

# Mutual Confidentiality Agreement

This agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_ (“Effective Date”), by and between MultiSoft Corporation, a Florida corporation (the “Company”), having a principal place of business at: 1723 SE 47th Terrace, Cape Coral, Florida 33904 and:

\_\_\_\_\_ a company/individual, residing at or having a principal place of business at: \_\_\_\_\_

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## 1. Term

This agreement shall govern all communications between the parties that are made during the period from the Effective Date of this Agreement to the date on which either party receives from the other written notice that subsequent communications shall not be so governed, provided, however, that each party’s obligations under Paragraph three (3) (“Non-disclosure and Non-use Obligations”), with respect to Confidential Information of the other party which it has previously received shall continue in perpetuity unless terminated pursuant to Paragraph four (4) (“Exclusions from Non-disclosure and Non-use Obligations”).

## 2. Definition of Confidential Information

“Confidential Information” as used in this Agreement shall mean any and all technical and non-technical information including patent, copyright, trade secret, and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae related to the current, future and proposed products and services of each of the parties, and includes, without limitation, their respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising and marketing plans and information. “Confidential Information” also includes proprietary or confidential information of any third party who may disclose such information to either party in the course of the other party’s business. Such information disclosed by the disclosing party (“Discloser”) will be considered Confidential Information by the receiving party (“Recipient”), only if such information is conspicuously designated as “Confidential.” or if provided orally, identified as confidential at the time of disclosure and confirmed in writing within thirty (30) days of disclosure.

## 3. Non-disclosure and Non-use Obligation

Each of the parties agrees that it will not make use of, disseminate, or in any way disclose any Confidential Information of the other party to any person, firm or business, except to the extent necessary for negotiations,

discussions, and consultations with personnel or authorized representatives of the other party, and any purpose the other party may hereafter authorize in writing. Furthermore, the existence of any business negotiations, discussions, consultations or agreements in progress between the parties shall not be released to any form of public media without written approval of both parties. Each of the parties agrees that it shall treat all Confidential Information of the other party with the same degree of care as it accords to its own Confidential Information, but in no event less than a reasonable degree of care. If either party is not an individual, such party agrees that it shall disclose Confidential Information of the other party only to those of its employees who need to know such information and certifies that such employees have previously agreed, either as a condition to employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those of this Agreement. Recipient will immediately give notice to Discloser of any unauthorized use or disclosure of the Confidential Information. Recipient agrees to assist Discloser in remedying any such unauthorized use or disclosure of the Confidential Information.

4. Exclusions from Non-disclosure and Non-use Obligations

Each party's obligations under Paragraph three (3) ("Non-disclosure and Non-use Obligations") with respect to any portion of the other party's Confidential Information shall terminate when the party seeking to avoid its obligation under such paragraph can document that: (i) it was in the public domain at or subsequent to the time it was communicated to Recipient by Discloser through no fault of Recipient; (ii) it was rightfully in Recipient's possession free of any obligation of confidence at or subsequent to the time it was communicated to Recipient by Discloser; (iii) it was developed by employees or agents of Recipient independently of and without reference to any information communicated to Recipient by Discloser; (iv) it was communicated by the Discloser to an unaffiliated third party free of any obligation of confidence; or (v) the communication was in response to a valid order by a court or other governmental body, was otherwise required by law or was necessary to establish the rights of either party under this Agreement.

5. Ownership of Confidential Information and Other Materials

All Confidential Information, and any Derivatives thereof whether created by Discloser or Recipient, remain the property of Discloser and no license or other rights to Confidential Information is granted or implied hereby. For purposes of this Agreement, "Derivatives" shall mean: (i) for copyrightable or copyrighted material, any translation, abridgement, revision or other form in which an existing work may be recast, transformed or adapted; (ii) for patentable or patented material, any improvement thereon; and (iii) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected by copyright, patent and/or trade secret. All materials (including without limitation, documents, drawings, models, apparatus, sketches, designs and lists) furnished to one party by the other

and which are designated in writing to be the property of such party, shall remain the property of such party and shall be returned to it promptly or destroyed at its request, together with any copies thereof.

