



Non-Disclosure Agreement (NRE)

Date _____

This **NON-DISCLOSURE AGREEMENT** (the "**Agreement**") is by and between: _____, a corporation organized under the laws of _____ with its principal place of business at _____ ("**Party 1**"), and _____, a corporation organized under the laws of _____ with its principal place of business at _____ ("**Party 2**").

Party 1 agree as follows:

1. **Purpose.** During the Term, _____ (Party 1) and Company anticipate exchanging Confidential Information, at their sole discretion, for the purpose of evaluating a possible business relationship between the Parties, and potentially entering into a definitive relationship and agreement thereafter (the "**Purpose**").

2. **Definition.** "Confidential Information" refers to all non-public information that may be disclosed by one party (the "**Discloser**") to the other (the "**Recipient**"), whether in writing, electronically, by demonstration, orally or otherwise, during the Term of this Agreement including, without limitation: (a) a party's financials, business strategies, pricing, proposals, concepts, or products or services, including but not limited to its program devices, formulae, patents, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and regardless of how stored, compiled, or memorialized; (b) the fact that discussions or negotiations are taking place concerning the Purpose; (c) information traditionally recognized as proprietary trade secrets; (d) all data and information about a party's current, former and perspective customers, suppliers and officers, directors and employees; and (e) all copies of any of the foregoing. Confidential Information made available hereunder may include information of third parties, such as affiliates and actual or potential customers or suppliers, and the source of such Confidential Information shall not affect its treatment hereunder. For the purposes of this Agreement, the term "**affiliate**" refers to any entity which controls, is under the control of or is under common control with a party.

3. **Protection of Confidential Information.** Recipient shall use the same or greater degree of care in safeguarding the Confidential Information as it uses for its own confidential information of like importance, but no less than reasonable care. Recipient shall not disclose the Confidential Information to any third party, except to its affiliates, employees, internal contractors and agents (the "**Representatives**") having both a need to know to accomplish the Purpose and an obligation to protect information as required by this Agreement. Recipient and its Representatives shall not utilize the Confidential Information for any reason other than the Purpose, and to the extent applicable, shall not modify, reverse engineer, de-compile, disassemble or create derivative works from any Confidential Information. Recipient shall make only such copies of the Confidential Information as are necessary to accomplish the Purpose. Any such copies shall reproduce all confidentiality markings included therein. Recipient shall be liable for its Representatives compliance with the terms of this Agreement and any breach of this Agreement. Each party shall notify the other immediately in the event of a breach of this Agreement, and shall promptly take reasonable steps to remedy the breach.

4. **Exceptions.** Recipient's obligation of confidentiality and a duty of confidentiality (b) generally not applicable to Confidential Information: (a) known to Recipient prior to disclosure; (b) generally not applicable to Confidential Information; (c) received by Recipient from a third party without a duty of confidentiality, and Recipient is not aware, after due inquiry, that such third party is breaching a duty of confidentiality by disclosing such Confidential Information to Recipient; or (d) independently developed by or for Recipient without any use of such Confidential Information as substantiated by reasonable documentation.

5. **Required Disclosures.** It shall not be considered a breach of this Agreement if Recipient discloses Confidential Information as required by law provided, however, that Recipient: (a) where permitted by law, gives Discloser written notice promptly upon receipt of a disclosure requirement and before the disclosure is made; (b) takes reasonable actions and provide reasonable assistance to Discloser to secure confidential treatment of the Confidential Information at the cost of Discloser; and (c) discloses only such Confidential Information as is required by law.

6. **Proprietary Rights.** Each party shall retain all right, title and interest to its Confidential Information. Except as explicitly provided in this Agreement, neither party to this Agreement acquires any intellectual property rights or any other rights in the other party's Confidential Information.

7. **No Warranties.** All Confidential Information is provided "AS IS". Discloser makes no representations or warranties, express or implied, regarding any Confidential Information, including but not limited to those of accuracy, completeness or fitness for any particular purpose.

8. **Injunctive Relief.** Recipient acknowledges that the use or disclosure of Confidential Information in contravention of the terms of this Agreement may cause irreparable harm to Discloser for which a remedy at law may be inadequate. Accordingly, Recipient agrees that Discloser will have the right to obtain an immediate injunction against any breach or threatened breach of this Agreement, as well as the right to pursue any and all other remedies available at law or equity for such breach.

9. **Return.** All Confidential Information derivatives and excerpts thereof, shall be returned to Discloser (or where return is not possible, destroyed) immediately on the earlier of termination of this Agreement or Discloser request. Upon Discloser's request, Confidential Information that has been incorporated into derivatives and other materials shall be destroyed by the Recipient. Upon the request of Discloser, Recipient shall certify in writing to the Discloser that the foregoing have been accomplished. Notwithstanding the foregoing: (a) Recipient may retain one copy of Confidential Information for audit and dispute resolution purposes; and (b) Recipient is not required to return or destroy computer files stored in the ordinary course of business as a result of automated back-up procedures (subject to the confidentiality restrictions set forth herein).

10. **Term and Termination.** The term of this Agreement shall commence on the date set out at the bottom of this Agreement and continue until the earlier of the second (2nd) year anniversary date or until terminated by either party upon the provision of not less than ten (10) days prior written notice (the "Term"), provided that Recipient's obligations of confidentiality and restrictions on use hereunder with respect to Confidential Information disclosed during the Term shall continue indefinitely.

11. **Independent Development.** Nothing in this Agreement shall be construed to preclude either party from developing, using, marketing, licensing, and/or selling any product or service that is developed without use of the Confidential Information, or require a party to provide access or disclose its Confidential Information.

12. **No Commitment.** Neither party has an obligation under this Agreement to purchase any product or service from the other party, or engage in any other transaction with the other party.

13. General.

- A. Entire Agreement: This Agreement is the entire agreement between the parties as to the subject matter hereof and supersedes any previous agreements, oral or written, as to its subject matter.
- B. Modifications: This Agreement may be modified only by the written agreement of the parties.
- C. No Agency: The parties do not intend that any agency or partnership relationship be created between them by this Agreement.
- D. Assignment: Neither party may assign any of its rights, or delegate any of its obligations, under this Agreement without the prior written consent of the other party, except to an affiliate.
- E. Successors and Assigns: This Agreement binds the parties and their respective successors and permitted assigns.
- F. Laws: Each party hereby agrees to comply with all applicable laws, regulations and government orders in performing its obligations under this Agreement, including, but not limited to Canadian and US export laws.
- G. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of Ontario, Canada, without regard to its choice of law provisions. Both parties hereby agree to the exclusive jurisdiction and venue of the courts of Toronto, Ontario with respect to any legal proceeding arising in connection with this Agreement; provided that the foregoing shall not restrict either party from obtaining injunctive relief in any jurisdiction it deems appropriate.
- H. Language: This Agreement is written in the English language only, which language shall be controlling in all respects.
- I. Counterparts: This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

The parties hereby execute this Agreement effective as of _____.

Title _____ (Party 1)

By: _____

Name: _____

Title: _____ (Party 2)

By: _____

Name: _____

Title: _____