

**RESOLUTION NO.: R-2012-095**

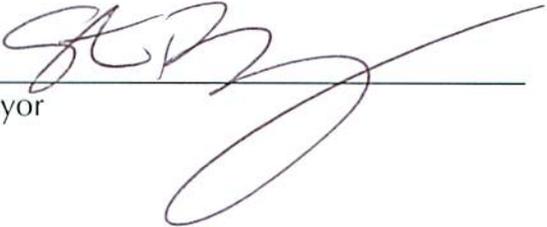
*Authorizing the City Manager to execute a Confidential Disclosure  
and Nonsolicitation Agreement between the City of Columbia  
and PredPol, Inc.*

ORIGINAL  
STAMPED IN RED

BE IT RESOLVED by the Mayor and City Council of the City of Columbia, South Carolina this 16th day of October, 2012, that the City Manager is hereby authorized to sign the attached Confidential Disclosure and Nonsolicitation Agreement between the City of Columbia and PredPol, Inc., or in a form approved by the City Attorney if non-material terms are amended, for the uses and purposes therein mentioned.

Requested by:

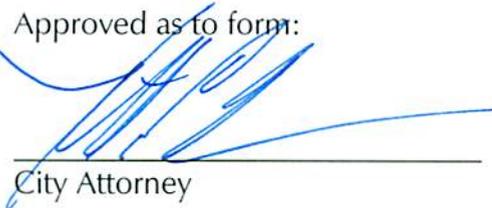
R.J. Hines, Police Captain

  
\_\_\_\_\_  
Mayor

Approved by:

  
\_\_\_\_\_  
City Manager

Approved as to form:

  
\_\_\_\_\_  
City Attorney

ATTEST:

  
\_\_\_\_\_  
City Clerk

Introduced: 10/16/2012  
Final Reading: 10/16/2012



## CONFIDENTIAL DISCLOSURE AND NONSOLICITATION AGREEMENT

This Confidential Disclosure and Nonsolicitation Agreement is made and effective as of \_\_\_\_\_, 20\_\_\_, by and between Predpol, Inc., and the City of Columbia, South Carolina, (both referred to here in this reciprocal NDA as “Disclosing Party”), on the one hand, and PredPol, Inc. and the City of Columbia, South Carolina, (both referred to here in this reciprocal NDA as “Receiving Party”, on the other.

1. BACKGROUND. Disclosing Party and Receiving Party are either engaged in an existing business relationship or intend to engage in a relationship concerning the business commonly known as PredPol and data covered by various laws of the State of South Carolina. In the course of such discussions and negotiations, and/or in the course of any such business relationship, Disclosing Party may disclose or deliver or has disclosed or delivered to the Receiving Party certain trade secrets or confidential or proprietary information. The parties have entered into this Agreement in order to assure the confidentiality of such trade secrets and confidential or proprietary information in accordance with the terms of this Agreement.

2. PROPRIETARY INFORMATION. As used in this Agreement, the term “Proprietary Information” shall include any and all information about Disclosing Party’s businesses, business plans, customers, clients, strategies, trade secrets, operations, recipes, methods, records, finances, assets, technology, data and information that reveals the processes, methodologies, technology or know-how by which Disclosing Party’s existing or future products, services, applications and methods of operation are developed, conducted or operated and other confidential or proprietary information designated as such in writing by Disclosing Party, whether by letter or by the use of an appropriate proprietary stamp or legend, prior to or at the time any such trade secret or confidential or proprietary information is disclosed or is orally or visually disclosed to the Receiving Party by Disclosing Party. The fact that the Parties are in a business relationship or engaged in business discussions, as well as the nature and content of all such discussions, is also considered Proprietary Information, subject to all of the terms and conditions of this Agreement. Information which is orally or visually disclosed by Disclosing Party, or is disclosed in writing without an appropriate letter, proprietary stamp or legend, shall constitute Proprietary Information if:

2.1 it would be apparent to a reasonable person, familiar with Disclosing Party’s business and the industry in which it operates, that such information is of a confidential or proprietary nature, the maintenance of which is important to Disclosing Party; or if:



2.2 Disclosing Party, within thirty (30) days after such disclosure, delivers to Receiving Party a written document or documents describing such information and referencing the place and date of such oral, visual or written disclosure and the names of the employees or officers of the Receiving Party to whom such disclosure was made.

3. DISCLOSURE/USE OF PROPRIETARY INFORMATION. The Receiving Party shall hold in confidence, and shall not disclose (or permit or suffer its personnel to disclose) to any person outside its organization, any Proprietary Information. The Receiving Party and its personnel shall use such Proprietary Information only for the purpose for which it was disclosed and shall not use or exploit such Proprietary Information for its own benefit or the benefit of another without the prior written consent of Disclosing Party. Without limitation of the foregoing, the Receiving Party shall not cause or permit reverse engineering of any Proprietary Information and shall disclose Proprietary Information only to persons within its organization who have a need to know such Proprietary Information in the course of the performance of their duties and who are bound by a written agreement, enforceable by Disclosing Party, to protect the confidentiality of such Proprietary Information. The Receiving Party shall adopt and maintain programs and procedures that are reasonably calculated to protect the confidentiality of Proprietary Information and shall be responsible to Disclosing Party for any disclosure or misuse of Proprietary Information that results from a failure to comply with this provision. The Receiving Party shall be fully responsible for any breach of this Agreement by its agents, representatives, employees and affiliates. The Receiving Party will promptly report to Disclosing Party any actual or suspected violation of the terms of this Agreement and will take all reasonable further steps requested by Disclosing Party to prevent, control or remedy any such violation.

