



## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement is made as of April 26, 2021:

**BETWEEN:**      **Sault Ste. Marie Innovation Centre**  
                    **Acorn Information Solutions**  
                    99 Foster Drive, Level 6  
                    Sault Ste. Marie, ON  
                    P6A 5X6

**AND:**            **City of Elliot Lake**  
                    45 Hillside Drive, North  
                    Elliot Lake, ON  
                    P5A 1X5

The parties have agreed upon a business relationship with each other, more specifically:

The City of Elliot Lake has agreed to receive confidential personal information pertaining to registrants of the Vulnerable Persons Registry (VPR) in order to assist in preparing effective responses during emergencies (as that term is later defined).

In the course of discussions regarding the business purpose, Acorn Information Solutions has agreed to the secure disclosure of authorized (as that term is later defined) personal information of VPR registrants on a monthly basis to the City of Elliot Lake. The City of Elliot Lake has agreed to update monthly VPR data within 15 days of receiving the email notification from the VPR Coordinator. By virtue of this Agreement, each party wishes to protect the confidentiality of such Confidential Information.

Both parties therefore agree as follows:

### 1. DEFINITIONS.

(a) “**Confidential Information**” refers to any personal information, data or materials disclosed by Acorn Information Solutions that pertain to any VPR registrant.

(b) “**Emergency**” in the case of the VPR refers to the following:

- Isolated situations effecting smaller geographic areas within the City of Elliot Lake that require emergency response planning (i.e. small scale evacuations)
- A state of emergency; a condition, declared by a government, in which martial law applies, usually because of civil unrest or natural disaster

(c) “**Authorized Information**” means the limits set by the Acorn Information Solutions as to what information is

to be disclosed to the City of Elliot Lake for the purposes of effectively planning emergency responses

(d) “**Government Authority**” means any governmental authority or court, tribunal, agency, department, commission, arbitrator, board, bureau, or instrumentality of Canada or any other country or territory, or domestic or foreign state, prefecture, province, commonwealth, city, county, municipality, territory, protectorate or possession.

(e) “**Law**” means all Laws, statutes, ordinances, codes, regulations and other pronouncements having the effect of Law of any Government Authority.

## **2. CONFIDENTIALITY.**

### **(a) Confidential Information Disclosures**

In the performance of this Agreement the City of Elliot Lake may receive the Confidential Information pertaining to the VPR Acorn Information Solutions. Disclosures of Confidential Information made by Acorn Information Solutions (or the “**disclosing party**”) to City of Elliot Lake (or the “**receiving party**”), are pursuant to all terms and conditions of this Agreement. All Confidential Information of the disclosing party will remain the exclusive property of the disclosing party. The terms and conditions of this Agreement are deemed to be Confidential Information of both parties.

### **(b) Exclusions**

Confidential Information does not include information, data or materials that, as proved by written records:

(i) Public Domain. are or become a part of the public domain through no act or omission on the part of the receiving party and no violation of any obligation of nondisclosure by any third party; or

(ii) Independently Developed. are independently developed by the receiving party without reference to the disclosing party's Confidential Information, as evidenced through written records created in the normal course of the receiving party's business; or

(iii) Third Party Source. are disclosed to the receiving party through a third party source or series of sources without any violation of nondisclosure with respect to such information, data or materials by any source(s) in the series (however, such information only becomes Confidential Information once the receiving party is aware of such breach).

**(c) Duties**

Without limiting any other obligations under this Agreement, the parties agree to the following specified duties:

- (i) Nondisclosure and Uses. The receiving party must use commercially reasonable methods, at least as substantial as the methods it uses to protect its own confidential information, data and materials of a similar nature, to maintain and cause its employees to maintain the confidentiality of the Confidential Information by not copying, publishing, disclosing to third parties or using the Confidential Information; except employees of a receiving party may use the Confidential Information in order to perform the receiving party's obligations or engage in activities contemplated under the Business Purpose. A receiving party may not modify or delete any proprietary rights legend appearing in the disclosing party's Confidential Information. It is further acknowledged and agreed by the parties that the City of Elliot Lake is bound by provisions of the Municipal Freedom of Information and Protection of Privacy Act.
- (ii) Advise Employees. The receiving party must advise each employee before receiving direct or indirect access to the Confidential Information of the obligations of the receiving party regarding the Confidential Information under this Agreement.
- (iii) Disclosures to Agents and Subcontractors. A receiving party may share Confidential Information with: (a) its counsel under an obligation of confidentiality and nondisclosure no less protective of the disclosing party's Confidential Information than the terms and conditions of this Agreement; and (b) its subcontractors pursuant to a written confidentiality agreement no less protective of the disclosing party's Confidential Information than this Agreement (a "***Subcontractor Confidentiality Agreement***"), provided that in no event may an counsel or subcontractor of a receiving party disclose Confidential Information to any other third party, with the exception of a Government Authority to which a disclosure may be made (for subcontractors, only pursuant to a provision in the Subcontractor Confidentiality Agreement identical to Section 2(d) (Disclosures Required by Law) of this Agreement), except that the counsel or subcontractor must give the prior notice required therein to both the receiving party and the disclosing party. Receiving party agrees to assume all liability and responsibility for such counsels' and subcontractors' compliance with and breach of the terms and conditions of this Agreement as if such counsels' and subcontractors' acts and omissions were receiving party's own.
- (iv) Notice. Upon discovery, receiving party agrees to provide disclosing party immediate telephonic and written notice of a breach of: (a) any obligation of confidentiality and nondisclosure required hereunder prior to a disclosure; and (b) any Subcontractor Confidentiality Agreement.
- (v) Return of Confidential Information. After a request by the disclosing party, and after

termination or expiration of this Agreement, receiving party must within thirty (30) days return or destroy (and certify to such destruction in writing, such certification not to be unreasonably withheld or delayed) all Confidential Information of the disclosing party, including, without limitation: (a) all tangible and electronic documents, drawings, materials, hardware, disks, tapes; and (b) all copies, notes, summaries and excerpts of any of the foregoing; and (c) all Confidential Information in the possession of any third parties to whom receiving party disclosed Confidential Information pursuant to this Agreement. Notwithstanding the foregoing, receiving party may retain Confidential Information as required by applicable Laws or orders of a Government Authority with jurisdiction over receiving party (the "**Retention Requirements**"), and any such uses or disclosures of Confidential Information by the receiving party will be limited to only those uses and disclosures mandated by the Retention Requirements.

**(d) Disclosures Required by Law**

In the event any Confidential Information is required to be disclosed by Law or order of any Government Authority having jurisdiction over the receiving party (including as necessary for a party to assert a claim in a court of competent jurisdiction), before any such disclosure the receiving party will make reasonable efforts to provide notice to the disclosing party reasonably sufficient to allow the disclosing party the opportunity to apply for a protective order or other restriction regarding such disclosure. In the event such Confidential Information is disclosed in such circumstances, such Confidential Information shall continue to constitute Confidential Information in all other circumstances pursuant to this Agreement.

**3. TERM AND SURVIVAL.**

**(a) Term**

The term of this Agreement (together with any renewals, the "**Term**") begins on April 26, 2021 and will continue as long as the VPR remains a service. Any changes to this agreement shall be mutually agreed to by the parties in writing.

**(b) Survival**

The following captioned sections survive any termination, expiration or non-renewal of this Agreement: "Nondisclosure and Uses" (only for purposes of complying with the "Return of Confidential Information" provision) and only for thirty (30) days or such longer period as necessary to comply with the Retention Requirements, also, if any personnel of a receiving party retains in their memory any specific contents of a disclosing party's Confidential Information, such specific contents may not ever be disclosed to any third parties except under "Disclosures Required by Law"), "Return of Confidential Information", "Survival" and "General".

