**Draft Memorandum of Understanding**

Between CeVen Limited and

Erastus Gichuhi

**Index**

1…………………NDA (Non-Disclosure Agreement)

8……………….. Design Build Transfer Agreement

3………………..Support and Maintenance Agreement

4……………….. Inclusion in CeVen Employee/Venfor Plan for Share Options

**Non- Disclosure Agreement**

This Mutual Nondisclosure Agreement (the “Agreement”) is made by and between **Ceven limited,** registered under the laws of Kenya to conduct the Electronic Distribution of Pre-Paid Products (Airtime and Electricity) with its registered offices at Jameson Ct Suite C8 Ngong Rd Nairobi, Kenya P.O Box 63175 and **Erastus Gichuhi**. (Together with its subsidiaries, the “Company” and, together with Ceven limited ,the “Parties”).

1. **Purpose**

The Parties wish to cement an ongoing business opportunity of mutual interest, (the “Relationship”) in connection with which each Party may disclose it’s Confidential Information (as defined below) to the other. This Agreement is intended to allow the Parties to discuss and evaluate the Relationship while protecting each Party’s Confidential Information against unauthorized use or disclosure. The purpose covers the following areas:

* **Design, Build and Transfer Agreement of the PataPawa Pre-paid Engine**
* **Support and Maintenance Agreement of the PataPawa Pr-paid Engine**
* **Inclusion of Erastus Gichuhi in the CeVen Employee/Vendor Plan for Share Options in CeVen Limited.**
1. **Definition of Confidential Information.**

“Confidential Information” means any oral, written, graphic, visual, electronic or machine‑readable information including, but not limited to, that which relates to patents, patent applications, research, product plans and specifications, products, developments, inventions, processes, designs, drawings, engineering, formulae, markets, software (including source and object code), hardware configuration, computer programs, algorithms, business plans, agreements with third parties, services, customers, marketing or finances of the disclosing Party.

1. **Nondisclosure of Confidential Information**
	1. The Parties each agree not to use any Confidential Information disclosed to it by the other Party for its own use or for any purpose other than to carry out discussions concerning, and the undertaking of, the Relationship. Neither Party shall disclose or permit disclosure of any Confidential Information of the other Party to third parties or to employees of the Party receiving Confidential Information, other than the minimum number of persons who are demonstrably required to have the information in order to carry out the discussions regarding the Relationship and who are party to nondisclosure agreements substantially similar in content to this Agreement with the Party receiving Confidential Information. Each Party agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure or improper use of Confidential Information of the other Party in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information. Such measures shall include, but not be limited to, the highest degree of care that the receiving Party uses to protect its own Confidential Information of a similar nature, which shall be no less than reasonable care. Each Party agrees to notify the other in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information of the disclosing Party which may come to the receiving Party’s attention.
	2. Exceptions. Notwithstanding the foregoing, neither Party shall have liability to the other with regard to any disclosure of Confidential Information of the other which the receiving Party can prove with clear and convincing evidence:
2. was in the public domain at the time it was disclosed or has entered the public domain through no fault of the receiving Party;
3. was known to the receiving Party, without restriction (to the receiving Party’s knowledge), at the time of disclosure, as demonstrated by files in existence at the time of disclosure;
4. is disclosed with the prior written approval of the disclosing Party;
5. was independently developed by the receiving Party without any use of the Confidential Information of the disclosing Party and by employees of the receiving Party who have not had access to the Confidential Information, as demonstrated by files created at the time of such independent development;
6. becomes known to the receiving Party, without restriction, from a source other than the disclosing Party without breach of this Agreement by the receiving Party and otherwise not in violation of the disclosing Party’s rights;
7. is disclosed generally to third Parties by the disclosing Party without restrictions similar to those contained in this Agreement; or
8. is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body or as otherwise may be required by applicable law; provided, however, that the receiving Party shall provide prompt notice of such court order or requirementto the disclosing Party to enable the disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure.
	1. Labeling of Confidential Information. The disclosing Party shall use reasonable efforts to (i) identify the confidential nature of the Confidential Information by proprietary and/or confidential notices and legends and (ii) identify the confidential nature of oral or visually disclosed Confidential Information at the time of or prior to the disclosure. Notwithstanding the foregoing, the failure to mark Confidential Information as confidential or proprietary, or to record oral conversations in writing, said information shall be deemed Confidential Information hereunder if it is of the type or nature that would reasonably be expected by the Parties, in the context of its disclosure, to be confidential. A Party may copy Confidential Information provided by the other Party only to the extent reasonable or necessary for exploring the possibility of the Relationship. All copies shall always clearly contain the same proprietary and confidential notices and legends which appear on the original Confidential Information. Confidential Information shall remain the property of the disclosing Party, anything to the contrary notwithstanding.
9. **Return of Materials**

