

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT ("the Agreement") dated this _____ day of _____, _____.

BETWEEN:

_____ of _____
(the "Client")

OF THE FIRST PART

- AND -

_____ of _____
(the "Contractor")

OF THE SECOND PART

BACKGROUND:

1. The Contractor is currently or may be retained as an independent contractor with the Client for the position of: _____. In addition to this responsibility or position (the "Retainer"), this Agreement also covers any position or responsibility now or later held with the Client.
2. The Contractor will receive from the Client, or develop on the behalf of the Client, Confidential Information as a result of the Retainer (the "Permitted Purpose").

IN CONSIDERATION OF and as a condition of the Client retaining the Contractor and the Client providing the Confidential Information to the Contractor in addition to other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, the parties to this Agreement agree as follows:

Confidential Information

1. All written and oral information and materials disclosed or provided by the Client to the Contractor under this Agreement constitute Confidential Information regardless of whether such

information was provided before or after the date of this Agreement or how it was provided to the Contractor.

2. The Contractor acknowledges that in any position the Contractor may hold, in and as a result of the Contractor's retainer by the Client, the Contractor will, or may, be making use of, acquiring or adding to information about certain matters and things which are confidential to the Client and which information is the exclusive property of the Client.
3. 'Confidential Information' means all data and information relating to the business and management of the Client, including but not limited to, the following:
 - a. 'Business Operations' which includes internal personnel and financial information of the Client, vendor names and other vendor information (including vendor characteristics, services and agreements), purchasing and internal cost information, internal services and operational manuals, external business contacts including those stored on social media accounts or other similar platforms or databases operated by the Client, and the manner and methods of conducting the Client's business;
 - b. 'Customer Information' which includes names of customers of the Client, their representatives, all customer contact information, contracts and their contents and parties, customer services, data provided by customers and the type, quantity and specifications of products and services purchased, leased, licensed or received by customers of the Client;
 - c. 'Intellectual Property' which includes information relating to the Client's proprietary rights prior to any public disclosure of such information, including but not limited to the nature of the proprietary rights, production data, technical and engineering data, technical concepts, test data and test results, simulation results, the status and details of research and development of products and services, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights and trade secrets);
 - d. 'Service Information' which includes all data and information relating to the services provided by the Client, including but not limited to, plans, schedules, manpower, inspection, and training information;
 - e. 'Product Information' which includes all specifications for products of the Client as well as work product resulting from or related to work or projects performed or to be

performed for the Client or for clients of the Client, of any type or form in any stage of actual or anticipated research and development;

- f. 'Production Processes' which includes processes used in the creation, production and manufacturing of the work product of the Client, including but not limited to, formulas, patterns, molds, models, methods, techniques, specifications, processes, procedures, equipment, devices, programs, and designs;
- g. 'Accounting Information' which includes, without limitation, all financial statements, annual reports, balance sheets, company asset information, company liability information, revenue and expense reporting, profit and loss reporting, cash flow reporting, accounts receivable, accounts payable, inventory reporting, purchasing information and payroll information of the Client;
- h. 'Marketing and Development Information' which includes marketing and development plans of the Client, price and cost data, price and fee amounts, pricing and billing policies, quoting procedures, marketing techniques and methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of the Client which have been or are being discussed;
- i. 'Computer Technology' which includes all scientific and technical information or material of the Client, pertaining to any machine, appliance or process, including but not limited to, specifications, proposals, models, designs, formulas, test results and reports, analyses, simulation results, tables of operating conditions, materials, components, industrial skills, operating and testing procedures, shop practices, know-how and show-how;
- j. 'Proprietary Computer Code' which includes all sets of statements, instructions or programs of the Client, whether in human readable or machine readable form, that are expressed, fixed, embodied or stored in any manner and that can be used directly or indirectly in a computer ('Computer Programs'); any report format, design or drawing created or produced by such Computer Programs; and all documentation, design specifications and charts, and operating procedures which support the Computer Programs; and
- k. Confidential Information will also include any information that has been disclosed by a third party to the Client and is protected by a non-disclosure agreement entered into between the third party and the Client.

4. Confidential Information will not include the following information:
 - a. Information that is generally known in the industry of the Client;
 - b. Information that is now or subsequently becomes generally available to the public through no wrongful act of the Contractor;
 - c. Information rightly in the possession of the Contractor prior to the disclosure to the Contractor by the Client;
 - d. Information that is independently created by the Contractor without direct or indirect use of the Confidential Information; or
 - e. Information that the Contractor rightfully obtains from a third party who has the right to transfer or disclose it.

Obligations of Non-Disclosure

5. Except as otherwise provided in this Agreement, the Contractor must not disclose the Confidential Information.
6. Except as otherwise provided in this Agreement, the Confidential Information will remain the exclusive property of the Client and will only be used by the Contractor for the Permitted Purpose. The Contractor will not use the Confidential Information for any purpose that might be directly or indirectly detrimental to the Client or any associated affiliates or subsidiaries.
7. The obligations to ensure and prevent the disclosure of the Confidential Information imposed on the Contractor in this Agreement and any obligations to provide notice under this Agreement will survive the expiration or termination, as the case may be, of this Agreement and those obligations will last indefinitely.
8. The Contractor may disclose any of the Confidential Information:
 - a. to such employees, agents, representatives and advisors of the Contractor that have a need to know for the Permitted Purpose provided that:
 - i. the Contractor has informed such personnel of the confidential nature of the Confidential Information;
 - ii. such personnel agree to be legally bound to the same burdens of non-disclosure and non-use as the Contractor;

- iii. the Contractor agrees to take all necessary steps to ensure that the terms of this Agreement are not violated by such personnel; and
 - iv. the Contractor agrees to be responsible for and indemnify the Client for any breach of this Agreement by their personnel.
- b. to a third party where the Client has consented in writing to such disclosure; and
 - c. to the extent required by law or by the request or requirement of any judicial, legislative, administrative or other governmental body.

Avoiding Conflict of Opportunities

- 9. It is understood and agreed that any business opportunity relating to or similar to the Client's current or anticipated business opportunities coming to the attention of the Contractor during the Contractor's retainer is an opportunity belonging to the Client. Accordingly, the Contractor will advise the Client of the opportunity and cannot pursue the opportunity, directly or indirectly, without the written consent of the Client.
- 10. Without the written consent of the Client, the Contractor further agrees not to directly or indirectly, engage or participate in any other business activities which the Client, in its reasonable discretion, determines to be in conflict with the best interests of the Client.

Ownership and Title

- 11. The Contractor acknowledges and agrees that all rights, title and interest in any Confidential Information will remain the exclusive property of the Client. Accordingly, the Contractor specifically agrees and acknowledges that the Contractor will have no interest in the Confidential Information, including, without limitation, no interest in know-how, copyright, trademark or trade names, notwithstanding the fact that the Contractor may have created or contributed to the creation of that Confidential Information.
- 12. The Contractor does hereby waive any moral rights that the Contractor may have with respect to the Confidential Information.
- 13. The Confidential Information will not include anything developed or produced by the Contractor during the term of this Agreement, including but not limited to intellectual property, process, design, development, creation, research, invention, know-how, trade name, trademark or copyright that:

- a. was developed without the use of any equipment, supplies, facility or Confidential Information of the Client;
 - b. was developed entirely on the Contractor's own time;
 - c. does not relate to the actual business or reasonably anticipated business of the Client;
 - d. does not relate to the actual or demonstrably anticipated processes, research, or development of the Client; and
 - e. does not result from any work performed by the Contractor for the Client.
14. The Contractor agrees to immediately disclose to the Client all Confidential Information developed in whole or in part by the Contractor during the term of the Retainer and to assign to the Client any right, title or interest the Contractor may have in the Confidential Information. The Contractor agrees to execute any instruments and to do all other things reasonably requested by the Client (both during and after the term of the Retainer) in order to vest more fully in the Client all ownership rights in those items transferred by the Contractor to the Client.

