

## CONFIDENTIALITY AGREEMENT

THIS AGREEMENT made the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BETWEEN:

\_\_\_\_\_, a company incorporated under the laws of \_\_\_\_\_ (province, state or country) and having an office at \_\_\_\_\_

\_\_\_\_\_

(hereinafter referred to as "the Company")

AND:

**EMPRISE CAPITAL CORP., a company incorporated under the federal laws of Canada and having an office at Suite 1600 – 609 Granville Street, PO Box 10068 Pacific Centre, Vancouver, BC V7Y 1C3**

(the "Recipient")

WHEREAS:

- A. The Company and the Recipient are interested in entering into discussions concerning a possible business relationship.
- B. For the purpose of determining if a mutually beneficial business relationship or other arrangement can be established between the Company and the Recipient, the Company will provide the Recipient with certain Confidential Information (as hereinafter defined) subject to and in accordance with the terms and conditions set forth herein

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the respective covenants, agreements, representations and warranties of the parties herein contained and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each party), the parties agree as follows:

1. *Definition of Parties.* In this Agreement, the Recipient includes any subsidiary, affiliate or associated company or other entity owned or controlled by or otherwise related to the Recipient. In this Agreement, the Company includes any subsidiary, affiliate or associate, company or other entity owned or controlled or otherwise related to the Company.
2. *Definition of Confidential Information.* In this Agreement, "Confidential Information" means trade secrets and other information not generally known to the public, that is owned by the Company, or by any of the Company's suppliers, customers or other business partners. Confidential Information includes, without limitation, all source code, patents and patent applications, business and marketing plans and strategies, financial information, legal, corporate, marketing, product, research, technical, manufacturing, personnel, customer and supplier

information, and any documentation related to any of the foregoing, and any other information, in whatever form or media, specifically identified as confidential by the Company, or the nature of which is such that it would generally be considered confidential in the industry in which the Company operates, or which the Company is obligated to treat as confidential or proprietary. Confidential Information also includes, without limitation, any and all information regarding discussions, negotiations, letters of intent, or agreements with any persons with whom the Company may transact business, including, but not limited to the details of such negotiations, letters of intent, or agreements, any copies of documents executed between the Company and such persons, and the identity of such persons.

3. *Ownership of Confidential Information.* For the purposes of this Agreement, the Confidential Information shall be deemed to be the property of the Company and the ownership of, and all right, title and interest in and to it shall at all times remain exclusively vested in the Company.
4. *Purpose.* The parties acknowledge that the Company shall provide the Recipient with Confidential Information solely for the purpose of determining if a mutually beneficial business relationship or other agreement can be established between the Company and the Recipient (the "Purpose"). In the event that the parties enter into a further business relationship, the parties agree that they shall continue to be bound by this Agreement and the Purposes, as defined herein, shall thereafter include all matters relating to or resulting from such relationship.
5. *Use of Confidential Information.* The Recipient acknowledges that it will be receiving Confidential Information from the Company in order to fulfill the Purpose. The Recipient further acknowledges that this information is of significant value to the Company. The Recipient agrees that nothing in this Agreement, or otherwise, shall allow the Recipient to acquire any right, title or interest in or to the Confidential Information. The Recipient shall:
  - a. maintain in strict confidence all Confidential Information disclosed to it, or to which it obtains access as a result of this Agreement, or otherwise;
  - b. take all necessary precautions against unauthorized disclosure of the Confidential Information;
  - c. ensure that every copy it makes of any Confidential Information is clearly marked, or otherwise identified, as confidential and proprietary to the Company, and is stored in a secure location while in the Recipient's possession, control, charge or custody
  - d. use its best efforts to maintain the secrecy of the Confidential Information, including taking reasonable steps to prevent its Representatives from acting in a manner inconsistent with the provisions of this Agreement and using at least the same means it uses to protect its own confidential and proprietary information to protect the Information;
  - e. disclose the Confidential Information only to those of its Representatives (as hereinafter defined) who need to have access to such Confidential Information in order for the Recipient to fulfill the Purpose, provided that each such Representative is subject to a binding confidentiality agreement with the Recipient that includes provisions materially the same as those in this Agreement.
6. *Disclosure to Representatives.* Except as specifically provided for herein, the Recipient shall not, without limitation, directly or indirectly, disclose, allow access to, transmit or transfer Confidential Information to any person without the Company's consent, or use or reproduce such Confidential Information, in any manner, except as reasonably required to fulfill the Purpose.

