

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is entered into and effective as of the 18th day of February 2020, (hereinafter called the “Effective Date”) between **INGENUITY TECHNOLOGIES LIMITED**, a company duly incorporated under the Laws of Jamaica with registered office situated at Suite No. 40, Winchester Business Centre Suite, 15 Hope Road Kingston 10, (hereinafter called “ITL”, “Provider”), and **Mark Anthony Scott** whose address is Shaw Park Heights, Ocho Rios, St. Ann.

For purposes of this Agreement, where the context admits, the term **ITL** shall include any company to which ITL is affiliated.

WHEREAS Mark Anthony Scott and ITL propose to enter into discussions for possible supply **Mark Anthony Scott** to ITL of certain information technology services, in particular the supply of **Information Technology Consulting as outlined in the proposal** (hereinafter referred to as the “Services”).

AND WHEREAS for the purposes of these discussions, **Mark Anthony Scott** and ITL will provide to each other, Confidential Information (as hereinafter defined) in connection with the Services.

AND WHEREAS the said Confidential Information is commercially sensitive, valuable or may contain trade secrets and is deserving of protection and each desires that such information shall be kept confidential by the other party.

AND WHEREAS Mark Anthony Scott and ITL wish to define the rights and obligations with respect to the said Confidential Information and to protect the confidentiality thereof and proprietary features contained therein.

NOW in consideration of the disclosure of and access to the said Confidential Information, and in consideration of the promises contained in this Agreement, **Mark Anthony Scott** and ITL HEREBY AGREE as follows:

1. **Definitions**

In this Agreement the following expressions shall have the following meanings:

1.1 “Confidential Information” means all non-public information of either party, in any format, whether of a technical, business or other nature, including, without limitation, any information relating to business or marketing plans, operations, processes, intentions, financial projections, financial reports, technical plans, technical specifications, purchasing requirements or intentions, customers and

business affairs, internal reports, marketing plans, opportunities, product information, know-how, design, rights, trade secrets, or any information of a market sensitive nature, that has been identified as being proprietary and/or confidential or that by the surrounding circumstances ought to be treated as confidential. Moreover, Confidential Information also includes codes, concepts, discoveries, descriptions, designs, displays, drawings, formulas, ideas, improvements, inventions, models, procedures, product specifications, samples, sketches, software, and past, present and future business activities, development, products, research or services that are proprietary to the party disclosing the information ("the Disclosing Party") or to a third party to whom the Disclosing Party has a duty of confidentiality as well as any additional information the Disclosing Party may also designate as Confidential Information either orally or in writing, or information that by the surrounding circumstances ought to be treated as confidential. Confidential Information also includes all information concerning the existence and progress of the parties' dealings.

1.2 "Purpose" shall mean any negotiations, discussions and agreements between the parties concerning, associated to or in connection with the provision of the Services, whether or not the parties subsequently enter into an agreement for the supply by the Company to ITL of same.

1.3 The headings in this Agreement are for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer.

1.4 Any undertaking by either party not to do any act or thing shall be deemed to include an undertaking not to permit or suffer the doing of that act or thing.

1.5 The expression "person" where used in this Agreement shall mean any person, firm or company or other legal entity.

2. **Handling of Confidential Information**

2.1 Each party understands the competitive value and confidential nature of the Confidential Information and the damage that could result to the Disclosing Party if its Confidential Information was disclosed, therefore each party receiving or acquiring Confidential Information ("Receiving Party") of the other party ("Disclosing Party") must take all reasonable measures to avoid disclosure or unauthorized use of the Confidential Information, including, at a minimum, to apply thereto no lesser security measures and degree of care than those which the Receiving Party applies to its own confidential or proprietary information and the Receiving Party hereby warrants itself as providing adequate protection of such information from unauthorized disclosure, copying or use.

2.2 Subject to Clause 2.3(b), the Receiving Party shall not disclose

Confidential Information to third parties without the Disclosing Party's prior written consent; however, this restriction does not prohibit a party from disclosing information to its external advisers (e.g., attorneys, accountants, auditors, directors, or similar personnel) who are bound in writing and/or fiduciary relationship to protect Confidential Information from unauthorized use or disclosure.

