

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

Effective Date:

This Confidentiality and Nondisclosure Agreement (the "Agreement") is made between _____ ("Company") with principal offices at:

_____, and MESSAGEONE INC on behalf of itself and its Affiliates (collectively, "Service Provider"), with principal offices at 401 Congress Ave. STE 2650. Austin, TX 78701 United States.

WHEREAS, the parties mutually desire to engage in discussions regarding _____ (the "Authorized Purpose");

WHEREAS, the parties in the course of their dealings may furnish to each other "Confidential Information" as defined in Section 1;

WHEREAS, the parties do not wish to (i) convey any right, title, or interest in such Confidential Information; (ii) make such Confidential Information public or common knowledge; (iii) disclose such Confidential Information to any third party; or (iv) permit any use of such Confidential Information except to facilitate the Authorized Purpose; and

NOW, THEREFORE, in consideration of the Authorized Purpose, disclosure of Confidential Information, and any future business relationship between the parties, it is hereby agreed as follows:

1. **DEFINITIONS.** All information which is defined as Confidential Information hereunder in tangible form shall be marked as "Confidential" or the like or, if intangible (e.g. visually or orally disclosed), shall be designated as being confidential at the time of disclosure and shall be confirmed as such in writing within thirty (30) days of the initial disclosure.

"Confidential Information" may include all technical, product, business, financial, and other information regarding the business and software programs of either party, its customers, employees, investors, contractors, vendors and suppliers, including but not limited to programming techniques and methods, research and development, computer programs,

documentation, marketing plans, customer identity, and business methods. Without limiting the generality of the foregoing, Confidential Information shall include all information and materials disclosed orally or in any other form, regarding Service Provider's software products or software product development, including, but not limited to, the configuration techniques, data classification techniques, user interface, applications programming interfaces, data modeling and management techniques, data structures, and other information of or relating to Service Provider's software products or derived from testing or other use thereof. Confidential Information includes all such Confidential Information that may have been disclosed by either party to the other party, before or after the Master Agreement Effective Date. Confidential Information includes information generally not publicly known, whether tangible or intangible and in whatever form or medium provided, as well as any information generated by a party that contains, reflects, or is derived from such information. For the purpose of this entire Section 1, 'Service Provider' shall include all its Affiliates. "Affiliate" under this Agreement shall mean any entity, directly or indirectly, controlled by or under common control with or controlling a party to this Agreement.

2. **CONFIDENTIALITY OF SOFTWARE.** The following is deemed Service Provider Confidential Information with or without marking or written confirmation: (i) software and other related materials furnished by Service Provider; (ii) the oral and visual information relating to the Software and provided in Service Provider's training classes; and (iii) Service Provider's representation methods of modeled data.

3. **NON-USE AND NONDISCLOSURE.** Recipient agrees that it will not at any time disclose, give, or transmit (in any manner or form or for any purpose) the Confidential Information received from the other party to any person, party, firm, or corporation. Recipient agrees that it will not use such Confidential Information for its own benefit or the benefit of

any third party, or for any purpose other than the Authorized Purpose.

Recipient shall take all reasonable measures to preserve the confidentiality and avoid the disclosure of Discloser's Confidential Information. Such reasonable measures shall be no less than those procedures and controls Recipient employs to protect its own confidential information of like importance. Neither party shall disassemble, decompile, or otherwise reverse engineer any software product of the other party and, to the extent any such activity may be permitted, the results thereof shall be deemed Confidential Information subject to the requirements of this Agreement.

4. **NEED TO KNOW BASIS.** Except as provided otherwise herein, each party shall limit its disclosure of the other party's Confidential Information to those of its officers, employees, and consultants (i) to which such disclosure is necessary for the Authorized Purpose; and (ii) who are bound pursuant to a written agreement ("Personnel Confidentiality Agreement") by confidentiality obligations with Recipient which are no less restrictive than those set forth in this Agreement. No consultant of Recipient shall have access to Discloser's Confidential Information under this Agreement if such consultant or consultant's employer competes directly or indirectly with Discloser. Recipient agrees to take full responsibility for the actions and/or omissions of its officers, employees, and consultants under the terms and conditions of this Agreement and any act or omission of Recipient's officers, employees, or consultants shall constitute an act and/or omission of Recipient. In the event the employment of any of Recipient's officers, employees, or consultants terminates with Recipient (each a "Former Recipient Personnel"), Recipient assigns to Discloser sufficient rights to allow Discloser to prevent and/or remedy, under a Former Recipient Personnel's Personnel Confidentiality Agreement, any unauthorized use or disclosure to a third party of Discloser's Confidential Information by such Former Recipient Personnel.

