

## CONFIDENTIALITY AND INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

This Employee Non-Disclosure, Non-Solicitation and Intellectual Property Assignment Agreement (this "**Agreement**"), is entered into by and between Insinger Excavating LLC, Insinger Transport LLC, Insinger Quarries LLC ("**Company**") and the individual identified on the signature page as Employee (hereinafter, "**Employee**") and is effective as of the first date of Employee's employment with the Company (the "**Effective Date**").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### 1. Confidential Information.

(a) Definition. The term "**Confidential Information**" as used in this Agreement means all information disclosed, before or after the Effective Date, by Company to Employee, as well as any information to which Employee has access or that is learned, generated, or created by Employee, whether alone or jointly with others. Confidential Information includes, but is not limited to: (i) source code and programming information, including proprietary wireless and portable computer technology software; (ii) licensing and purchasing agreements; (iii) client lists and other client data, supplier lists, pricing information and fee schedules; (iv) employment, management and consulting agreements and other organizational information; (v) trade secrets and other proprietary business and management methods; (vi) competitive analysis and strategies; (vii) all other technical, marketing, operational, economic, business, management, or financial knowledge, information or data of any nature whatsoever relating to the business of Company, which has been or may hereafter be learned, generated, created, or otherwise obtained by Employee, alone or jointly with others, whether in written, electronic, oral, or any other form; and (viii) any extracts therefrom. Confidential Information shall also include any information that is provided to Company by third parties and is subject to obligations of confidentiality.

(b) Exclusions. Notwithstanding Section 1(a), Confidential Information shall not include: (i) information that at the time of disclosure is publicly available, or information which later becomes publicly available through no act or omission of the Employee; (ii) information that Employee independently developed without the use of Company's Confidential Information; or (iii) information disclosed to Employee by a third party not in violation of any obligations of confidentiality to Company.

2. Disclosure and Use of Confidential Information. Employee will use the Confidential Information only for the purpose of performing his or her duties to Company within the course and scope of employment, and will make no use or disclosure of the Confidential Information, in whole or in part, for any other purpose. Employee agrees to keep confidential all Confidential Information and to preserve the confidential and proprietary nature of the Confidential Information at all times. Employee shall not disclose any Confidential Information except as provided in this Agreement.

3. No Ownership or Other Rights Granted. All right, title and interest in and to Confidential Information will remain the property of Company. Nothing in this Agreement will be construed to grant Employee any rights to or license under the Confidential Information or under any related patent, patent application, trademark, copyright, know-how, or other intellectual property of Company.

4. Required Disclosure. In the event that Employee is requested or required by subpoena or court order to disclose any Confidential Information received pursuant to this Agreement, it is agreed that Employee will provide immediate notice of such request(s) to Company and will use reasonable efforts to resist disclosure, until an appropriate protective order may be sought, or a waiver of compliance with the provisions of this Agreement granted. If, in the absence of a protective order or the receipt of a waiver hereunder, Employee is nonetheless, in the written opinion of its counsel, legally required to disclose

Confidential Information received pursuant to this Agreement, then in such event Employee may disclose such information without liability hereunder, provided that Company has been given a reasonable opportunity to review the text of such disclosure before it is made and that disclosure is limited to only the Confidential Information specifically required to be disclosed.

5. Return of Information. Upon the termination or expiration of Employee's employment with Company or upon written request from Company, Employee shall return all Confidential Information and Company property in his or her possession including, without limitation, all originals, copies, translations, notes, or any other form of said material, without retaining any copy or duplicates thereof, and promptly to delete or destroy any and all written, printed, electronic or other material or information derived from the Confidential Information.

6. Nature of Information. Employee acknowledges and agrees that the Confidential Information protected by this Agreement is of a special, unique, unusual, extraordinary and intellectual character; that money damages would not be sufficient to avoid or compensate for the unauthorized use or disclosure of the Confidential Information; and, that specific performance, injunctive relief, and other equitable relief would be appropriate to prevent any actual or threatened use or disclosure of the Confidential Information. Employee also acknowledges that the interests of Company in and to its Confidential Information may be irreparably injured by disclosure of such Confidential Information. The remedy stated above may be pursued in addition to any other remedies available at law or in equity for breach of this Agreement, and Employee agrees to waive any requirement for the securing or posting of any bond in connection with such remedy. Should litigation be instituted to enforce any provision hereof, the prevailing party will be entitled to recover all costs, including, without limitation, reasonable legal fees, cost of investigation and cost of settlement.

