

APPENDIX C
MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Mutual Confidentiality and Nondisclosure Agreement (“NDA”) is entered into on or effective as of the ___ day of _____, 20__ (“Effective Date”) by and between **Vermont Information Technology Leaders**, whose principal offices are located at 600 Blair Park Rd., Suite 302, Williston VT 05495 and _____, whose principal offices are located at _____, each of whom shall hereinafter be referred to as a “Party” and, together, as the “Parties”.

WHEREAS, the Parties are already in a business relationship or intend to engage in discussions and negotiations concerning the possible establishment of a business relationship between them, and in the course of such discussions and negotiations it is anticipated that each Party will disclose or deliver to the other Party directly and through its directors, officers, employees, agents or advisors (including, without limitation, attorneys, accountants, consultants, bankers, financial advisors and members of advisory boards) (collectively, “Representatives”) certain of its Confidential Information (as defined below) for the purposes of enabling the other Party to engage in such discussions and negotiations (collectively, the “Purposes”); and

WHEREAS, each Party considers its Confidential Information to be valuable and wishes to protect it; and

WHEREAS, the Parties wish to enter into this NDA to ensure that the terms and conditions hereof apply when one Party (“Discloser”) discloses Confidential Information to the other Party (“Recipient”).

NOW THEREFORE, in consideration of the mutual covenants and obligations set forth herein, the Parties, intending to be legally bound, agree as follows:

1. Definition of Confidential Information.

The term “Confidential Information” shall mean all business or technical information including without limitation, strategies, discoveries, compilations, studies, documents, proprietary hardware, software and operating systems or other intellectual property or know-how, techniques, systems design, computer databases, data models, communications networks, finances, product development plans,

product performance data, business directions, marketing and pricing plans, prospective and existing customer names, other technical or business information, other intellectual property of suppliers and affiliates, pricing information, the actual or proposed terms and conditions of any contract between Discloser's customers and suppliers, whether or not any such information is designated as "confidential", "proprietary" or a "trade secret" and any other non-public or proprietary information reasonably identified by Discloser as confidential or which by its nature could reasonably be understood to be confidential under the circumstances in which it is disclosed whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" The term "Confidential Information" does not include information which: (a) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, a disclosure by Recipient or its Representatives; (b) was rightfully within Recipient's possession prior to its being furnished by or on behalf of Discloser pursuant hereto or is disclosed to Recipient by another party without obligation of confidentiality; (c) becomes available to Recipient on a non-confidential basis from a source other than Discloser; or (d) is developed independently by Recipient without reference to or use of any of the Discloser's Confidential Information.

2. Use of Confidential Information.

Recipient agrees that it will keep Discloser's Confidential Information confidential and use it solely for the Purposes.

3. Standard of Care.

Recipient agrees to use at least the same degree of care and discretion to avoid disclosure, publication or dissemination of Discloser's Confidential Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate, but in no event less than a commercially reasonable standard of care. Notwithstanding the foregoing, Recipient may: (a) make any disclosure of Confidential Information to which Discloser gives its prior written consent; and (b) disclose any Confidential Information to Recipient's Representatives who need to know such information for the Purposes and who are informed of the confidential nature and agree for the benefit of Recipient and Discloser to keep such Confidential Information strictly confidential and to be bound by the other terms and conditions of this NDA.

4. Duration of Confidentiality Obligation.

Confidential Information disclosed pursuant to this NDA shall be subject to the terms of this NDA for two (2) years following the date of disclosure, provided that with respect to Confidential Information that constitutes a trade secret under the laws of any jurisdiction, such rights and obligations will survive such expiration until, if ever, such Confidential Information loses its trade secret protection other than due to an act or omission of Recipient or its Representatives. Either Party may terminate this NDA at any time by providing written notice to the other Party. Notwithstanding anything to the contrary herein, each Party's rights and obligations under this Agreement shall survive any expiration or termination of this Agreement for a period of 2 years from the date of such expiration or termination, even after the return or destruction of Confidential Information by the Recipient.

5. Nondisclosure of Relationship of Possible Transaction.

Each Party agrees that, without the prior written consent of the other Party, it will not disclose to any person or entity the fact that Confidential Information has been made available hereunder, that discussions or negotiations are taking place between the Parties, or otherwise disclose any of the terms, conditions or other facts with respect to the business relationship between the Parties.