Any materials or documents that have been furnished by one Party to the other in connection with the Relationship (including all copies of such documentation, and any summaries, analyses or extracts thereof) shall be promptly returned to the disclosing Party or destroyed by the receiving Party, at the election of the disclosing Party, within ten (10) business days after (a) the expiration or earlier termination of this Agreement or (b) the written request of the disclosing Party. If requested by the disclosing Party, the receiving Party shall certify in writing its destruction of such documentation, if applicable.

1. **Term**

The foregoing commitments of each Party shall survive any termination of the Relationship, and shall continue for a period terminating on the later to occur of the date (a) five (5) years following the date of this Agreement or (b) three (3) years from the date on which Confidential Information is last disclosed under this Agreement.

1. **Successors and Assigns**

This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the Parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

1. **Severability**

If one or more provisions of this Agreement is or are held to be unenforceable under applicable law, the Parties agree to renegotiate such provision in good faith. In the event that the Parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

1. **Governing Law**

This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the Parties hereto shall be governed, construed and interpreted in accordance with the laws of Kenya, without giving effect to principles of conflicts of law.

1. **Notices**

All notices, demands or other communications required or permitted to be given or made hereunder shall be:

1. in writing,
2. in English language and
3. delivered personally or sent by Domestic / International courier service or sent by prepaid registered post.(or to such other address as any party may from time to time notify the other party).

Any such notice, demand or communication shall be deemed to have been duly served on and received by the addressee:

1. if delivered by hand, at the time of delivery;
2. if sent by domestic courier, within 3 business days of dispatch
3. if sent by prepaid registered post, within 3 business days of dispatch if the sender in case of domestic recipient and 10 business days in case of recipient is abroad
4. If sent by international courier service, within 4 business days of dispatch.

In proving the giving of a notice or any other document, it shall be sufficient to show:

1. in the case of registered post or domestic courier or international courier, that the notice or other document was contained in an envelope which was duly addressed and posted or handed over to the courier agency against a waybill receipt

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| Ceven Limited. | : | P.O.Box 63175-00619 Kindaruma gardens #6Kindaruma Rd Kilimani, Nairobi Kenya |
|  |  | Email: andrewgitonga@patapawa.com |
|  |  |  |
|  |  | Attn: Andrew Gitonga |

|  |  |  |
| --- | --- | --- |
| Erastus Gichuhi | : |  |
|  |  |  |
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1. **Remedies; Indemnification**

The Parties each agree that its obligations set forth in this Agreement are necessary and reasonable in order to protect the disclosing Party and its business. The Parties each expressly agree that due to the unique nature of the disclosing Party’s Confidential Information, monetary damages would be inadequate to compensate the disclosing Party for any breach by the receiving Party of its covenants and agreements set forth in this Agreement. Accordingly, the Parties each acknowledge and agree that any such violation or threatened violation would cause irreparable injury to the disclosing Party and that, in addition to any other remedies that may be available, at law, in equity or otherwise, the disclosing Party shall be entitled (a) to seek injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by the receiving Party (including its directors, employees, consultant or agents, as the case may be), without the necessity of proving actual damages, and (b) to be indemnified by the receiving Party from any loss or harm, including but not limited to reasonable attorneys’ fees, arising out of or in connection with any breach or enforcement of the receiving Party’s obligations under this Agreement or the unauthorized use or disclosure of the disclosing Party’s Confidential Information. In any action or proceeding by the disclosing Party to obtain injunctive relief, the receiving Party’s or any other defendant’s ability to answer in damages shall not be a bar or be interposed as a defense to the granting of relief and the disclosing Party shall not be required to post a bond or other undertaking in such action or proceeding.

