

ESSENTIAL SOFTWARE, INC.

**CONFIDENTIAL INFORMATION, NON-SOLICITATION AND
INVENTION ASSIGNMENT AGREEMENT**

This Confidential Information, Non-Solicitation and Invention Assignment Agreement (the "Agreement") is entered into as of _____, by and between Essential Software, Inc., a Maryland company, and any of its current or future subsidiaries, affiliates, successors or assigns (collectively, the "Company") and _____ ("Employee"). As a condition of Employee's employment with the Company and Employee's receipt of compensation now and hereafter paid to Employee by the Company, Employee hereby agrees to the following:

1. **At-Will Employment Relationship.** Employee understands and acknowledges that Employee's relationship with the Company is and shall continue to be "at-will," meaning that either the Company or Employee may terminate the employment relationship (the "Relationship") at any time for any reason (or for no reason), without further obligation or liability, provided that such termination does not violate applicable law. Employee further understands and acknowledges that this Agreement does not alter, amend or expand upon any rights Employee may have to continue in the employ of, or the duration of employment with, the Company under any existing agreements between the Company and the Employee or under applicable law.
2. **Duties.** Employee will perform for the Company such duties as may be designated by the Company from time to time. During the period of Employee's employment or service with the Company, Employee will devote the Employee's best efforts to the interests of the Company and will not engage in other employment, occupation, or consulting directly related to the business in which the Company is now involved, becomes involved, or has plans to become involved, or in any activities detrimental to the best interests of the Company without the prior written consent of the President of the Company.
3. **Non-Disclosure of Confidential Information.**
 - a. Employee acknowledges and agrees that, during the period of Employee's employment or service with the Company, Employee may have access to and become familiar with various trade secrets and other confidential or proprietary information that the Company has a legitimate interest in keeping confidential, including, but not limited to, the Company's existing and contemplated services and products, bids or proposals, technical data, contracts, business and financial methods, practices and plans, costs and pricing information, lists of the Company's customers, prospective customers and contacts, suppliers, vendors, consultants and employees, methods of obtaining customers, suppliers, vendors, consultants and employees, financial and operational data of the Company's present and prospective customers, suppliers, vendors, consultants and employees, and the

particular business requirements of the Company's present and prospective customers, suppliers, vendors, consultants and employees, marketing and sales literature, records, software, diagrams, source code, object code, product development; and the Company's techniques of doing business, business strategies and standards (including all non-public information of the Company (collectively, the "Confidential Information"). Employee expressly agrees not to, except with express prior permission by the President of the Company, disclose any Confidential Information, directly or indirectly, nor use Confidential Information in any way, both during the period of Employee's employment or service with the Company and for a period of twelve (12) months following termination of Employee's employment (the "Restricted Period"). Specifically, during the Restricted Period, Employee: (i) will maintain the Confidential Information in strict confidence; (ii) will not disclose any Confidential Information to any person or other entity (except to governmental agencies charged with the enforcement of laws in relation to a pending investigation with such an agency); (iii) will not use any Confidential Information to the detriment of the Company; (iv) will not authorize or permit such use or disclosure; and (v) will comply with the policies and procedures of the Company regarding use and disclosure of Confidential Information. Notwithstanding the foregoing, Confidential Information shall not include any information that has become public knowledge prior to the date Employee proposes to disclose or use such information, information within the general knowledge of the Employee, or knowledge that is generally known in the industry, provided that such public knowledge of the Confidential Information shall not have resulted from Employee directly or indirectly breaching Employee's obligations under this Section 3 or any other similar provision by which Employee is bound, or as a result of disclosure by a third party whom Employee knew or should have known was under an obligation of confidentiality to the Company with respect to such Confidential Information.

- b. All files, papers, records, documents, drawings, specifications, equipment and similar items relating to the business of the Company and Confidential Information, whether prepared by Employee or otherwise coming into Employee's possession, will at all times remain the exclusive property of the Company and such items and all copies thereof will be returned to the Company at the Company's request or upon the expiration or termination of Employee's employment, whichever is earlier.
- c. Nothing in this Section 3 shall prohibit Employee from disclosing information and documents (A) to any governmental agency charged with the enforcement of laws in connection with a pending investigation by such an agency or (B) when required by law, court order or valid and lawful subpoena or other legal process, provided that in the case of (B) above, Employee shall (i) give the Company the earliest possible notice thereof, (ii) as much in advance of the return date as possible, make available to the Company and its counsel the documents and other information sought and (iii) assist such counsel at the Company's expense in resisting or otherwise responding to such process, in each case to the fullest extent permitted by applicable laws or rules.

