

PROPRIETARY INFORMATION AND INVENTIONS AGREEMENT

In consideration of my being engaged by or my continued engagement to perform services for, or my employment or continued employment by Netgain Solutions, Inc., a Delaware corporation (together with any successors or assigns, the “**Company**”), and in consideration of the compensation now and hereafter paid to me, I, intending to be legally bound, hereby agree as follows (this Proprietary Information and Inventions Agreement is referred to herein as this “**Agreement**”):

1. CONFIDENTIALITY.

1.1 Recognition of the Company’s Rights; Nondisclosure. I acknowledge that during my relationship with the Company I will have access to and knowledge of Proprietary Information (as defined below). At all times during my relationship with the Company and thereafter, I will hold in strictest confidence and will not disclose, use, lecture upon, or publish any of the Company’s Proprietary Information, except as such disclosure, use, or publication may be required in connection with my work for the Company, or unless an authorized officer of the Company (other than me) expressly authorizes such in writing. I will obtain the Company’s written approval before publishing or submitting for publication any material (written, verbal, or otherwise) that incorporates any Proprietary Information and/or disparages the Company; provided however that nothing in this Agreement restricts me from engaging in any protected activity under federal, state, or local law, including where applicable discussing the terms and conditions of my employment or disclosing information in confidence to a federal, state, or local government official for the purpose of reporting or investigating a suspected violation of law. I hereby assign to the Company any rights I may have or acquire in such Proprietary Information and recognize that all Proprietary Information shall be the sole property of the Company and its assigns.

1.2 Proprietary Information. The term “**Proprietary Information**” shall mean any and all confidential and/or proprietary knowledge, data, or information of the Company. By way of illustration but not limitation, Proprietary Information includes (a) trade secrets, inventions, mask works, ideas, processes, formulas, source and object codes, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs, and techniques (hereinafter collectively referred to as “**Inventions**”); (b) information regarding plans for research, development, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, and names of suppliers and customers and potential suppliers and customers; and (c) information regarding the skills and compensation or engagement/employment terms of service providers, employees, and independent contractors of the Company. The term Proprietary Information shall not include items in (a), (b), or (c) that are or have become publicly known and made generally available through no wrongful act of mine or of others or information that is readily and publicly ascertainable.

1.3 Third Party Information. I understand, in addition, that the Company has received and, in the future, will receive from third parties confidential or proprietary information (“**Third Party Information**”) subject to a duty on the Company’s part to maintain the confidentiality of such information and to use it only for certain limited purposes. During the term of my relationship with the Company and thereafter, I will hold Third Party Information in the strictest confidence and will not disclose to anyone (other than Company personnel who need to know such information in

connection with their work for the Company) or use, except in connection with my work for the Company, Third Party Information unless expressly authorized in writing by an authorized officer of the Company (other than me).

1.4 No Improper Use of Information of Others. During my relationship with the Company, I will not improperly use or disclose any confidential information or trade secrets, if any, of any former employer or any other person to whom I have an obligation of confidentiality, and I will not bring onto the premises of the Company any unpublished documents or any property belonging to any former employer or any other person to whom I have an obligation of confidentiality, unless consented to in writing by that former employer or person. I will use in the performance of my duties only information which is generally known and used by persons with training and experience comparable to my own, which is common knowledge in the industry or otherwise legally in the public domain, or which is otherwise provided or developed by the Company.

1.5 Defend Trade Secrets Act. I understand that an individual (a) shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made in confidence to a federal, state, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law; (b) shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (c) who files a lawsuit against an employer for retaliation by such employer for such individual’s reporting of a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal, and does not disclose the trade secret, except pursuant to court order.

1.6 Return of Company Documents. Upon termination of my relationship with the Company, I will deliver to the Company any and all drawings, notes, memoranda, specifications, devices, formulas, and documents, together with all copies thereof, and any other material containing or disclosing any Company Inventions, Third Party Information, or Proprietary Information of the Company. I further agree that any property situated on the Company’s premises and owned by the Company, including without limitation disks and other storage media, filing cabinets, or work areas, is subject to inspection by Company personnel at any time with or without notice. Upon termination of my relationship with the Company, I will cooperate with the Company in completing and signing the Company’s termination statement in the general form attached as Exhibit B to this Agreement, with such modifications as may reasonably apply with respect to my service to, and relationship with, the Company.

