

## CONFIDENTIALITY, NON-DISCLOSURE AND WAIVER AGREEMENT

This AGREEMENT made as of the \_\_\_\_ day of \_\_\_\_\_ (the "Effective Date")

BETWEEN:

**The University of New Brunswick**, (hereinafter referred to as the "University")

OF THE FIRST PART

-and-

\_\_\_\_\_, (hereinafter referred to as the "Company")

OF THE SECOND PART

**WHEREAS** students of the University are enrolled in the "Activator Program" and are working on a project that requires the participation of the Company;

**AND WHEREAS** the Company wishes to cooperate with the University and the students with the provision of information, consultation and expense off-setting funds;

**AND WHEREAS** such cooperation will require the University and its students to be granted access to certain confidential information (as hereinafter defined) of the Company;

**AND WHEREAS** the Company is willing to grant to the University access to such Confidential Information solely in accordance with the terms and conditions hereinafter set forth;

**THIS AGREEMENT WITNESSES** that in consideration of the premises, the covenants herein contained, the sum of One Dollar (\$1.00) of lawful money of Canada paid by each party to the other and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged by the Company and the University, the parties acknowledge to, and covenant and agree with, each other as hereinafter set forth.

### **1. Confidential Information**

**1.1 Definition:** The University has and will be, directly or indirectly, provided with the information and knowledge which is owned or lawfully possessed by the Company including (without limitation) data, documents, reports, analyses, tests, specification, charts, plans, drawings, models, ideas, schemes, correspondence, communications, lists, manuals, computer programs, software, technology, techniques, methods, processes, services, routines, systems, procedures, practices, operations, modes of operation, apparatus, equipment, business opportunities, customer and supplier lists and other customer information, sales data, financial data, know-how and trade or other secrets (collectively, whether verbal, written or existing, stored or communicated in any other form or medium, together with all copies thereof, however or whenever made, the "**Confidential Information**").

**1.2** Subject to section 1.4, neither party will disclose to any third party, nor use for any purpose except as expressly permitted by this Agreement, any of the other party's Confidential Information.

**1.3** The University will not be in breach of any obligation to keep any Confidential Information or not to disclose it to any other party to the extent that it:

- (a) is known to the party making the disclosure before its receipt from the other party, and not already subject to any obligation of confidentiality to the other party;
- (b) is or becomes publicly known without any breach of this Agreement or any other undertaking to keep it confidential;
- (c) has been obtained by the party making the disclosure from a third party in circumstances where the party making the disclosure has no reason to believe that there has been a breach of an obligation of confidentiality owed to the other party;
- (d) has been independently developed by the party making the disclosure;
- (e) is disclosed pursuant to the requirement of any law or regulation (provided in the case of a disclosure pursuant to the *Right to Information and Protection of Privacy Act*, none of the exceptions to that Act apply to the information disclosed) or the order of any Court of competent jurisdiction, and the party required to make that disclosure has informed the other, within a reasonable time after being required to make the disclosure, of the requirement to disclose and the information required to be disclosed; or
- (f) is approved for release in writing by an authorized representative of the other party.

**1.4** If the University receives a request under the *Right to Information and Protection of Privacy Act*, S.N.B. 2009, c. R-10.6, as amended, (the “Act”) to disclose any information that, under this Agreement, is Confidential Information, it will notify the Company and will consult with the Company promptly and before making any disclosure under that Act. The Company will respond to the University within ten (10) days after receiving the University’s notice if that notice requests the Company to provide information to assist the University to determine whether or not an exemption to the Act applies to the information requested under the Act.

## **2. Non-Disclosure**

**2.1 Injunction:** The University agrees that the unauthorized disclosure, communication or use of Confidential Information by the University may cause irreparable harm and result in significant commercial damages to the Company, and such harm and damages may be difficult to ascertain and therefore the Company has the right, in addition to any other remedy at law or in equity, to an immediate injunction enjoining any breach or reasonably anticipated breach of this Agreement by the University.

## **3. Return of Confidential Information**

**3.1 Return or Destruction:** Forthwith upon demand by the Company, the University will:

- (a) return to the Company all Confidential Information that was provided to the University; or

- (b) at the option of the Company, destroy all such Confidential Information in circumstances and in a manner approved of and supervised by the Company.