5. **DISCLAIMER OF WARRANTIES.** ANY AND ALL CONFIDENTIAL INFORMATION PROVIDED BY SERVICE PROVIDER TO THE RECIPIENT ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND.

6. **NONCONVEYANCE.** Confidential

Information shall at all times remain the property of Discloser. Nothing in this Agreement shall be construed as conveying to the Recipient: (i) any right, title, or interests in or to Discloser's Confidential Information or intellectual property rights associated therewith, or (ii) any license to use, sell, exploit, copy, or further develop any such Confidential Information.

7. **RETURN OF CONFIDENTIAL INFORMATION.** Upon Discloser's request or upon termination of the Authorized Purpose or this Agreement (whichever occurs sooner), Recipient shall promptly destroy or deliver to Discloser all documents, notes, or other physical embodiments of, reflecting, or derived from the Confidential Information (including any copies thereof) that are in Recipient's possession or control.

Upon Discloser's request, an officer of Recipient shall provide the Discloser with written certification of the completeness of the destruction or delivery of the Confidential Information.

8. **EXCLUDED INFORMATION.** Recipient agrees that its covenant not to disclose or use Discloser's Confidential Information shall not apply to any information that:

8.1 is, or at any time becomes a part of the public domain through no act or omission of Recipient;

8.2 is independently discovered or developed by Recipient without use of the Confidential Information;

8.3 is rightfully obtained by Recipient from a third party without any obligation of confidentiality; or

8.4 is already known by Recipient without any obligation of confidentiality prior to obtaining the Confidential Information from Discloser.

9. **COURT ORDERED DISCLOSURE.** Recipient shall not be liable for disclosure of Confidential Information if made in response to a valid order of a court or authorized agency of government provided that notice is promptly given to the Discloser so that a protective order may be sought and other efforts employed to minimize the required disclosure. Recipient shall cooperate with Discloser in seeking the protective order and engaging in such other efforts.

10. **NO COMMITMENT.** This Agreement does not in any way bind the parties to enter into a business relationship of any nature with the other. Nothing herein or any other verbal representations made by either party shall be construed as a binding commitment to establish a business relationship. Neither party shall have any liability to the other, except for the breach of this Agreement, if the parties do not establish a business relationship that is expressed in writing and expressly stated to be legally binding.

11. **REMEDIES.** Recipient acknowledges that the Discloser shall have the right to take all reasonable steps to protect its Confidential Information including, but not limited to, injunctive relief and any other remedies as may be available at law or in equity in the event the Recipient does not fulfill its obligations under this Agreement.

Notwithstanding anything contained hereunder, during the term of this Agreement and for a period of 6 months thereafter, neither party will file a declaratory judgment action to invalidate or to assert non-infringement positions in relation to the other party's patents or patent applications.

12. **ATTORNEY'S FEES.** In the event any action, including arbitration, is brought to enforce any provision of this Agreement, or to declare a breach of this Agreement, the nonbreaching party in the event of a determined breach or the prevailing party otherwise shall be entitled to recover, in addition to any other amounts awarded, reasonable legal and other related costs and expenses, including attorney's fees incurred thereby.

13. **NONASSIGNMENT.** Neither party may assign or transfer this Agreement or any rights hereunder to any third party without the prior written consent of the other party.

14. **TERMINATION.** This Agreement may

be terminated by either party on thirty (30) days' written notice. Upon termination of this Agreement, Recipient shall return Discloser's Confidential Information in accordance with Section 7. Recipient's obligations under this Agreement including, but not limited to, those relating to the non-use and nondisclosure of Discloser's Confidential Information shall continue after the termination of the Authorized Purpose or this Agreement.

15. **SEVERABILITY AND REFORMATION.** Each provision of this agreement is a separately enforceable provision. If any provision of this Agreement is determined to be or becomes unenforceable or illegal, such provision shall be reformed to the minimum extent necessary in order for this Agreement to remain in effect in accordance with its terms as modified by such reformation.

16. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties regarding the subject matter addressed hereof and supercedes all proposals and prior discussions and writings between the parties with respect thereto. Any signed copy of this Agreement made by reliable means (e.g., photocopy or facsimile) shall be considered an original. The parties agree that this Agreement may not be altered, amended or modified except in writing and signed by an authorized representative of each party.

17. **GOVERNING LAW.** THIS AGREEMENT SHALL BE CONSTRUED FOR ALL PURPOSES IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS OF ANY STATE OR JURISDICTION.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the latest date set forth below:

MessageOne Inc.

(“Service Provider”)

(“Company”)

Signature

Signature

Print Name

Print Name

Title

Date

Title

Date