2. ASSIGNMENT OF INVENTIONS.

2.1 Prior Inventions. I have set forth on Exhibit A attached hereto a complete list of all Inventions related to the business of the Company as of the date of this Agreement that I have, alone or jointly with others, conceived, developed, or reduced to practice or caused to be conceived, developed, or reduced to practice prior to or after the commencement of my relationship with the Company, and that I consider to be my property or the property of third parties and that shall be excluded from the scope of this Agreement (collectively referred to as “**Prior Inventions**”). If disclosure of any such Prior Inventions would cause me to violate any prior confidentiality obligation to which I am subject, I understand that I am not to list such Prior Inventions in Exhibit A but am only to disclose a cursory name for each such invention, a listing of the party (or parties) to whom it belongs and the fact that full disclosure as to such inventions has not been made for that reason. A space is provided on Exhibit A for such purpose. IF EXHIBIT A IS LEFT BLANK OR IF NO SUCH DISCLOSURE IS ATTACHED, I REPRESENT THAT THERE ARE NO PRIOR INVENTIONS. If, in the course of my relationship with the Company, I incorporate a Prior Invention into a Company product, process, or machine, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to make, have made, modify, use, and sell such Prior Invention. Notwithstanding the foregoing, I agree that I will not incorporate, or permit to be incorporated, Prior Inventions in any Company Inventions without the Company’s prior written consent.

2.2 Assignment of Inventions. I hereby assign, and agree to assign in the future during the time I am employed by or providing service to the Company or as otherwise required by this Agreement (when any such Inventions or Proprietary Rights are first reduced to practice or first fixed in a tangible medium, as applicable), to the Company all my right, title, and interest in and to any and all Inventions (and all Proprietary Rights with respect to such Inventions), whether or not patentable or registrable under copyright or similar statutes, developed, made, conceived, reduced to practice, or learned by me, either alone or jointly with others, prior to or during the period of my relationship with the Company, and which either (a) relate to the business or anticipated business of the Company; or (b) arise from or relate to my service or anticipated service to the Company. Inventions assigned to the Company, or to a third party as directed by the Company, pursuant to this Section 2 are referred to as “**Company Inventions.**” The term “**Proprietary Rights**” shall mean all trade secret, patent, trademark, copyright, mask work, and other intellectual property rights throughout the world.

2.3 Obligation to Inform the Company. During the period of my relationship with the Company and for a period of two (2) years thereafter, I will promptly disclose to the Company fully and in writing all Inventions authored, conceived, or reduced to practice by me, either alone or jointly with others. In addition, I will promptly disclose to the Company all patent applications filed by me or on my behalf within a year after termination of my relationship with the Company.

2.4 Works for Hire. I acknowledge that all original works of authorship which are made by me (solely or jointly with

others) within the scope of my relationship with the Company (which shall be deemed to include Company Inventions made by me, solely or jointly with others, prior to my relationship with the Company), and which are protectable by copyright are “works made for hire,” pursuant to United States Copyright Act (17 U.S.C., Section 101).

2.5 Enforcement of Proprietary Rights; Power of Attorney. I will assist the Company in every reasonable way to obtain, and from time to time enforce, United States and foreign Proprietary Rights relating to Company Inventions in any and all countries. To that end I will execute, verify and deliver such documents and perform such other acts (including appearances as a witness) as the Company may reasonably request for use in applying for, obtaining, perfecting, evidencing, sustaining, and enforcing such Proprietary Rights and the assignment thereof. In addition, I will execute, verify, and deliver assignments of such Proprietary Rights to the Company or its designee. My obligation to assist the Company with respect to Proprietary Rights relating to such Company Inventions in any and all countries shall continue for two (2) years beyond the termination of my relationship with the Company; provided that the Company compensates me at a reasonable rate after my termination for the time actually spent by me at the Company’s request on such assistance.

In the event the Company is unable for any reason, after reasonable effort, to secure my signature on any document needed in connection with the actions specified in the preceding paragraph, I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney in fact, which appointment is coupled with an interest, to act for and in my behalf to execute, verify, and file any such documents and to do all other lawfully permitted acts to further the purposes of the preceding paragraph with the same legal force and effect as if executed by me. I hereby waive and quitclaim to the Company any and all claims, of any nature whatsoever, which I now or may hereafter have for infringement of any Proprietary Rights assigned hereunder to the Company.

2.6 Records. Unless otherwise directed or requested by the Company, I agree to keep and maintain adequate and current records (in the form of notes, sketches, drawings, or any other form that may be required by the Company) of all Proprietary Information developed by me and all Company Inventions made by me during the period of my relationship with the Company, which records shall be available to and remain the sole property of the Company at all times.

3. RESTRICTIVE COVENANTS.

3.1 No Conflicts. I agree that during the period of my relationship with the Company I will not, without the Company’s express written consent, engage in any other employment or business activity that would materially conflict with my obligations to the Company. In addition, I represent that my performance of all the terms of this Agreement does not and will not breach any agreement to keep in confidence information acquired by me in confidence or in trust prior to my relationship with the Company. I have not entered into, and I agree I will not enter into, any agreement (either written or oral) in conflict herewith. I warrant that I have notified the Company of all non-

competition agreements, confidentiality agreements, and similar agreements I have entered into with former employers or other entities. I further warrant that I will (a) comply with all terms of such agreement, and (b) upon request by the Company, provide a copy of each such agreement to the Company. I further agree to indemnify the Company and its directors, managers, officers, equity holders, officers, employees, and affiliates against any loss arising out of any claim, legal proceeding or litigation resulting from my breach of this Section.

