

INDEPENDENT CONTRACTOR NON-DISCLOSURE AGREEMENT

BETWEEN

("Client")

(Mailing Address)

AND

("Independent Contractor")

(Mailing Address)

Effective Date of Agreement: _____

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this "Agreement") is made and entered into as of the Effective Date of Agreement set forth above by and between Client and Independent Contractor.

WITNESSETH:

WHEREAS, the parties hereto desire to have discussions related to, and may enter into, one or more business transactions (the "Subject Matter");

WHEREAS, it is contemplated that such discussions and any business transactions entered into in connection therewith will require the disclosure by Client to Independent Contractor of Confidential Information (as hereinafter defined);

WHEREAS, both parties recognize the value of the Confidential Information and that it is in their mutual best interests to maintain the confidential, proprietary and secret nature of the Confidential Information.

NOW, THEREFORE, for and in consideration of the above premises, and in further consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **CONFIDENTIAL INFORMATION.** Confidential Information shall include, but not be limited to, documents, records, information and data (whether verbal, electronic or written), drawings, models, apparatus, sketches, designs, schedules, product plans, marketing plans, technical

procedures, manufacturing processes, analyses, compilations, studies, software, prototypes, samples, formulas, methodologies, formulations, patent applications, know-how, experimental results, specifications and other business information, relating to Client's business, assets, operations or contracts, furnished to Independent Contractor and/or Independent Contractor's affiliates, employees, officers, owners, agents, consultants or representatives, in the course of their work contemplated in this Agreement, regardless of whether such Confidential Information has been expressly designated as confidential or proprietary. Confidential Information also includes any and all analyses, compilations, work product, studies, and other materials prepared by or in the possession or control of the Independent Contractor, which contain, include, refer to or otherwise reflect or are generated from any Confidential Information. Confidential Information may be provided in written, oral, electronic or other form.

2. FORM OF DISCLOSURE. Confidential Information may be oral, visual, or by demonstration, or in some other form not permanently recorded, and shall be considered Confidential Information regardless of whether such Confidential Information has been expressly designated as confidential or proprietary.

3. PERIOD OF CONFIDENTIALITY AND NON-USE. Independent Contractor (including its affiliates, employees, agents and consultants) shall maintain in strict confidence for a period of _____ from the Effective Date and not disclose any Confidential Information it receives from Client to any third party or use the Confidential Information for its own or any other party's benefit, except in furtherance of its obligations to Client pursuant to any business transaction it may enter into with Client. Independent Contractor shall use, as a minimum, the same degree of care to avoid disclosure or use of the Confidential Information as it employs with respect to its own confidential, proprietary and secret information of like importance, but in any case, using no less than a reasonable degree of care. Independent Contractor shall limit access to all Confidential Information to only those of Independent Contractor's personnel, agents and representatives who "need to know" such information for carrying out Independent Contractor's obligations to Client pursuant to any business transaction it may enter into with Client and the Confidential Information will be used only for carrying out Independent Contractor's obligations to Client pursuant to any business transaction it may enter into with Client. Independent Contractor shall ensure that its affiliates, employees, officers, directors, owners, agents, consultants, and representatives who are given access to the Confidential Information by or on behalf of Independent Contractor shall be bound by and shall comply with the terms of this Agreement.

4. EXCLUSIONS. Information shall not be deemed Confidential Information, and Independent Contractor shall have no obligation of confidentiality or restriction against use with respect to any information which:

4.1. was known, in the possession of and documented by Independent Contractor through no wrongful act of the Independent Contractor prior to Client's disclosure of such information; or

4.2. is or becomes publicly known through no wrongful act of Independent Contractor and/or through no breach of any obligation to Client; or

4.3. is rightfully received from a third party who is not subject to restrictions on the use and disclosure of such information in favor of Client; or

4.4. is approved for release by written authorization from Client; provided that, unless notice of said prior knowledge and possession or receipt from a third party is given to

Client within thirty (30) days of receipt of the information from Client or from a third party, respectively, it shall be conclusively presumed that the said information was not previously in the Independent Contractor 's knowledge and possession or received from a third party.

5. DISCLOSURES REQUIRED BY LAW. In the event Independent Contractor is requested or required by a government or court order, or similar process, to disclose any Confidential Information supplied to it by Client, Independent Contractor shall provide Client with prompt notice of such request so that Client may seek an appropriate protective order and/or waive Independent Contractor's compliance with the provisions of this Agreement.

6. INDEMNIFICATION. Independent Contractor shall reimburse, indemnify and hold harmless Client and its affiliates, owners, employees, officers, directors, agents and representatives from any damage, loss, penalty, cost or expense incurred by Client as a result of or in connection with the use or disclosure of the Confidential Information contrary to the terms of this Agreement by Independent Contractor or its affiliates, employees, directors, officers, owners, consultants, agents or representatives or any others to whom such Confidential Information has been disclosed by any such persons or entities. The term "affiliates" as used in this Agreement shall mean any persons, corporations, partnerships, limited liability companies, or other business entities which directly or indirectly control, are controlled by, or are in common control with such party to this Agreement. As used herein, the term "control" shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities, by contract or otherwise).

