

# PocketGPSWorld.Com Ltd

## Mutual Non-Disclosure Agreement

This Mutual Non-Disclosure Agreement (this "Agreement") dated as of 8th December 2009 is made between PocketGPSWorld.com Ltd ("PocketGPSWorld.com Limited") and iPhone Application Test User Group (the "User") (collectively, the "Parties").

PocketGPSWorld.com Ltd and the User wish to protect the confidentiality of their Confidential Information (as defined below) and restrict the use and disclosure of such Confidential Information for the Purpose (as defined below). Accordingly, PocketGPSWorld.com Ltd and the User hereby agree as follows:

### 1. DEFINITIONS

For the purposes of this Agreement, the words and phrases used in this agreement have the following meanings ascribed to them:

"Confidential Information" means all information of whatever nature, relating to the Purpose, relating to a Party, or a Party's Related Entities, disclosed by a Party (the "Disclosing Party") or on behalf of a Party by that Party's Related Entity, agent or Professional Advisors to the other Party (the "Receiving Party"), whether: (i) in physical form (including in writing, and by the provision of products, samples, models, pre-production samples or prototypes); (ii) electronic form (including on disk, magnetic tape, via email, on CD, DVD, USB mass storage device, hard drives or any other digital or analogue storage medium); or (iii) disclosed orally or pursuant to visits to premises or sites, where that information is: (a) designated as "confidential" or "proprietary"; (b) if disclosed orally, is summarised in writing by the Disclosing Party and sent to the Receiving Party within ten (10) days of such disclosure; and/or (c) given the nature of the information or the circumstances surrounding its disclosure, should reasonably be expected to be considered confidential. Confidential Information includes without limitation (i) non-public information and information that is not readily available relating to the Purpose or the Disclosing Party's products, software, technology, know how, trade secrets, methodologies, ideas, concepts, processes, algorithms, intellectual property, customers, business plans, promotional and marketing activities, promotional and marketing plans, finances and other business affairs, and (ii) third-party information that the Disclosing Party is under an obligation to keep confidential;

"Party" means a party to this Agreement;

"Professional Advisors" means in relation to a Party, its lawyers, solicitors, counsel, barristers or attorneys, its accountants and any officers and/or employees of such entities, provided that each such advisor owes a fiduciary duty to its clients, and any other professional advisor that owes a fiduciary duty to its clients;

"Purpose" means each Party's assessment and evaluation of the other Party's Confidential Information, Tools, Technologies and Infrastructure relating to the testing and integration of content developed and/or owned and/or controlled by either Party.

"Related Entity" means, in relation to a Party, any other entity controlling, controlled by or under common control with a Party. The terms "control", "controlling" and "controlled", as used in this definition, shall mean the legal or beneficial ownership, directly or indirectly, of more than 50% of the issued share capital or more than 50% of the voting rights, or the power, directly or indirectly, to appoint a majority of the members of the board of directors or similar governing body of such entity.

## **2. EXCLUSIONS**

Confidential Information does not include any information that:

- (i) is or becomes publicly available without breach of this Agreement;
- (ii) was known to the Receiving Party at the time of its receipt from the Disclosing Party, as evidenced by independent documentation;
- (iii) is received from a third party which did not acquire or disclose such information through a breach of an obligation of confidentiality or by a wrongful or tortious act; or
- (iv) was independently developed by the Receiving Party by a means other than through its access to any Confidential Information, as evidenced by independent documentation.

## **3. USE AND PROTECTION OF CONFIDENTIAL INFORMATION**

The Receiving Party may use the Confidential Information disclosed to it by the Disclosing Party solely for and in relation to the Purpose.

Except as expressly provided in this Agreement, the Receiving Party will not disclose the Confidential Information of the Disclosing Party to third party(parties) without the Disclosing Party's prior written consent, and any such permitted disclosure shall be under a written agreement with said parties. In relation to such disclosure of Confidential Information to third parties, the Disclosing Party, may at its discretion require such third party to enter into an agreement substantially identical to this Agreement with the Disclosing Party. Notwithstanding the provisions of this clause, the Receiving Party may disclose Confidential Information to its Personnel and Professional Advisors in accordance with the provisions set forth in section 4 below without the need to obtain the Disclosing Party's consent.