3.2 Nonsolicitation. For the period of my relationship with the Company and continuing until three (3) years after termination of my relationship with the Company, I will not (a) directly or indirectly solicit any employee or service provider of the Company to terminate or adversely alter his, her, or its relationship with the Company; (b) solicit the business of any client or customer of the Company (other than on behalf of the Company) in any manner that is competitive with the Company; or (c) solicit any supplier, provider, vendor, consultant, or independent contractor of the Company to terminate or adversely alter his, her, or its relationship with the Company; provided, however, that the foregoing restrictions shall apply with respect to only persons with whom I have had material contact during my relationship with the Company and nothing in this Agreement shall be deemed to prohibit (i) any general solicitation for employment or engagement by me not specifically directed at employees of, or independent contractors engaged by, the Company; or (ii) the employment or engagement by me of any person whose employment or engagement with the Company has been terminated by the Company prior to commencement of employment or engagement discussions between me and such person.

3.3 Noncompetition. I agree that during my relationship with the Company and for a period of one (1) year after termination of my relationship with the Company, I will not engage, directly or indirectly, either on my own behalf or on behalf of another (whether as an employee, consultant, proprietor, partner, director, manager, officer, owner, lender, financier, or otherwise, for any person, firm, corporation, or business), in any Restricted Activity in the Restricted Territory in furtherance of a Restricted Business (as such terms are defined below). “**Restricted Activity**” means any activities, responsibilities or services I performed or supervised, or any that are similar to those I performed or supervised, for the benefit of the Company during the one-year period prior to the termination of my relationship with the Company. “**Restricted Territory**” means any state within the United States where I worked for the Company, represented the Company, or where the Company sells or offers products or services to which I provided a material contribution (whether as to its development, marketing, sale, or otherwise or direct or indirect supervision of any of the foregoing). “**Restricted Business**” means any line of business that is the same or similar to any line of business that the Company conducted or contemplated during the one-year period prior to the termination of my relationship with the Company, but only to the extent that I provided services to, or otherwise worked in, the line of business during my relationship with the Company. It is agreed that ownership of (i) no more than one percent (1%) of the outstanding

voting stock of a publicly traded corporation, or (ii) any stock I presently own shall not constitute a violation of this provision.

3.4 Acknowledgments of Reasonableness. I agree and acknowledge that I have and shall provide special, unique, or extraordinary services to the Company and that the time, activity, and geographic limitations in this Section 3 are reasonable and necessary to protect the Company’s Proprietary Information, goodwill, and other legitimate business interests. I also understand that executing this Agreement is a condition of my relationship with the Company and I acknowledge and agree that through my relationship with the Company I have and shall receive adequate consideration for any loss of opportunity associated with this Section 3. If any restriction set forth in this Section 3 is found by any court of competent jurisdiction to be unenforceable because it extends over too long a period of time, too great a range of activities, or too broad a geographic area, it shall be interpreted to extend only over the maximum period of time, range of activities, or geographic area as to which it may be enforceable.

4. TECHNOLOGY AUDIT. I acknowledge that I have no reasonable expectation of privacy in any Company computer, technology system, email, handheld device, telephone, or document used to conduct the business of the Company. Therefore, the Company has the right to audit and search all such items and systems, without further notice to me, to ensure that the Company is licensed to use the software on the Company’s devices in compliance with the Company’s software licensing policies, to ensure compliance with the Company’s policies, and for any other business-related purposes in the Company’s sole discretion. I understand that I am not permitted to add any unlicensed, unauthorized or non-compliant applications to the Company’s technology systems and that I shall refrain from copying unlicensed software onto the Company’s technology systems or using non-licensed software or websites. I understand that it is my responsibility to comply with the Company’s policies governing use of the Company’s documents and the internet, email, telephone and technology systems to which I will have access in connection with my relationship with the Company.

5. LEGAL AND EQUITABLE REMEDIES. I acknowledge and agree that any breach of this Agreement will result in irreparable harm to the Company and that the Company shall have the right to enforce this Agreement and any of its provisions by injunction, specific performance, or other equitable relief, without bond and without prejudice to any other rights and remedies that the Company may have for a breach of this Agreement.

6. NOTIFICATION. If my relationship with the Company is terminated, I covenant and agree to inform any new employer or other person or entity that retains my services of my rights and obligations under this Agreement and hereby consent to the notification of my rights and obligations under this Agreement by the Company.

