



MUTUAL CONFIDENTIALITY AGREEMENT

This confidentiality agreement (the "Agreement") is entered _____, by and between eNow, Incorporated, a Delaware Corporation, having its principal place of business at 133 Hallene Road, Warwick, RI 02886 ("eNow") and _____ ("Company").

In connection with exploring a potential business relationship, eNow and Company are willing to share confidential information with each other provided that they are assured that the confidentiality of such information will be maintained and that such information will only be used for the purposes of such potential business relationship. For that purpose, the parties are agreeing as follows:

1. *Disclosing Party and Receiving Party.* Under this Agreement, a party disclosing information shall be referred to as a "Disclosing Party," and the recipient of such information shall be referred to as a "Receiving Party." In addition, the terms "Disclosing Party" and "Receiving Party" shall specifically include such party's affiliated companies and the partners, directors, officers, employees, agents, consultants, members, managers, and other persons acting for or on behalf of such party or its affiliated companies (each a "Representative"). The signatories to this Agreement (i) agree to cause their respective Representatives to comply with the terms and conditions of this Agreement and (ii) shall be responsible for any breach of this Agreement by their respective Representatives.

2. *Definition of Confidential Materials.* Information disclosed to a Receiving Party regarding the intellectual property, designs, books, records, financial information, strategic and business plans, employees, customers and other proprietary or confidential information relating to the business of the Disclosing Party, together with analyses, compilations, studies or other documents prepared by the Receiving Party and its agents, or employees that contain or otherwise reflect or are generated from such information, shall be referred to as "Confidential Materials." The term "Confidential Materials" does not include information that: (i) was, or hereafter becomes, public information other than as a result of a disclosure by the Receiving Party, (ii) was in the Receiving Party's possession prior to the date hereof, (iii) becomes available to the Receiving Party from a source other than the Disclosing Party, provided that such source is not bound by a confidentiality agreement with the Disclosing Party or is not otherwise prohibited from disclosing the information to the Receiving Party by a contractual, legal or fiduciary obligation, or (iv) is clearly demonstrated to have been independently developed by Receiving Party without access to the Confidential Information or through a breach of this Agreement.

3. *Uses of Confidential Materials by a Receiving Party.* Upon receiving Confidential Materials, a Receiving Party hereby agrees that the Confidential Materials will be used solely for the purpose of evaluating a possible transaction between the Receiving Party and the Disclosing Party. The Receiving Party further agrees not to use the Confidential Materials in any way detrimental to, or to the competitive disadvantage of, the Disclosing Party and that such information will be kept strictly confidential; *provided, however*, that: (i) any of such information may be disclosed to the Receiving Party's Representatives who need to know such information for the purpose of assisting the Receiving Party in its evaluation (it being understood that any such Representative shall be informed by the Receiving Party of the confidential nature of such

information and shall be required to agree with the Receiving Party, for the benefit of the Disclosing Party, that by receiving such information such Representative is agreeing to be bound by this Agreement) and (ii) any disclosure of such information may be made if the Disclosing Party has specifically consented thereto in writing. The Receiving Party shall protect the Disclosing Party's Confidential Information with the same degree of care that Receiving Party uses to safeguard its own confidential or most valuable proprietary information, and shall in no event exercise less than a reasonable degree of care.

4. *Lack of Warranty.* All Confidential Information is provided "AS IS" and without any express or implied warranty as to its accuracy or completeness. A Receiving Party agrees that the Disclosing Party shall have no liability to the Receiving Party resulting from the use of the Confidential Materials. Only those representations or warranties that are made in a definitive agreement when, as, and if it is executed, and subject to such limitations and restrictions as may be specified in such an agreement, shall have any legal effect.

5. *Non Circumvention.* Each Receiving Party agrees that it will not, at any time prior to the expiration of three years from the date of termination of this Agreement, disclose the identities of any individual or entity and any other third parties (including, without limitation, Disclosing Party's suppliers, customers, financial sources, manufacturers and consultants) discussed and made available IN WRITING by the Disclosing Party in respect of the Purpose and any related business opportunity shall constitute Confidential Information and the Receiving Party or any entity or associated entity or individual shall not (without the prior written consent of, or having entered into a commission agreement with the disclosing party):

- a. directly or indirectly initiate, solicit, negotiate, contract or enter into any business transactions, agreements or undertakings with any such third party identified or introduced by the Disclosing Party; or
- b. seek to by-pass, compete, avoid or circumvent the Disclosing Party from any business opportunity that relates to the purpose by utilizing any Confidential Information or by otherwise exploiting or deriving any benefit from the Confidential Information.

Notwithstanding the foregoing, to the extent there already exists an ongoing business relationship between the Receiving Party and the third party, this Agreement shall not restrict such relationship. For the avoidance of doubt, an ongoing business relationship would be evidenced by an executed non-disclosure agreement, two or more discussions with middle or senior management, or an actual transaction within the prior ten years hereof. Further, this agreement does not apply to government funding opportunities.

