



**MUTUAL NONDISCLOSURE AGREEMENT**

THIS MUTUAL NONDISCLOSURE AGREEMENT is made and entered into this \_\_\_ day of \_\_\_\_\_ 20\_\_ (the "Effective Date") between:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**VANTEON CORPORATION ("Vanteon")**

99 Garnsey Road, Suite 200

Pittsford, New York 14534

**Purpose.** The parties wish to explore a business relationship of mutual interest, and in connection with this relationship, each party may disclose to the other certain confidential technical and business information which the disclosing party desires the receiving party to treat as confidential.

**1. "Confidential Information"** shall mean any and all technical and non-technical information, in any form, provided by either party to the other, including but not limited to (a) patent and patent applications, (b) trade secrets, and (c) proprietary information – ideas, samples, media, techniques, sketches, drawings, works of authorship, models, inventions, know-how related to networking, data communications or other technology, processes, apparatuses, equipment, algorithms, software programs, software source documents, and formulae related to the current, future, and proposed products and services of each of the parties, and including, without limitation, their respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, personnel information, business and contractual relationships, business forecasts, sales and merchandising, marketing plans and information the disclosing party provides regarding third parties. Confidential Information may also include information disclosed to a disclosing party by third parties and includes any notes, analyses, compilations, or other material or documents prepared by the Recipient based in whole or in part on the Confidential Information.

**2. Non-use and Nondisclosure.** Each party agrees that at all times and notwithstanding any termination or expiration of this Agreement, it will hold in strict confidence and not disclose to any third party Confidential Information of the other during the term specified in Section 8. Each party shall only permit access to Confidential Information of the other party to those of its employees or authorized representatives having a need to know and who have been expressly advised of the terms of this Agreement and are bound by similar contractual obligations of confidentiality. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own most highly confidential information, but in no case less than a reasonable degree of care. Each party shall be responsible for any use or disclosure of the other party's Confidential Information by any of its employees or advisors. Each party further agrees not to use any Confidential Information of the other party for any purpose except to evaluate and engage in discussions concerning a potential business relationship between the parties. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder.

**3. Termination of Obligations.** Each party's obligations under this Agreement with respect to any portion of the other party's Confidential Information shall terminate when the party to whom Confidential Information was disclosed (the "Recipient") can document or otherwise demonstrate as applicable that: (a) it was in the public domain at the time it was communicated to the Recipient by the other party; (b)

it entered the public domain subsequent to the time it was communicated to the Recipient by the other party through no fault of the Recipient; (c) it was in the Recipient's possession free of any obligation of confidence at the time it was communicated to the Recipient by the other party; (d) it was rightfully communicated to the Recipient free of any obligation of confidence subsequent to the time it was communicated to the Recipient by the other party; (e) it was developed by employees or agents of the Recipient independently of and without reference to any information communicated to the Recipient by the other party; (f) it was communicated by the other party to an unaffiliated third party free of any obligation of confidence; or (g) it was communicated with the written permission of the disclosing party; or (h) it was communicated in response to a valid order by a court or other governmental body, or was otherwise required by law, rule, regulation, order, or decree, provided, however, that the Recipient will promptly notify the disclosing party as practicable of the same in order to permit the disclosing party an opportunity to contest such disclosure.

**4. No Obligation.** Nothing herein shall obligate either party to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the business relationship.

**5. No Warranty.** ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". EACH PARTY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS OR PERFORMANCE.

**6. Return of Materials.** All documents and other tangible objects containing or representing Confidential Information which have been disclosed by either party to the other party, and all copies thereof which are in possession of the other party, shall be and remain the property of the disclosing party and shall be promptly returned to the disclosing party or destroyed upon the disclosing party's written request.

**7. No License.** Nothing in this Agreement is intended to grant any rights to either party under any intellectual property of the other party, nor shall this Agreement grant any party any rights in or to the

Confidential Information of the other party except as expressly set forth herein.

**8. Term.** This Agreement shall terminate three (3) years after the Effective Date and shall be binding upon the parties' heirs, successors, and assigns unless otherwise terminated earlier pursuant to Section 3.

**9. Remedies.** Each party agrees that any violation or threatened violation of this Agreement may cause irreparable injury to the other party, entitling the other party to seek injunctive relief, without the need to post bond, in addition to all legal remedies.

**10. Assignability.** Neither party may assign its rights and obligations hereunder without the prior written consent of the other party. Notwithstanding the foregoing, either party shall be entitled to assign this Agreement, without the prior written consent of the other party, (i) in connection with the merger or consolidation of the party with another entity (ii) in connection with the sale of all or substantially all of its assets or (iii) to any of its affiliates.

**11. Severability.** If any part, term or provision of this Agreement shall be held unenforceable, the validity of the remaining portions or provisions shall not be affected thereby.

**12. Disclosures Required by Law.** If Recipient becomes legally compelled (by disposition, interrogatory, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information, then Recipient shall provide Discloser with prompt prior written notice of such requirement so that Discloser may seek a protective order or other appropriate remedies. If such protective order or other remedy is not obtained, or if Discloser waives in writing compliance with the terms hereof, then Recipient shall furnish only that portion of the information which Recipient is advised by written opinion of counsel is legally required; and Recipient shall use reasonable efforts to obtain confidential treatment of such information.

**13. Miscellaneous.** This Agreement shall bind and inure to the benefit of the parties hereto and their successors and assigns. This Agreement shall be governed by the laws of the State of New York without reference to conflict of laws principles. This document contains the entire Agreement between the parties

with respect to the subject matter hereof, and neither party shall have any obligation, express or implied by law, with respect to trade secret or proprietary information of the other party except as set forth herein. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both parties hereto.

**14. Solicitation.** Neither party shall, without the prior written consent of the other, hire, solicit for hire, contract with or engage any current or former employee, vendor, or subcontractor of the other party for a period of one (1) year from the termination of discussion between the parties.

**15. Notices.** All notices under this Agreement shall be in writing and shall be delivered by personal delivery or by certified or registered mail, return receipt requested. Notices shall be sent to the addresses set forth above or such other address as either party may specify in writing.


By signing below, the undersigned representative of each party warrants and represents that he or she has full authority to execute this Agreement on behalf of their respective party and to bind their respective party to the terms hereof.

**IN WITNESS WHEREOF,** the parties have executed this Agreement with the intent that it be effective as of the date first written above.

\_\_\_\_\_  
(Insert company name above)

**Vanteon Corporation**

_____ <b>Signature</b>	_____ <b>Date</b>
_____ <b>Name</b>	_____ <b>Title</b>

 <b>Signature</b>	_____ <b>Date</b>	Effective date on page 1
Ronnie B. Ells, CPA <b>Name</b>	_____ <b>Title</b>	CFO