4. **Non-Solicitation.** Employee acknowledges and agrees that, during the period of Employee's employment or service with the Company, Employee may develop personal contact and goodwill with customers.
- a. During the period of Employee's employment or service with the Company and the Restricted Period, Employee will not, either on Employee's own behalf or on behalf of any third party (except the Company):
 - i. (A) directly or indirectly, seek to induce or otherwise cause any Customer (as defined below) (1) to cease being a customer of or to not become a customer of the Company, or (2) to divert any business of such Customer from the Company, or otherwise, to discontinue or alter in a manner adverse to the Company, such business relationship, (B) engage in any work for any person or entity other than the Company that assists the such person or entity in taking the actions described in Section 4(a)(i)(A); or (C) in any manner that is in competition with the Company solicit for business, provide services to, do business with or become employed or retained by, any Customer (other than by the United States Government or any state or local government entity or agency thereof, or by any educational institution, provided that any such educational institution does not engage in business or activities which are competitive with Company);
 - ii. solicit or encourage to leave the employment or service of the Company, any officer, employee, contractor or consultant to the Company with whom Employee has worked with or otherwise interacted with while working for the Company, or participate (with another third party) in the process of soliciting any person or entity who is then, or who within the preceding twelve (12) months was an employee, contractor or consultant of the Company, or provide names or other information about the Company's employees, contractors or consultants to any person or entity under circumstances which could lead to the use of that information for purposes of recruiting or hiring; or
 - iii. except as an employee of the Company as permitted herein, otherwise interfere with, disrupt, or attempt to interfere with or disrupt, the relationship between the Company, on the one hand, and any of its Customers, suppliers, consultants or employees, on the other hand.
 - b. For purposes of this Agreement, "Customer" means any person or entity: (i) that is a current customer of the Company at the time of the termination of Employee's employment which the Employee has had contract with in the performance of the Employee's duties; or (ii) that the Company has made business overtures to, of which Employee is aware, during the twelve (12) months preceding the termination of Employee's employment, and, in the case of either (i) or (ii), provided that Employee was employed by the Company at the time such person or entity qualified as a "Customer" or Employee otherwise acquired non-public information regarding such person or entity in connection with Employee's employment by the Company.

5. **Ownership of Intellectual Property.** During the period of Employee's employment or service with the Company, to the extent that Employee, alone or with others, develops, makes, conceives, contributes to or reduces to practice, any intellectual property (including trade secrets under the Defend Trade Secrets Act of 2016, codified at 18 U.S.C. § 1836, *et seq.*) related to the duties of Employee hereunder or which results in any way from Employee using the resources of the Company, whether or not during working hours, such intellectual property is and will be the sole and exclusive property of the Company. The foregoing provision shall not apply to (a) any intellectual property that is not related to the Company's business and was developed for charitable or academic use and which was not developed using resources of the Company or during working hours; or (b) an invention for which no equipment, supplies, facility, or trade secret information of the Company was used and which was developed entirely on the Employee's own time, unless (i) the invention relates (A) directly to the business of the Company, or (B) the Company's actual or demonstrably anticipated research or development, or (ii) the invention results from any work performed by the Employee for the Company. To the extent any such intellectual property can be protected by copyright, and is deemed in any way to fall within the definition of "work made for hire" as such term is defined in 17 U.S.C. §101, such intellectual property will be considered to have been produced under contract for the Company as a work made for hire. In any event, and regardless of whether such intellectual property is deemed to be a "work made for hire", Employee will disclose any and all such intellectual property to the Company and does hereby assign to the Company any and all right, title and interest which Employee may have in and to such intellectual property. Upon the Company's request at any time and at their expense, including any time after termination of Employee's employment, to the extent Employee can reasonably do so, Employee will execute and deliver to the Company such other documents as the Company deems reasonably necessary to vest in the Company the sole ownership of and exclusive worldwide rights in and to, all of such intellectual property. All intellectual property infringement or misappropriation will be prosecuted to the fullest extent under applicable federal law, including but not limited to the Copyright Act of 1976 and the Defend Trade Secrets Act of 2016.
6. **Return of Company Property.** Employee will return all Company property (including Confidential Information) within five (5) business days of the termination of Employee's employment with the Company and will reasonably cooperate with the Company in completing and signing a termination statement or affidavit in the form reasonably proscribed by the Company, which will contain Employee's certification that Employee has no Confidential Information in Employee's possession or control.
7. **Independent Agreement.** The covenants on the part of Employee in this Agreement will be construed as an agreement independent of any other agreement and independent of any other provision of this Agreement, and the existence of any claim or cause of action by Employee against the Company, whether predicated upon this Agreement or otherwise, will not constitute a defense to the enforcement by the Company of such covenants. Each of the covenants of this Agreement are given by Employee as a condition of Employee's employment with the Company.

