

# Confidentiality Agreement

This agreement (the “Agreement”), dated as of [date], 2016 (the “Effective Date”), is by and between:

[licenseeName], with its headquarters in [licenseeCity] (“Licensee”)

- and-

Softwood Technology Inc., a corporation organized and existing under the laws of Canada,  
with its headquarters in Toronto (“Softwood”).

WHEREAS Licensee wishes to license Sumac, together with support services relating thereto, and  
WHEREAS delivery of such services may entail exchange of confidential information between Softwood  
and Licensee,

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties  
hereto, intending to be legally bound, agree as follows:

## Confidentiality

### C-1. Definitions

Either party (“Disclosing Party”) may from time to time disclose Confidential Information to the other  
party (“Recipient”).

“Confidential Information” includes:

- a. the following types of information, and other information of a similar nature (whether or  
not reduced to writing or still in development): designs, concepts, ideas, inventions,  
specifications, techniques, discoveries, models, data, source code, object code,  
documentation, diagrams, flow charts, research, development, methodology, processes,  
procedures, know-how, new product or new technology information, strategies and  
development plans, business plans, financial plans and projections and other information,  
sales and marketing plans, suppliers, personnel and other business relationships;
- b. information concerning the business, technology, clients, staff, volunteers, customers,  
financial information and plans of the Disclosing Party which is either marked as  
“confidential” or which, due to the circumstances surrounding its disclosure or its nature or  
sensitivity, should have been understood by the Recipient as intended to be treated as  
“confidential” and subject to the undertakings of this article;
- c. the Sumac software, the services to be provided, and all techniques, concepts and methods  
relating thereto or to sales thereof.

### C-2. Confidentiality Obligations

- a. Recipient agrees that it shall not make use of Confidential Information for its own benefit or for  
the benefit of any person or entity other than Disclosing Party, except as necessary for the  
performance of this Agreement.

- b. Recipient will keep in confidence and trust and will not disclose or disseminate, or permit any employee, agent or other person working under Recipient's direction to disclose or disseminate, the existence, source, content or substance of any Confidential Information to any other person.
- c. Recipient will employ at least the same methods and degree of care, but no less than a reasonable degree of care, to prevent disclosure of the Confidential Information as Recipient employs with respect to its own confidential trade secrets and proprietary information. Recipient's employees and independent contractors will be given access to the Confidential Information only on a need-to-know basis, and only if they have executed a form of non-disclosure agreement with Recipient which imposes a duty to maintain the confidentiality of information that is at least as restrictive as the terms of this article. Recipient will not copy or load any of the Confidential Information onto any computing device or store the Confidential Information electronically except in circumstances in which Recipient has taken all necessary precautions to prevent access to the information stored on such the relevant device or electronic storage facility by anyone other than the Persons entitled to receive the Confidential Information hereunder.
- d. With respect to customer information that is considered personal data, the Parties agree that they shall treat and transfer such data to each other only in compliance with applicable data protection laws.

**C-3. Permitted Disclosures**

The commitments in this article will not impose any obligations on Recipient with respect to any portion of the received information which:

- a. is now generally known or available or which hereafter, through no act or failure to act on the part of Recipient, becomes generally known or available;
- b. is rightfully known to Recipient at the time of receiving such information;
- c. is furnished to Recipient by a third party without restriction on disclosure and without a breach by such third party of any confidentiality undertaking with respect thereto;
- d. is independently developed by Recipient without the use of Confidential Information; or
- e. is required to be disclosed by operation of law or by an instrumentality of the government, including but not limited to any court, tribunal or administrative agency; provided that, in the case of any disclosure required under these circumstances, Recipient shall give Disclosing Party as much advance notice as is reasonably practicable under the circumstances so as to permit Disclosing Party to seek a protective order.

**C-4. Destruction On Request**

On request by the Disclosing Party, Recipient shall destroy or return any or all Confidential Information that it has received from Disclosing Party.

## **Term and Termination**

**TT-1. Term**

The term of this Agreement shall commence on the Effective Date and continue in effect until the date of termination pursuant to this article.

**TT-2. Termination**

Either party (the "First Party") may terminate this Agreement immediately and with immediate effect at any time upon written notice to the other party (the "Second Party") if the Second Party:

- a. breaches any material term or condition of this Agreement and such breach is not cured within 30 days after notice of the breach is given by the First Party;
- b. is or becomes insolvent or unable to pay its debts; or
- c. commences or becomes involuntarily subject to any case, proceeding or other action seeking the adjudication of the Second Party as bankrupt or insolvent, and such case, proceeding or action is not discharged within ten days after written notice thereof has been given to the Second Party.

**TT-3. Effect of Termination**

- a. Each Party acknowledges that, upon termination of this Agreement in accordance with the terms hereof, Licensee shall not have any continuing rights under this Agreement, nor shall either party have any right to any compensation at any time from the other party arising out of or by reason of any such termination.
- b. Upon termination of this Agreement for any reason, Licensee shall immediately:
  - (i) furnish Softwood written notice certifying that the original and all copies, including partial copies, whether furnished by Softwood or made by Licensee, of the Licensed Materials, and proprietary or confidential information delivered by Softwood to Licensee hereunder, have either been returned to Softwood or destroyed and no copies or portions thereof remain in Licensee's possession or control; and
  - (ii) discontinue the use of the Licensed Materials.
- c. Upon termination of this Agreement for any reason, Softwood shall immediately furnish Licensee written notice certifying that the original and all copies, including partial copies, whether furnished by Licensee or made by Softwood, of proprietary or confidential information delivered by Licensee to Softwood hereunder, have either been returned to Licensee or destroyed and no copies or portions thereof remain in Softwood's possession or control.
- d. Termination shall not relieve the parties from their obligations under this Agreement arising prior to such termination.

