

## MUTUAL NON-DISCLOSURE AGREEMENT

This MUTUAL NON-DISCLOSURE AGREEMENT (this “Agreement”), effective as of the date set forth last below, is made by and between the undersigned counter party (the “Counter Party”) and [FULL NAME OF COMPANY] (“Company”). In consideration of the mutual agreements and other provisions of this Agreement, the parties hereto agree as follows:

### 1. Scope of Confidential Information.

1.1 “Confidential Information” means, subject to the exceptions set forth in Section 1.2 hereof, any information or data, regardless of whether it is in tangible form, that is disclosed or otherwise made available by a party hereto (the “Disclosing Party”) to the other party hereto (the “Receiving Party”) and that (a) the Disclosing Party has marked or identified as confidential or proprietary, or (b) the Disclosing Party identifies as confidential in writing within [15/30] days of disclosure to the Receiving Party; provided, however, that reports and/or information related to or regarding the Disclosing Party’s business plans, business methodologies, strategies, technology, specifications, development plans, customers, prospective customers, [PARTNERS, SUPPLIERS] billing records, and products or services [*describe any other special category of Company’s confidential information that should always be confidential, e.g., the existence of this Agreement*] shall be deemed Confidential Information of the Disclosing Party even if not so marked or identified, unless such information is the subject of any of the exceptions set forth in Section 1.2 hereof.

1.2 “Confidential Information” shall not include any information that: (a) is or becomes available to the public (other than as a result of disclosure by Receiving Party or its representatives prohibited by this Agreement); (b) is made available to Receiving Party by a third party who is lawfully in possession of such information, and who is not in violation of any confidentiality obligation in favor of Disclosing Party; or (c) the Receiving Party can show by written record was in available to or in possession of Receiving Party (free of any confidentiality obligation in favor of Disclosing Party known to Receiving Party at the time of disclosure or availability) prior to disclosure of such information by Disclosing Party to Receiving Party, provided that the Receiving Party must promptly notify the Disclosing Party of any prior knowledge in the manner provided in Section 2.4 below.

### 2. Use and Disclosure of Confidential Information.

2.1 The Receiving Party shall only use the Confidential Information internally solely for the purpose of [EVALUATING A POTENTIAL BUSINESS RELATIONSHIP BETWEEN THE RECEIVING PARTY AND THE DISCLOSING PARTY] (the “Permitted Purpose”). The Receiving Party must keep secret and shall never, without the prior written consent of the Disclosing Party, directly or indirectly, disclose, publish, divulge, furnish or make accessible to anyone all or any portion of the Confidential Information, other than furnishing such Confidential Information to (a) the Receiving Party’s employees [AND CONSULTANTS] who are required to have access to such Confidential Information in connection with the Permitted Purpose, and (b) Receiving Party’s professional advisers (e.g., lawyers and accountants), in each case, during the time that the Receiving Party is permitted to retain such Confidential

Information hereunder; provided that any and all such employees[AND CONSULTANTS] are bound by written agreements or, in the case of professional advisers, ethical duties, respecting the Confidential Information in the manner set forth in this Agreement.

2.2 The Receiving Party shall use at least reasonable care and adequate measures to protect the confidentiality of the Confidential Information of the Disclosing Party and to ensure that any Confidential Information of the Disclosing Party is not disclosed or otherwise made available to other persons or used in violation of this Agreement. Without limiting any of the foregoing, such measures shall be at least the equivalent of measures which the Receiving Party uses to protect the Receiving Party’s own most valuable proprietary information.

2.3 In the event that the Receiving Party is required by law to make any disclosure of any of the Confidential Information of the Disclosing Party, by subpoena, judicial or administrative order or otherwise, the Receiving Party shall first give written notice of such requirement to the Disclosing Party, and shall permit the Disclosing Party to intervene in any relevant proceedings to protect its interests in the Confidential Information, and provide full cooperation and assistance to the Disclosing Party in seeking to obtain such protection.

2.4 The Receiving Party agrees to notify the Disclosing Party promptly in writing if (a) the Receiving Party becomes aware of any breach of this Agreement with respect to the Confidential Information of the Disclosing Party in the Receiving Party’s possession; (b) subsequent to disclosure of any Confidential Information by the Disclosing Party, information is disclosed to the Receiving Party in the manner described in Section 1.2; or (c) upon disclosure of Confidential Information by the Disclosing Party, the Receiving Party has prior knowledge of the same.

2.5 The Receiving Party shall not embody any of the Confidential Information of the Disclosing Party in any of the Receiving Party’s products, processes or services, or duplicate or exploit any of such Confidential Information in the Receiving Party’s business, or file any patent application, utility model or design application based upon, derived from, or disclosing any Confidential Information of the Disclosing Party or otherwise use any of the Confidential Information for any purpose other than for the [PERMITTED PURPOSE].

### 3. Certain Rights and Limitations.

3.1 All Confidential Information shall remain the property of Disclosing Party. The provision of Confidential Information hereunder shall not transfer any right, title or interest in such information to Receiving Party. Disclosing Party does not grant Receiving Party any express or implied right to or under

Disclosing Party's or another party's patents, copyrights, trademarks, trade secret information or other proprietary rights.

