or conditions of any section of this Agreement shall be considered a material breach of this Agreement. The Receiving Party shall immediately notify the Disclosing Party of any breach or threatened breach of this Agreement in writing, specifying, in detail, the nature of the breach or threatened breach.

19. General. The section headings in this Agreement are inserted for convenience only and shall not be used in the construction or interpretation of the respective sections or of this Agreement as a whole. Any rule or principle of contractual construction that would otherwise require any aspect of this Agreement to be interpreted against the Party primarily responsible for its drafting shall not be employed in the interpretation thereof. This Agreement may only be amended by a written document signed by an authorized representative of both Parties. No waiver of any provision of this Agreement, or of a breach hereof, shall be effective unless it is in writing and signed by authorized representatives of both Parties. No waiver of a breach of this Agreement (whether express or implied) shall constitute a waiver of a subsequent breach. A Party's failure to enforce any provision of this Agreement shall neither be construed as a waiver of the provision nor prevent the Party from enforcing any other provision of this Agreement. All provisions of this Agreement are severable, and the unenforceability or invalidity of any of them shall not affect the validity or enforceability of the remaining provisions of this Agreement. If any provision of this Agreement is found to be illegal or unenforceable, such provision shall be severed from this Agreement, and the other provisions shall remain effective and enforceable to the greatest extent permitted by law. This Agreement constitutes the entire understanding between the Parties and supersedes all previous understandings, agreements, communications, and representations, whether written or oral, concerning the subject matter hereof, except that any information or data exchanged prior to the Effective Date of this Agreement that qualifies as Confidential Data hereunder shall be afforded protection as Confidential Data according to the terms of this Agreement, and neither Party shall have any obligation, express or implied by law, with respect to trade secret or propriety information of the other Party except as set forth in this Agreement. The Parties may execute this Agreement in counterparts, each of which is deemed an original, but all of which together constitute one and the same Agreement. This Agreement may be delivered by facsimile transmission, and facsimile copies of executed signature pages shall be binding as originals.

[Remainder of Page Intentionally Left Blank; Signature Page to follow.]

The Parties have caused and duly authorized their officers or their representatives to execute and deliver this Agreement as of the Effective Date.

COMPANY:

Arrows Up, Inc. _____

By: _____

Name: John Allegretti

Title: President & CEO

SANDY CREEK:

SANDY CREEK CAPITAL, LLC

By: _____

Name: John R. Oren

Title: Chairman

Initial

JA

Initial

JO