

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made and entered into this 30th day of *[insert date]*, by and between *[insert company name]*, with an address of *[insert company address]* (hereinafter referred to as "*[insert short company name]*") and Christian B. Brown, with an address of *[insert CBB address]* (hereinafter referred to as "Vendor").

WITNESSETH:

WHEREAS, *[insert short company name]* possesses certain confidential and proprietary information and receives certain confidential and proprietary information from third parties necessary for the business operation of *[insert short company name]* (individually and collectively "Confidential Information"); and

WHEREAS, *[insert short company name]* may need to disclose Confidential Information to Vendor during the business relationship, (the "Business Purposes"); and

WHEREAS, *[insert short company name]* desires to prevent the unauthorized use and disclosure of the Confidential Information.

NOW THEREFORE, in consideration of these premises and for other good and valuable consideration, Receipt of which is hereby acknowledged, the parties agree as follows:

1. Confidential Information. "Confidential Information" shall mean any and all technical and non-technical information including patent, copyright, trade secret, and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae related to the current, future and proposed products, clients and services of *[insert short company name]*, and includes, without limitation, any information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising, and marketing plans and information. "Confidential Information" also includes proprietary or confidential information of any third party who may disclose such information to *[insert short company name]* in the course of the third party's business and which may be the subject of a Non-Disclosure and Confidentiality Agreement between *[insert short company name]* and said third party.

The obligations of Vendor with regards to the Confidential Information shall not apply to Confidential Information which:

A. is, or later becomes, public knowledge other than by breach of the provisions of this Agreement; or

- B. is in the possession of Vendor with the full right to disclose prior to its receipt from [insert short company name], as evidenced by written records; or
- C. is independently received by Vendor from a third party, with no restrictions on disclosure.

2. Nondisclosure and Nonuse Obligation. Vendor agrees that it will not make use of, disseminate, or in any way disclose any Confidential Information directly or indirectly to anyone, including anyone associated with or employed by [insert short company name], except as required in the Vendor's performance of his duties on behalf of [insert short company name]; or use any of the Confidential Information either during the term of the Consulting Agreement, if any, or any time thereafter, for his own benefit or for the benefit of any third party. The Vendor will treat all Confidential Information with the same degree of care as it accords to its own Confidential Information, and the Vendor represents that it exercises reasonable care to protect its own Confidential Information. If the Vendor is not an individual, the Vendor agrees that it shall disclose Confidential Information only to those of its employees who need to know such information and certifies that such employees have previously agreed, either as a condition to employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those of this Agreement. The Vendor will immediately give notice to [insert short company name] of any unauthorized use or disclosure of the Confidential Information. Vendor agrees to assist [insert short company name] in remedying any such unauthorized use or disclosure of the Confidential Information.

3. Ownership of Confidential Information and Other Materials. The Vendor agrees and acknowledges that all Confidential Information and any Derivatives thereof whether created by [insert short company name] or Vendor, remain the property of [insert short company name] and no license or other rights to Confidential Information is granted or implied hereby. For purposes of this Agreement, "Derivatives" shall mean: (i) for copyrightable or copyrighted material, any translation, abridgement, revision or other form in which an existing work may be recast, transformed or adapted; (ii) for patentable or patented material, any improvement thereon; and (iii) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected by copyright, patent and/or trade secret. All materials (including without limitation, documents, drawings, models, apparatus, sketches, designs and lists) furnished by [insert short company name] to the Vendor, shall remain the property of [insert short company name] and shall be returned to [insert short company name] upon request, together with any copies thereof.

4. Ability to Enter into Agreement. The Vendor represents that the Vendor has the power and capacity to enter into this Agreement, and that in entering into this Agreement the Vendor is not in violation of any contract or agreement with any third party. In the event that such a violation does occur, or is alleged to occur, the Vendor shall indemnify [insert short company name] from and against any and all manner of expenses and liabilities incurred by [insert short company name] or any affiliated company in connection with such violation or alleged violation.

5. Use of Third Party Confidential Information. The Vendor represents that he has not brought and will not bring to [insert short company name] or use in the performance of his responsibilities at [insert short company name] any Confidential Information of any other party without first obtaining written authorization for its use and possession, which authorization he will deliver to [insert short company name] on or before using such Confidential Information.

6. Disclosure of Third Party Information. The Vendor shall not communicate any Confidential Information to any other party in violation of the proprietary rights of any third party.

7. Ownership of Inventions. The Vendor shall assign to [insert short company name] (at [insert short company name]'s expense), immediately upon making or acquiring any and all inventions, processes, discoveries, patents, copyrights, trademarks and trade names, and applications therefore, and all proprietary know-how related to [insert short company name]'s business as well as all rights and interests in, to and under the same which he may legally transfer, hereafter made, acquired or possessed by him during the course of his relationship with [insert short company name] and relating to [insert short company name]'s business.

8. Assignment of Interest. The Vendor agrees that, upon request, it will promptly make all disclosures, execute all instruments and papers, and perform all acts whatsoever, which are necessary or desired by [insert short company name] in order to vest and confirm [insert short company name], its successors, assigns and nominees, fully and completely, with all rights created or contemplated by this Agreement which may be necessary or desirable in order to enable [insert short company name] and its successors, assigns and nominees to fully secure and enjoy the benefits and advantages thereof.

9. Defense of Copyright. Vendor further agrees to assist [insert short company name] in every way, upon [insert short company name]'s request, (at [insert short company name]'s expense) to obtain, defend and from time to time to enforce any copyrights or patents which are deemed by [insert short company name] to be part of [insert short company name] Confidential Information.

10. No Solicitation of Employees. Vendor agrees that Vendor will not, from the latter of (i) two (2) years from the date of this Agreement, or (ii) two (2) years from Vendor receiving compensation from [insert short company name], initiate contact with employees of [insert short company name] in order to solicit, entice or induce any employee of [insert short company name] to terminate an employment relationship with [insert short company name] to accept employment with Vendor or Vendor's employer.

11. No Warranty. All Confidential Information is provided "AS IS" and without any warranty, express, implied or otherwise, regarding its accuracy or performance.

12. Term. This Agreement shall govern all communications between the parties that are made from the date and shall continue in perpetuity.

13. Successors and Assigns. Vendor shall have no right to assign its rights under this Agreement, whether expressly or by operation of law, without the written consent of [insert short company name]. This Agreement and the obligations of Vendor hereunder shall be binding on representatives, permitted assigns, and successors of Vendor and shall inure to the benefit of representatives, assigns and successors of [insert short company name].

14. Remedies. Vendor understands and acknowledges that any disclosure or misappropriation of any of the Confidential Information in violation of this Agreement may cause [insert short company name] irreparable harm, the amount of which may be difficult to ascertain and, therefore, agrees that [insert short company name] shall have the right to apply to a court of competent jurisdiction for injunctive relief and/or a decree for specific performance restraining any such further disclosure or misappropriation and for such other relief as [insert short company name] shall deem appropriate. Such right of [insert short company name] shall be in addition to remedies otherwise available to the [insert short company name] at law or in equity.

15. Notices. Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (i) by personal delivery when delivered personally; (ii) by overnight courier upon written verification of receipt; (iii) by telecopy or facsimile transmission upon acknowledgement of receipt of electronic transmission; or (iv) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth above or such other address as either party may specify in writing.

16. Governing Law. This Agreement shall be governed in all respects by the laws of the Commonwealth of Massachusetts.

17. Severability. Should any provisions of this Agreement be held by a court of law to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

18. Waiver. The waiver by [insert short company name] of a breach of any provision of this Agreement by the Vendor shall not operate or be construed as a waiver of any other or subsequent breach by the Vendor.

19. Entire Agreement. This Agreement constitutes the entire agreement with respect to the Confidential Information disclosed herein and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information. This Agreement may only be changed by mutual agreement of authorized representatives of the parties in writing.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

[insert short company name]

Christian B. Brown

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Date: _____

Date: _____