



**NONDISCLOSURE AGREEMENT**  
**("AGREEMENT")**

**PARTIES:** **SMART Technologies ULC**, having its principal place of business at 3636 Research Road NW, Calgary, Alberta, Canada T2L 1Y1 ("**SMART**")

**AND** \_\_\_\_\_, having its address at \_\_\_\_\_  
\_\_\_\_\_  
 ("**Participant**")

**IN CONSIDERATION OF THE DISCLOSURE OF INFORMATION UNDER THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:**

**1. Definitions**

(a) **Affiliate(s)** means a person (whether natural, corporate, legal or other entity) directly, or indirectly, controlling, controlled by, or under common control with, another person. Control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, voting interests, as trustee or executor, by contract, or otherwise.

(b) **Confidential Information** means any and all information disclosed or accessed (whether verbally or in writing and regardless of the media or medium) on or after the Effective Date, including but not limited to information regarding the past, current or future business operations, technology, services, interests, financial matters, methodologies, data, designs, codes, trade secrets, know-how, strategic or other plans or intellectual property of the Disclosing Party, as well as any other information or data which is apparent from its nature and content, or the circumstances surrounding it, is or would reasonably be expected to be confidential. Without limiting the above, information will also be deemed to be Confidential Information if:

- (i) it is marked or designated (in writing or other tangible form) by the Disclosing Party as "CONFIDENTIAL", "PROPRIETARY", "RESTRICTED" or similar legend; or
- (ii) it was indicated at the time of disclosure (in verbal or other intangible form) as confidential and followed by a written notification by the Disclosing Party to the Receiving Party (marked "CONFIDENTIAL", "PROPRIETARY", "RESTRICTED" or similar legend) within thirty (30) days of the disclosure.

Notwithstanding the above, information will not be considered as Confidential Information, to the extent that the Receiving Party can prove that such information:

- (iii) was, or becomes, a part of the public domain through no act or omission of the Receiving Party;
- (iv) was in the rightful possession of, or rightfully known to, Receiving Party (without any limitation on use or disclosure) prior to the receipt from Disclosing Party;
- (v) was received by Receiving Party from a third person who was free to disclose such information to Receiving Party without any obligation of confidentiality;
- (vi) was independently developed by Receiving Party without use of, or reference to, the Disclosing Party's Confidential Information;
- (vii) was generally made available to third parties by Disclosing Party without restriction on disclosure; or
- (viii) was disclosed pursuant to governmental action or order of a court of competent jurisdiction and an appropriate protective order or its equivalent was not available.

(c) **Disclosing Party** means a party (either SMART or Participant), or a Representative, who discloses or provides access to Confidential Information.

(d) **Effective Date** means \_\_\_\_\_, or (if no date is specified) the date this Agreement is signed by both parties.

(e) **Personal Information** means any Personal Information or identifiable information respecting any natural third party disclosed to or for the benefit of the Receiving Party, including in connection with third party contracts, competitor information, pricing information and pricing models. For purposes of this Agreement, "Personal Information" includes information about an identifiable natural person including such person's name, address, telephone number, fax number or e-mail address.

(f) **Purpose** means the exploration of potential opportunities between the parties and/or their Affiliates, or if the parties enter into a business relationship, such relationship between the parties and/or their Affiliates.

- (g) **Receiving Party** means a party (either SMART or Participant), or a Representative, who receives or accesses any Confidential Information.
- (h) **Representative** means, in respect of a party, such party's Affiliates, its and their respective directors, officers, employees, agents, consultants, contractors and advisors, and the directors, officers, partners and employees of any of the foregoing.
- (i) **Third Party Recipient** means any person who accesses through, or who receives from, a Receiving Party, any Confidential Information in connection with this Agreement, including, but not limited to, any Representative of the Receiving Party.
2. Each party undertakes and agrees that it will, and that it will cause its Affiliates to:
- (a) keep in strict confidence and protect all Confidential Information by using at least the same degree of care (but no less than a reasonable standard of care) as it uses for its own information of similar importance;
  - (b) restrict disclosure of, and access to, the Confidential Information, only to its Representatives, and then only to the extent such Representatives have a need to know for the Purpose, and provided that such Representatives owe obligations of confidentiality and restricted use to the Receiving Party on terms no less restrictive than those imposed by this Agreement;
  - (c) immediately notify the Disclosing Party of any access to, disclosure or use of, the Confidential Information which is not permitted or authorized by this Agreement, and cooperate fully with the Disclosing Party in any efforts to remedy, limit the consequences, and prevent such breaches;
  - (d) indemnify the Disclosing Party against all losses, damages, costs or expenses that the Disclosing Party may incur as a result of any disclosure of, access to, or use of, the Confidential Information, other than in accordance with this Agreement; and
  - (e) notify the Disclosing Party as soon as practicable of any requirement on the Receiving Party or its Representatives, by law or government regulation to disclose any Confidential Information (including but not limited to freedom of information legislation), and comply with all reasonable directions by the Disclosing Party to contest, resist or narrow the scope of the requirement for such disclosure, at the Disclosing Party's expense. Such disclosure is limited to the portion of the Confidential Information which is legally required to be disclosed (in the reasonable legal opinion of counsel to the Disclosing Party or its applicable Representative) and the Receiving Party will use best efforts to obtain reliable assurances that the Confidential Information that is to be disclosed will be kept confidential.
3. Except to the extent expressly authorized or permitted by this Agreement, the Receiving Party will not, and will not authorize or permit its Representatives or Third Party Recipients to:
- (a) use or utilize the Confidential Information for any purposes other than the Purpose;
  - (b) decompile, reverse-engineer, or disassemble the Confidential Information (or intellectual property contained therein) in any way; or
  - (c) create any derivative works based on or deriving from the Confidential Information or build a product or service using the Confidential Information (or intellectual property contained therein),
- without the prior written consent of the Disclosing Party on terms acceptable to the Disclosing Party in its sole discretion.
4. Each party acknowledges that the other party may be, and nothing in this Agreement will prohibit the Receiving Party from, independently developing or acquiring products, concepts, systems or techniques that are similar to, or compete with, the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information without the use of the Confidential Information of the other, provided that the Receiving Party does not violate any of its obligations under this Agreement in connection with such development or acquisition. Receiving Party has the right to refuse to receive any information under this Agreement. Nothing herein obligates the Disclosing Party to disclose any particular information.
5. Title and/or rights (including all intellectual property rights) in and to the Confidential Information, including all copies thereof, are and will remain vested in the Disclosing Party as its absolute property at all times. No disclosure or use of the Confidential Information or conduct of the Disclosing Party will be construed as granting (expressly or by implication) a licence to, interest in, right, or entitlement to use, the Disclosing Party's Confidential Information or intellectual property.
6. This Agreement, once signed by both parties, comes into force as of the Effective Date, and continues in force unless terminated by either party at any time upon thirty (30) calendar day's written notice to the other. The obligations of each Receiving Party apply (and will survive any termination) for a period of five (5) years from the date of disclosure of the applicable Confidential Information, subject to the exclusions in Section 1(b), and provided that such obligations apply and survive indefinitely in respect of trade secrets.

