



Mutual Confidentiality and Non-Disclosure Agreement

Upon incorporation by reference, the terms and conditions of this Mutual Confidentiality and Non-Disclosure Agreement are agreed upon between Lightstream Managed Services, LLC, a Utah limited liability company, for itself and on behalf of each of its affiliates and subsidiaries now and hereafter existing (“Lightstream”), with principal offices at 208 North 2100 West, (2nd Floor), Salt Lake City, UT 84116 and customer executing the agreement incorporating these terms (“Company”). Lightstream and Company are each referred to as a “Party” and collectively as the “Parties.”

WHEREAS, the Parties wishes to engage in business discussions concerning a possible transaction (“Possible Transaction”), and in connection therewith each Party will have access to certain confidential and proprietary information of the other Party; and

WHEREAS, the Parties wish to evidence by this agreement the manner in which said confidential and proprietary information will be treated.

NOW THEREFORE, and in consideration of the premises, the Parties agree as follows:

1. Confidential Information. “Confidential Information” includes all information, technical data, or know-how, including, but not limited to, that which relates to a Discloser’s research, products, hardware, software, designs, inventions, ideas, processes, drawings, business plans, product implementations, financial information, marketing techniques, business operation and systems, pricing policies, information concerning employees, customers, and/or vendors, Intellectual Property (as defined below) disclosed by one Party (“Discloser”) to the other Party (“Recipient”) whether in writing, orally, by inspection, or otherwise. Nothing in this Agreement is intended to grant or imply any rights, by license or otherwise, to either Party under any patent, copyright, trade secret, or other intellectual property right, nor shall this Agreement grant or imply to Recipient any rights in or to Discloser’s Confidential Information, except the limited right to review such Confidential Information solely for the purposes of consideration of a Possible Transaction or relationship between the parties. All discussions between the Parties hereto and their respective affiliates regarding the Possible Transaction as well as the existence or nature of this Agreement shall be deemed Confidential Information otherwise agreed in writing. Without limiting the forgoing, except as required by law, each Party hereto hereby agrees that it will not make any public announcements, filings, or other disclosures with respect to the Possible Transaction without the written consent of the other Party.

2. Lightstream Intellectual Property. Lightstream may disclose confidential and/or proprietary intellectual property under this Agreement, including but not limited to, use of internal and third-party systems; sales and/or operation strategies, models, and/or processes; compilations of generally available (non-confidential) source material in a manner that is proprietary and confidential in furtherance of sales or operations proposals, strategies, or activities; etc. (“Intellectual Property”). All such disclosed Intellectual Property shall be considered Confidential Information under this Agreement. Lightstream shall own all Intellectual Property solely created by Lightstream, including, without limitation, as part of providing any services or contained in any deliverable.

3. Exclusions. Recipient shall not have any obligations under this agreement with respect to any information (and the term “Confidential Information” shall not include any such information) that is: (a) already known to Recipient or its Representatives and affiliates at the time of disclosure unless such information was previously given to Recipient by Discloser pursuant hereto or otherwise under written instructions of confidentiality; (b) publicly known at the time of the disclosure or becomes publicly known through no wrongful act of Recipient; (c) subsequently disclosed to Recipient or its Representatives or affiliates on a non-confidential basis by a third party not known by Recipient (or other recipient) to be under any restriction from disclosing such information; (d) independently developed by Recipient or its affiliates; (e) communicated to a third party by Recipient with the express written consent of Discloser; or (f) required to be disclosed to any governmental agency or is required by any subpoena, summons, order or other judicial process, provided that, subject to and as permitted by applicable law, Recipient shall give Discloser reasonable notice prior to such disclosure and reasonable opportunity to obtain a protective order or the equivalent. Nothing contained herein shall in any manner restrict Recipient’s business activities; provided that Recipient shall remain obligated to abide by the provisions of this Confidentiality Agreement.

4. Use and Protection of Confidential Information. Confidential Information may be exchanged under this Agreement pursuant to the Possible Transaction and shall not be used for any other purpose. Recipient acknowledges that Discloser’s Confidential Information is confidential and proprietary and is a special, valuable, and unique asset, that it may constitute trade secrets of Discloser, and that it is of great value and importance to the success of Discloser’s business, and agrees that so long as such information shall be considered confidential, Recipient shall: (a) use the Confidential Information only in connection with its investigation of the Possible Transaction, (b) not disclose the Confidential Information to any third party without prior written consent of Discloser, (c) restrict dissemination of Confidential Information to only its Representatives (as defined below) who are directly participating in or are anticipated to participate in the Possible Transaction and who have a need to