6. IndependentDevelopment

Discloser understands that Recipient may currently or in the future be developing information internally, or receiving information from other parties that may be similar to Discloser's information. Accordingly, nothing in this Agreement will be construed as a representation or inference that Recipient will not develop products, or have products developed for it, that, without violation of this agreement, compete with the products or systems contemplated by Discloser's Confidential Information.

7. DisclosureofThird Party Information

Neither party shall communicate any information to the other in violation of the proprietary rights of any third party.

8. NoWarranty

All Confidential Information is provided "As Is" and without any warranty, express, implied or otherwise, regarding its accuracy or performance.

9. NoExport

Neither party shall export, directly or indirectly, any technical data acquired from the other pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other government approval without first obtaining such license or approval.

10. InjunctiveRelief

A breach of any of the promises or agreements contained herein will result in irreparable and continuing damage to the party whose Confidential Information is/was disclosed, for which there will be no adequate remedy at law. The parties agree that upon a breach or threatened breach of any of the terms of this Agreement concerning any matters referenced herein, the non-breaching party is entitled to seek an injunction restraining the breach and/or to a decree of specific performance, without showing or proving any actual damage, together with recovery of reasonable attorneys' fees and costs incurred in obtaining said equitable relief. The foregoing equitable remedy will be in addition to all remedies or rights that the aggrieved party may otherwise have by virtue of any breach of this Agreement by the breaching party. The aggrieved party is entitled to seek relief without the posting of any bond or security and if a court of competent jurisdiction will nevertheless require a bond, the parties agree that the sum of \$100 is a sufficient bond.

11. GoverningLaw

This Agreement shall be governed by, and interpreted under, the laws of the State of Florida and the United States. The parties acknowledge that a

substantial portion of the negotiations, anticipated performance and signing of this Agreement occurred or will occur in Lee County, Florida, and therefore, each of the parties irrevocably and unconditionally: (a) agrees that any suit, action or legal proceeding arising out of or relating to this Agreement shall be brought in the circuit or county courts of the State of Florida, which state Courts shall have exclusive subject matter and personal jurisdiction over the parties, with venue in Lee County, Florida; (b) consents to the jurisdiction of each court in any suit, action or proceeding; (c) waives any objection that it may have to personal jurisdiction or the laying of venue of any suit, action or proceeding in any of these courts; and (d) agrees that service of any court paper may be effected on that party by mail at the last known address, as provided in this Agreement, or in any other manner as may be provided under Florida law.

12. Attorneys Fees & Costs

If any legal action or other proceeding is instituted for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties will be entitled to recover reasonable pre-institution and post-institution attorneys' fees, court costs and all expenses even if not taxable as court costs (including all fees, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in connecting with the action or proceeding, in addition to any other relief to which the party or parties may be entitled. Attorneys' fees include paralegal fees, administrative costs, investigative costs, costs of expert witnesses, court reporter fees, sales and use taxes, if any, and all other charges billed by the attorneys to the prevailing party.

13. No Assignment

Neither party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party.

14. Waiver

The waiver of a breach of any provision of this Agreement by either party shall not operate or be construed as a waiver of any other or subsequent breach.

15. Severability

Should any provisions of this Agreement be held by a court of law to be illegal, invalid, or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

16. Notices

Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (i) by delivery when delivered personally; (ii) by overnight courier upon written verification of receipt; (iii) by telecopy or facsimile transmission upon acknowledgment of receipt of electronic transmission; or (iv) by certified or registered mail, return receipt requested, upon verification of receipt. Notice

shall be sent to the addresses set forth above or such other address as either party may specify in writing.

17. Entire Agreement

This Agreement constitutes the entire agreement with respect to the Confidential Information disclosed herein and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information. This Agreement may only be changed by mutual agreement of authorized representatives of the parties in writing.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

**By Company:** \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

**For MultiSoft Corporation:**

Signature: \_\_\_\_\_

Robert Proctor, President