7. *Provisions to Employees and Agents.* In using the Confidential Information, the Recipient shall limit access to the Confidential Information, and any reproductions thereof, to those officers, directors, employees and agents and advisors of the Recipient or its subsidiary or affiliated companies or agents (the "Representatives") who reasonably require the Confidential Information for fulfilling the Purpose and who are obligated to treat the Confidential Information as confidential in the same manner and to the same extent as herein provided.
8. *Exemptions.* The non-disclosure obligations under this Agreement shall not apply to Confidential Information which the Recipient can establish:
  - a. is, or becomes, readily available to the public other than through a breach of this Agreement;
  - b. is disclosed lawfully and not in breach of any contractual or other legal obligation to it by a third party; or
  - c. through written records, was known to it or developed by it, prior to the date of first disclosure of the Confidential Information under this Agreement.
9. *Return of Confidential Information.* Upon receipt of written request from the Company, the Recipient shall forthwith return to the Company all Confidential Information that it has received from the Company. In addition, upon receipt of such notice, the Recipient shall forthwith destroy all copies of Confidential Information, in any form, which the Recipient produced while in possession of the original Confidential Information. Furthermore, upon receipt of such notice, the Recipient shall forthwith destroy all notes or other data, in any form, that it created in respect of the Confidential Information.
10. *Non-Solicitation of Third Parties.* The Recipient acknowledges that the Company may introduce the Recipient to certain persons (each a "Third Party", collectively, the "Third Parties"), including, without limitation, employees or consultants of the Company, in order to fulfill the Purpose. The Recipient further acknowledges that the relationship the Company has with such Third Parties is of significant value to the Company. The Recipient acknowledges that for the purposes of this Agreement, the Third Parties and all information related thereto that are exposed to the Recipient in fulfilling the Purpose shall be treated as Confidential Information. The Recipient covenants to and with the Company that it shall not establish or attempt to establish a business relationship or other agreement with any Third Party without the direct involvement of the Company. The Recipient shall in no manner attempt to circumvent the Company's relationship with a Third Party by communicating, in any manner and for any purpose, with any Third Party without the direct involvement or express consent of the Company.
11. *Term.* Subject to section 8 with respect to any applicable portion of the Confidential Information, the obligations imposed on the Recipient in respect of the non-disclosure of Confidential Information shall not terminate until the Confidential Information, or applicable portion thereof, ceases to be treated as confidential by the Company. The Recipient's obligations set forth in section 10, shall expire on the date that is 2 years from the date hereof.
12. *Injunctive Relief* The Recipient acknowledges and agrees that without prejudice to any and all other rights of the Company, in the event of its violation or attempted violation of any of the covenants contained in this Agreement, an injunction or any other like remedy shall be the only effective remedy to protect the Company's rights and property as set out herein, and that an interim injunction may be granted immediately on the commencement of any suit. The Recipient understands and agrees that the Company has a material interest in preserving the relationship it has developed with Third Parties. Accordingly, the Recipient agrees that the restrictions and

covenants contained in this Agreement and the Recipient's agreement to them by his execution of this Agreement, are essential to this Agreement and constitute a material inducement to the Company to enter into this Agreement and to disclose Confidential Information to the Recipient and introduce the Third Parties to the Recipient, and the Company would not enter into this Agreement absent such an inducement. Further, the Recipient understands and agrees that the restrictions and covenants contained in this Agreement shall each be construed as independent of any other portion of this Agreement, and the existence of any claim or cause of action by the Recipient against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defence to the enforcement by the Company of such covenants and restrictions.

13. *No Liability.* The Company shall not be deemed to make or have made any representation or warranty as to the accuracy or completeness of the Confidential Information furnished hereunder. The Recipient hereby agrees that neither the Company nor any of its agents shall have any liability to the Recipient or any of the Recipient's agents resulting from the use by the Recipient or its agents of the Confidential Information.
14. *No Disclosure of Negotiations.* The Recipient agrees that it will not, without the prior written consent of the Company, disclose to any person the fact that discussions or negotiations are taking place concerning a possible transaction involving the Recipient and the Company or any of the terms, conditions or other facts with respect to any possible transaction including the status thereof.
15. *Successors and Assigns.* This Agreement is for the benefit of the parties hereto and their respective successors and permitted assigns. No other person or entity shall have any rights hereunder.
16. *Notices.* All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand or mailed postage prepaid addressed to the addressee at the address appearing on the first page hereof or to such other address as may be provided by such party in writing, and shall be deemed to have been received, if delivered, on the date of delivery and if mailed then on the seventh business day following posting.
17. *Severability.* The invalidity or unenforceability of any provision or part of any provisions of this Agreement shall not affect the validity or enforceability of any other provision or part thereof, and any such invalid or unenforceable provision or part thereof shall be deemed to be separate, severable and distinct, and no provision or part thereof shall be deemed dependent upon any other provision or part thereof unless expressly provided for herein.
18. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral.
19. *Time of Essence.* Time shall be of the essence in this Agreement.
20. *Applicable Law.* This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of British Columbia and the federal laws of Canada applicable therein, and each party irrevocably and unconditionally submits to the jurisdiction of the courts of such province and all courts competent to hear appeals therefrom.
21. *Amendments and Waivers.* No amendment or waiver of any provision of this Agreement shall be binding on any party unless consented to in writing by such party. No waiver of any provision of

this Agreement shall constitute a waiver of any other provision nor shall any waiver constitute a continuing waiver unless otherwise provided. No delay on the part of any party in exercising any right hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party, nor any single or partial exercise of any right hereunder, preclude any other or further exercise thereof or any other right hereunder.

- 22. *Further Assurances.* Each of the parties will execute and deliver such further documents and instruments and do such acts and things as may be reasonably required by another party to carry out the full intent and meaning of this Agreement.
- 23. *Legal Advice.* The parties expressly declare that in entering into this Agreement it is understood and agreed that they each relied fully on their own judgment, belief and knowledge and that they have been advised to consult with their own legal advisors prior to executing this Agreement.
- 24. *Counterparts.* This Agreement may be executed in counterparts and by facsimile, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

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

\_\_\_\_\_ (the "Company")

Per: \_\_\_\_\_  
Authorized Signatory for the Company

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Authorized Signatory for EMPRISE CAPITAL CORP. (the "Recipient")

\_\_\_\_\_  
Print Name