

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("Agreement") is entered into effective as of the \_\_\_th day of \_\_\_\_\_ 200\_\_ by and between \_\_\_\_\_ a \_\_\_\_\_ corporation, having a place of business at \_\_\_\_\_, **Vantage Technologies Knowledge Assessment (VTKA)** a Delaware LLC, having a principal place of business at 113 Floral Valley Blvd., Yardley, PA 19067 ("VTKA"). \_\_\_\_\_ and VTKA are sometimes referred to herein individually as a "Party" and collectively as the "Parties," each Party as a provider/discloser of Confidential Information hereunder is sometimes referred to herein as a "Provider," and each Party as a reviewer/recipient of Confidential Information hereunder is sometimes referred to herein as a "Reviewer."

### RECITALS

A. The Parties desire to review Confidential Information relating to each other for the sole purpose of determining whether the Parties will use each others' software and/or related products and services (the "Transaction"), in connection with specifications provided in association with this project and others.

B. As a condition to either Party providing any Confidential Information to the other Party, the Parties have agreed to execute and deliver this Agreement to protect each other prior to gaining access to any Confidential Information.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

1. Confidential Information.

(a) Subject to Section 1(b) below, the term "Confidential Information" means and includes all information and materials relating to either Party including, without limitation, all books, records, financial statements, by-laws, operating agreements and/or other organizational documents, capital structure information, ownership information, business plans, pricing information, employee information, marketing plans and procedures, strategies, forecasts, customer lists, supplier lists, product development plans, trade secrets, documents, files, data, notes, analyses, compilations, studies, specifications, technology, computer programs, designs and other information, materials and rights of every nature whatsoever relating to either Party whether prepared or created by the Provider, the Reviewer or otherwise, together with such other information, data or materials, if any, already provided to the Reviewer or its Representatives (as hereinafter defined) by or on behalf of the Provider, directly or indirectly, in each case whether oral or written, whether such confidential or proprietary status is indicated orally or in writing or in a context in which the Provider or its representatives reasonably communicated, or the Reviewer or its

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Representatives should reasonably have understood, that the information should be treated as confidential, whether or not the specific words "confidential" or "proprietary" are used, and all portions of all compilations, studies, notes, analyses and memoranda prepared in connection therewith or derived therefrom that contain or reflect such information, and all copies thereof. The fact that Confidential Information has been or will be exchanged pursuant to the terms of this Agreement and that discussions are occurring with respect to the purposes hereof (and the status of such discussions) also shall be treated as "Confidential Information" under this Agreement.

(b) Anything contained in this Agreement to the contrary notwithstanding, the following types of information and materials shall not constitute "Confidential Information" for purposes of this Agreement and neither Party shall have any obligations to the other Party hereunder with respect to any information or materials if, when or to the extent that such information or materials: (i) is or becomes generally available in the industry or to the public other than as result of unauthorized disclosure by the Reviewer or its Representatives, (ii) was received by the Reviewer or its Representatives on a non-confidential basis from a third party lawfully possessing and lawfully entitled to disclose such information, or (iii) is required to be disclosed by law or by regulatory or judicial process, subject to compliance with Section 3(b).

2. Purpose. Each Party agrees that its review and inspection of the Confidential Information shall be solely to determine whether the Parties desire to proceed with the Transaction.

3. Non-Disclosure and Use of Confidential Information.

(a) The Reviewer agrees that all Confidential Information shall be used by the Reviewer solely for the purpose stated in Section 2 and shall be treated by the Reviewer and its Representatives as strictly confidential. The Reviewer further agrees not to disclose, directly or indirectly, any of the Confidential Information to any third party without the prior written consent of the Provider, other than to the following (collectively, the "Representatives"): (i) the Reviewer's directors, officers and, (ii) the Reviewer's attorneys, accountants and financial advisors (including those of its affiliates); in each case only to those who have a need to know the Confidential Information for the purpose stated in Section 2. The Reviewer shall inform each of its Representatives that receive any of the Confidential Information of the requirements of this Agreement.

(b) If the Reviewer or its Representatives are requested or required under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction or by a governmental body to disclose any Confidential Information, the Reviewer shall not do so without first giving the Provider written notice of such request(s) so that the Provider may seek an appropriate protective order.

