

# Mutual Non-Disclosure Policy

## Preamble

- a) In connection with disclosure of information and discussions with the prospective Client and Methods Technologies Services, Winnipeg, Manitoba, Canada, have agreed to provide to each other certain confidential information for the purpose of discussing technical issues submitted by the prospective Client via Methods' website.
- b) Each of the parties desires to protect their confidential information from unauthorized disclosure and use.

**NOW THEREFORE**, in consideration of the disclosure of certain confidential information by either party (the "Disclosing Party") to the other party (the "Recipient") in the evaluation, determination, and/or implementation with respect to said Subject Matter, and of the mutual covenants, agreements and undertakings contained in this Agreement, the parties agree as follows:

## 1. Confidential Information

For the purpose of this Agreement, "Confidential Information" means all oral, written or electronic data and information which includes but is not limited to technical information, research and development, information relating to new product plans, test information and other proprietary information, trade secrets, discoveries, ideas, concepts, know-how, techniques, software, designs, drawings, sketches, bills of materials, formulae, models, patent disclosures, specifications, diagrams, financial data and information regarding future product plans as well as market development plans and trade secrets. The Disclosing Party may consider such Confidential Information proprietary under this Agreement, either because it has developed the Confidential Information internally, or because it has received the Confidential Information subject to a continuing obligation to maintain the confidentiality of the Confidential Information, or because of other reasons. The Disclosing Party may consider such Confidential Information as a trade secret because such Confidential Information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertained by proper means by other persons who can obtain economic value from its disclosure or use.

The Recipient hereby acknowledges the confidentiality of the Confidential Information.

Confidential Information shall not include information of the Disclosing Party that:

- a) is or becomes part of the public domain through no wrongful act of the Recipient;
- b) is disclosed with the written consent and authorization of the Disclosing Party;
- c) is independently developed by the Recipient;
- d) is received by the Recipient without obligation of confidence from a third party whom the Recipient had no reason to believe was not lawfully in possession of such information, free of any obligation of confidence; or
- e) is lawfully required to be disclosed pursuant to an order of a court or other authority of competent jurisdiction, provided that, before making such disclosure, the Recipient shall promptly provide the Disclosing Party with written notice of the requirement to disclose, and shall reasonably cooperate with the Disclosing Party in its actions to secure the confidential treatment of the Confidential Information, or actions taken by the Disclosing Party to challenge, narrow or restrict such order, the costs of which shall be the responsibility of the Disclosing Party.

## 2. Non-Disclosure

Each party undertakes and agrees that a Termination Date of this agreement shall take effect solely on the date which is 30 days subsequent to written notification of termination by either Party. Subsequent to the Termination Date, the Recipient shall remain obligated to this Agreement for a period of 5 years and unless specifically authorized in writing by the other party, it shall:

- a) treat the Confidential Information as strictly confidential, and shall not disclose or permit the disclosure of the Confidential Information to any person, corporation or organization whatsoever without first obtaining written permission from the Disclosing Party;
- b) restrict the disclosure of the Confidential Information solely to those officers and employees of the Recipient which shall include any representatives of any affiliate companies, or any other advisor engaged for the purpose of assisting the Recipient in evaluating the Confidential Information (collectively "Affiliates") with a need-to-know, provided that the Recipient agrees to inform each person made privy to the Confidential Information of the provisions of this agreement and shall make reasonable efforts to ensure that such person shall abide by the provisions hereof and not make use of the Confidential Information other than as required for the purpose of evaluating a potential business relationship between the parties and commencing the Subject Matter;
- c) take all reasonable precautions against the Confidential Information being used or acquired by any unauthorized person or persons, which precautions shall entail the same degree of care as the Recipient uses in preserving the confidentiality of its own confidential information;
- d) upon request of Disclosing Party, promptly return to the Disclosing Party or provide certified evidence of destruction of, all copies of the Confidential Information, and any and all tangible materials relating to the Confidential Information, including, but not limited to, all copies, computer discs, tapes, compact discs, and any other data recording electronic media whether such material was made or compiled by the Recipient or furnished by the Disclosing Party;
- e) not reproduce or make copies of the Confidential Information except with the written consent of the Disclosing Party and that any such copies shall be given to the Disclosing Party upon request;
- f) use the Confidential Information only in connection with continuing discussions by the parties concerning the Subject Matter, except as may otherwise be mutually agreed upon in writing; and
- g) if Recipient or any of its representatives is served with a subpoena or other process requiring the production or disclosure of the Disclosing Party's Confidential Information, then the person or entity receiving such subpoena or other process, before complying with such subpoena or other process, shall immediately notify the Disclosing Party of same and permit the Disclosing Party a reasonable period of time to intervene and contest disclosure or production. Recipient and its representatives will cooperate in seeking, performing and enforcing a protective order for the Disclosing Party's Confidential Information.