7. GENERAL PROVISIONS.

7.1 Governing Law; Consent to Personal Jurisdiction; Forum Selection. This Agreement will be governed by and construed according to the laws of the State of Utah, without

reference to its choice of law rules. I hereby expressly agree that any claim, legal proceeding or litigation arising in connection with this Agreement will be brought solely in the state and federal courts of the United States located in the State of Utah, and I consent to the personal jurisdiction of such courts. I hereby waive my right to assert the doctrine of forum non conveniens or to object to venue.

7.2 Severability. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

7.3 Successors and Assigns. This Agreement will be binding upon my heirs, executors, administrators and other legal representatives and will be for the benefit of the Company, its successors and its assigns.

7.4 Survival. The provisions of this Agreement shall survive the termination of my relationship with the Company and the assignment of this Agreement by the Company to any successor in interest or other assignee.

7.5 Notices. Any notices required or permitted hereunder shall be given to the appropriate party at the address of the Company's headquarters or the me at the address on file with the Company, or at such other address as the applicable party shall specify in writing. Such notice shall be deemed given (a) upon personal delivery to the appropriate address; (b) on the next business day after mailing, if sent by a nationally recognized overnight courier; or (c) if sent by certified or registered mail, postage prepaid, three (3) days after the date of mailing.

7.6 Attorneys' Fees. In the event that any dispute between the Company and I should result in litigation, the prevailing party in such dispute shall be entitled to recover from the losing party all reasonable fees, costs, and expenses incurred by such prevailing party, including without limitation such reasonable fees and expenses of attorneys, which shall include, without limitation, all reasonable fees, costs, and expenses of appeals.

7.7 Status. I acknowledge and agree that (a) if I am an employee of the Company, my employment with the Company is at-will and either the Company or I may terminate my employment relationship at any time, with or without cause or advance notice; and (b) nothing in this Agreement shall confer any right with respect to the continuation of my relationship with the Company, nor shall it interfere in any way with my right or the Company's right to terminate my employment or engagement by the Company at any time, with or without cause or advance notice.

7.8 Waiver. No waiver by the Company of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver by the Company of any right under this Agreement shall be construed as a waiver of any other right. The Company shall not be required to give notice to enforce strict adherence to all terms of this Agreement.

7.9 Entire Agreement. The obligations pursuant to Sections 1 and 2 of this Agreement shall apply to any time during which I was previously or am in the future providing service to the Company or any of its predecessors as an equity holder, consultant, employee, or in any other capacity if no other agreement governs nondisclosure and assignment of inventions during such period. This Agreement is the final, complete, and exclusive agreement between me and the Company with respect to the subject matter hereof and supersedes and merges all prior discussions between us. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing and signed by the me and the Company. Any subsequent change or changes in my duties or compensation will not affect the validity or scope of this Agreement.

7.10 Waiver of Jury Trial. I HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT I MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). I CERTIFY THAT NO REPRESENTATIVE OF THE COMPANY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE COMPANY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER.

I ACKNOWLEDGE THAT, IN EXECUTING THIS AGREEMENT, I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND I HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT AND HAVE COMPLETELY FILLED OUT EXHIBIT A.

EXHIBIT A – PRIOR INVENTIONS

EXHIBIT B – TERMINATION CERTIFICATE

Date: _____

Signature

Print Name

EXHIBIT A

PRIOR INVENTIONS

A. Except as listed in Section B, the following is a complete description of all Prior Inventions that shall not be assigned to the Company in accordance with Section 2 of the Agreement (and if left blank, then there are no Prior Inventions):

☐ Additional sheets attached.

B. Due to a prior confidentiality agreement, I cannot complete the disclosure under Section A with respect to the Prior Inventions generally listed below, the proprietary rights and duty of confidentiality with respect to which I owe to the following party(ies):

General Description of Prior Invention	Restricting Party/Relationship

☐ Additional sheets attached.

EXHIBIT B

TERMINATION CERTIFICATE

(To be executed only upon termination of service)

This termination certificate (this “**Certificate**”) is executed in connection with the termination of my service to Netgain Solutions, Inc., a Delaware corporation (the “**Company**”). Capitalized terms not otherwise defined herein have the meaning set forth in that certain Proprietary Information and Inventions Agreement signed by me (the “**Inventions Agreement**”), a copy of which is attached to this Certificate.

In this Certificate, I represent and warrant that I have complied, and covenant and agree that I will comply, with all of the terms and conditions of the Inventions Agreement, including without limitation all terms and conditions relating to Proprietary Information, Proprietary Rights, and Inventions. I acknowledge and agree that the Company’s acceptance of this Certificate does not constitute an acknowledgement, waiver, or release of any claims that the Company may have against me under the Inventions Agreement or applicable law.

Date: _____

Signature

Print Name