



## **MUTUAL NON-DISCLOSURE AGREEMENT**

**THIS MUTUAL NON-DISCLOSURE AGREEMENT** ("Agreement") is effective as of the date of last signature below (the "Effective Date"), by and between Loftware, Inc., a Maine corporation, located at 249 Corporate Drive, Portsmouth, NH 03801 ("Loftware"), and \_\_\_\_\_, located at \_\_\_\_\_ ("Company").

**WHEREAS**, each party has or may acquire certain confidential and proprietary information, products and concepts which it desires to disclose to the other (in that capacity, the "Discloser"), and each party is willing to confidentially accept the other's information (in that capacity, the "Recipient").

**NOW, THEREFORE**, the parties agree as follows:

1. Definitions. For purposes of this Agreement, each word or phrase listed below shall have the meaning designated. Other words or phrases used in this Agreement may be defined in the context in which they are used, and shall have the respective meaning there designated.

(a) "Affiliate" shall mean, in relation to a party, any business entity that, from time to time, directly or indirectly controls, is controlled by, or is under common control with the party specified, or that is a successor (whether by change of name, dissolution, merger, consolidation, reorganization, sale or other disposition) to any such business entity or its business and assets. For the purposes of the definition, control shall mean the direct or indirect ownership of capital stock or other securities constituting fifty percent (50%) or more of the voting power of such entity or the right to elect a majority of the board of directors or comparable body of such entity. By way of clarification, the term Affiliate includes both: (i) entities that are Affiliates as of the Effective Date of this Agreement and (ii) entities that become Affiliates after the Effective Date of this Agreement. For Loftware, Euro Plus d.o.o., NiceLabel entities and Prisym ID entities are considered "Affiliates".

(b) "Confidential Information" means any information, whether or not marked as confidential, and which is disclosed by the Discloser to the Recipient or learned by the Recipient, including but not limited to any information relating to the Discloser's business, operations, projects, technologies and affairs, and information related to financial data, products and concepts, technical documentation and advantages, methods of production, general research and development, ideas, processes, designs, systems, manufacturing, methods, security questionnaires, reports, practices and processes, suppliers and customers and certain other trade secrets as such trade secrets are defined under applicable law, proprietary information and technical know-how, whether disclosed orally, in writing or by other media, or information that, given the nature of the information or circumstances surrounding its disclosure, reasonably could be considered as Confidential Information. In addition, the term "Confidential Information" includes (a) any notes, analyses, compilations, studies, interpretations, memoranda or other documents prepared by the Recipient that contain, reflect or are based upon, in whole or in part, any Confidential Information furnished to the Recipient pursuant hereto; and (b) the existence or status of, and any information concerning, the discussions between the parties concerning the possible establishment of a business relationship.

(c) "Stated Purpose" means to facilitate discussion and analysis regarding certain proposed business transactions involving the licensing, implementation and/or support of certain proprietary software products owned by Loftware and/or its Affiliates. The Recipient will allow access to the Confidential Information only to those of its employees, officers, directors, Affiliates, advisors, contractors and service providers who need to know the Confidential Information for the performance of tasks in connection with the Stated Purpose and which the Recipient has instructed to observe the confidentiality obligations under this Agreement. The Recipient will be responsible vis-à-vis the Discloser for any failure of those persons to which it has made available the Confidential Information to comply with the obligations under this Agreement.



2. Confidential Treatment. Unless otherwise expressly authorized by the Discloser or by this Agreement, the Recipient shall retain the Confidential Information in confidence, shall not disclose the Confidential Information to any third party and shall not use or reproduce the Confidential Information for any reason other than the Stated Purpose. These obligations with respect to the Confidential Information shall not apply to any information that is or becomes disqualified as Confidential Information pursuant to Section 4.

3. Internal Dissemination. The Recipient shall use commercially reasonable efforts to limit dissemination of the Discloser's Confidential Information to the Recipient's employees, agents, and associates who have a need to know for the Stated Purpose, provided, however, that all such individuals shall agree to abide by the terms of this Agreement and the Recipient shall remain liable for any breach of this Agreement by any such employees, agents or associates.

4. Exceptions. Notwithstanding any other provision of this Agreement, each party acknowledges that Confidential Information shall not include any information that:

- (a) is or becomes publicly known through no wrongful act on the Recipient's part;
- (b) is, at the time of disclosure under this Agreement, already known to the Recipient without any obligation restricting disclosure;
- (c) is, or subsequently becomes, rightfully and without breach of this Agreement, in the Recipient's possession without any obligation restricting disclosure;
- (d) is independently developed by the Recipient without breach of this Agreement or any other agreement between the parties; or
- (e) is explicitly approved for release by written authorization of the Discloser.

5. Return or Destruction of Confidential Information. Upon request by the Discloser, the Recipient shall in its discretion promptly (a) return to the Discloser all Confidential Information together with all copies made by the Recipient or by anyone to whom such information was made available by the Recipient, or (b) destroy all such Confidential Information.

