### Noncompete, Nondisclosure and Proprietary Rights Agreement

THIS NONCOMPETE, NONDISCLOSURE AND PROPRIETARY RIGHTS AGREEMENT(this “Agreement”) is made and entered into effective the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Employer"), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_("Employee”).

A. Employer engages in the business of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Business").[[1]](#endnote-1)

B. Employee, as the result of employment with Employer, will have access to and will learn or may develop confidential and proprietary information concerning the business operations of Employer.

C. Employer is willing to provide Employee the opportunity to develop, and is willing to permit Employee access to, certain confidential and proprietary information concerning the Business of Employer only if Employee makes the covenants and warranties set forth below.

NOW, THEREFORE, in consideration of the above and in consideration of the employment of Employee by Employer, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Employer and Employee agree as follows:[[2]](#endnote-2)

1. OWNERSHIP OF PROPRIETARY INFORMATION. Employee agrees that Proprietary Information (as defined below) disclosed to Employee, or learned by Employee, in connection with Employee's employment with Employer is being disclosed to Employee solely for the benefit of Employer and that Employee shall acquire no right, title, or interest in any such Proprietary Information because of its disclosure to Employee. All such Proprietary Information is and shall remain the exclusive property of Employer.

2. NONDISCLOSURE. Employee agrees that Employee will not at any time either during or after Employee's employment by Employer disclose to any Person (other than Employer) any Proprietary Information disclosed to Employee or learned or developed by Employee in connection with Employee's employment with Employer, except as such disclosure may be necessary to fulfill Employee's duties and responsibilities as an employee of Employer or except as is required to be disclosed by law provided that Employee shall promptly notify Employer and undertake reasonable efforts to obtain a protective order or otherwise assure the confidential treatment of such information subsequent to the legally required disclosure.

3. NONUSE. Employer agrees that Employee will not at any time either during or after Employee's employment use, directly or indirectly, any Proprietary Information disclosed to Employee or learned or developed by Employee in connection with Employee's employment with Employer for the benefit of Employee or for the benefit of any Person other than Employer.

4. DISCLOSURE AND ASSIGNMENT OF INTELLECTUAL PROPERTY.

(a) Disclosure. Employee agrees to make prompt full written disclosure to Employer and to hold in trust for the sole right, benefit, and use of Intellectual Property (as defined below) of Employer which Employee discovers, develops or improves or becomes aware of, during or after his/her term of employment with Employer, which are made through the use, in whole or in part, of any Proprietary Information (as defined below) or any of Employer's equipment, facilities or time, or which results from work performed by the Employee during the Employee's employment with Employer.

(b) Assignment. Employee agrees that any and all work performed by Employee during Employee's employment with Employer shall be deemed to be a "work for hire" within the meaning of the Copyright Act of 1976, as amended. To the extent any such work is determined not to be a work for hire, or at any time upon the request of Employer, Employee agrees to assign and does hereby assign to Employer all right, title, and interest in and to all Intellectual Property discovered, developed or improved during Employee's employment with Employer, or thereafter, through the use, in whole or in part, of any Proprietary Information or any of Employer's equipment, facilities or time or which results from work performed by the Employee during Employee's employment with Employer. Employee shall, during the term of employment with Employer, and thereafter, at Employer's request and expense, review, execute, acknowledge and deliver any and all papers necessary, in Employer's opinion, to secure legal protection of the Intellectual Property, including but not necessarily limited to applications for patents and copyrights, and to execute any oath or declaration and to verify any document in connection with carrying out the terms of this Agreement.

1. Attorney-in-Fact. In the event Employer is unable for any reason whatsoever to secure the signature of Employee to any lawful and necessary documents required, in the opinion of Employer, to fulfill Employee's obligations hereunder, including those necessary for the assignment of, application for, or prosecution of any United States or foreign applications for letters patent or copyright, Employee hereby irrevocably designates and appoints Employer and its duly authorized officers and agents as Employee's agent and attorney-in-fact for such purposes. Employee hereby waives and assigns to Employer any and all claims of any nature whatsoever which Employee may now have or may hereafter have for infringement of any patent or copyright resulting from any such application.

5. WARRANTY OF EMPLOYEE. The Employee warrants that any Propri­etary Information developed by the Employee will not be in derogation of the rights of any Person not related to Employer, nor will any software, source code, object code or related information developed by Employee infringe the copyrights or patents of Persons not related to Employer.

6. RETURN OF PROPRIETARY INFORMATION. Employee agrees that upon termination of employment with Employer, or at any time upon the request of Employer, Employee will deliver promptly to Employer all documents and materials, including software, notes, data, reference materials, sketches, drawings, memoranda, and records in any way incorporating or reflecting any of the Proprietary Information of Employer in the Employee's possession or control, and any Proprietary Information in a form not physically returnable shall be promptly destroyed.

7. AGREEMENT NOT TO COMPETE.

(a) Scope. Employee covenants and agrees that Employee shall not, directly or indirectly, during the Restrictive Period (as defined below) (a) engage in any activity competitive with and adverse to the Business of Employer, whether alone, or as a partner, member, officer, director, employee, manager, agent, representative, shareholder, trustee, fiduciary (or in any other capacity) of any other Person; (b) engage in, become financially interested in or represent or render any advice or services to, or be employed by (as an employee, consultant, agent, representative or in any other capacity), any other business that competes with the Business of Employer; (c) solicit any Person who is a client or customer of Employer to do business with or to obtain services from a firm, other than Employer, that competes with the Business of Employer; (d) interfere with, disrupt or attempt to disrupt relationships, contractual or otherwise, between Employer and its customers, vendors and others who are in any way related to Employer’s business; or (e) solicit for employment or employ any employee of Employer, or aid or assist any other Person in any attempt to hire or employ any person who is an employee of Employer.[[3]](#footnote-1)

(b) Reasonableness. The parties agree that the scope of the geographical area, the duration and the restricted activities set forth in this paragraph 7 are fair and reasonable. Notwithstanding anything to the contrary in this Agreement, and if, and only if, any one or more of the provisions contained in this paragraph 7 shall for any reason be held to be excessively broad as to time, duration, geographical scope, activity or subject, such provisions shall be construed by limiting and reducing them so as to be enforceable to the extent compatible with the applicable law as it should then be determined.