4. LIMITATION ON OBLIGATIONS. The obligations of the Receiving Party specified in Section 3 above shall not apply, and the Receiving Party shall have no further obligations, with respect to any Proprietary Information to the extent Receiving Party can demonstrate, by clear and convincing evidence, that such Proprietary Information:

4.1 is generally known to the public at the time of disclosure or becomes generally known through no wrongful act on the part of the Receiving Party;

4.2 is in the Receiving Party's possession at the time of disclosure otherwise than as a result of Receiving Party's breach of any legal obligation;



4.3 becomes known to the Receiving Party through disclosure by sources other than Disclosing Party having the legal right to disclose such Proprietary Information; or

4.4 is independently developed by the Receiving Party without reference to or reliance upon the Proprietary Information.

In the event of a disputed disclosure, the Receiving Party shall bear the burden of proof of demonstrating that the information falls under one of the above exceptions. In the event any Proprietary Information is required to be disclosed by the Receiving Party to comply with applicable laws or governmental or regulatory regulations, the Receiving Party agrees to provide prior written notice of such disclosure to Disclosing Party and take reasonable and lawful actions to avoid and/or minimize the extent of such disclosure.

5. OWNERSHIP OF PROPRIETARY INFORMATION. The Receiving Party agrees that Disclosing Party is and shall remain the exclusive owner of the Proprietary Information and all patent, copyright, trade secret, trademark service mark and other intellectual property rights therein. No license or conveyance of any such rights to the Receiving Party is granted or implied under this Agreement.

6. RETURN OF DOCUMENTS. The Receiving Party shall, upon the termination of this Agreement or the request of Disclosing Party, return to Disclosing Party all drawings, documents, and other tangible manifestations of Proprietary Information received by the Receiving Party pursuant to this Agreement (and all copies, electronically stored versions and reproductions thereof).

7. NONSOLICITATION. During the one-year period commencing on the date of this Agreement, the Receiving Party may not, without the prior written consent of the Disclosing Party, directly solicit for employment any director, officer, employee or agent of Disclosing Party, the identities of whom constitute protectable trade secrets.

8. TERM AND TERMINATION.

8.1 Disclosing Party shall have the right to terminate this Agreement upon written notice to the Receiving Party. All obligations of the Receiving Party under this Agreement shall survive termination.

8.2 The provisions of this Agreement shall continue with respect to the confidentiality of the respective item of Proprietary Information until the earlier of:



- a. the expiration of Disclosing Party's ownership rights in the respective item of Proprietary Information; or
- b. the occurrence of any of the events set forth in section 4.1 through 4.4 of section four.

9. MISCELLANEOUS.

9.1 This Agreement supersedes all prior agreements, written or oral, between Disclosing Party and the Receiving Party relating to the subject matter of this Agreement. This Agreement may not be modified, amended or discharged, in whole or in part, except by an agreement in writing signed by Disclosing Party and the Receiving Party.

9.2 This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective officers, directors, shareholders, agents, affiliates, successors and assigns.

9.3 This Agreement shall be construed and interpreted in accordance with the laws of the State of South Carolina. Venue for any legal action pursuant to this Agreement shall be Richland County, South Carolina.

9.4 The provisions of this Agreement are necessary for the protection of the business and goodwill of Disclosing Party and are considered by the Receiving Party to be reasonable for such purpose. The Receiving Party agrees that any breach of this Agreement will cause Disclosing Party substantial and irreparable damages and, therefore, in the event of any such breach, in addition to other remedies that may be available, Disclosing Party shall have the right to seek specific performance and other injunctive and equitable relief, in which event the Receiving Party expressly waives any requirement that Disclosing Party post a bond or undertaking.

9.5 The Receiving Party acknowledges and agrees that neither the Disclosing Party nor any of its representatives are making any representation or warranty, express or implied, as to the accuracy or completeness of all or any part of the Proprietary Information, and that neither the Disclosing Party nor any of its representatives will have any liability to the Receiving Party or any other person or entity as a result of the use of the Proprietary Information by such person or entity, or as a result of any errors therein or omissions therefrom.



EXECUTED as a sealed instrument as of the day and year first set forth above.

DATED: \_\_\_\_\_, 20\_\_

PredPol, Inc.,

\_\_\_\_\_

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

DATED: Oct. 22, 2012

City of Columbia, South Carolina:

*Steven A. Gantt*

By: Steven A. Gantt, City Manager