The Receiving Party shall use its best efforts to avoid disclosure, dissemination or unauthorised use of the Confidential Information, including, taking the same measures it takes to protect its own confidential information of a similar nature, and at a minimum it shall take all reasonable measures to avoid such disclosure, dissemination or unauthorised use of the Confidential Information.

At no time and under no circumstances shall the Receiving Party reverse engineer, de-compile or disassemble any products, samples, models, pre-production samples, prototypes or software made available by the Disclosing Party or otherwise attempt in any way to gain access to, possession of or an understanding of source code or to use such products, samples, models, pre-production samples, prototypes or software, for any reason other than the Purpose.

## **4. RECEIVING PARTY PERSONNEL**

The Receiving Party will restrict the possession, knowledge and use of the Confidential Information of the Disclosing Party to the Receiving Party's officers and/or employees ("Personnel") and/or Professional Advisors who have a need to possess, know or use the Confidential Information in connection with the Purpose. Prior to disclosing Confidential Information to Professional Advisors and/or Personnel, the Receiving Party shall inform the Professional Advisors and/or Personnel of the confidential nature of the Confidential Information to be disclosed, and shall ensure that such Professional Advisors and/or Personnel execute written agreements which prevent further disclosure of Confidential Information, restrict the use of said Confidential Information and contain terms no less onerous than the terms of this Agreement.

## **5. DISCLOSURE TO GOVERNMENT ENTITIES OR REGULATORY AUTHORITIES**

The Receiving Party may disclose the Confidential Information of the Disclosing Party as required to comply with binding orders of governmental entities or regulatory authorities that have jurisdiction over the Receiving Party, provided that the Receiving Party:

- (i) gives the Disclosing Party reasonable written notice to allow the Disclosing Party to seek an injunctive order or another appropriate remedy or remedies;
- (ii) provides any assistance which the Disclosing Party may reasonably require in order to secure such order or such remedy;
- (iii) discloses only such information as is required by the governmental entity or regulatory authority; and
- (iv) uses its reasonable best efforts to obtain confidential treatment for any Confidential Information so disclosed.

## **6. OWNERSHIP OF CONFIDENTIAL INFORMATION**

The exclusive right to possess and/or control the Confidential Information of the Disclosing Party shall vest in and remain with the Disclosing Party. The Disclosing Party's disclosure of Confidential Information will not constitute an express or implied grant to the Receiving Party of any right or interest in, to or under, the Disclosing Party's patents, copyrights, trade secrets, trademarks or other intellectual property rights, or its products, software, technology, know how, trade secrets, methodologies, ideas, concepts, processes, algorithms, intellectual property, promotional and marketing plans and business plans, other than for the Purpose and in accordance with the terms of this Agreement.

The Receiving Party will notify the Disclosing Party immediately upon discovery of any unauthorised use or disclosure of Confidential Information of the Disclosing Party or any other breach of this Agreement by the Receiving Party, its Professional Advisors and/or its Personnel. The Receiving Party will co-operate with the Disclosing Party in every reasonable way to help the Disclosing Party regain possession and exclusive control of such Confidential Information and prevent its further unauthorised use and disclosure.

## **7. RETURN OF CONFIDENTIAL INFORMATION**

The Receiving Party will, at any time, promptly on the Disclosing Party's written request, return or destroy (at the direction of the Disclosing Party) Confidential Information (including, without limitation any copies or summaries of the Confidential Information, and all products, samples, models, pre-production samples or prototypes, photographs, schematics, notes, and excerpts from the Confidential Information, and any copies thereof) of the Disclosing Party. At the Disclosing Party's option, the Receiving Party will provide written certification of its compliance with this clause.