7. NO PUBLIC COMMENT. Independent Contractor shall not directly or indirectly make any public comment, statement or communication with respect to, or otherwise disclose or permit the disclosure to any third party of any Confidential Information or of any matter relating to the Subject Matter or purpose or any transactions contemplated by the parties in connection therewith, without the prior written consent of Client.

8. NOTICE OF UNAUTHORIZED USE OR DISCLOSURE. Independent Contractor shall notify Client immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by Independent Contractor or any third party and will cooperate with Client in every reasonable way to help regain possession of the Confidential Information and prevent its further unauthorized use or disclosure.

9. OWNERSHIP AND RETURN OF CONFIDENTIAL INFORMATION. All Confidential Information disclosed to Independent Contractor shall be and remain the property of Client. Upon Client's written request, Independent Contractor shall promptly return all Confidential Information (including all originals, copies, reproductions and summaries of such Confidential Information), or certify its destruction in writing, and keep the same confidential and secret in accordance with this Agreement.

10. NO LICENSE. Nothing contained in this Agreement shall be construed as granting or conferring to Independent Contractor any rights or license or otherwise, either expressly or by implication, in or to any Confidential Information disclosed by Client to Independent Contractor as a result of this Agreement, including, without limitation, rights or license under any present or future patent, patent application, copyright, trademark, service mark, trade secret or other proprietary information owned, licensed or controlled by Client.

11. **SURVIVAL.** Independent Contractor's obligations of non-disclosure pursuant to the terms of this Agreement shall survive until all Confidential Information has been returned to Client or the destruction thereof has been certified to Client in writing.

12. **RELATIONSHIP.** This Agreement shall not be construed as a joint venture, pooling arrangement, partnership, teaming effort or agency arrangement but each party hereto shall be considered as an independent contractor, in accordance with Title 17, United States Code, Sections 101 and 201(b), and shall be responsible for its own expenses and financial obligations incurred in the performance of this Agreement. Furthermore, this Agreement does not express any ownership by the Independent Contractor in the Confidential Information or the final service or product that is created after the use of said information. All ownership interests, if any, are to be stated in a separate agreement.

13. **NO WAIVER.** Neither party waives any rights in invention or development lawfully possessed by it at the time of signing this Agreement. In addition, this Agreement does not imply any waiver of any rights or action under the patent, trademark, copyright, trade secret, unfair competition, fair trade or related laws. Failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof.

14. **BINDING AGREEMENT.** This Agreement shall be binding upon Independent Contractor and its subsidiaries, successors, assigns, legal representatives, and all corporations controlling Independent Contractor or controlled by Independent Contractor and shall inure to the benefit of Client and its subsidiaries, successors, assigns, legal representatives, and all corporations controlling Client or controlled by Client.

15. **INJUNCTIVE RELIEF.** Independent Contractor understands and agrees that any use or dissemination of Confidential Information in violation of this Agreement will cause Client irreparable harm, and that monetary damages may not be a sufficient remedy for unauthorized use or disclosure of Confidential Information, and that Client may be left with no adequate remedy at law; therefore, Client shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction. Such remedies shall not be deemed to be the exclusive remedy for any breach of this Agreement but shall be in addition to all other remedies available at law or in equity.

16. **PREVAILING PARTY.** If either party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and expenses.

17. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of _____ without regard to principles of conflict or choice of laws, and Independent Contractor consents to venue and jurisdiction in and by the state and federal courts in the jurisdiction of the Client.

18. **ASSIGNMENT.** This Agreement may not be assigned by Independent Contractor without the prior written consent of Client.

19. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the parties relative to the protection of Confidential Information and supersedes all prior and collateral communications, reports and understanding between the parties in respect thereto. No change, modification, alteration or addition to any provision shall be binding unless it is in writing and signed by an authorized representative of both parties.

20. **SEVERABILITY.** If a court of competent jurisdiction makes a final determination that any provision of this Agreement (or any portion thereof) is invalid, illegal or unenforceable for any reason whatsoever, and all rights to appeal the determination have been exhausted or the period of time during which any appeal of the determination may be perfected has been exhausted, (i) the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby; and (ii) to the fullest extent possible, the provisions of this Agreement shall be construed so as to give effect to the intent manifested by the provisions held invalid, illegal or unenforceable.

21. **HEADINGS.** The headings in this Agreement are for reference purposes only and shall not limit or otherwise affect the meaning of the provisions.

22. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts including signing a facsimile copy. Each counterpart shall be deemed an original and all counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement as of the date first written above.

INDEPENDENT CONTRACTOR:

Independent Contractor's Signature _____ Date: _____

Print Name: _____

Company: _____

Title: _____

CLIENT:

Client's Signature _____ Date: _____

Print Name: _____

Company: _____

Title: _____