7. Prior Commitments and Indemnification. Employee represents and warrants that he or she is free to enter into this Agreement and is not bound by any employment agreement, non-disclosure agreement, non-competition agreement or any other agreement, document or obligation, that may infringe on or limit his or her ability or in any manner prevent Employee from performing any of the obligations under this Agreement, or that may result in liability to the Company in any manner, action, suit or other proceeding concerning Employee's former employment with any former employer or the termination thereof. Employee knows of no other agreements, relationships, or commitments to any other person or entity that conflict with Employee's obligations to the Company under this Agreement. Employee shall indemnify and hold the Company harmless against any and all costs, attorney's fees, losses, liabilities and expenses resulting from claims, demands, suits, actions or judgments arising out of or in any way related to Employee's representations, warranties, covenants, agreements, acknowledgments or assignments as set forth in this Agreement.

8. Confidential and Proprietary Information Not to be Disclosed to Company. It is the Company's policy to honor the confidentiality of other entities' confidential and proprietary information. Accordingly, Employee shall not disclose to the Company, or use or induce the Company to use, any confidential and proprietary information of any third party. Employee represents and warrants that he or she has returned

all property and confidential and proprietary information belonging to all prior employers and all third parties.

9. Work for Hire. Employee understands and agrees that, to the extent permitted by law, all work, papers, reports, documentation, drawings, images, product ideas, service ideas, photographs, negatives, tapes and masters therefor, computer programs including their source code and object code, prototypes and other materials (collectively, "Work Product"), including, without limitation, any and all such Work Product generated and maintained on any form of electronic media, that Employee generates, either alone or jointly with others, during employment with Company will be considered a "work made for hire," and ownership of any and all copyrights in any and all such Work Product will belong to Company. In the event that any portion of the Work Product should be deemed not to be a "work made for hire" for any reason, Employee hereby assigns, conveys, transfers and grants, and agrees to assign, convey, transfer and grant to Company all of Employee's right, title, and interest in and to the Work Product and any copyright therein, and agrees to cooperate with Company in the execution of appropriate instruments assigning and evidencing such ownership rights. Employee hereby waives any claim or right under "droit moral" or moral rights to object to Company's copyright in or use of the Work Product. Any Work Product not generally known to the public shall be deemed Confidential Information and shall be subject to the use and disclosure restrictions herein.

10. Inventions. Employee hereby assigns and agrees to assign to Company all of Employee's right, title, and interest in and to any discoveries, inventions and improvements (each, an "Invention," and collectively, "Inventions"), whether patentable or not, that Employee makes, conceives or suggests, either alone or jointly with others, while employed by Company. Any Invention that was made, conceived or suggested by Employee, either solely or jointly with others, within one (1) year following termination of employment with Company and that pertains to any Confidential Information or business activity of Company will be irrebuttably presumed to have been made, conceived or suggested in the course of Employee's employment and with the use of the time, materials or facilities of Company. Any Invention not generally known to the public shall be deemed Confidential Information and shall be subject to the use and disclosure restrictions herein.

11. Prior Inventions. To preclude any possible uncertainty with respect to Inventions, Employee has attached hereto a complete list of all prior inventions, discoveries, improvements, or works of authorship that Employee has, alone or jointly with others, conceived, developed or reduced to practice or caused to be conceived, developed or reduced to practice prior to the commencement of Employee's employment with the Company, that Employee considers to be Employee's property or the property of third parties and that Employee wishes to have excluded from the scope of this Agreement (collectively referred to as "Prior Inventions"). If disclosure of any such Prior Invention would cause Employee to violate any prior confidentiality agreement, Employee understands that Employee is not to list such Prior Inventions in such attachment but is only to disclose a cursory name for each such invention, a listing of the party(ies) to whom it belongs and the fact that full disclosure as to such inventions has not been made for that reason. IF NO SUCH DISCLOSURE IS ATTACHED, EMPLOYEE REPRESENTS AND WARRANTS THAT THERE ARE NO PRIOR INVENTIONS. If, in the course of Employee's employment with the Company, Employee incorporates a Prior Invention into a Company product, process or machine, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to make, have made, modify, use and sell such Prior Invention. Notwithstanding the foregoing, Employee agrees that Employee will not incorporate, or permit to be incorporated, Prior Inventions in any Company inventions without the Company's prior written consent.

12. Disclosure of Inventions. Employee hereby agrees promptly to disclose all Inventions to Company and to perform, during and after his or her employment, all acts deemed necessary or desirable by Company to permit and assist it, at its expense, in obtaining and enforcing the full benefits, enjoyment, rights and title throughout the world in the Inventions. Such acts may include, without limitation, the execution and delivery of documents and the provision of assistance or cooperation in legal proceedings. In addition, Employee hereby irrevocably designates and appoints Company and its duly authorized officers and agents as his or her agent and attorney in fact, to act for and in his or her behalf and to execute and file any such applications and to perform all other lawfully permitted acts to further the securing of Company's rights in and to the Inventions.