2.3 The Receiving Party hereby undertakes:

- (a) to use Confidential Information only for the Purpose;
- (b) subject to Clause 4, to hold all Confidential Information in strict confidence and not to disclose Confidential Information except as permitted herein or assist or facilitate any party to disclose such information;
- (c) to limit disclosure of the Confidential Information to its employees and agents on a "need to know" basis to further the parties' mutual interest in relation to the Purpose, and then only after notifying each such persons that the Confidential Information is to be held in confidence and not to be disclosed to any other Person. The Receiving Party shall be responsible for the obligation of each of its employees and agents to keep Confidential Information confidential in accordance with the terms of this Agreement; and
- (d) not to copy, reproduce or reduce to writing any part thereof except as may be reasonably necessary for the Purpose and agrees that any copies, reproductions or reductions to writing so made shall be the property of the Disclosing Party

3. **Return/Destruction of Confidential Information**

3.1 The Receiving Party undertakes to, at the option of the Disclosing Party, destroy or return to the Disclosing Party all Confidential Information and all copies and excerpts thereof within 5 business days of:

- (a) receipt of a written request from the Disclosing Party;
- (b) termination or abandonment of discussions and transactions between the Parties relating to the Purpose or otherwise; or
- (c) completion of the review of the Confidential Information.

Upon termination of this Agreement, in the event that the Receiving Party is in breach of any of the conditions of this Agreement, the Receiving Party will immediately return the Confidential Information and any copies of it made by or in the possession of or under the control of the Receiving Party pursuant to this Agreement, and make no further use or disclosure of any of the Confidential Information. If the Disclosing Party so dictates, the Confidential Information shall

be destroyed under the above circumstances.

3.2 The Receiving Party undertakes to certify in writing to the Disclosing Party that it has complied with the requirements of sub-clause 3.1 above if so requested by the Disclosing Party.

3.3 The Receiving Party undertakes, notwithstanding completion or abandonment of the Purpose or destruction or return of documents and materials as aforesaid, to continue to be bound by the undertakings set out in Clause 2.

4. **Exceptions to Non-Disclosure Obligations**

The provisions of Clause 2 of this Agreement do not apply to any information that:

- (a) can be shown by documentation to have been either in the rightful possession of the Receiving Party prior to receipt of the Confidential Information from the Disclosing Party or to have been independently developed by the Receiving Party without knowledge of the Confidential Information;
- (b) is now or later becomes part of the public domain through no wrongful act or breach of this Agreement on the part of the Receiving Party;
- (c) was rightfully received from a third party who was rightfully in possession of it;
- (d) must be disclosed because of any applicable governmental or judicial law, rule, regulation, directive or order; or
- (e) the Receiving Party is permitted to disclose after receiving the Disclosing Party's written consent.

5. **Response to Legal Process**

In the event that the Receiving Party (or anyone to whom it transmits the Confidential Information whether or not in compliance with this Agreement) is requested, pursuant to subpoena or other legal process, to disclose any Confidential Information, the Receiving Party shall provide the Disclosing Party with immediate notice so that the Disclosing Party may seek a protective order or appropriate remedy and/or waiver compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, or that the Disclosing Party waives compliance with the provisions of this Agreement, the Receiving Party (or such other person) shall furnish only that

portion of the Confidential Information which is legally required and, at the cost of the Disclosing Party, exercise its best efforts to obtain a protective order or other assurance satisfactory in form and substance to the Disclosing Party that confidential treatment will be accorded the Confidential Information in accordance with this Agreement.

6. **Term**

This Agreement shall continue in force from the date hereof until terminated by mutual consent or by either party by giving to the other not less than one month's prior notice provided or immediately by either party if the other party is in breach of any of its obligations herein provided however that the provisions under Clauses 2.2 and 2.3(b) shall survive termination of this Agreement.

7. **Disclaimer and Warranty**

7.1 The Disclosing Party reserves all rights in its Confidential Information and no rights or obligations other than those expressly recited herein are granted or to be implied from this Agreement. In particular, no license is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other industrial property right now or in the future held, made, obtained or licensable by either party.

7.2 The Disclosing Party makes no representation, warranty or guarantee of any kind with respect to the Confidential Information. Without limiting the generality of the foregoing disclaimer, the Disclosing Party, in particular, does not warrant or represent the non-infringement of trademarks, patents, copyrights, mark protection rights or any third party rights in or to the Confidential Information.

7.3 No furnishing of Confidential Information by the Disclosing Party and no obligation under this Agreement obligates either party to enter into any further agreement or negotiation with the other or to refrain from entering into an agreement or negotiation with any other party

7.4 Each party acknowledges that the other may now market or may have under development products or services which are competitive with products or services now offered or which may be offered by the other party. Furthermore, each party may now be having or may in the future have discussions with others concerning matters similar to the Services or similar business arrangements, and may receive information from others similar to the Confidential Information. Subject to the express obligations set forth in this Agreement, neither this Agreement nor discussions or communications between the parties hereto will impair the right of either party to develop, make, use, procure and/or market any product or service or to pursue other business transactions or relationships, alone or with others, now or in the future, including those which may be competitive with those offered by the other party and those similar in nature to the Services.