## **8. INJUNCTIVE RELIEF**

The Receiving Party acknowledges that disclosure or use of Confidential Information in violation of this Agreement could cause irreparable harm to the Disclosing Party for which monetary damages may be difficult to ascertain or be an inadequate remedy. The Receiving Party therefore agrees that the Disclosing Party will have the right, in addition to its rights to recover monetary damages and other rights and remedies, to seek injunctive relief for any violation or threatened violation of this Agreement.

## **9. SCOPE AND TERMINATION**

This Agreement is intended to cover the Confidential Information disclosed by each Party, both prior, and subsequent, to the date of this Agreement, and shall have a duration of one (1) year from the date first written above. Each party's obligations with respect to the other

Party's Confidential Information will survive for five (5) years following the expiration or termination of this Agreement.

Neither Party is required or obliged to provide Confidential Information to the other Party under this Agreement. The nature, extent and content of the Confidential Information disclosed shall be at the complete discretion of the Disclosing Party.

Each Party shall have the right to terminate discussions with the other Party at any time, or cease to pursue the Purpose, provided that in such circumstances, each Party acknowledges, understands and agrees that is, and shall continue to be, bound by the terms of this Agreement.

#### **10. NO WARRANTIES**

No representation or warranty, express or implied, is made or given under this Agreement as to the accuracy, completeness, or current nature of any of the Confidential Information disclosed under this Agreement, or its usefulness or fitness for purpose for, or use with, or in relation to, the Purpose. Disclosing Party shall not be liable to Receiving Party or its Related Entities, Professional Advisors or Personnel for any personal or bodily injury or property damage arising from or resulting in any way from any defect in any Confidential Information or for any errors, omissions or misstatements contained in the Confidential Information..

#### **11. NO FURTHER AGREEMENT**

Neither this Agreement nor disclosure or receipt of Confidential Information shall constitute or imply any promise or intention to make any purchase of products or services by either Party hereto or any commitment by either Party hereto with respect to the present or future marketing of any product or service or any promise or intention to enter into any other business arrangement.

#### **12. NON-DISCLOSURE OF DISCUSSIONS**

Except as expressly permitted here-under, without the prior written consent of the other Party, each Party agrees that neither it nor any of its representatives will disclose to any other person or entity: (i) the fact that the Confidential Information of the other Party has been made available to it; or (ii) the fact that the Parties are engaged in discussions in relation to the Purpose.

#### **13. MISCELLANEOUS**

(i) This Agreement constitutes the entire agreement between the Parties relating to the matters discussed herein and supersedes all prior proposals, representations, statements or agreements regarding the subject matter hereof, whether written or oral. This Agreement may be amended or modified only with the mutual written consent of both of the Parties. Each Party's obligations here-under are in addition to, and not exclusive of, any and all of its other obligations and duties to the other Party, whether express, implied, in fact or in law. Subject to the limitations set forth in this Agreement, this Agreement will inure for the benefit of, and be binding upon, the Parties and their respective successors and assigns.

(ii) Any failure by either Party to enforce the other Party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

(iii) If a provision of this Agreement is held invalid under any applicable law, such invalidity will not affect any other provision of this Agreement that can be given effect without the invalid provision. Further, all terms and conditions of this Agreement will be deemed enforceable to the fullest extent permissible under applicable law.

(iv) The Parties may not assign this Agreement, in whole or in part, including but not limited to any rights or obligations memorialised herein without the prior written consent of the other Party.

(v) The relationship between the Parties shall not be construed to be that of employer and employee, nor to constitute a partnership, joint venture, franchise or agency of any kind

(vi) The laws of the United Kingdom, without regard to the rules governing conflict of laws, govern all matters arising under or relating in any way to this Agreement, including all tort claims. Each of the parties submits to the exclusive jurisdiction of the courts located in the United Kingdom.

The Parties have executed this Agreement as of the date first written above.

**Electronically Signed for and on behalf of PocketGPSworld.Com Limited:**

Full Name	Mike Barrett
Position	Director
Date	8th December 2009

**Electronically Signed for and on behalf of the User:**

By participation in the iPhone Application Test User Group it is assumed that you have agreed to and accepted the terms of this non-disclosure agreement.