6. Ownership. The Confidential Information is and shall remain at all times the exclusive property of the Discloser. No license, express or implied, in the Confidential Information is granted to the Recipient other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. The parties acknowledge that the Confidential Information is provided "AS IS" and no warranty of any kind is granted or implied to any party. No rights or obligations other than those expressly recited herein are to be implied from this Agreement. Neither the execution of this Agreement, nor the furnishing of any information hereunder shall be construed as granting or creating, either expressly or by implication, estoppel or otherwise, any right, title, interest, or license, trademarks or copyrights in or to any inventions, patents, technical data, computer software, or computer documentation or material, or other intellectual property now or hereafter owned or controlled by the Discloser.

7. Injunctive Relief. Each party recognizes and acknowledges that the Discloser would suffer irreparable injury from the unauthorized use or disclosure of any of the Confidential Information and each party agrees and acknowledges that the Discloser shall have the right to seek injunctive relief against the unauthorized use, disclosure or transfer of any of the Confidential Information, as well as the right to pursue all of its other remedies in equity and at law. In no event shall either party be liable for the other party's consequential damages, even if such party is informed of the possibility of such damages.



8. Disclosure if Required by Law. Disclosure of Confidential Information shall not be precluded if such disclosure is in response to a valid order of a court or other governmental body or is otherwise required to be disclosed by law; provided, however, that the Recipient so required to disclose shall, to the extent legally permissible, first give written notice to the Discloser so that the Discloser may seek an appropriate protective order.

9. Standard of Care. The acceptable standard of care required of either party receiving Confidential Information hereunder will be the same standard as normally used by that party in protecting its own Confidential Information against disclosure, publication or dissemination, but in any event not less than reasonable care.

10. Miscellaneous.

(a) This Agreement shall commence on the Effective Date and shall expire five (5) years thereafter. Notwithstanding the foregoing, the protections afforded to the Confidential Information under this Agreement are in addition to and not in lieu of the protections afforded under any applicable laws. With regard to each item of Confidential Information identified to the Recipient as a trade secret and constituting a trade secret under applicable law, Recipient shall remain bound by all confidentiality obligations and subject to all remedies under this Agreement at all times during the term of this Agreement and for as long after the termination or expiration of this Agreement as such item continues to constitute a trade secret under applicable law; and with regard to any Confidential Information other than a trade secret, Recipient shall remain bound by all confidentiality obligations, and subject to all remedies, under this Agreement at all times during the term of this Agreement and for three (3) years after the termination or expiration of this Agreement.

(b) This Agreement shall be governed and interpreted in accordance with the laws of the State of Delaware, except its rules as to choice of laws. The parties agree that any claims or other actions arising out of this Agreement shall be litigated in the Federal or State courts in the State of Delaware, and each party consents to the exclusive jurisdiction of such courts.

(c) This Agreement shall in no way require either party to disclose or receive Confidential Information.

(d) No modifications of this Agreement or waiver of any of its terms will be effective unless set forth in a writing signed by both parties. Failure by any party to require the other to perform any of the terms of this Agreement, or waiver by any party of any breach of this Agreement by the other shall not prevent subsequent enforcement of such term or be deemed a waiver of any subsequent breach thereof.

(e) No agency or partnership relationship shall be created between the parties by this Agreement. Nothing in this Agreement shall obligate either party to enter into any business relationship with the other. This Agreement is solely for the purpose of protecting Confidential Information and shall not be construed in any manner as a teaming agreement, joint venture, or as an obligation to enter into a contract, subcontract, or other business relationship, or result in any claim whatsoever for reimbursement of any costs or expenses for any effort, including the performance of work, expended by either party hereto.

(f) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Either party may, upon notice and without the consent of the other party, transfer or assign its interests in this Agreement, in whole or in part, to any Affiliate of such party or to the purchaser of all or substantially all of its capital stock, assets or business. Except as otherwise provided above, neither party may transfer or assign its interests in this Agreement, in whole or in part, without the prior written consent of the other party. Any attempted transfer or assignment in contravention of this paragraph shall be null and void, and of no force or effect.



(g) Each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.

(h) This Agreement constitutes the complete understanding of each party's obligations to the other relating to Confidential Information disclosed or received for the Stated Purpose. All prior or contemporaneous negotiations, representations, discussions, or agreements, whether oral or written, concerning the disclosure and protection of Confidential Information for the Stated Purpose are cancelled and merged herein.

(i) The headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of any provision of this Agreement.

(j) Each party hereby agrees that a facsimile or electronic copy or copies of both signatures hereto shall have the same force and effect as an original.

**IN WITNESS WHEREOF**, the parties understand this Agreement and have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

**Company**

**Loftware, Inc.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Christopher Smith  
Title: General Counsel  
Date: \_\_\_\_\_