

**NONDISCLOSURE AGREEMENT**

This Nondisclosure Agreement (the "Agreement") is entered into between Engine Yard, Inc. ("Engine Yard"), a California corporation, with primary mailing address of 2795 East Bidwell Street, Suite #100-347, Folsom, CA 95630,  
and \_\_\_\_\_ ("Other Party"),  
with primary mailing address of:

\_\_\_\_\_,  
as of \_\_\_\_\_, 2007.

In consideration of the mutual promises and covenants contained in this Agreement and the disclosure of confidential information to each other, the parties to this Agreement agree as follows:

1. In order for the parties to discuss business activities and plans, each party may need to disclose confidential or proprietary information to the other (the "Confidential Information"). "Confidential Information" shall include the terms and conditions of this Agreement, the existence of the discussions between the parties, and any other business, financial, technical and other information concerning the business activities and plans of the parties, including but not limited to, information regarding each party's product and services plans, product and services costs, product and services pricing, finances, marketing plans, business opportunities, personnel, research and development activities, know-how and pre-release products and services. All such Confidential Information shall be subject to the terms of this Agreement whether marked as "Confidential" or not and whether disclosed orally, electronically, in writing or other media.

2. Each party shall use a reasonable degree of care to avoid unauthorized disclosure or use of the other party's Confidential Information as it employs with respect to its own Confidential Information of like importance. Receipt and disclosure of Confidential Information will be coordinated for the parties by:

For Engine Yard:      Riki Crusha  
                                 Engine Yard, Inc.  
                                 2795 East Bidwell Street, Suite #100-347  
                                 Folsom, CA 95630  
                                 Phone: 800-880-4040  
                                 Fax: 866-690-8078

For other party:      \_\_\_\_\_  
                                 \_\_\_\_\_  
                                 \_\_\_\_\_  
                                 \_\_\_\_\_  
                                 \_\_\_\_\_  
                                 Phone: \_\_\_\_\_  
                                 Fax: \_\_\_\_\_

3. Neither party has any obligation with respect to any Confidential Information which (a) was previously known by such party without obligations of confidentiality; (b) that party independently develops; provided such independent development can be shown by documentary evidence; (c) is, or subsequently becomes, legally and publicly available without a breach of this Agreement by either party; or (d) is disclosed to it by a third person who is not required to maintain its confidentiality. The party claiming any of the above exceptions has the burden of proving its applicability.

4. Each party may disclose Confidential Information only to its own officers, directors and employees and to its consultants and advisors who reasonably need to know. Each party shall be responsible to the other for any violation of this Agreement by its own officers, directors, employees, consultants or advisors.

5. Neither party may print or copy, in whole or in part, any documents or other media containing any Confidential Information without the prior written consent of the other party other than copies for its officers, directors, employees, consultants or advisors who are working on the matter. Neither party will remove or deface any notice of copyright, trademark, logo, watermark or other propriety notice of the other party appearing on any original or copy of the other's Confidential Information.

6. Neither party may use the other party's Confidential Information for competing with the other party or for any purpose not in furtherance of the business relationship between them.

7. Each party's Confidential Information shall remain its own property. Upon the request of the other party, each party shall return all of the other's Confidential Information, or destroy it and provide the other party with written certification of such destruction, except for archival and backup copies that are not readily available for use and business records required by law to be retained.

8. If either party becomes legally obligated to disclose any of the other party's Confidential Information, the party subject to the obligation shall notify the other party in writing prior to such disclosure and shall reasonably cooperate with the other party at the other party's expense in seeking a protective order or other appropriate remedy.

9. Each party agrees that in the event of a breach or threatened breach by either party, including its officers, directors, employees, consultants or advisors, of the provisions of this Agreement, the non-breaching party will have no adequate remedy in money damages and, accordingly, shall be entitled to seek an injunction against such breach, in addition to any other legal or equitable remedies available to it.

10. Each party is disclosing Confidential Information solely on an "AS IS" basis with all faults. In no event shall the disclosing party be liable for the accuracy or completeness of the Confidential Information. None of the Confidential Information disclosed by the parties constitutes any representation, warranty, assurance, guarantee or inducement by either party to the other with respect to the infringement of trademarks, copyrights, patents, any right of

privacy, or any rights of third person. The disclosing party will not be liable for any damages arising out of the use of Confidential Information disclosed hereunder.

11. If any Confidential Information originating in the United States of America is authorized by this Agreement to be disclosed outside the United States of America, the receiving party agrees to ensure that it or any materials derived from it are not disclosed or communicated to any individual or entity in any country to which the export of such information is prohibited by export laws or regulations of the United States of America.

12. Neither party shall knowingly, directly or indirectly, either alone or with others, canvass, contact, attempt to call on, solicit, hire, recruit, or take away the clients, customers, employees, service providers, or trade vendors of the other, relative to the sale, distribution, or promotion of its products and services, or in regard to any other concern, without the express written permission of the other party.

13. This Agreement is governed by the laws of the State of California without regard to its rules on conflicts of law. Neither party may assign its rights or obligations under this Agreement. No modifications or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties. This Agreement is the entire agreement between the parties on nondisclosure of confidential information and supersedes all prior representations and agreements between the parties on that subject. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed any original, but all of which together shall constitute one and the same instrument.

14. This Agreement shall expire three (3) years after written termination of this agreement by either party. A lack of mutual communication or normal business transactions between the two parties to this agreement shall be treated the same as written termination of this agreement if such lack of mutual communication or business lasts for a period of more than 6 months.

**[SIGNATURE PAGE FOLLOWS ON THE NEXT PAGE]**

**IN WITNESS WHEREOF**, each party hereto has caused this Agreement to be duly executed by its authorized representative.

**ENGINE YARD, INC.**

By: \_\_\_\_\_  
(sign, print, date)

**OTHER COMPANY/PARTY NAME:** \_\_\_\_\_

By: \_\_\_\_\_  
(sign, print, date)

Please fax back to Engine Yard at (866) 690-8078.