

Non-Disclosure and Reporting Agreement

Digitrax Entertainment and/or their affiliates (collectively "DTE") and the undersigned Recipient ("Recipient") hereby enter into an agreement ("Agreement") in connection with, and in order to permit the Recipient to evaluate certain products, services, offers and other such materials as DTE may see fit to permit access, and to perform hereunder an evaluation of same by the Recipient, for which DTE may disclose to the Recipient certain Proprietary Information (as defined below). The parties hereby agree that any and all trade information, processes, pricing, and software information is proprietary, confidential, and/or a trade secret of the industry.

In consideration of DTE providing Proprietary Information to the Recipient and the Recipient analyzing and returning a report ("Beta Test Report"), and for other good and valuable consideration and mutual covenants, the sufficiency of which are hereby acknowledged, each of the parties hereto, does hereby agree as follows:

- 1. Proprietary Information.** In the course of evaluating the items, the Recipient will have access to, among other things, certain of DTE's confidential and proprietary business documents and information, including, but not limited to, products, services, marketing, promotion and advertising data, technologies, know-how, trade secrets, current and future marketing and business plans and current and future research and development, all of which are or may be deemed to be confidential and proprietary and are owned and used by or are exclusively licensed to DTE. Such information shall be referred to as "Proprietary Information" and shall also include any and all other confidential and proprietary information relating to the business conducted by DTE; provided, however, that the following information shall not be deemed Proprietary Information: (i) information which has become publicly available without breach hereunder by the Recipient or another person, (ii) information which was rightfully received by the Recipient from a source not under obligation of confidentiality to DTE, (iii) information in the possession of the Recipient, in written or other recorded form, prior to disclosure by DTE, (iv) information which is developed by the Recipient independent of any Proprietary Information, and (v) information which DTE has approved in writing for release by the Recipient without restriction. Notwithstanding the foregoing, it shall not be a breach of this Agreement for either party to disclose Proprietary Information of the other party if required to do so under law or in a judicial or other governmental investigation or proceeding, provided the other party has been given prior notice and the disclosing party has sought all available safeguards against widespread dissemination prior to such disclosure. Proprietary Information may be preliminary or incomplete and relate to products or services under development or planned for development. Recipient acquires no intellectual property rights under this Agreement except the limited rights necessary to evaluate the Transaction and to perform thereunder if the Transaction is consummated.
- 2. Protection of Proprietary Information.** The Recipient acknowledges that DTE has protected the secrecy of all Proprietary Information, that said Proprietary Information is of critical importance to DTE, that a violation of this Agreement would seriously and irreparably impair and damage DTE's business, and that the Recipient shall keep all Proprietary Information in a fiduciary capacity for the sole benefit of DTE.
- 3. Non-Use and Non-Disclosure.** The Recipient shall, throughout the beta testing period, and for a period of two weeks following the official end of the beta testing period, hold the Proprietary Information in secrecy and confidence in accordance with the provisions of this Agreement and shall use the Proprietary Information solely for the purpose of evaluating the items to which DTE grants access and the completion of the Beta Test Report. The Recipient shall not disclose, divulge, provide or otherwise make available any Proprietary Information, or any portion or summary thereof (or any notes, reports, analyses, studies or other documents made by or for Recipient or its employees, representatives or agents with respect to the Proprietary Information), to any person, firm, corporation or other entity. In the event that DTE so requests in writing, the Recipient shall deliver to DTE all documents and other recordings containing Proprietary Information supplied to the Recipient and all copies thereof and agrees to destroy all notes, summaries, analyses and compilations prepared by the Recipient or for the Recipient's use containing or reflecting any such Proprietary Information.
- 4. Non-Solicitation.** During the period ending sixty (60) days from the receipt of the testing software, the Recipient will not, directly or indirectly, solicit clients and/or employees of DTE for purposes of providing or offering services identical or reasonably substitutable to DTE's business.

- 5. Ownership of Proprietary Information.** All Proprietary Information shall remain the exclusive property of DTE and nothing in this Agreement, or any course of conduct between the parties shall be deemed to grant to the Recipient any rights in or to the Proprietary Information of DTE, or any part thereof, other than as expressly granted herein.
- 6. Remedies.** It is specifically understood and agreed that any breach of this Agreement is likely to result in irreparable injury to DTE and that the remedy at law alone will be an inadequate remedy for such breach, and that in addition to any other remedy it may have, DTE shall be entitled to seek the specific performance of this Agreement by the Recipient and to seek both temporary and permanent injunctive relief (to the extent permitted by law) without the necessity of proving actual damages.
- 7. Governing Law.** This Agreement shall be construed under and governed by the laws of the United States of America and the State of Tennessee.
- 8. Waiver; Severability.** The waiver by either party of a breach or a default of any provision of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege by such party. No waiver of any provision of this Agreement shall be effective unless in writing and executed by the party waiving the right. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason or to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the fullest extent permitted by law.
- 9. Definitive Agreement.** Neither party is legally obligated by this Agreement to continue to negotiate or consummate the Transaction or any other business transaction.
- 10. Counterparts.** This Agreement may be executed in counterparts, each of which shall represent an original, and all of which, when taken together, shall constitute one and the same instrument. Signatures transmitted by facsimile, e-mail, or other comparable means shall be deemed an original.
- 11. Gag Order.** The Recipient is enjoined from discussion or statements in any form, written, pictorial or verbal, whether by physical or electronic means known or unknown, and of any nature, about DTE products, services, pricing, offers, promotions, marketing, advertising or merchandising, for a period of two (2) weeks from the official end of the beta testing period, or until such time as the Recipient is released in writing from the Order by DTE or its authorized officer, whichever occurs first, with the exception of the Beta Test Report, as outlined below, and such communications between the Recipient and DTE staff as may become necessary for the Recipient to adequately test the software as designed.
- 12. Beta Test Report.** The Recipient shall as a consequence of this agreement complete and return to the designated agent of DTE a Beta Test Report no later than one (1) week of the official end of the beta testing period. The Recipient acknowledges and affirms that the answers provided by the Recipient on the Beta Test Report shall be true and correct to the best of the Recipient's knowledge and reflective of their experience while reviewing the product(s) or service(s). The Beta Test Report shall be considered Proprietary Information under the terms of this Agreement, and the Recipient shall only allow access to the Beta Test Report to DTE's designated agents during the Gag Order term.
- 13. Indemnity.** Any software provided to the Recipient for the purposes of evaluation shall be provided "as is", with no warranties, either expressed or implied. The software is offered without any claims as to its suitability or facility to perform any particular function. The Recipient acknowledges that evaluation software might interact with hardware and software in unintended ways, assumes all risk from the use of the software, and agrees that DTE shall not be responsible for any deleterious effects arising from the use of the software. The Recipient agrees to indemnify, defend, and hold harmless DTE and each of its respective officers, directors, partners, employees, agents, successors, and assigns, or any of them from all claims, suits, legal actions, assessments, deficiencies, and charges, and for any costs, fees, liabilities, damages, losses, expenses, and associated attorney fees arising from or incidental to the aforementioned.