



- (d) “Include” (whether with or without an initial capital) means “include, without limitation” and “including” (whether with or without an initial capital) means “including, without limitation.”
- (e) “Person” (whether with or without initial capitals) means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a business trust, or an unincorporated organization.
- (f) “Record” (whether with or without initial capitals) means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form, and “electronic record” (either with or without initial capitals) means a record created, generated, sent, communicated, received, or stored by electronic means.
- (g) “Trade secret” (whether with or without initial capitals) has the meaning ascribed to that term by the Uniform Trade Secrets Act.

2. Confidentiality. The provisions of this section are the “Confidentiality Provisions.”

- (a) Confidentiality Generally; “Confidential Information” Defined. The Parties recognize that, in the course of performing under this Agreement, each Party may have access to the following things (collectively, “Confidential Information”) belonging to the other Party.
  - (i) Written information received from the other Party that is marked or identified as confidential;
  - (ii) Oral or visual information identified as confidential at the time of disclosure;
  - (iii) Oral or visual information that the receiving Party knew, or should have known, based on the circumstances, should be treated as confidential;
- (b) Obligations. With respect to the Confidential Information of the other Party, each Party will:
  - (i) Not disclose any such Confidential Information to any third party except professional advisors of the receiving Party who are bound by a legally recognized and enforceable obligation of confidentiality; and
  - (ii) Permit access to such Confidential Information only by its employees and other agents who have a bona fide need to know the Confidential Information and who are subject to enforceable obligations of confidentiality that are at least as strict as the obligations contained in this Agreement.
- (c) Exceptions to Confidentiality. Nothing in this section regarding confidentiality shall prevent either Party from disclosing Confidential Information that:
  - (i) is already known by the receiving Party if the Confidential Information is not subject to a previous obligation of the receiving Party to keep such Confidential Information confidential and the Confidential Information was not received in violation of a previous confidentiality obligation of the receiving Party or a third party of which the receiving Party knew or had reason to know;

- (ii) is publicly known or becomes publicly known without any breach of a confidentiality obligation of the receiving Party;
  - (iii) is received from a third party who is not under an obligation of confidentiality of which the receiving Party knew or had reason to know;
  - (iv) is independently developed by the receiving Party without use of the disclosing Party's Confidential Information;
  - (v) is disclosed by the disclosing Party to a third party without restrictions similar to those in this Agreement;
  - (vi) is approved in writing by the disclosing Party for disclosure; or
  - (vii) is required by law to be disclosed, provided that the receiving Party provides the disclosing Party as much notice as is practicable under the circumstances of such requirement prior to disclosure and provides to the disclosing Party, at the disclosing Party's expense, such reasonable assistance as the disclosing Party requests in order to pursue protective orders and the like..
- (d) Return of Confidential Information. Upon termination or expiration of this Agreement, each Party shall, upon notice from the other Party, return to the other Party, or destroy, all written or descriptive matter, including drawings, specifications, descriptions, or other papers, tapes, or any other media that contain any of the other's Confidential Information.
- (e) Injunctive Relief. Because unauthorized use or disclosure of Confidential Information may result in immediate and irreparable injury to a disclosing Party for which monetary damages may not be adequate, in the event that a receiving Party or any officer, director, employee, agent, or subcontractor of that receiving Party uses or discloses Confidential Information or, in the disclosing Party's reasonable opinion, the receiving Party is likely to use or disclose Confidential Information in breach of the receiving Party's obligations under this Agreement, the disclosing Party will be entitled to equitable relief, including temporary and permanent injunctive relief and specific performance. The disclosing Party shall also be entitled to recover any pecuniary gain that the receiving Party realizes from the unauthorized use or disclosure of the disclosing Party's Confidential Information. The rights in this section regarding confidentiality are in addition to any other rights a Party may have under this Agreement, or under applicable law.
- (f) Duration. The confidentiality obligations in this section regarding Confidentiality will last for each item of Confidential Information for the longer of:
- (i) Three years after first disclosure of the item to the receiving Party; or
  - (ii) For as long as the item remains a trade secret of the disclosing Party.