13. No Solicitation. Employee, whether full-time or part-time, agrees that from the Effective Date until the termination or expiration of employment and for a period of two (2) years thereafter, Employee will not (and will not assist or encourage others to), directly or indirectly: (a) seek to negotiate or influence the terms and conditions of employment of employees or engagement of consultants of Company (including, without limitation, the termination or expiration thereof) or any agreement of collective bargaining with employees of Company; (b) initiate or continue an attempt to employ or retain any person who is or was within the prior two (2) years at such time an employee of or consultant to Company; (c) with respect to any person or entity that is or was during the prior two (2) years a customer of, vendor to or contracted with Company, seek to negotiate or influence the terms and conditions of any agreement, or to terminate or adversely change any agreement, arrangement or relationship, between such customer, vendor, or contractor and Company; (d) encourage or assist any member or sponsor of Company to terminate or let expire their membership or sponsorship, or to adversely change their agreement, arrangement or relationship with the Company; or (e) enter into any discussions, negotiations, arrangements or understandings with any third party with respect to any of the foregoing.

14. No Competition While Employed. Employee, whether full-time or part-time, agrees that from the Effective Date until the termination or expiration of employment, Employee shall not engage in any activity that is in any way competitive with the business or demonstrably anticipated business of the Company, and shall not assist any other person or organization in competing or in preparing to compete with any business or demonstrably anticipated business of the Company.

15. Governing Law. California law will govern the interpretation of this Agreement, without reference to its rules regarding conflicts of law. Any dispute arising out of this Agreement will be submitted to a state or federal court sitting in Los Angeles, California, which will have the exclusive jurisdiction regarding the dispute and to whose jurisdiction the parties irrevocably submit.

16. No Other Agreement; Amendment; At-Will Employment. This Agreement, together with any attachment regarding Prior Inventions, constitutes the parties' entire agreement with respect to the subject matter hereof and supercedes any and all prior statements or agreements, both written and oral, related thereto. This Agreement may be amended only by a writing signed by the parties. Employee acknowledges and agrees that Employee's employment with Company is at will and, therefore, can be terminated by Employee or by Company at any time, with or without cause and with or without notice. The at-will employment relationship will remain in effect throughout Employee's employment with Company unless modified by an express written contract for a specified term signed by Employee and an authorized representative of Company. The at-will employment relationship may not be modified by any oral or implied agreement. In the event that Employee leaves the employ of the Company, Employee hereby consents to the notification of Employee's new employer of any rights and obligations under this Agreement.

17. Survival. This Agreement (a) will survive the termination or expiration of Employee's employment with Company, (b) is personal to Employee and may not be assigned by it; (c) may be assigned by Company in its sole discretion and will inure to the benefit of the successors and assigns of Company, and (d) is binding upon Employee's heirs and legal representatives.

18. No Waiver. No waiver of any term, provision, or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, will be deemed to be or be construed as a further or continuing waiver of any such term, provision, or condition or as a waiver of any other term, provision, or condition of this Agreement.

19. Severability. If any provision of this Agreement is determined by any court of competent jurisdiction to be invalid or unenforceable, such provision shall be interpreted to the maximum extent to which it is valid and enforceable, all as determined by such court in such action, and the remaining provisions of this Agreement will, nevertheless, continue in full force and effect without being impaired or invalidated in any way.

20. Prohibition on Assignment of Inventions Meeting the Requirements of Labor Code Section 2870. Section 10 of this Agreement does not apply to any Invention that qualifies fully under Section 2870 of the California Labor Code. A copy of Section 2870 appears on the signature page at the end of this Agreement. At the time of each disclosure of an Invention that Employee makes pursuant to this Agreement, Employee shall advise the Company in writing of any Inventions that Employee believes fully qualify for protection under California Labor Code Section 2870, and Employee shall, at that time, provide to the Company in writing all evidence necessary to substantiate that belief. The Company shall keep in confidence and shall not use for any purpose or disclose to third parties without Employee's consent any confidential information disclosed in writing to the Company pursuant to this Agreement relating to Inventions that qualify fully for protection under the provisions of California Labor Code Section 2870. Employee acknowledges that any Invention that does not fully qualify for protection under California Labor Code Section 2870 is Confidential Information hereunder.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on the day and year first herein above written.

Insinger Excavating LLC, Insinger Transport LLC,  
Insinger Quarries LLC

Address: 11099 STATE ROUTE 220  
DUSHORE, PA 18614

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EMPLOYEE**

Address: \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_.