3.2 The Receiving Party [**SHALL NOT REVERSE-ENGINEER, DECOMPILE, OR DISASSEMBLE ANY SOFTWARE DISCLOSED TO IT UNDER THIS AGREEMENT AND**] shall not remove, overprint or deface any notice of confidentiality, copyright, trademark, logo, legend or other notices of ownership or confidentiality from any originals or copies of Confidential Information it obtains from the Disclosing Party.

3.3 This Agreement imposes no obligations on either party to exchange any Confidential Information or to purchase, sell, license, transfer or otherwise transact in any technology, services or products.

3.4 Confidential Information disclosed by the parties under this Agreement may be subject to export controls under the laws of the United States. Each party will comply with such laws and agrees not to knowingly export, re-export or transfer Confidential Information of the other party without first obtaining all required United States authorizations or licenses.

3.5 All tangible embodiments of the Confidential Information of the Disclosing Party (*e.g.*, drawings, memoranda and notes) and all copies thereof, whether in hard-copy or machine-readable form and whether supplied by the Disclosing Party or made by or for the Receiving Party (collectively, the "Tangible Embodiments"), shall at all times be and remain the exclusive property of the Disclosing Party.

3.6 The Receiving Party will provide upon the Disclosing Party's request a certification that access and use is being controlled in accordance with this Agreement. The Disclosing Party will have the right to audit to verify compliance with this Agreement.

4. **Remedies.** Receiving Party acknowledges that a breach by it of any of the terms of this Agreement would cause irreparable harm to the Disclosing Party for which Disclosing Party could not be adequately compensated by money damages. Accordingly, Receiving Party agrees that, in addition to all other remedies available to Disclosing Party in an action at law, in the event of any breach or threatened breach by the Receiving Party of the terms of this Agreement, the Disclosing Party shall, without the necessity of proving actual damages or posting any bond or other security, be entitled to temporary and permanent injunctive relief, including, but not limited to, specific performance of the terms of this Agreement.

#### 5. **Termination.**

5.1 This Agreement shall remain in effect until it is terminated by either party with thirty (30) days prior written

notice. The terms and conditions of this Agreement shall survive any such termination with respect to Confidential Information that is disclosed prior to the effective date of termination.

5.2 Upon the earlier of (a) the termination of this Agreement, (b) Disclosing Party's written request or (c) such time as the Receiving Party no longer requires the Confidential Information [**FOR THE PERMITTED PURPOSE**], Receiving Party agrees to promptly return to Disclosing Party or destroy all Confidential Information and any Tangible Embodiments that are in the possession of Receiving Party and to certify the return or destruction of all such Confidential Information and embodiments.

6. **Warranty.** NO WARRANTY IS MADE BY EITHER PARTY UNDER THIS AGREEMENT. ANY INFORMATION EXCHANGED UNDER THIS AGREEMENT IS PROVIDED "AS IS."

7. **Miscellaneous.** This Agreement does not create any agency or partnership relationship between the parties hereto. This Agreement shall be governed by and construed in accordance with the laws of the [STATE/Commonwealth of \_\_\_\_\_] governing such agreements, without regard to conflicts-of-law principles. The sole and exclusive jurisdiction and venue for any litigation arising out of this Agreement shall be an appropriate federal or state court located in the [STATE/Commonwealth of \_\_\_\_\_], and the parties agree not to raise, and waive, any objections or defenses based upon venue or forum non conveniens. This Agreement contains the complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings whether written or oral, express or implied. [**EXCEPT WHERE EXPRESSLY INDICATED OTHERWISE, THE WORDS "WRITTEN" OR "IN WRITING" SHALL INCLUDE, BUT NOT BE LIMITED TO, WRITTEN OR PRINTED DOCUMENTS, IN ANY FORMAT NOW KNOWN OR LATER DEVELOPED INCLUDING ELECTRONIC AND FACSIMILE TRANSMISSIONS AND COMPUTER DISKS OR TAPES (WHETHER MACHINE OR USER READABLE).**] If any provision of this Agreement is held invalid, illegal or unenforceable by a court of competent jurisdiction, such shall not affect any other provision of this Agreement, which shall remain in full force and effect. No amendment or alteration of the terms of this Agreement shall be effective unless made in writing and executed by both parties hereto. A failure or delay in exercising any right in respect to this Agreement shall not be presumed to operate as a waiver, and a single or partial exercise of any right shall not be presumed to preclude any subsequent or further exercise of that right or the exercise of any other right. Any modification or waiver of any provision of this Agreement shall not be effective unless made in writing. Any such waiver shall be effective only in the specific instance and for the purpose given.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed below by their duly authorized signatories.

\_\_\_\_\_  
[NAME OF COMPANY]

By:

\_\_\_\_\_  
Name:  
Title:  
Date:

Address for notices to Counter Party:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:  
Date:

Address for notices to Company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_