

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

CTI agrees to furnish COMPANY with the following list of materials, subject matter, and/or concepts and ideas: Licensed PLCIO Source Code (the "License" or "Code") as referenced herein.

Subject the terms stated herein, COMPANY agrees not to, directly or indirectly, in any way reveal, report, publish or disclose, transfer or otherwise use the License or Code except as authorized.

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT (the "Agreement") entered into on this date of _____ by and between _____, a corporation having an address at _____ ("Company"), and Commercial Timesharing, Inc., an Ohio corporation with a principal business address at 2740 Cory Avenue, Akron, Ohio 44314 (herein referred to as "CTI"). Company and CTI are sometimes referred to herein collectively as (the "Parties") and individually as (a "Party.")

RECITALS

A. CTI and Company are entering into discussions concerning a license pursuant to which CTI will provide certain confidential and proprietary source code aka the Code to Company.

B. In connection with the Code, the Parties may disclose to each other certain confidential and proprietary information, and the Parties desire to assure the confidentiality of such information and the protection and preservation thereof. A Party disclosing confidential or proprietary information pursuant to this Agreement is referred to herein as a "Disclosing Party" and a Party receiving confidential or proprietary information is referred to herein as a "Receiving Party."

NOW THEREFORE, in consideration of the promises, covenants, understandings, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. Confidential Information.** As used in this Agreement, the term "Confidential Information" means and includes any and all information in any way related to a Party, its affiliates or the License or Code that has been, or may hereafter be, disclosed to a Party by the other Party or by the directors, officers, employees, agents, consultants, advisors or other representatives, including legal counsel, accountants and financial

advisors (collectively, "Representatives") of a Party, or that is otherwise obtained from review of a Party's documents or property or discussions with a Party's Representatives. "Confidential Information" shall include, but shall not be limited to any and all information provided to a Party by the other Party, which the Disclosing Party identifies as being proprietary or confidential at the time of disclosure or within thirty (30) days after disclosure, including, by way of example but without limitation, any and all of a Party's business and technical information and plans, patent applications, trade secrets, data, software, source codes, photographs, product and/or manufacturing specifications, manufacturing methods or processes, printed disclosures, reports, formulae, diagrams, sketches, drawings, product or component samples, designs, test methods, product composition, know-how, inventions or ideas, whether or not patentable, and any financial or marketing information relating to the Party or its business, including, but not limited to, any information as to business plans, systems, marketing programs, strategic planning, business opportunities, financial forecasts, products, cost of materials, production, administration, overhead, royalties or other business costs, vendors, manufacturers, customers, suppliers or any of the terms of any agreement to which a Party is a party. The term "Confidential Information" includes not only information disclosed by Party but also information developed or learned as a result of the work performed by a Party's Representatives or visits to the other Party's facilities by the Representatives of a Party. "Confidential Information" shall include any information satisfying the definition of "Confidential Information" set forth above, regardless of whether such information is communicated in writing, orally or by any form of electronic communication, including, without limitation, e-mail or voice-mail.

"Confidential Information" also includes all notes, analyses, compilations, studies, summaries and other material prepared by a Receiving Party or its Representatives containing or based, in whole or in part, upon any information included in the foregoing. Any trade secrets of a Party will also be entitled to all of the protections and benefits under applicable trade secret or other law. If any information that a Party deems to be a trade secret is found by a court of competent jurisdiction not to be a trade secret for purposes of this Agreement, such information will in any event still be considered Confidential Information for purposes of this Agreement. In the case of trade secrets, a Receiving Party hereby waives any requirement that the Disclosing Party must submit proof of the economic value of any trade secret or post a bond or other security.

2. **No Disclosure of Confidential Information.** A Receiving Party shall protect and treat as strictly confidential any Confidential Information, and shall not disclose Confidential Information, or any part thereof, to any person not a party to this Agreement, unless the Disclosing Party has provided its prior written consent, or if such disclosure is required pursuant to Paragraph 4 below. The provisions of this Agreement shall apply throughout the period of the License and shall survive the termination or expiration of the License and remain in effect for as long the subject matter of the License remains Confidential Information as held to be proprietary by CTI.
3. **No Use of Confidential Information.** A Receiving Party shall use the Confidential Information received from a Disclosing Party solely for purposes in accordance with the License or Code, subject to all restrictions therein. Moreover, a Receiving Party will disclose the Confidential Information only to its Representatives who need to know the Confidential Information for purposes of effectuating the License, provided that such Representatives will be informed and directed by the Receiving Party, or have written agreements with the Receiving Party, to treat the Confidential Information consistent with the terms and conditions of this Agreement. A Receiving Party shall be responsible for any disclosures of Confidential Information by its Representatives in violation of this Agreement. Other than its Representatives, a Receiving Party shall not disclose Confidential Information to anyone, unless such disclosure is required pursuant to Paragraph 4 below.
4. **Protective Order.** If a Receiving Party is required by law, subpoena, regulation, or court order to disclose Confidential Information, the Receiving Party shall promptly provide the Disclosing Party with written notification prior to making any such disclosure in order to facilitate the Disclosing Party in seeking a protective order or other appropriate remedy from the proper authority, and will fully cooperate with the

Disclosing Party with respect thereto. If the Disclosing Party is not successful in precluding the requesting legal body from requiring the disclosure of Confidential Information, the Receiving Party agrees to furnish only that portion of the Confidential Information which is legally required, and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be afforded to the Confidential Information. In no event, however, shall the Receiving Party produce any Confidential Information until the Disclosing Party has unsuccessfully exhausted any and all possible challenges to the applicable subpoena, regulation, court order, etc.

