

Proprietary and Confidential

1STPOINT COMMUNICATIONS MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Confidentiality Agreement (herein known as “Confidentiality Agreement”) is entered into on _____, 20____, by and between _____, with its principal place of business at _____ (herein known as “COMPANY”) and 1stpoint Communications, LLC., a New York State Limited Liability Company with its principal place of business at 401 East 34th Street, Suite #N27J, New York, NY 10016 (herein known as “1stpoint”). In connection with a possible agreement, the parties hereby agree to the following:

1. **Confidentiality.** Certain Confidential Information may be requested by either party in order to evaluate the feasibility of an agreement. In that regard, we each agree to keep all Confidential Information confidential and neither to appropriate for its own use, disclose or reveal any of it in any manner except for disclosures: (i) to those of our directors, officers, employees, advisors, and agents (collectively, “Representatives”) who need to know such information for the purpose of evaluating the proposed agreement (it being understood that those Representatives will be informed of, and will be bound by, the confidential nature of the Confidential Information and the terms of this Confidentiality Agreement), and (ii) as otherwise permitted by this Confidentiality Agreement.

2. **Confidential Information.** The term “Confidential Information” shall mean all information disclosed in writing by one party to the other party that is clearly marked “CONFIDENTIAL” by the disclosing party at the time of disclosure. “Confidential Information” shall also include oral information disclosed by one party to the other party, provided that the disclosing party designates such information as confidential at the time of disclosure and gives recipient a written summary of such information within five business days after the oral disclosure was made. Notwithstanding the foregoing, information disclosed by either party to the other party concerning proposals, customer lists, customer names, and contact information, employee files, flow charts, software (in all stages of development and in final form), source code, tapes, file data, financial and pricing information and rates, product and marketing plans, trade secrets, and marketing concepts is hereby deemed to be Confidential Information regardless of whether it is identified. The term “Confidential Information” does not include any information that: (i) was already known by the receiving party free of any obligation to keep it confidential at the time of its disclosure by the disclosing party, (ii) becomes publicly known through no wrongful act of the receiving party, (iii) is rightfully received from a third person without knowledge of any confidentiality obligation, (iv) is independently acquired or developed without violating any of our obligations under this agreement, or (v) is approved for release by written authorization of the disclosing party.

3. **Required Disclosure.** In the event that either of us or any of our Representatives

is requested pursuant to, or required by, applicable law, regulation, or legal or administrative process to disclose any of the Confidential Information, we will promptly notify the disclosing party in writing so that such party may seek a protective order or other appropriate remedy or, in its discretion, waive compliance with the terms of this Confidentiality

4. **Agreement.** In the event that no such protective order or other remedy is obtained, or if such party does not waive compliance with the terms of this Confidentiality Agreement, we each agree to furnish only that portion of the Confidential Information that we are advised by counsel is legally required and that we will use reasonable efforts to obtain reliable assurances that confidential treatment will be accorded to the Confidential Information.

5. **Termination of Negotiations.** If an agreement is not executed within sixty (60) days following the execution hereof, we each agree upon written request to promptly return to the other the original and all copies of the Confidential Information in our possession or in the possession of our Representatives, and we will certify the destruction of all copies of any analysis, compilations, studies, or other documents prepared by us or for our internal use which reflect the Confidential Information, except that a single copy of the Confidentiality Agreement may be retained by the receiving party solely as an archival record of the materials received. All Confidential Information is, and shall remain, the property of the party providing it.

6. **No Representation or Warranty.** Each party understands and acknowledges that neither of us, nor our Representatives, makes any representation or warranty, expressed or implied, as to the accuracy or the completeness of the Confidential Information, and that any information concerning future plans may be tentative and is not intended to represent firm decisions by a party concerning the implementation of such plans. We each agree that neither of us, nor our Representatives, will have any responsibility to the other relating to or arising from our use of the Confidential Information, except as may be specifically provided in this Confidentiality Agreement or any agreement that we may subsequently execute.

7. **No Obligation to Execute Agreement.** Each of us agrees that unless and until a definitive agreement between us has been executed and delivered, neither party will be under any legal obligation of any kind with respect to such agreement by virtue of this Confidentiality Agreement nor any written or oral expression with respect to such agreement by any of our Representatives, except, in the case of this Confidentiality Agreement, for the matters specifically agreed to herein.

8. **Specific Performance.** Any breach of our confidentiality undertaking as expressed herein by anyone making any disclosure or misappropriation of Confidential Information could cause irreparable harm to the nonbreaching party, the amount of which would be extremely difficult to estimate. Accordingly, it is understood and agreed that monetary damages would not be a sufficient remedy for a breach of this agreement and that specific performance and injunctive relief without the requirement to post bond therefore shall be appropriate remedies for such breach or any threat of such breach. Such remedies shall not be deemed to be the exclusive remedies for any such breach but shall be in addition to all other

remedies available at law or in equity.

9. Amendments and Waivers. This Confidentiality Agreement may be amended or modified, and any of the terms or covenants hereof may be waived, only a written instrument duly executed by each of the parties hereto, or in the case of a waiver, by the party waiving compliance.

10. Applicable Law and Divisibility. This Confidentiality Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York, without reference to principles of conflicts of law. If any of the provisions of this agreement shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this agreement shall remain in full force and effect. If any action is brought to enforce the terms of this agreement against the other party hereto, the prevailing party shall be entitled to its costs and reasonable attorney's fees.

11. Term. This Confidentiality Agreement shall become effective upon the date of execution and shall continue for a period of four (4) years thereafter unless terminated by either of us upon ten (10) days written notice to the other party. The obligations to protect the confidentiality of any Confidential Information received prior to such termination shall survive termination of this agreement for so long as such information continues to be Confidential Information.

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

FOR COMPANY: FOR 1STPOINT:

By: _____ By: _____

Title: _____ Title: _____

Date: _____ Date: _____

[NO FURTHER TEXT BELOW]