7. Upon written request by the Disclosing Party at any time, the Receiving Party will promptly:
  - (a) return or destroy (at the Disclosing Party's sole discretion) all or part of the Confidential Information in whatever form, including copies thereof, and provide written certification of the same; and
  - (b) co-operate with such inspections and audits reasonably required by the Disclosing Party for auditing compliance with the terms of this Agreement.
8. The Disclosing Party provides the Confidential Information "as is", and disclaims any representation or warranty whatsoever regarding the Confidential Information (including but not limited to its accuracy, completeness or suitability for any purpose). The Disclosing Party is not liable for any costs, claims, liability or damages (direct, indirect, consequential, special, punitive or otherwise) resulting from the use of Confidential Information.
9. The Receiving Party of Personal Information shall be responsible, to the extent the Disclosing Party discloses Personal Information to the recipient, for compliance with applicable privacy laws governing the collection, use, disclosure and retention of Personal Information acquired by the recipient. The recipient may not (except as required hereunder) re-disclose or use the Personal Information in any manner other than to evaluate the Purpose.
10. Each party is responsible for the actions, or failures to act, by each of its Representatives or Third Party Recipients, which, if committed or omitted by a party, would constitute a breach of this Agreement. If any of a party's Representatives or Third Party Recipients is alleged to have breached this Agreement, the aggrieved party may seek all available remedies against and recover all damages (if any) from such party as if it had committed such breach.
11. If any official approval is required by a governmental/administrative authority to export or re-export Confidential Information, such export or re-export is subject to that approval.
12. This Agreement (including all schedules) is the complete and final agreement of the parties and supersedes any prior agreements or representations, written or oral, with respect to the subject matter of this Agreement, provided that any existing confidentiality obligations (whether arising in law or contract), and Confidential Information Transmittal Record (CITR) signed by a party and/or its Affiliate(s) with the other party and/or its Affiliate(s) survives in respect of information the subject of such obligation and/or CITR. This Agreement cannot be modified except by written agreement signed by both parties, and may be executed in any number of counterparts. Neither party may assign or otherwise transfer its rights or delegate its duties or obligations under this Agreement without the prior written consent of the other party. In the event of any conflict, the content of a CITR prevails over the Agreement.
13. This Agreement will be exclusively governed, construed and interpreted in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein, without regard to conflict of law principles. All disputes arising out of, or relating to this Agreement shall be referred to and settled by final and binding arbitration in accordance with the International Rules of the American Arbitration Association (the "Rules") by a single arbitrator agreed to by the parties. If the parties are unable to select an arbitrator within a reasonable time after the dispute is referred to arbitration, the arbitrator shall be chosen in accordance with the Rules. The arbitration shall take place in Calgary, Canada and shall be conducted in the English language. Each party acknowledges breach will cause significant harm and undue losses to the Disclosing Party and monetary damages may not be sufficient. In addition to other rights and remedies, a party is entitled to urgent court injunction or restraining order in the event of a breach, which relief may be sought in any jurisdiction in which the breach took place or in which it continues to occur.
14. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the parties hereby authorize the court to modify such provision to the minimum extent necessary to effectuate the parties' intentions and the remaining provisions will remain in full force and effect. The failure or delay of the Disclosing Party to enforce any provision of this Agreement at any time will not operate as a waiver of that provision.
15. Each party hereby confirms and warrants that it has all requisite legal and corporate power and authority to enter into this Agreement on behalf of the respective party (and its Affiliates) and upon execution, this Agreement will constitute a legal and binding obligation of each respective party and its Affiliates. Notice pursuant to this Agreement shall be delivered to the addresses for service as advised by either party from time to time.
16. This Agreement is not to be construed as a commitment for the performance of any work or the entry into a business, partner, joint venture, or other relationship, between the parties or any of their respective Affiliates or Representatives.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be signed by their respective authorized representatives as of the Effective Date.

**SMART Technologies ULC**

**Participant**

\_\_\_\_\_  
(Authorized Signatory)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
(Authorized Signatory)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_