## 3. No License

This Agreement shall not be construed as granting or conferring any patent, copyright, trademark or any other proprietary rights by license or otherwise, expressed or implied, in the Confidential Information disclosed pursuant to this Agreement. All Confidential Information in whatever form (including, but not limited to, information in computer software or held in an electronic storage media) shall be and remain the property of the Disclosing Party.

## **4. Ownership of Information**

The Confidential Information shall be deemed the property of the Disclosing Party. If the Recipient loses or makes an unauthorized disclosure of the Disclosing Party's Confidential Information, it shall notify the Disclosing Party immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed Confidential Information.

## **5. Indemnification**

In the event the Recipient or its Affiliates makes an unauthorized disclosure, the Recipient shall indemnify the Disclosing Party for any loss proximately arising from such disclosure. With respect to any dispute, claim, or legal action between the parties regarding or relating to this Agreement, the prevailing party shall be entitled to recover all reasonable out-of-pocket costs and expenses (including, but not limited to, reasonable attorneys' fees) incurred as a result thereof.

## **6. Scope of Agreement**

Neither this Agreement, nor the disclosure of Confidential Information under this Agreement, nor the ongoing discussions and correspondence between the parties, shall constitute or imply a commitment or binding obligation between the parties or their respective affiliated companies, if any, regarding the Subject Matter. If, in the future, the parties elect to enter into a binding commitment regarding the Subject Matter, such commitment will be explicitly stated in a separate written agreement executed by both parties, and the parties hereby affirm that they do not intend their discussions, correspondence, and other activities to be construed as forming a contract regarding the Subject Matter or any other transaction between them without execution of such separate written agreement.

## **7. No Representation**

The Disclosing Party does not make any representations or warranties regarding the accuracy or completeness of the Confidential Information, and the Disclosing Party shall not be liable in any way or manner to the Recipient for any use of or reliance on the Confidential Information by the Recipient.

## **8. Equitable Remedies**

In the event of a breach, or a threatened breach, of any of the foregoing provisions, the parties acknowledge and agree that the harm suffered by the injured party would not be compensable by monetary damages alone and, accordingly, the injured party, in addition to other available legal or equitable remedies, shall be entitled to an injunction against such breach or threatened breach.

## **9. Entire Agreement**

This Agreement is the complete agreement of the parties concerning this subject matter and supercedes any such prior agreements; may not be amended except in writing signed by both parties; and is executed by the authorized representative of each party.

## **10. Effective Date**

This Agreement shall become effective on the earlier of the date of release of Confidential Information by one of the parties to the other party or upon its execution by the parties (the "Effective Date"), it being understood that the obligations set out in paragraph 2 shall survive termination of this Agreement.

## **11. Non-Compete Agreement**

While the parties acknowledge that this Agreement does not restrict the ability of the parties to engage in their respective businesses, it does not preclude the parties from entering into a separate non-competition agreement. In the absence of a separate non-competition agreement, however, unauthorized disclosure of the Confidential Information by a Recipient in a competitive situation constitutes a breach of this Agreement. The terms of confidentiality under this Agreement shall not be construed to limit either party's right (without use of the other party's Confidential Information) to independently develop or acquire products or services which may be similar to those discussed hereunder. The Disclosing Party acknowledges that the Recipient may currently or in the future be developing information internally, or receiving information from other parties, that is similar to the Confidential Information. Accordingly, nothing in this Agreement shall prohibit the Recipient from developing or having developed for its products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information provided that the Recipient does not violate any of its obligations under this Agreement in connection with such development.

## **12. Execution**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Facsimile signatures to this Agreement shall be deemed to be binding upon the parties.

## **13. Choice of Law**

This Agreement shall be governed and construed in accordance with the laws of the Province of Manitoba and the laws of Canada applicable therein. Each of the parties hereto hereby irrevocably attorns to the jurisdiction of the Court of the Province of Manitoba.