8. NON-COMPETITION AND NON-SOLICITATION: During the term of this Agreement and for a period of one (1) year following the termination of the initial and renewal periods:

8.1 Company agree not to directly or indirectly solicit the employment or retention of any of the providers employees or of any consultant or third party providing services to the company without the prior written consent of the provider.

8.2 Provider agrees not to directly or indirectly solicit the employment or retention of any of the company's employees or third party requesting services from company without the prior written consent of the Company

Public Announcements

The Receiving Party undertakes and agrees to keep the existence and nature of this Agreement confidential and not to use the same or the name of Disclosing Party in any publicity, advertisement or other disclosure with regard to this Agreement or to the Purpose without the prior written consent of the Disclosing Party.

9. Notices

9.1 All notices under this Agreement shall be in writing and shall be sent by telex, facsimile, courier or first-class registered or recorded delivery post to the party being served at its address specified below or at such other address of which such party shall have given notice as aforesaid, and marked for the attention of that party's signatory of this Agreement. The date of service shall be deemed to be the day following the day on which the notice was transmitted by facsimile or telex or three (3) days after dispatched, where sent by courier and seven (7) days after post, where sent by post as the case may be.

9.2 Send notices to each party at the addresses listed below:

For **ITL**:

Address: Ingenuity Technologies Limited
Suite 40 - Winchester Business Centre,
15 Hope Road, Kingston 10
Attn: Melarka Williams – Chief Executive Officer

For: **Mark Anthony Scott**

Address: Shaw Park Heights,
Ocho Rios, St. Ann

10. **Non-assignment**

10.1 This Agreement is personal to the parties and shall not be assigned or otherwise transferred in whole or in part by the Receiving Party without the prior written consent of the Disclosing Party.

10.2 This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors.

11. **Entire Agreement & Variations**

11.1 This Agreement constitutes the entire Agreement and understanding between the parties in respect of Confidential Information and supersedes all previous agreements, understandings and undertakings in such respect (and all obligations implied by law to the extent that they conflict with the express provisions of this Agreement). This Agreement cannot be changed except by written agreement between the parties.

11.2 The parties may expressly agree in writing any variation in the provisions hereof, provided that unless expressly so agreed, no such agreement shall constitute or be construed as a general waiver of any of the provisions hereof by either of the parties and the rights and obligations of the parties hereunder shall remain in full force and effect notwithstanding any variation agreed between the parties on any particular occasion.

12. **Governing Law**

The interpretation construction and effect of this Agreement shall be governed and construed in all respects in accordance with the laws of Jamaica (excluding its conflict of law's provisions).

13. **Severance**

13.1 Each party warrants to the other that this Agreement has been duly authorised and executed and is valid and legally binding upon such party and enforceable in accordance with its terms. Any provision of this Agreement that is held invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

13.2 Each undertaking in this Agreement shall be construed as a separate undertaking and if one or more undertakings contained in this Agreement are found to be unenforceable the remaining undertakings shall continue to bind the parties.

14. **Waiver**

In no event shall any delay failure or omission on the part of the Disclosing Party in enforcing exercising or pursuing any right, power, privilege, claim or remedy, which is conferred by this Agreement, or arises under this Agreement, or arises from any breach by the Receiving Party of any of the obligations hereunder, be deemed to be or be construed as a waiver thereof, or of any other such right, power, privilege, claim or remedy in respect of the particular circumstances in question; or operate as to bar the enforcement or exercise thereof, or of any such right, power, privilege, claim or remedy, in any other instance at any time or times thereafter.

15. **Consequences of Breach**

15.1 Notwithstanding the provisions of Clause 15.2 below, if any breach or alleged breach of this Agreement by the Receiving Party occurs, then the Disclosing Party will suffer irreparable injury for which monetary damages will be inadequate to compensate. Accordingly, in addition to all other rights and remedies at law and in equity that might be available to the Disclosing Party, the Disclosing Party is entitled to injunctive relief to prevent or to restrain any such breach by the Receiving Party, or any other persons, directly to indirectly acting for or with the Receiving Party.

15.2 Subject to Clause 15.1 above, any dispute arising in connection with or out of the performance or the interpretation of this Agreement, which the parties cannot settle amicably shall be finally settled by arbitration proceedings to be conducted in accordance with laws of Jamaica.



Software Engineering
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Signed on behalf of
INGENUITY TECHNOLOGIES LIMITED

by _____
Melarka Williams
Chief Executive Officer

In the presence of:

Witness

Signed by

Mark Anthony Scott



In the presence of:



Witness