Remedies

15. The Contractor agrees and acknowledges that the Confidential Information is of a proprietary and confidential nature and that any disclosure of the Confidential Information to a third party in breach of this Agreement cannot be reasonably or adequately compensated for in money damages and would cause irreparable injury to the Client. Accordingly, the Contractor agrees that the Client is entitled to, in addition to all other rights and remedies available to it at law or in equity, an injunction restraining the Contractor and any agents of the Contractor, from directly or indirectly committing or engaging in any act restricted by this Agreement in relation to the Confidential Information.

Return of Confidential Information

16. The Contractor agrees that, upon request of the Client, or in the event that the Contractor ceases to require use of the Confidential Information, or upon expiration or termination of this Agreement, or the expiration or termination of the Retainer, the Contractor will turn over to the Client all documents, disks or other computer media, or other material in the possession or control of the Contractor that:

- a. may contain or be derived from ideas, concepts, creations, or trade secrets and other proprietary and Confidential Information as defined in this Agreement; or
- b. is connected with or derived from the Contractor's services to the Client.

Notices

- 17. In the event that the Contractor is required in a civil, criminal or regulatory proceeding to disclose any part of the Confidential Information, the Contractor will give to the Client prompt written notice of such request so the Client may seek an appropriate remedy or alternatively to waive the Contractor's compliance with the provisions of this Agreement in regards to the request.
- 18. If the Contractor loses or makes unauthorized disclosure of any of the Confidential Information, the Contractor will immediately notify the Client and take all reasonable steps necessary to retrieve the lost or improperly disclosed Confidential Information.
- 19. Any notices or delivery required in this Agreement will be deemed completed when hand-delivered, delivered by agent, or seven days after being placed in the post, postage prepaid, to the parties at the addresses contained in this Agreement or as the parties may later designate in writing.
- 20. The addresses for any notice to be delivered to any of the parties to this Agreement are as follows:
 - a. Name: _____
Address: _____
 - b. Name: _____
Address: _____

Representations

- 21. In providing the Confidential Information, the Client makes no representations, either expressly or impliedly as to its adequacy, sufficiency, completeness, correctness or its lack of defect of any kind, including any patent or trademark infringement that may result from the use of such information.

Termination

22. This Agreement will automatically terminate on the date that the Contractor's Retainer with the Client terminates or expires, as the case may be. Except as otherwise provided in this Agreement, all rights and obligations under this Agreement will terminate at that time.

Assignment

23. Except where a party has changed its corporate name or merged with another corporation, this Agreement may not be assigned or otherwise transferred by either party in whole or part without the prior written consent of the other party to this Agreement.

Amendments

24. This Agreement may only be amended or modified by a written instrument executed by both the Client and the Contractor.

Governing Law

25. This Agreement will be construed in accordance with and governed by the laws of the State of New York.

General Provisions

26. Time is of the essence in this Agreement.
27. This Agreement may be executed in counterpart.
28. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.
29. The clauses, paragraphs, and subparagraphs contained in this Agreement are intended to be read and construed independently of each other. If any part of this Agreement is held to be invalid, this invalidity will not affect the operation of any other part of this Agreement.
30. The Contractor is liable for all costs, expenses and expenditures including, and without limitation, the complete legal costs incurred by the Client in enforcing this Agreement as a result of any default of this Agreement by the Contractor.
31. The Client and the Contractor acknowledge that this Agreement is reasonable, valid and enforceable. However, if a court of competent jurisdiction finds any of the provisions of this

Agreement to be too broad to be enforceable, it is the intention of the Client and the Contractor that such provision be reduced in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable, bearing in mind that it is the intention of the Contractor to give the Client the broadest possible protection against disclosure of the Confidential Information.

32. No failure or delay by the Client in exercising any power, right or privilege provided in this Agreement will operate as a waiver, nor will any single or partial exercise of such rights, powers or privileges preclude any further exercise of them or the exercise of any other right, power or privilege provided in this Agreement.
33. This Agreement will inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns, as the case may be, of the Client and the Contractor.
34. This Agreement constitutes the entire agreement between the parties and there are no further items or provisions, either oral or otherwise.

IN WITNESS WHEREOF _____ and _____ have duly affixed their signatures under hand and seal on this _____ day of _____, _____.

_____(Client)

Per: _____
(Seal)

_____(Contractor)