

ProTracker Software, Inc.

Nondisclosure Agreement

This Nondisclosure Agreement will provide the necessary protection for firms who need to provide Confidential Information (defined hereafter) to **ProTracker Software, Inc.**, for general business purposes, such as converting data or troubleshooting an apparent software anomaly (the "Business Purposes").

The following terms shall apply when one of us ("Discloser") discloses Personal Information or Confidential Information to the other ("Recipient") under this Nondisclosure Agreement.

1. Disclosure.

As used in this Agreement, "**Personal Information**" shall mean Personally Identifiable Information, which includes but is not necessarily limited to a person's first name and last name, or first initial and last name, in combination with a Social Security Number, a driver's license number (or state-issued ID card number, a financial account number, or a credit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a person's financial account.

Additionally, "**Confidential Information**" shall include the following: business vision, business objectives, business strategy, business tactics, business challenges, business requirements, marketing, sales, forecasts, finances, price quotes, price lists, marketing proposals, branding strategies, services, suppliers, clients, client lists, markets, creative designs and concepts, technical data, screen layouts, report layouts, web designs, trade secrets and know-how, research, product plans, products, technical requirements, ideas, preliminary concepts, functional specifications, training materials, software, programming techniques, algorithms, developments, inventions, processes, technology, designs, drawings, techniques, hardware configuration information, or other business information disclosed by either of the parties.

Personal Information and Confidential Information (**collectively, "Confidential Information"**) may be disclosed:

- i) in writing;
- ii) by delivery of items;
- iii) by authorized access to Confidential Information, such as may be contained in a database; or
- iv) by oral and/or visual presentation.

All materials containing Confidential Information must have a restrictive marking of the Discloser at the time of Disclosure, or if disclosed orally, identified as confidential at the time of disclosure.

Notwithstanding the foregoing, all information disclosed by authorized access to a database, internal website, server or computer network is Confidential Information. Confidential Information shall not include information the Recipient can establish:

- i) has entered the public domain without Recipient's breach of any obligation owed to Discloser;
- ii) is rightfully received by Recipient from a third party without confidentiality restrictions;
- iii) is known to Recipient without any restriction as to use or disclosure prior to first receipt by Recipient from Discloser;
- iv) is authorized for disclosure by Discloser;
- v) is independently developed by Recipient.

All disclosures of information other than those made pursuant to this Agreement shall be deemed to be non-confidential. The Discloser shall not disclose any Confidential Information that Discloser does not have the right to disclose to the Recipient.

2. Protection.

This Agreement shall apply to all Confidential Information disclosed during the period that begins on the date that this Agreement is signed by both parties and ends one (1) year thereafter.

For three (3) years after the date of disclosure, the Recipient will:

- i) use the same care and discretion to avoid disclosure of the Discloser's Confidential Information as the Recipient uses with its own similar information that it does not wish to disclose (which shall be no less than the care a reasonable person would use under similar circumstances);
- ii) not disclose any Confidential Information to third parties; and
- iii) use the Confidential Information only for the Business Purposes.

This Agreement shall terminate following such three (3) year period, EXCEPT THAT, Confidential Information shall remain confidential for such period of time as Federal and/or State Laws shall specify. If, however, the Recipient presents an affidavit attesting to the total destruction of any and/or all Confidential Information by legally acceptable means (for example, physical shredding of paper-based information, or electronic shredding of digitally-based information), then Recipient will be relieved of the time constraints above for the portion of Confidential Information so destroyed.

3. Exceptions.

The Recipient may disclose Confidential Information to:

- i) its employees and independent contractors who have a need to know;
and
- ii) any other party with the Discloser's prior written consent.

Before disclosure to any of the above parties, the Recipient must have an appropriate written or oral agreement with such party sufficient to require that the party treat such Confidential Information in accordance with this Agreement.

The Recipient may disclose Confidential Information to the extent required by law, but the Recipient must give the Discloser advance notice to allow the Discloser a reasonable opportunity to obtain a protective order.

4. General.

- 4.1 This Agreement does not require either party to disclose or to receive Personal Information or Confidential Information.
- 4.2 All Personal Information and Confidential Information is provided "as is." Discloser makes no warranties, expressed, implied or otherwise, regarding its information.
- 4.3 Neither this Agreement, nor any disclosure of Confidential Information hereunder grants the Recipient any right or license under any trademark, copyrights or patent now or hereafter owned by or controlled by the Discloser.
- 4.4 Neither party shall be deemed to make any representation, warranty, assurance, guarantee or inducement with respect to any Confidential Information disclosed hereunder, including without limitation any representation concerning non-infringement of trademarks, patents, copyrights, mask protection rights or any other intellectual property rights or other rights.
- 4.5 Neither of us may assign or otherwise transfer our rights or delegate our duties or obligations under this Agreement without the prior written consent of the other. Said written consent will not be unreasonably withheld.
- 4.6 Each party acknowledges that monetary damages may not be a sufficient remedy for unauthorized use or disclosure of Confidential Information of the other party, and that in the event of a breach or threatened breach of this Agreement, the other party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

- 4.7 If either party should undertake legal action to enforce any of the terms of this Agreement, the prevailing party therein shall be entitled to reasonable attorney fees and costs of suit incurred in connection therewith. These fees will be in addition to any other relief awarded.
- 4.8 Only a written agreement signed by both of us can modify this Agreement.
- 4.9 The failure of either party, in any one or more instances, to insist on performance of any of the provisions of this Agreement, or to exercise any right to terminate this Agreement or any other right under this Agreement, shall not be a waiver and shall not prevent such party from enforcing such provision or any other provision of this Agreement in the future.
- 4.10 If a court of competent jurisdiction determines that any provision of this Agreement or any part of that provision is illegal or unenforceable, the remainder of that provision and this Agreement shall remain in full force and effect.
- 4.11 Either of us may terminate this Agreement by providing thirty (30) days advance written notice to the other. Any provisions of this Agreement, which by their nature extend beyond its termination, remain in effect until fulfilled and apply to our respective successors and authorized assignees.
- 4.12 The laws of the State of New Hampshire, excluding its conflict of laws rules, govern this Agreement. This Agreement is the complete and exclusive agreement regarding our disclosures of Confidential Information.

Agreed to:

By: _____ Date _____
ProTracker Software, Inc.

By: _____ Date _____

Firm: _____