know the Confidential Information for such purpose, and who are bound by a duty of confidentiality under terms no less restrictive than contained herein concerning the use of Confidential Information, (d) not reverse-engineer, copy, disassemble, modify, decompile, or make any other attempt to ascertain the composition or the properties and characteristics of any process, prototype, software, hardware or other tangible objects or products which constitute Confidential Information or Intellectual Property of Discloser, and (e) use the same degree of care as for its own information of like importance, but at least reasonable care, to prevent the intentional or unauthorized, negligent, or inadvertent disclosure of any Confidential Information. In the event any violations of clause 4(d) nevertheless occur, and without limiting in any way any remedy available to Discloser at law or in equity, all data and results and/or any inventions, discoveries, or works arising therefrom shall be solely owned by Discloser, and Recipient shall, at its expense, assign any such inventions or discoveries to Discloser and transfer to Discloser all copies or instances of such material.

5. Disclosure to Representatives. Recipient shall advise every Representative to whom it discloses any Confidential Information that (i) the information is confidential and subject to the terms of a non-disclosure agreement, and (ii) any disclosure of any such information by any Representatives under circumstances that are not permitted hereunder shall constitute a violation of this Agreement by Recipient. In any and all events in which a Representative of Recipient violates this Agreement, Recipient shall be responsible hereunder to Discloser for any such violation to the same extent as if Recipient itself had committed such violation. For the purposes hereof, a Party's "Representatives" are its officers, directors, shareholders, professional advisors, employees, or authorized contractors or affiliates (if permitted) who are involved in the investigation of the Possible Transaction.

6. Duty to Return. Recipient shall, upon the written request of Discloser at any time promptly either: (a) return to Discloser any and all Confidential Information in tangible form together with any copies or reproductions thereof; and/or (b) destroy all such Confidential Information together with any copies or reproductions thereof and in such later case provide a certificate from an officer of Recipient certifying to the disclosing Party that such items have been destroyed.

7. Termination; Survival. Without limiting the generality of Section 3 above, either Party may at any time terminate discussions respecting a Possible Transaction. In such case, each Party shall be obligated to return to the other Party the Confidential Information in accordance with the terms of Section 6. The obligations of each Recipient with respect to any Confidential Information hereunder shall survive any termination of this Agreement until such time as the Confidential Information disclosed hereunder qualifies under any exclusion Section 3.

8. No Representations. Discloser makes no representation or warranty, expressed or implied, as to the accuracy or completeness of any Confidential Information, nor shall Discloser have any liability resulting from Recipient's use of the Confidential Information except to the extent that use is solely pursuant to the Possible Transaction. Neither the holding of discussions nor the exchange of material or information shall be construed as an obligation of either party to perform any work, enter into any leases, business engagement or other agreement, or pursue the Possible Transaction with the other Party. The Parties hereby acknowledge that they are not agents of each other.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah without regard to conflicts of laws principles. Any legal action or proceeding, whether at law or in equity, must be brought in and remain exclusively in the state or federal courts of Salt Lake County or the District of Utah, as applicable. Each party hereby submits to exclusive jurisdiction of those courts.

10. Enforcement; Waiver. Each Party acknowledges and understands that the actual or threatened breach of this Agreement by Recipient may cause Discloser irreparable damage. Accordingly, Discloser has the right to seek (a) equitable injunctive relief to prevent such unauthorized, negligent, or inadvertent use or disclosure, and (b) to recover the amount of all such damage (including reasonable attorney's fees and expenses) in connection with such breach. If any court of competent jurisdiction determines that any provision of this Agreement is too broad to enforce as written, such court is authorized and directed to construe, modify or reform such provision to the extent reasonably necessary to make such provision enforceable. No failure or delay by Discloser in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial release thereof preclude the exercise of any other right, power, or privilege hereunder.

11. Assignment. This Agreement, or any right or interest under this Agreement, shall not be assigned, nor shall any work or obligation to be performed under this Agreement (an "assignment") be delegated, voluntarily, by operation of law or otherwise, without the parties' prior written consent. Any attempted assignment in contravention of this Section 10 shall be void and ineffective. The terms of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the permitted respective successors and assigns of the parties thereto. This restriction on assignment shall not be construed as to restrict any merger or acquisition activity of either Party in any way, nor impose any obligation to obtain prior consent or give notice of any such activity so long as the entities involved in such activity agree to be bound by the obligations of this Agreement.

12. Counterparts. This Agreement may be executed in two or more counterparts, all of which together shall be considered a single instrument.

13. Binding Nature; Entire Agreement. The provisions of this Agreement shall be binding upon each Party's directors, officers, attorneys, accountants, agents, employees, advisors, successors, and assigns.

This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between them relating to the subject matter of this Agreement.