

MUTUAL NON-DISCLOSURE AGREEMENT

DATE:

PARTIES: **INNAWORKS DEVELOPMENT LIMITED** (hereafter known as “INNAWORKS”), with registered office of 115 Tirohanga Road, Lower Hutt, New Zealand.

AND _____ (hereafter known as the “Company”), with registered office of _____

BACKGROUND

- A. INNAWORKS and Company intends to disclose certain information to the other party for the purpose of **evaluation of INNAWORKS’ products and/or services by Company for potential licensing and/or purchase** (“the Purpose”).
- B. In consideration of Discloser agreeing to provide the information to Recipient, and of the promise of confidentiality by Recipient contained in this Agreement, the parties have agreed to be bound by the terms of this Agreement.

OPERATIVE PART:

- 1. Interpretation
- 1.1 In this Agreement, the following terms shall have the meanings set out below:
 - (a) “Agreement” means this agreement as amended from time to time.
 - (b) “Discloser” means the party making available Confidential Information to the Recipient.
 - (c) “Recipient” means the party receiving the Confidential Information from the Discloser.
 - (d) “Confidential Information” means:
 - (i) Information which is confidential and/or proprietary to Discloser, including without limitation, all information and property relating to software (including without limitation its architecture, features, functions, structures and code), products, technology, development plans, potential and pending acquisitions, trade secrets, specifications and data, financial information, projects, forecasts, formulae, know-how, designs, marketing plans and strategies, customer and supplier lists, operation processes and policies, and other valuable business information which is proprietary and/or confidential to Discloser, which is at any time made available to Recipient before or after the date of this Agreement by or on behalf of Discloser in connection with the Purpose; and
 - (ii) Any part of the Confidential Information, any record or copy of the Confidential Information (whether or not authorised by this Agreement) and any information which incorporates the Confidential Information or is based on the Confidential Information, but does not include any information which is:
 - (A) at the date of receipt by Recipient in the public domain; or

- (B) at the date of receipt by Recipient already known to Recipient other than by reason of a breach of this Agreement or any duty of confidentiality owed by Recipient to Discloser; or
 - (C) agreed by the parties in writing to be information to which this Agreement does not apply; and
 - (D) is shown by the Recipient to have been developed by its Representatives wholly without reference to the Confidential Information of the Discloser.
- (e) “Representative” means any employee, agent, director or professional adviser of or to Recipient.

1.2 In the construction of this Agreement, unless the context requires otherwise:

- (a) Headings appear as a matter of convenience and do not affect the construction of this Agreement;
- (b) A reference to information includes a reference to that information in whatever form (including information which is oral, visual, written or electronically stored or recorded) and the document, if any, containing that information.
- (c) A reference to a person includes a body of persons, whether corporate or unincorporated;
- (d) A reference to the singular includes the plural and vice versa, and words importing one gender include the other genders;
- (e) A reference to “including” does not exclude any other matter or thing; and
- (f) A reference to “written” or “in writing” includes all modes of presenting, reproducing or storing words, figures and symbols in a form which is, or is capable of becoming, tangible and permanently visible and includes words, figures and symbols which are stored or recorded electronically or magnetically.

2. **CONFIDENTIALITY**

Recipient will keep all Confidential Information strictly confidential except to the extent that disclosure is permitted under this Agreement and will not disclose the Confidential Information to any person except to the extent that disclosure is permitted under this Agreement.

3. **USE OF CONFIDENTIAL INFORMATION**

Recipient will only use the Confidential Information for the Purpose and for no other purpose.

4. **DISCLOSURE TO REPRESENTATIVES**

4.1 Recipient (and any Representative of Recipient) may disclose the Confidential Information to any of its Representatives if, but only if:

- (a) The Representative is a person who needs to know the Confidential Information to assist Recipient for the Purpose; and
- (b) Recipient has informed the Representative of the confidential nature of the Confidential Information and Recipient is satisfied that arrangements are in place which to ensure that the Representative will maintain the confidentiality of the Confidential Information in accordance with this Agreement and will not use the Confidential Information otherwise than as contemplated by this Agreement.