1. **Amendment and Waiver**

Any term of this Agreement may be amended only in a writing that is duly and manually signed in ink and which makes specific reference to this Section 11. For the sake of clarity, email communication does not constitute a writing that is manually signed in ink by both Parties hereto within the meaning of this Agreement. Any amendment or waiver affected in accordance with this Section 11 shall be binding upon the Parties and their respective successors and assigns. Failure to enforce any provision of this Agreement by a Party shall not constitute a waiver of any term hereof by such Party.

1. **Counterparts**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

1. **Entire Agreement**

This Agreement is the product of both Parties hereto, and constitutes the entire agreement between such Parties pertaining to the subject matter hereof, and supersedes and merges all prior negotiations and drafts of the Parties with regard to the subject matter hereof. Neither Party shall be entitled to assign or transfer this Agreement to any third party without the prior written consent of the other Party hereto which shall not be unreasonably withheld, conditioned or delayed.

1. **No Publicity**

Neither Party shall, without the prior consent of the other Party, disclose to any other person the fact that Confidential Information of the other Party has been and/or may be disclosed under this Agreement, that discussions or negotiations are taking place between Ceven Limited and Erastus Gichuhi, or any of the terms, conditions, status or other facts with respect thereto, except as required by law and then only with prior notice as soon as possible to the other party.

1. **No Modification**

Ceven Limited and Erastus Gichuhi each agree that it shall not modify, reverse engineer, decompile, create other works from or disassemble any products, hardware or software programs contained in the Confidential Information of the other Party unless specifically permitted in writing by the disclosing Party.

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by a duly authorized officer thereof as of the date first above written.

**Ceven Limited.**

Name: Andrew Gitonga

Title: Managing Director

Address: P.O.Box 63175-00619 ,

Nairobi, Kenya East Africa

**Erastus Gichuhi**

Address:

**Design Build and Transfer Agreement**

This Design, Build and Transfer Agreement (the “Agreement”) is made by and between **Ceven limited,** registered under the laws of Kenya to conduct the Electronic Distribution of Pre-Paid Products (Airtime and Electricity) with its registered offices at Kindaruma gardens, Kindaruma Rd Suite 6 Nairobi, Kenya P.O Box 63175 and **Erastus Gichuhi**. (Together with its subsidiaries, the “Company” and, together with Ceven limited ,the “Parties”).

Background Information

1. CeVen Limited approached and contracted Erastus Guchuhi (software developer) to build a Pre-paid vending Engine to dispense Pin numbers via a variety of methods.
2. Erastus Gichuhi has built the software engine (PataPawa) and has been in operation for approximately 3 years.

Purpose

The purpose of this agreement is to ensure the following:

1. A clear, defined handover process of the PataPawa engine from development to CeVen Limited as the clear and outright owner of the PataPawa engine.
2. To determine the full, fair current market cost of the PataPawa engine as is and that is to be determined by an Independent Evaluator of mutual agreement between the parties.
3. To determine the full monetary amounts that has been paid so far for the creation of the PataPawa engine.
4. To ensure all payments due to Erastus Gichuhi are paid in full if the fair market cost is determined to be more than has been paid out and ensure and that the said payment will be in the form of monthly revenue share based on a mutually acceptable % of net income to Ceven Limited as paid by Kenya Power.
5. To ensure any additional development will be considered “new business” with the default of any such development to be undertaken by Erastus under a separate software development agreement.

**Support and Maintenance Agreement**

**Inclusion in CeVen Employee/Vendor Plan for Share Options**