**TT-4. Survival**

Notwithstanding termination of this Agreement, whether or not by the effect of this article, sections C-1 to C-4 and those provisions of this Agreement which state that they are intended to survive, shall survive termination of this Agreement.

## **General Terms**

**GT-1. Entire Agreement**

This Agreement, including all appendices attached hereto, constitutes the entire agreement between the parties pertaining to the subject matter hereof. It supersedes in their entirety any and all, prior or contemporaneous, written or oral agreements, negotiations, or other dealings between the parties.

**GT-2. No Third Party Beneficiary**

It is the explicit intention of the parties hereto that no person other than the parties shall be entitled to bring any action to enforce any provision of this Agreement against either of the parties, and the covenants, undertakings, and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the parties hereto or their respective successors and assigns as permitted hereunder.

### **GT-3. Construction**

Each party hereto hereby acknowledges that the parties hereto participated equally in the negotiation and drafting of this Agreement and that, accordingly, no court construing this Agreement shall construe it more stringently against one party than against the other.

### **GT-4. Headings**

Article and section headings contained in this Agreement are inserted for convenience of reference only, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

### **GT-5. Governing Law**

This Agreement will be governed, construed, and enforced exclusively in accordance with the laws of the province of Ontario and the federal laws of Canada applicable to contracts executed and performed entirely in, and by residents of Ontario, and the parties hereto hereby irrevocably attorn to the jurisdiction of the courts of the said province. We agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from and shall not apply to this Agreement.

### **GT-6. Binding Effect**

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns as permitted hereunder.

### **GT-7. Force Majeure**

Neither party shall be liable to the other party for delay in performing its obligations, or failure to perform any such obligations under this Agreement, if the delay or failure results from circumstances beyond the reasonable control of the party, including but not limited to: act of God; accident; war; fire; lockout; strike or labor dispute; riot or civil commotion; act of the public enemy; enactment, rule, order or act of civil or military authority; acts or omissions of the other party; judicial action; inability to secure adequate materials, labour, or facilities (despite exertion of commercially reasonable efforts to obtain such items); defaults of suppliers; the inability of carriers to make scheduled deliveries; or any other event beyond the reasonable control of such party. Notwithstanding the foregoing, such circumstances shall not excuse either party from making payments. Either party shall have the right to terminate this Agreement without further obligation if the circumstances continue for a period of 180 days.

### **GT-8. Waiver**

Failure or delay by either party to enforce at any time any of the provisions of this Agreement, or to exercise any election of options provide herein, shall not constitute a waiver of such provision or option, nor affect the validity of this Agreement or any part thereof, or the right of the waiving party to thereafter enforce each and every such provision.

### **GT-9. Severability**

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be legally ineffective or unenforceable, such provision shall, to the extent possible, be deemed rewritten to reflect the original intent of the parties, and the validity of the remaining provisions shall not be affected.

### **GT-10. English Language**

The parties hereto confirm their express wish that this agreement (including the schedules hereto) as well as all notices, documents and agreements related hereto be drawn in the English language. Les parties aux présentes reconnaissent qu'il est de leur volonté expresse que la présente convention (y compris ses annexes) ainsi que tout avis, documents et ententes s'y rapportant soient rédigés en anglais.

**GT-11. Equitable Remedies**

Both parties acknowledge that remedies at law for breach of either party's obligations under this Agreement will be inadequate, that the non-breaching party may be irreparably harmed by any such breach, and that in the event of any such breach, the non-breaching party shall be entitled to specific performance or any type of preliminary, temporary or permanent injunctive relief.

**GT-12. Compliance With The Law**

Parties shall comply with all applicable laws concerning this agreement. Licensee shall adhere to high standards of honesty, integrity, fair dealings, and ethical conduct in all of its dealings with clients, potential clients, and the general public, and shall refrain from any business or advertising practice, which may be injurious to the business or reputation of Softwood.

**GT-13. Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

**Notices**

Any and all notices or other information to be given by one of the parties to the other shall be deemed sufficiently given when in writing and hand delivered (including delivery by courier or overnight delivery service), or mailed by first-class registered or certified mail, return receipt requested and postage prepaid, addressed as follows:

If to Softwood:

Softwood Technology Inc.  
208-675 King Street West  
Toronto, Ontario, Canada, M5V 1M9  
Attention: Contract Administration  
info@Sumac.com

If to Licensee:

[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]

Attention: Sumac Project Manager

Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent.

Each notice or communication which shall be mailed or delivered in the manner described above shall be deemed sufficiently given, served, sent or received for all purposes at such time as it is delivered to the addressee or at such time as delivery is refused by the addressee upon presentation.

**Execution**

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be duly executed and delivered on its behalf as of the date indicated above.

[ \_\_\_\_\_ ]

**Softwood Technology Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_