8. **Subsequent Employment.** Employee hereby covenants and agrees, as promptly as possible following Employee's acceptance of any subsequent employment or consulting arrangement that Employee undertakes on behalf of persons or entities other than the Company during the Restricted Period, to notify the President, in writing of any such arrangement, including the identity, address and telephone number of such person or entity. Employee agrees that the Company may notify any person or entity employing or otherwise retaining the services of Employee or evidencing an intention of employing or retaining the services of Employee of the existence and provisions of this Agreement.
9. **Prior Obligations.** Employee represents and warrants to the Company that Employee is not bound by any restrictive covenants, confidentiality or other obligations or commitments of any kind (written, oral or otherwise) that would in any way prevent, restrict, hinder or interfere with Employee's acceptance of employment with the Company or the performance of all duties and responsibilities for which Employee is employed to the fullest extent of Employee's ability and knowledge.

10. **General Provisions.**

- a. **Governing Law.** The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Maryland without giving effect to the choice of law principles thereof and the Courts of Maryland shall have exclusive jurisdiction.
- b. **Venue.** Employee agrees to submit to personal jurisdiction and venue of the United States District Court for Montgomery County, Maryland, or in any other federal court of competent jurisdiction in Maryland. Employee further acknowledges that by accepting employment with the Company, Employee waives an objection to the personal jurisdiction of any of the above named courts.
- c. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the Company and Employee relating to the subject matter herein and merges all prior discussions between the parties. No modification or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by both parties. Any subsequent change or changes in Employee's duties, obligations, rights or compensation will not affect the validity or scope of this Agreement.
- d. **Severability.** If one or more of the provisions in this Agreement is deemed void by law, then the remaining provisions will continue in full force and effect.
- e. **Successors and Assigns.** This Agreement will be binding upon Employee's heirs, executors, administrators and other legal representatives, and Employee's successors and assigns, and will be for the benefit of the Company, its successors, and its assigns.

- f. Survival.** The provisions of this Agreement shall survive the termination of the Relationship and the assignment of this Agreement by the Company to any successor in interest or other assignee.
- g. Remedies.** Employee acknowledges and agrees that violation of this Agreement by Employee may cause the Company irreparable harm, and therefore agree that the Company will be entitled to seek extraordinary relief in court, including but not limited to temporary restraining orders, preliminary injunctions and permanent injunctions without the necessity of posting a bond or other security and in addition to and without prejudice to any other rights or remedies that the Company may have for a breach of this Agreement. Company may also seek damages.
- h. Counterparts; Electronic Signature.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Further, this Agreement may be executed by transfer of an originally signed document by facsimile, e-mail or other electronic means, any of which will be as fully binding as an original document.
- i. ADVICE OF COUNSEL.** EMPLOYEE ACKNOWLEDGES THAT, IN EXECUTING THIS AGREEMENT, EMPLOYEE HAS READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT AND EMPLOYEE HAS HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL TO THE EXTENT EMPLOYEE DESIRES LEGAL ADVICE REGARDING THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF.

[Signature Page Follows]

SIGNATURE PAGE

The parties have duly executed this Agreement as of the respective dates set forth below.

Employee First and Last Name: _____

Signature: _____

Date: _____

Company Name: Essential Software Inc.

ESI Senior VP: Adam Malcolm

Signature: _____

Date: _____