### 3. Arbitration.

- (a) Generally. If a dispute arises with regard to this Agreement, any Party may make a written demand for arbitration under this section. The Parties shall attempt to agree on the selection of a single arbitrator. If the Parties are unable to agree on the selection of a single arbitrator within 15 days after the demand, each Party shall appoint an arbitrator within 15 days. The two arbitrators shall then select a third arbitrator within 15 days of their appointment. If any Party fails to appoint an arbitrator within the allotted time, there shall be only one arbitrator, the one selected by the other Party. Each Party shall bear the cost of the arbitrator that

Party selects. The Parties shall equally bear the cost of the third arbitrator (or a single arbitrator if only one arbitrator is selected). The arbitrators shall reach their decision within 90 days after the appointment of the last arbitrator. Their decision shall be made under the commercial arbitration rules of the American Arbitration Association as modified by this section and shall be binding on all Parties. The arbitration award is enforceable as a judgment of any court having proper jurisdiction. All arbitration under this Agreement will take place in Oakland County, Michigan.

- (b) Exceptions for Equitable Relief. Notwithstanding the foregoing or anything to the contrary contained elsewhere in this Agreement, a Party may bring a proceeding against any other Party hereto for specific performance or injunctive or other forms or equitable relief in the state or federal courts of Oakland County, Michigan, and the federal courts within the jurisdiction of the United States District Court for the Eastern District of Michigan, Southern Division without having to submit the matter in question to arbitration as hereinabove set forth, provided, however, that such Party shall not seek any monetary award or relief in such action or proceeding unless its failure to do so would prejudice such Party's rights or ability to seek such monetary award or relief in another action or proceeding.

4. Miscellaneous.

- (a) Choice of Law. This Agreement shall be governed in all respects by the laws of the State of Michigan without regard to its conflict of laws provisions, and Client and Developer agree that the sole venue and jurisdiction for any equitable relief permitted under this Agreement shall be the Michigan state courts sitting in Oakland County in Michigan or the United States District Court for the Eastern District of Michigan, Southern Division, and Client and Developer hereby submit to the jurisdiction of, and consent to venue in, such courts.
- (b) Notice.
- (i) Timing. Any notice under this Agreement shall be deemed given:
- (A) If by personal delivery in the form of a record, upon receipt thereof;
  - (B) If by United States mail, at 1:00 PM local time at the receiver's address on the third Business Day after deposit in the United States mail, postage prepaid, certified mail, return receipt requested at any location in the continental United States;
  - (C) If by fax, at 12:00 noon local time at the receiver's address on the next Business Day, provided that the sender's fax device has generated a confirmation of transmission;
  - (D) If by overnight delivery service, at 12:00 noon local time at the receiver's address the next Business Day after sending; or
  - (E) If by electronic mail, at 12:00 noon local time at the receiver's physical address on the next Business Day after sending, provided that the sender does not receive any automated message indicating that the e-mail was not transmitted to the recipient's e-mail account.

- (ii) Address. Each notice will be sent to the address in the preamble or as otherwise specified by the Party.
- (c) Electronic Communications. The Parties agree to send and receive notices and otherwise permit binding communications by electronic means. Any requirement that any item be in writing is satisfied if the item is a record, whether electronic or otherwise. Any requirement that any item be signed is satisfied by an electronic signature.
- (d) Waiver. The waiver of, or failure of either Party to exercise, any right in any respect provided for herein shall not be deemed a waiver of any further right under this Agreement.
- (e) Severability. If any provision of this Agreement is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable.
- (f) Counterparts. This Agreement or any other document that forms a part of this Agreement, may be executed in one or more counterparts.
- (g) Drafting Party. No rule of law that requires that any part of the Agreement be construed against the Party drafting the language will be used in interpreting this Agreement.
- (h) Survival.
  - (i) The Confidentiality Provisions will survive for the periods stated in this Agreement.
  - (ii) The provisions of Sections 3, and 4 will survive indefinitely the termination of this Agreement.
- (i) Entire Agreement. This Agreement constitutes the entire agreement between Client and Developer with respect to the subject matter hereof and there are no representations, understandings or agreements about the subject matter hereof that are not fully expressed in this Agreement. No amendment, change, waiver, or discharge of this Agreement shall be valid unless in a record signed by the Party against whom enforcement is sought.

[Signatures appear on the next page.]

**Signature Page to**

**Technology Confidentiality Agreement**

The Parties have caused their authorized representatives to execute this Agreement as of the Effective Date.

**GPT**

**GoPoint Technology, Inc**  
a Michigan corporation

Brennan Hamilton

By: \_\_\_\_\_  
(Signature)

Its: President

Its: