

ProFix IT Non-Disclosure Agreement

This Agreement is entered into this ___ day of _____, 201█ by and between ProFix IT and _____, with offices at _____.

WHEREAS Discloser possesses certain ideas and information relating to Business Activities, Business Strategies, Business Data, Database Systems, Software Integration, and Hardware / Software Maintenance that is confidential and proprietary to Discloser (hereinafter "Confidential Information"); and

WHEREAS the Recipient is willing to receive disclosure of the Confidential Information pursuant to the terms of this Agreement for the purpose of business development and operations management plus system implementation, integration, training, and support;

NOW THEREFORE, in consideration for the mutual undertakings of the Discloser and the Recipient under this Agreement, the parties agree as follows:

- 1. Disclosure:** Discloser agrees to disclose, and Receiver agrees to receive the Confidential Information.
- 2. Confidential Information:** As used in this Agreement, "Confidential Information" means all information (whether oral, written, electronic or otherwise) disclosed by one party or its agents (collectively the "Disclosing Party") to the other party (the "Receiving Party"). Confidential Information includes, without limitation (i) information relating to the Disclosing Party's current or future technology, customers, prospects, business plans, business practices, strategies, performance, promotional and marketing activities, finances and other business affairs, which information may include, but is not limited to, customer data and lists, business manuals, processes, financial information, databases, know-how, methods of doing business, software, personnel data, contracts, business relationships and business partners, (ii) third-party information that the Disclosing Party is obligated to keep confidential and (iii) any copies and analysis of the foregoing.
- 3. Non-Circumvention:** Each Party agrees to refrain from circumventing the other Party in any dealings with any third party, either directly or indirectly, concerning the Business Purposes or any Confidential Information or Business Relationships disclosed hereunder.

4. Confidentiality:

4.1 Use of Confidential Information: Confidential Information shall be kept strictly confidential by the Receiving Party and the Receiving Party may use Confidential Information only in pursuance of its business relationship with the Disclosing Party. Except as expressly provided in this Agreement, the Receiving Party will not disclose the Disclosing Party Confidential Information to anyone without the Disclosing Party's prior written consent. The Receiving Party will make all efforts to avoid disclosure, dissemination or unauthorized use of Disclosing Party Confidential Information. The Receiving Party will not export any Disclosing Party Confidential Information in any manner contrary to the export regulations of the United States.

4.2 Receiving Party Personnel: The Receiving Party will restrict the possession, knowledge and use of Disclosing Party Confidential Information to its officers, directors, employees, contractors and entities controlled by it (collectively, "Personnel") who have a need to know Disclosing Party Confidential Information in connection with the parties' business relationship. All references to the parties herein shall include Personnel.

4.3 Disclosures to Governmental Entities: The Receiving Party may disclose the Disclosing Party Confidential Information as required to comply with binding orders of governmental entities that have jurisdiction over it, provided that the Receiving Party (i) gives the Disclosing Party reasonable written notice to allow the Disclosing Party to seek a protective order or other appropriate remedy, (ii) discloses only such information as is required by the governmental entity, and (iii) uses commercially reasonable efforts, at the Disclosing Party's cost and expense, to obtain confidential treatment for any Disclosing Party Confidential Information so disclosed.

5. Limits on Confidential Information: Confidential Information shall not be deemed proprietary and the Recipient shall have no obligation with respect to such information where the information:

- a) was known to Recipient prior to receiving any of the Confidential Information from Discloser;
- b) has become publicly known through no wrongful act of Recipient;
- c) was received by Recipient without breach of this Agreement from a third party without restriction as to the use and disclosure of the information;
- d) was independently developed by Recipient without use of the Confidential Information; or
- e) was ordered to be publicly released by the requirement of a government agency.

6. Ownership of Confidential Information: All Disclosing Party Confidential Information will remain the exclusive property of the Disclosing Party. The Disclosing Party does not make any representations or warranties as to the accuracy or completeness of any Disclosing Party Confidential Information. The Disclosing Party's disclosure of Disclosing Party Confidential Information will not constitute an express or implied grant to the Receiving Party of any right, title or interest, including without limitation any

license, to or under the Disclosing Party's patents, copyrights, trade secrets, trademarks or other intellectual property rights or ownership rights.

7. Notice of Unauthorized Use: The Receiving Party will notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Disclosing Party Confidential Information or any other breach of this Agreement by the Receiving Party. The Receiving Party will cooperate with the Disclosing Party in every reasonable way to help the Disclosing Party regain possession of such Confidential Information and prevent its further unauthorized use.

8. Return of Confidential Information: The Receiving Party will return or destroy all tangible materials embodying Disclosing Party Confidential Information (in any form and including, without limitation, all summaries, copies and excerpts of Confidential Information) promptly following the Disclosing Party's written request, retaining no copies of the same. At the Disclosing Party's option, the Receiving Party will provide written certification of its compliance with this Section.

9. Injunctive Relief: The Receiving Party acknowledges that disclosure or use of the Disclosing Party's 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 an inadequate remedy. The Receiving Party therefore agrees that the Disclosing Party will have the right, in addition to its other rights and remedies, to seek injunctive relief for any violation of this Agreement.

10. Term and Termination: This Agreement is intended to cover Disclosing Party Confidential Information disclosed by the Disclosing Party subsequent to the date hereof. This Agreement automatically will terminate upon the completion or termination of the parties' business relationship; provided, however, that the Receiving Party's obligations with respect to the Disclosing Party's Confidential Information will survive for five (5) years following such completion or termination

11. Miscellaneous:

11.1 This Agreement will not create a joint venture, partnership or other formal business relationship or entity of any kind, or an obligation to form any such relationship or entity. Each party will act as an independent contractor and not as an agent of the other party for any purpose, and neither will have the authority to bind the other.

11.2 This Agreement constitutes the entire agreement relating to the matters discussed herein and may be amended or modified only with the mutual written consent of the parties.

11.3 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.

11.4 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, and, when necessary, the court is requested to reform any and all terms or conditions to give them such effect.

11.5 This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware. This Agreement may be executed in counterparts and by facsimile, each of which shall be deemed to be an original, and all of which together shall constitute one and the same Agreement.

11.6 The headings used herein are for convenience of reference only and shall be of no legal effect in the interpretation of the terms hereof.

12. Survival of Rights and Obligations: This Agreement shall be binding upon, inure to the benefit of, and be enforceable by (a) Discloser, its successors, and assigns; and (b) Recipient, its successors and assigns.

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

ProFix IT

Company Name

By: _____

By: _____

Name: John Harris

Name: _____

Title: Principal

Title: _____