6. Mandatory Disclosure.

Notwithstanding any other provision hereof, in the event that Recipient is required by an applicable court order or by law to disclose any of Confidential Information of Discloser, Recipient shall provide Discloser with prompt written notice of any such request or requirement so that Discloser may seek a protective order or other appropriate remedy. If, in the absence of a protective order or other remedy, Recipient is nonetheless legally compelled to disclose Confidential Information, Recipient may, without liability hereunder, disclose that portion of the Confidential Information which is legally required to be disclosed, provided that Recipient exercises reasonable efforts to preserve the confidentiality of the Confidential Information, including, without limitation, by cooperating with Discloser to obtain an appropriate protective order or other reliable assurance that confidential treatment will be afforded the Confidential Information, at Discloser's sole cost and expense.

7. Return of Confidential Information.

Recipient shall, upon the mutual termination of this NDA, or upon written request of Discloser, promptly return to Discloser all Confidential Information received by Recipient or its Representatives (and all copies and reproductions thereof) or, if so

requested by Discloser, shall promptly destroy such Confidential Information (and all copies and reproduction thereof). In addition, Recipient shall destroy: (a) any notes, reports or other documents prepared by or for Recipient which contain any of Discloser's Confidential Information; and (b) any of Discloser's Confidential Information (and all copies and reproductions thereof) which is in electronic form or cannot otherwise be returned to Discloser. Upon any such destruction, Recipient shall promptly provide written certification of such by an officer of Recipient. Notwithstanding the return or destruction of Confidential Information, Recipient will continue to be bound by its obligations of confidentiality and other obligations hereunder. Recipient may retain a single archival copy of Discloser's Confidential Information in its legal files solely for the purpose of ensuring compliance with this Agreement. Notwithstanding the foregoing, the Recipient may retain copies of Confidential Information that are stored on the Recipient's IT backup and disaster recovery systems until the ordinary course deletion thereof. Recipient shall continue to be bound by the terms and conditions of this Agreement with respect to such retained Confidential Information.

8. No Transfer of Rights, Title, or Interest.

Each Party hereby retains its entire right, title, and interest, including all intellectual property rights, in and to all of its Confidential Information. Any disclosure of such Confidential Information hereunder shall not be construed as an assignment, grant, option, license, or other transfer of any such right, title, or interest whatsoever to the Recipient or any of its Representatives.

9. No Representations or Warranties.

Neither the Disclosing Party nor any of its Representatives make any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information disclosed to the Recipient hereunder. Neither the Disclosing Party nor any of its Representatives shall be liable to the Recipient or any of its Representatives relating to or resulting from the Recipient's use of any of the Confidential Information or any errors therein or omissions therefrom.

10. Miscellaneous Provisions.

The Parties hereby further agree as follows:

A. This NDA does not require either Party to disclose or to receive information or to enter into any business transaction.

B. Neither Party may assign, or otherwise transfer, its rights or delegate its duties or obligations under this NDA without prior written consent of the other Party, except that either Party may assign this NDA without the consent of the other Party in conjunction with a corporate reorganization, merger or sale of substantially all of the assigning Party's assets. Any other attempt to assign or otherwise transfer this NDA shall be void and without effect.

C. Recipient agrees to comply with all applicable laws, rules and regulations relevant to Discloser's Confidential Information.

D. No failure or delay by either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

E. This Agreement constitutes the sole and entire agreement of the Parties regarding the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Party.

F. The provisions of this NDA are necessary for the protection of the business and goodwill of the Parties and are considered by the Parties to be reasonable for such purpose. Recipient agrees that any breach of this NDA will cause Discloser substantial and irreparable injury and, therefore, in the event of any such breach, in addition to other remedies which may be available, Discloser shall have the right to seek specific performance and other injunctive and equitable relief.

G. This NDA shall be interpreted and enforced in accordance with the laws of the State of Vermont. If any provision of this NDA is held invalid, void, or unenforceable to any extent, that provision will be enforced to the greatest extent permitted by law and the remainder of this NDA and application of such provision to other persons or circumstances will not be affected.

H. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this NDA as of the Effective Date, intending to be legally bound thereby.

Vermont Information Technology Leaders **<Organization>**

By: _____
Name: Beth Anderson
Title: President & CEO

By: _____
Name: _____
Title: _____