



## Birds-Eye Network Services MUTUAL NONDISCLOSURE AGREEMENT

**THIS MUTUAL NONDISCLOSURE AGREEMENT** (this "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 200\_ by and between, Birds-Eye Network Services, LLC., a limited liability company ("Birds-Eye.Net"), and, \_\_\_\_\_, a \_\_\_\_\_ corporation, with offices at \_\_\_\_\_ ("the Company").

1. Purpose. Birds-Eye-Net and the Company wish to explore a business opportunity of mutual interest (the "Business Opportunity"), and, in connection with such exploration, each party may disclose to the other certain confidential business or technical information which such party desires the other to treat as confidential.

2. "Confidential Information" means any information, data, or know-how disclosed by one party (the "Disclosing Party") to the other (the "Receiving Party"), which, if in written, graphic, machine-readable or other tangible form is marked by the Disclosing Party as "Confidential" or "Proprietary," or which, if disclosed orally or by demonstration, (i) is identified by the Disclosing Party at the time of initial disclosure as confidential and (ii) the Disclosing Party provides written confirmation to the Receiving Party within thirty (30) days of such disclosure. Confidential Information shall also include the items set forth or described in the Appendix attached hereto. Confidential Information may include information disclosed to the Receiving Party by an entity related to the Disclosing Party. Confidential Information does not include information, data or know-how which the Receiving Party can demonstrate to the reasonable satisfaction of the Disclosing Party: (i) was independently developed by the Receiving Party without any use of the Disclosing Party's Confidential Information; (ii) becomes known to the Receiving Party, without restriction, from a source other than the Disclosing Party that had a right to disclose it and without breach of this Agreement; (iii) was in the public domain at the time it was disclosed or becomes in the public domain through no act or omission of the Receiving Party; or (iv) was rightfully known to the Receiving Party, without restriction, at the time of disclosure.

3. Treatment of Confidential Information. Each Receiving Party agrees not to use the Confidential Information disclosed to it by the Disclosing Party for the Receiving Party's own use or for any purpose except for evaluation of, and to carry out discussions concerning, and the undertaking of, the Business Opportunity. Each Receiving Party shall not disclose any Confidential Information of the Disclosing Party except to those directors, officers, employees, consultants and agents of the Receiving Party who are required to have such information in order to carry out such evaluation and discussions and the undertaking of the Business Opportunity. Birds-Eye.Net shall be permitted to disclose Confidential Information to its affiliate Birds-Eye.Net. Each Receiving Party represents that those directors, officers, employees, consultants and agents to whom Confidential Information of the Disclosing Party is disclosed or who have access to Confidential Information of the Disclosing Party have executed confidentiality agreements or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein. Each Receiving Party shall take all reasonable measures (i) to protect the secrecy of and avoid disclosure or unauthorized use of Confidential Information of the Disclosing Party, and (ii) to prevent such Confidential Information from falling into the public domain or the possession of persons other than those persons authorized hereunder to have such information. Such measures shall include using the same degree of care that the Receiving Party uses to protect its own Confidential Information of a

similar nature but no less than reasonable care. Each Receiving Party agrees to notify the Disclosing Party in writing of any misuse or misappropriation of the Disclosing Party's Confidential Information which may come to such Receiving Party's attention.

4. Mandatory Disclosure. In the event that a Receiving Party or its respective directors, officers, employees, consultants or agents is requested or required by legal process to disclose any of the Confidential Information of the Disclosing Party, such Receiving Party shall give prompt notice to the Disclosing Party so that the Disclosing Party may seek a protective order or other appropriate relief. In the event that such a protective order is not obtained, such Receiving Party shall disclose only that portion of the Confidential Information which such Receiving Party's counsel advises that such Receiving Party is legally required to disclose.

5. No Obligation. Nothing herein shall obligate Birds-Eye.Net or the Company to proceed with any transaction between them and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the Business Opportunity. Furthermore, nothing herein shall prohibit either party from independently developing and marketing any products or services or pursuing other business opportunities separately or with any other party.

6. No Warranty. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS OR USEFULNESS OF ANY CONFIDENTIAL INFORMATION.

7. Return of Materials. Each party shall promptly destroy or return to the other any materials or documents which contain any part of the Confidential Information after such party has concluded its evaluation of the Business Opportunity or the Business Opportunity has been rejected or concluded.

8. No License. Nothing in this Agreement is intended to or shall grant any rights to either party under any patent, mask work right, copyright, or any other proprietary right, and this Agreement shall not grant to either party any rights in or to Confidential Information except as expressly set forth herein.

9. Term. Each party's obligations hereunder shall survive any termination of discussions between the parties, and shall continue for a period of five (5) years following the date of this Agreement.

10. Remedies. Each party agrees that its obligations hereunder are necessary and reasonable in order to protect the other party and such other party's business, and expressly agrees that monetary damages would be inadequate to compensate the other party for any breach by such party of any covenant or agreement set forth herein. Accordingly, each party agrees and acknowledges that any such violation or threatened violation will cause irreparable injury to the other party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the other party shall be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

11. Miscellaneous. This Agreement shall bind and inure to the benefit of the parties hereto and their successors and assigns. This Agreement shall be governed by the laws of the

State of Minnesota, without reference to conflict of laws principles. This document contains the entire agreement between the parties with respect to the subject matter hereof. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision hereof. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both parties hereto. This Agreement may be executed in counterparts which taken together shall constitute one agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first set forth above.

For: **Birds-Eye.Net, LLC.**

By: \_\_\_\_\_

Name: Bruce Bahlmann

Title: CEO

For: **The Company**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPENDIX**

**Mutual Nondisclosure Agreement**

Additional Description of Confidential Information Disclosed:

Disclosed by COMPANY:

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Disclosed by Birds-Eye.Net :

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