#### **4. Intellectual Property**

- 4.1 Definition:** “Intellectual Property” means patents, trade-marks, copyrights, database rights, design rights, confidential information, applications for any of the above, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above
- 4.2** The Company will own any Intellectual Property created during the course of the Project and may take such steps as it may decide from time to time, and at its own expense, to register and maintain any protection for that Intellectual Property, including filing and prosecuting patent applications. The University hereby waives any rights it might have in the Intellectual Property and hereby assigns any Intellectual Property rights it might have in order to be able to give effect to the provisions of this Section 4. **[Note: Is this ownership of IP appropriate?]**

#### **5. Indemnification**

- 5.1** The Company will indemnify and save harmless the University, its officers, employees, consultants, students, and agents against all costs, suits or claims on account of injuries (including death) to persons participating in the Project or on account of damage to property caused by officers, employees, consultants, students and agents of the Company during the performance of this Agreement or resulting from the use by the University of any deliverable or Intellectual Property developed under this Agreement.
- 5.2** The University will indemnify and save harmless the Company, its officers, employees, consultants, and agents against all costs, suits or claims on account of injuries (including death) to persons participating in the Project or on account of damage to property caused by officers, employees, consultants, students and agents of the University during the performance of this Agreement.

#### **6. Employees and Students of the University**

- 6.1** The University will ensure that its employees and students (if any) involved in the Activator Program observe the terms set out in this Agreement and will obtain agreements with the said employees and students for carrying out that purpose.

#### **7. Duration of Agreement**

- 7.1 Term:** The term of this Agreement commences on the earlier of: (i) the first disclosure of Confidential Information by the Company to the University, and (ii) the Effective Date, and continues for a period of 5 years thereafter.

#### **8. General Provisions**

- 8.1 Notices:** Any notice, demand, request or other communication (a “**Notice**”) required or permitted to be given to either Party under this Agreement shall be in writing and shall be satisfactorily given by personal delivery, registered mail or by electronic means of communication, addressed to the recipient as follows:

- (a) If to the University, at:

(b) If to the Company, at:

- 8.2 Headings:** The headings in this Agreement are for ease of reference only; they do not affect its construction or interpretation.
- 8.3 Assignment:** Neither party may assign or transfer this Agreement as a whole, or any of its rights or obligations under it, without first obtaining the written consent of the other party. That consent may not be unreasonably withheld or delayed.
- 8.4 Severability:** If any article or part of an article contained in this Agreement shall be judicially held invalid or unenforceable, the remainder of this Agreement shall be interpreted as if such article or part of an article had not been included.
- 8.5 Waiver of rights:** If a party fails to enforce, or delays in enforcing, an obligation of the other party, or fails to exercise, or delays in exercising, a right under this Agreement, that failure or delay will not affect its right to enforce that obligation or constitute a waiver of that right. Any waiver of any provision of this Agreement will not, unless expressly stated to the contrary, constitute a waiver of that provision on a future occasion.
- 8.6 No agency:** Nothing in this Agreement creates, implies or evidences any partnership or joint venture between the parties, or the relationship between them of principal and agent. Neither party has any authority to make any representation or commitment, or to incur any liability, on behalf of the other.
- 8.7 Entire agreement:** This Agreement constitutes the entire agreement between the parties relating to its subject matter. Each party acknowledges that it has not entered into this Agreement on the basis of any warranty, representation, statement, agreement or undertaking except those expressly set out in this Agreement. Each party waives any claim for breach of this Agreement, or any right to rescind this Agreement in respect of any representation which is not an express provision of this Agreement. However, this clause does not exclude any liability which either party may have to the other (or any right which either party may have to rescind this Agreement) in respect of any fraudulent misrepresentation or fraudulent concealment prior to the execution of this Agreement.
- 8.8 Formalities:** Each party will take any action and execute any document reasonably required by the other party to give effect to any of its rights under this Agreement, or to

enable their registration in any relevant territory provided the requesting party pays the other party's reasonable expenses.

- 8.9 Amendments:** No variation or amendment of this Agreement will be effective unless it is made in writing and signed by each party's representative.
- 8.10 Governing law:** This Agreement shall be conclusively deemed to be a contract made under, and shall for all purposes, be governed by and, construed in accordance with the laws of the Province of New Brunswick and the federal laws of Canada applicable therein.
- 8.11 Counterparts:** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile or electronic transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or electronic transmission shall be deemed to be their original signatures for all purposes.
- 8.12 Successors and Assigns:** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted transferees and assignees.

**[SIGNATURE PAGE TO FOLLOW]**

**IN WITNESS WHEREOF** the parties have each duly executed this agreement as of the Effective Date.

The University of New Brunswick

Per: \_\_\_\_\_  
Duly Authorized Officer

[Company]

Per: \_\_\_\_\_ c/s  
Duly Authorized Officer