**(c) Termination for Insolvency**

If either party is adjudged insolvent or bankrupt, or upon the institution of any proceedings by it seeking relief, reorganization or arrangement under any Laws relating to insolvency, or if an involuntary petition in bankruptcy is filed against a party and the petition is not discharged within sixty (60) days after filing, or upon any assignment for the benefit of a party's creditors, or upon the appointment of a receiver, liquidator or trustee of any of a party's assets, or upon the liquidation, dissolution or winding up of its business (each, an "***Event of Bankruptcy***"), then the party affected by any Event of Bankruptcy must immediately give notice of the Event of Bankruptcy to the other party, and the other party may terminate this Agreement by notice to the affected party.

#### **(d) Termination for Breach**

If either party breaches any provision contained in this Agreement, and the breach is not cured within thirty (30) days after the breaching party receives notice of the breach from the non-breaching party, the non-breaching party may then deliver a second notice to the breaching party immediately terminating this Agreement.

#### **4. GENERAL**

***Entire Agreement and Amendments.*** This Agreement is the entire agreement between the parties and supersedes all earlier and simultaneous agreements regarding the subject matter, including, without limitation, any invoices, business forms, purchase orders, proposals or quotations. This Agreement may be amended only in a written document, signed by both parties.

***Independent Contractors, Third Party Beneficiaries, and Subcontractors.*** The parties acknowledge that they are independent contractors under this Agreement, and except if expressly stated otherwise, none of the parties, nor any of their employees or agents, has the power or authority to bind or obligate another party. Except if expressly stated, no third party is a beneficiary of this Agreement. Party-1 may not subcontract any obligation under this Agreement without Party-2's prior written consent. Party-2 can subcontract without Party-1's consent. Each party is responsible for its subcontractors' compliance with and breach of this Agreement as if the subcontractors' acts and omissions were the party's own.

***Assignment.*** This Agreement binds and inures to the benefit of the parties' successors. This Agreement is not assignable, delegable, sub-licenseable or otherwise transferable by any party in whole or in part without the prior written consent of the other party (or parties). Any transfer, assignment, delegation or sublicense by a party without such prior written consent is invalid. However, any party may assign this Agreement to a third party purchasing: (a) majority control of the party's equity shares; or (b) all or substantially all of either (i) a party's assets or (ii) the assets of the party's relevant business unit under this Agreement.

**No Waivers, Cumulative Remedies.** A party's failure to insist upon strict performance of any provision of this Agreement is not a waiver of any of its rights under this Agreement. Except if expressly stated otherwise, all remedies under this Agreement, at Law or in equity, are cumulative and nonexclusive.

**Severability.** If any portion of this Agreement is held to be unenforceable, the unenforceable portion must be construed as nearly as possible to reflect the original intent of the parties, the remaining portions remain in full force and effect, and the unenforceable portion remains enforceable in all other contexts and jurisdictions.

**Notices.** All notices, including notices of address changes, under this Agreement must be sent by registered or certified mail, by overnight commercial delivery or by email to the address set forth in this Agreement by each party or by electronic mail.

**Captions and Plural Terms.** All captions are for purposes of convenience only and are not to be used in interpretation or enforcement of this Agreement. Terms defined in the singular have the same meaning in the plural and vice versa.

**IN WITNESS WHEREOF,** the parties execute this Agreement as of April 26, 2021. Each person who signs this Agreement below represents that such person is fully authorized to sign this Agreement on behalf of the applicable party.

**PARTY-1**

By: 

Print Name: Paul Beach

Title: Privacy Officer

Organization: Sault Ste. Marie Innovation Centre

**PARTY-2**

Signature: \_\_\_\_\_

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

Organization: City of Elliot Lake

Signature: \_\_\_\_\_

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

Organization: City of Elliot Lake

We have authority to bind the corporation