4. No Obligation to Disclose Confidential Information. Notwithstanding any provision of this Agreement, neither Party shall have any obligation to furnish or otherwise disclose Confidential Information to the other Party.

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5. Return/Destruction of Confidential Information. Upon the earlier of termination of discussions between the Parties concerning the transaction or the request of the Provider, all copies of Confidential Information provided to or in the possession of the Reviewer or its Representatives shall, at the Provider's request, be destroyed or returned promptly to the Provider, together with (i) all copies thereof made by the Reviewer or its Representatives, and (ii) all portions of all compilations, studies, notes, analyses and memoranda prepared in connection with the examination thereof or derived therefrom that contain or reflect any Confidential Information. Upon request of the Provider, the Reviewer shall provide to the Provider a certificate as to the return or destruction of such Confidential Information.

6. Solicitation. Neither party, nor their affiliates shall, either directly or indirectly, employ, hire for consulting, recruit, solicit or otherwise attempt to induce any employee of the other party.

7. Amendment. No amendment, modification, or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of the amendment, modification, discharge, or waiver is sought.

8. Breach of Agreement; Indemnity.

(a) In the event the Reviewer or any of its Representatives fails in any respect to comply with its obligations under this Agreement, the Reviewer shall be liable to the Provider for breach of this Agreement. The Reviewer understands and agrees that monetary damages would not be a sufficient remedy for any breach or contemplated breach of this Agreement, and that the Provider shall be entitled to specific performance or other equitable relief by way of restraining orders and injunctions as a remedy for any such breach or contemplated breach without proof of actual damages and without the necessity of posting any bond.

(b) The rights, powers, and remedies provided for in Section 8 a (above) shall be in addition to and do not preclude the exercise of any other right, power, or remedy available to the Provider at law or in equity, including actions for actual, punitive, consequential, and other damages. No forbearance, failure, or delay in exercising any such right, power, or remedy shall operate as a waiver thereof or preclude its further exercise.

(c) The Reviewer hereby indemnifies and holds harmless the Provider from and against any and all claims, demands, losses, actions, debts, liabilities, judgments, costs, and attorneys' fees and disbursements arising out of, claimed on account of, or in any manner predicated upon or contributed to by a breach of this Agreement by the Reviewer or its Representatives or otherwise incurred by the Provider in enforcing or preserving the Provider's rights under this Agreement.

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9. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns; provided, however, that neither Party shall assign any of its rights or obligations under this Agreement without the prior written consent of the other Party.

10. Severability. This Agreement shall be interpreted so as to give full force and legal effect to all provisions hereof to the maximum extent permitted by law. If any term, provision, covenant, or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable, or against public policy, such term, provision, covenant, or restriction shall be deemed to be reformed to the minimum extent necessary to make such term, provision, covenant, or restriction enforceable to the maximum extent permitted by law and the remainder of the terms, provisions, covenants, and restrictions of this Agreement shall remain in full force and effect to the maximum extent permitted by law and shall in no way be affected, impaired, or invalidated.

11. No Further Obligations or Agreements Hereunder. Neither Party shall be under any obligation to enter into any further agreements with the other Party as a result of this Agreement. Each Party reserves the right, in its sole discretion, to decline to make, to retract or to reject at any time any proposal which has not yet become legally binding by execution of a written agreement between the Parties with respect to any further agreements or business arrangements with the other Party or its parents, subsidiaries or other affiliates, and to terminate all further discussions and negotiations.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Transmission by facsimile of an executed counterpart signature page hereof by a Party shall constitute due execution and delivery of this Agreement by such Party.

13. Entire Agreement. This Agreement represents the entire agreement between the Parties relating to the subject matter hereof and to the treatment of Confidential Information heretofore or hereafter reviewed or inspected by either Party or its Representatives.

IN WITNESS WHEREOF, duly authorized representatives of the parties have executed this Agreement as of the date first set forth above.

By \_\_\_\_\_  
Print \_\_\_\_\_  
Title \_\_\_\_\_

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Vantage Technologies Knowledge Assessment

By \_\_\_\_\_  
Robert Patrylak, Esquire  
Vantage Corporate Counsel

Date: \_\_\_\_\_

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