8. DEFINITIONS. For purposes of this Agreement,

1. "Intellectual Property" shall mean any Proprietary Information, including but not limited to ideas, discoveries, develop­ments and/or improvements, whether or not patentable; trademarks, service marks and trade names, whether or not registered; and works of authorship, whether or not copyrightable.
2. "Person" shall mean any natural person, partnership, corpora­tion, business trust, joint stock company, trust, unincorpo­rated association, joint venture, limited liability company, governmental entity or any other entity.
3. "Proprietary Information" shall mean all information pertaining to Employer, including, without limitation, all information or material, written or oral, (i) made known to Employee by or on behalf of Employer in any manner or (ii) originated, discovered or developed in whole or in part by Employee. Proprietary Information includes, but is not limited to, the follow­ing, whether or not reduced to writing: discoveries, ideas, concepts, Intellectual Property, software in various stages of develop­ment, source codes, object codes, designs, drawings, graphics, plans, specifications, techniques, models, data, documen­tation, diagrams, flow charts, research, development, processes, technology, procedures, "know-how", marketing techniques and materials, company strategy, long-range plans, trade secrets, contracts, marketing and development plans, project plans, client and potential client lists and other information related to clients or potential clients, price lists, pricing policies, cost information and financial information. Proprietary Informa­tion also includes any information described above which Employer treats as proprietary or designates as Proprietary Information, whether or not owned or devel­oped by Employer. Proprietary Information shall not include information which was or becomes publicly known without disclosure by Employee. The burden shall be on Employee to establish that information concerning Employer is not Proprietary Information.
4. "Restrictive Period" shall mean the period covering any time during which Employee is an employee of Employer and thereafter (regardless of the cause of termination of employment) for a period equal to the lesser of (i) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and (ii) the length of the most recent continuous period of Employee's employment with Employer.[[4]](#endnote-3)

8. REMEDIES. Employee shall indemnify and hold Employer harmless from and against any and all loss, damage, cost or expense (including attorney fees and expenses) resulting from any use or disclosure of Proprietary Information or any competitive activity in violation of this Agreement. Employee acknowledges and agrees that a violation of the covenants set forth above shall entitle Employer to injunctive relief in addition to any other rights or remedies to which Employer may be entitled, including damages.

9. RELATIONSHIP TO EMPLOYMENT. Except for the obligations of Employee expressly stated in this Agreement, nothing in this Agreement shall have the effect of modifying the terms and provisions of Employee's employment by Employer. In particular, Employee agrees that this Agreement shall not alter the nature of Employee's employment by Employer, nor does it guarantee any particular term of employment. Furthermore, this Agreement shall be enforceable without regard to the cause or basis for any future termination of Employee's employment with Employer.

10.MISCELLANEOUS.

(a) Enforceability. This Agreement shall inure to the benefit of and may be enforced by Employer, its successors or assigns and shall be binding upon Employee, his/her heirs, assigns, legal representatives, executors, administrators, and other successors in interest, except that this Agreement may not be assigned by Employee without the prior written consent of Employer.

(b) Waiver, Modification or Cancellation. Any waiver, alteration or modification of any of the provisions of this Agreement or cancellation or replacement of this Agreement shall not be valid unless in writing signed by the parties hereto. The waiver by Employer of a breach of this Agreement shall not constitute a waiver of any subsequent breach.

(c) Construction. This Agreement shall be governed by the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[[5]](#endnote-4).

(d) Paragraph Headings. The paragraph headings contained herein are for the convenience of reference only and shall not be construed so as to affect the interpretation or construction of any substantive provision of this Agreement.

(e) Severability. If any part of this Agreement, or any part of any provision hereof, is adjudicated to be invalid or void, then the remaining provisions shall be executed insofar as the remaining provisions are capable of execution.

IN WITNESS WHEREOF, the parties execute this Agreement effective as of the day and year first above written.

EMPLOYEE: EMPLOYER:

Print Name & Signature Print Name of Employer

Title Title

1. Insert a general description of Employer's business. Care should be given to this definition because it defines in part the scope of this Agreement. [↑](#endnote-ref-1)
2. In order for this Agreement to be enforceable against Employee, Employee must have received adequate consideration in exchange for making the promises provided in this Agreement. To help satisfy that requirement, this Agreement is designed for execution by employee as a condition to the commencement of his/her employment with Employer. Modifications to this Agreement and additional consideration may be necessary if Employee signs this Agreement after Employee commences employment with Employer. Consideration requirements may vary from state to state. Consult your attorney for advice. [↑](#endnote-ref-2)
3. Employer should carefully consider the geographic area which Employer has a legitimate reason to protect. This Agreement attempts to provide broad protection by not limiting the restrictions to a specific geographic area. Consult your attorney to determine whether a specific geographic limitation is warranted in your case. [↑](#footnote-ref-1)
4. Employer must insert a period of time, usually at least one year. Employer must have a legitimate and reasonable basis for limiting Employee's activities for the specified length of time. Reasonableness standards may vary from state to state. Consult your attorney for advice. [↑](#endnote-ref-3)
5. Insert the name of the state whose law is to govern the contract. The appropriate state is usually the state in which the employment relationship is based. Consult your attorney for advice. [↑](#endnote-ref-4)