4.2 It is the intention of the parties that Recipient will:

- (a) determine which of its Representatives (if any) will be authorised to receive and deal with the Confidential Information;

- (b) be responsible for its Representatives; and
 - (c) be liable for any act or omission of any of its Representatives which constitutes a breach of this Agreement.
- 4.3 The Recipient will, at its own cost and expense, take all steps which Discloser reasonably requires, including instituting legal proceedings, to prevent a breach, or a further breach, of the obligations concerning the use or disclosure of the Confidential Information by any of its Representatives.

5. PERMITTED DISCLOSURES

- 5.1 Recipient may disclose Confidential Information if, and to the extent that:
- (a) Recipient can demonstrate that the Confidential Information is in the public domain or has become public knowledge, other than through any act or omission of Recipient or a representative in breach of the terms of this Agreement or any duty of confidentiality owed to Discloser; or
 - (b) Discloser agrees in writing to the disclosure; or
 - (c) Subject to compliance with clause 5.2, Recipient is legally obligated to disclose the Confidential Information; or
 - (d) The disclosure is made to a person who is bound by this Agreement.
- 5.2 If Recipient or any of its Representatives becomes, or is, aware that it is reasonably likely to become, legally required to disclose any Confidential Information, Recipient shall promptly give written notice to Discloser of the requirements and shall co-operate with Discloser to enable Discloser to seek a protective order or other appropriate remedy. In any event, Recipient will only disclose that part of the Confidential Information which it is legally required to disclose and will use reasonable endeavours to obtain orders, or other assurances, that the Confidential Information will be treated as confidential by the person or persons to whom disclosure is legally required to be made.

6. OWNERSHIP AND RETURN OF CONFIDENTIAL INFORMATION

- 6.1 Recipient acknowledges that all Confidential Information is, and shall remain, the absolute property of Discloser and Recipient shall have no claim to, and shall not assert any title in or claim to, proprietary rights in, or rights of use in, the Confidential Information.
- 6.2 Upon the receipt by Recipient of a written request from Discloser, Recipient will promptly:
- (a) return the Confidential Information, and all copies of the Confidential Information; or
 - (b) to the extent that the Confidential Information has not been returned as provided in (a) above, destroy or erase all copies of the Confidential Information, including any reports or documents prepared by or on behalf of Recipient which incorporates the Confidential Information and confirm in writing to Discloser that it has done so.

7. REMEDIES

7.1 Recipient acknowledges that the disclosure of the Confidential Information may cause irreparable damage to Discloser for which monetary damages would not be an adequate remedy. Accordingly, Discloser is entitled to seek and to obtain specific performance and injunctive relief against any breach or threatened breach of any of the provisions of this Agreement in addition to any other remedies that may be available.

7.2 Recipient shall indemnify Discloser against any losses, damages, costs and expenses which Discloser may suffer or incur as a result of or arising from any breach by Recipient of its obligations under this Agreement.

8. NO WAIVER

No failure, delay or indulgence by Discloser in exercising any power or right under this Agreement shall operate as a waiver of that power or right. A single or partial exercise of any such power or right shall not preclude further exercises of that power or right or the exercise of any other power or right under this Agreement.

9. SEVERABILITY

If any part of this Agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Agreement which shall remain in full force and, to the extent possible, that part shall be read down in such a manner as to make it enforceable.

10. GOVERNING LAW

This Agreement shall be governed by, and interpreted in accordance with, the laws of New Zealand.

11. COUNTERPARTS

This Agreement may be executed in counterparts with the intention that all of the counterparts shall, when signed by each of the relevant parties, constitute a single agreement and delivery of an executed counterpart by facsimile shall be acceptable and binding.

Executed as an agreement

INNAWORKS DEVELOPMENT LIMITED

Director

Name of Company

Title of authorised representative of Company

Signature of authorised representative of Company