5. **Property of Owner.** All Confidential Information disclosed hereunder shall be and remain the sole and exclusive property of the Disclosing Party. Promptly upon the Disclosing Party's written request or the termination or expiration of this Agreement, Confidential Information disclosed hereunder (including any and all copies thereof and any all notes, analyses, compilations, studies, summaries and other material prepared by the Receiving Party or its Representatives containing or based, in whole or in part, upon any Confidential Information of the Disclosing Party) shall be returned to the Disclosing Party or destroyed, and shall not thereafter be retained in any form by the Receiving Party. If requested by the Disclosing Party, the Receiving Party shall provide written confirmation of the destruction or elimination of Confidential Information.
6. **No Grant.** Neither the holding of discussions between the parties hereto nor the furnishing of Confidential Information to a Receiving Party shall grant any interest in and to the Confidential Information to the Receiving Party other than to ensure its confidentiality pursuant to the terms and conditions of this Agreement. No additional licenses or rights under any patent, copyright, trademark, or trade secret are granted or are to be implied by this Agreement.
7. **Developed Intellectual Property.** All derived intellectual property created or developed by Company in connection with the License or Code, shall be the property of the Company subject to the limitations set forth in this Section 7. Such intellectual property rights shall include, but shall not be limited to, all copyrights, trademarks, inventions, patentable or unpatentable, moral rights and all contract and licensing rights, and all claims and causes of action with respect to the foregoing, whether now known or hereafter to become known. However, Company is expressly prohibited from claiming ownership over any software, intellectual property, or other derived works that merely mimic, copy, or reproduce the functionality of the source code that is the subject matter of the License, and Company hereby irrevocably grants, assigns, transfers and sets over onto CTI any and all such right, title, and interest of any kind, nature or description it may have with respect thereto in such works. CTI reserves all right, title, and interest in any such software, intellectual property, and other derived works that merely mimic, copy, or reproduce the functionality of the source code that is the subject matter of the License.
8. **Binding Agreement.** This Agreement shall inure to the benefit of and be binding upon the Parties, and their respective successors and assigns.
9. **Injunctive Relief.** Notwithstanding anything contained in this Agreement to the contrary, a Receiving Party acknowledges that a violation or threatened violation of the provisions set forth in Paragraphs 2 and 3 above will result in irreparable harm to the Disclosing Party, and, accordingly, the Receiving Party agrees that the Disclosing Party shall be entitled to institute judicial proceedings, seeking immediate injunctive relief (or similar equitable relief) against such violation or threatened violation without any requirement to post a bond as a condition of such relief, as well as damages at law as may be recovered by the Disclosing Party, and the attorney fees it incurs in enforcing any of the covenants contained herein.
10. **No Assignment.** Neither Party shall assign any of its rights or obligations hereunder without the prior written consent of the other Party; provided, however, a Party shall have the right to assign its rights hereunder to any person that acquires substantially all of the assets of such entity.
11. **No Waiver.** All waivers hereunder must be made in writing and signed by the Party against which such waiver or consent is asserted. The failure by any Party at any time to require the other Party's performance



of any obligation under this Agreement shall not affect the right subsequently to require performance of the obligation. No waiver of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or other provision of this Agreement.

- 12. **Severability.** If any provision of this Agreement is found to be unenforceable, the remainder shall be enforceable as fully as legally possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the parties hereto as expressed herein.
- 13. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same instrument.
- 14. **Notices.** All notices and legal process related to this Agreement shall be in writing and shall be delivered by national courier, or transmitted by facsimile addressed to the applicable address first set forth above, and shall be deemed effective on the next business day following dispatch, in the case of courier-delivered notices, and upon transmission by the sender with receipt confirmed, in the case of facsimile-sent notices.
- 15. **Governing Law.** This Agreement shall be governed by, and construed in accordance with the laws of the State of Ohio, without reference to the principles of conflict or choice of law.
- 16. **Complete Agreement.** This Agreement is the complete agreement of the parties hereto concerning the subject matter hereof and supersedes any prior such agreements with respect to disclosures concerning such subject matter; and may not be amended or in any manner modified except by a written instrument signed by authorized representatives of both of the Parties.

IN WITNESS WHEREOF, the Parties have duly executed this Confidentiality and Nondisclosure Agreement as of the day and year first written above.

CLIENT

CTI

Signature

Signature

First / Last Name

First / Last Name

Title

Title

Email

Date

Date