6. *Non-Solicitation.* Each Receiving Party agrees that, for the three year period from the date of this Agreement, it will not (without the prior written consent of the Disclosing Party) (i) recruit or hire any person who is now or, prior to the expiration of 30 days following the return of all Confidential Materials and the cessation of discussions between the parties, becomes an employee of the Disclosing Party or (ii) solicit (except by job listings of general circulation) any such person to terminate his or her employment with the Disclosing Party.

7. *Term; Return of Confidential Information.* This Agreement is effective as of the Effective Date above and will expire one (1) year from the Effective Date. The Agreement may be terminated by either party with thirty (30) day prior written notice. All Confidential Information disclosed under this Agreement shall be held by Recipient in confidence for a period of three (3) years from the date of expiration or termination of this Agreement and be used by Recipient only for the Purpose. Within 10 days of a request from a Disclosing Party, or in the event that a Receiving Party determines not to proceed with a transaction that is the subject of this Agreement, the Receiving Party shall redeliver to the Disclosing Party the Confidential Materials and any copies thereof, or excerpts therefrom, and shall destroy all memoranda, notes, analyses, compilations and other writings prepared by the Receiving Party or any other person associated therewith based on the Confidential Materials. The foregoing obligations apply regardless of the form in which Confidential Materials are maintained by the Receiving Party, and include copies maintained in electronic format. The Receiving Party shall, at the same time, provide to the Disclosing Party a written confirmation, executed by its chief executive officer, certifying compliance with this Section.

8. *Fact of Potential Transaction Confidential.* Each party to this Agreement, without the prior written consent of the other party to this Agreement, will not, and will direct its Representatives not to, (i) disclose to any person either the fact that discussions or negotiations are taking place concerning a possible transaction between the Receiving Party and the Disclosing Party or any of the terms, conditions or other facts with respect to any such possible transaction, including the status thereof, or (ii) make any contact with any client, employee, consultant, bank or other lender of or to the Disclosing Party or any other person regarding the business, practice, operations, prospects or finances of the Disclosing Party; *provided* that the Receiving Party may make the disclosures prohibited by the foregoing provisions (i) to its Representatives to the extent required to carry out the purposes of this Agreement or (ii) with the written permission of the Disclosing Party. As used in this Agreement, the term “person” includes without limitation, any corporation, company, partnership, limited liability company, governmental entity, other entity and individual.

9. *No License.* Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in any Confidential Materials. It is understood and agreed that neither party solicits any change in the organization, business practice, service or products of the other party, and that the disclosure of Confidential Materials shall not be construed as evidencing any intent by a party to purchase any products or services of the other party nor as an encouragement to expend funds in development or research efforts. Confidential Materials may pertain to prospective or unannounced products of the Disclosing Party. Receiving Party agrees not to use any Confidential Materials as a basis upon which to develop or have a third party develop a competing or similar product.

10. *Protections in Context of Required Disclosures.* In the event that a Receiving Party is requested or required (by oral or written interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Materials, the Receiving Party will provide the Disclosing Party with prompt prior notice thereof and the identity of any of the Confidential Materials requested thereby to be disclosed, so that the Disclosing Party may seek an appropriate protective order or other appropriate remedy and/or waive the Receiving Party’s compliance with the provisions of this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the

Receiving Party is nonetheless compelled to disclose any Confidential Materials or else stand liable for contempt or suffer other censure or penalty, the Receiving Party may disclose such information without liability hereunder. The Receiving Party shall, if the Disclosing Party so requests, use all reasonable efforts to cooperate with the Disclosing Party at the Disclosing Party's expense in seeking an order or other reliable assurance that confidential treatment will be accorded to any Confidential Materials required to be disclosed.

11. *Money Damages Not Sufficient; Equitable Relief Warranted.* Each Receiving Party agrees that money damages would not ordinarily be a sufficient remedy for any breach of this Agreement by the Receiving Party and that, in addition to all other remedies that may be available, the Disclosing Party shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach.

12. *No Implied Waiver; Jurisdiction.* It is further understood and agreed that no failure or delay by a Disclosing Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. The interpretation and validity of this Agreement and the rights of the parties shall be governed by the laws of the State of Rhode Island.

13. *Assignment of Rights.* The Disclosing Party reserves the right to assign all rights under this Agreement, including, without limitation, the right to enforce all the terms of this Agreement in the event of a sale of substantially all of the assets and goodwill of the Disclosing Party.

14. *Final Agreement.* This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

15. *Severability.* If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

16. *Notices.* Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services.

If to ENow: Jeffrey Flath, President
eNow, Incorporated
133 Hallene Road, Warwick RI 02886

If to Company: _____

17. *No Implied Waiver.* Either party's failure to insist in any one or more instances upon strict performance by the other party of any of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.

18. *Headings.* Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

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

Witness:

ENow, Inc.

By: _____
Jeffrey Flath, President

(company)

By: _____
(name, title)
Title: _____