

INDEPENDENT CONTRACTOR NON-DISCLOSURE AGREEMENT

This Independent Contractor Non-Disclosure Agreement ("Agreement") has been entered into on _____, 20___. between the parties set forth below

PARTIES

CLIENT NAME: _____
(“Client”)

CLIENT ADDRESS: _____
(Mailing Address)

AND

CONTRACTOR NAME: _____
(“Contractor”)

CONTRACTOR ADDRESS: _____
(Mailing Address)

This Confidentiality and Nondisclosure Agreement (this "Agreement") is made and entered into by and between the Client and the Contractor as of the above-mentioned Effective Date.

WITNESSETH:

WHEREUPON, the parties to this agreement wish to discuss and/or enter into one or more business transactions (the "Subject Matter");

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

WHEREAS, both parties acknowledge the value of Confidential Information and the mutual benefit of maintaining its confidentiality, proprietary, and secret nature.

Therefore, the parties hereto agree as follows: For and in consideration of the foregoing 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:

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. The term "confidential information" refers to information that is not permanently recorded and can be expressed verbally, visually, orally, or in some other way. It is not necessary for the information to be expressly marked as confidential or proprietary for it to be deemed confidential.

3. PERIOD OF CONFIDENTIALITY AND NON-USE. Except for the purposes of carrying out its obligations to Client under any business transaction it may enter into with Client, Independent Contractor (including its affiliates, employees, agents, and consultants) shall keep all Confidential Information received from Client in strict confidence for a period of [TIME PERIOD] following the Effective Date and not disclose or use the Confidential Information for its own or any other party's benefit. In order to prevent disclosure or use of the Confidential Information, Independent Contractor shall exercise at least the same level of care that it does with respect to its own confidential, proprietary, and secret information of comparable importance—in other words, no less than a reasonable degree of care. In order to fulfill its obligations to Client under any business transaction it may enter into with Client, Independent Contractor shall restrict access to all Confidential Information to those of Independent Contractor's employees, agents, and representatives who "need to know" such information. The Confidential Information will only be used for fulfilling Independent Contractor's obligations to Client under any business transaction it may enter into with Client. When given access to Confidential Information by or on behalf of Independent Contractor, its affiliates, employees, officers, directors, owners, agents, consultants, and representatives must agree to be bound by and adhere to the terms of this Agreement.

4. EXCLUSIONS. Information will not be considered confidential information, and the independent contractor will not be subject to any restrictions on use or confidentiality obligations with regard to any information that:

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 that Independent Contractor is requested or required to divulge any Confidential Information given to it by Client pursuant to a government or court order or other similar process, Independent Contractor shall promptly notify Client of such request so that Client may seek an appropriate protective order and/or waive Independent Contractor's compliance with this Agreement.

6. INDEMNIFICATION. If Independent Contractor or its affiliates, employees, directors, officers, owners, consultants, agents or representatives use or disclose Confidential Information in a manner that is inconsistent with the terms of this Agreement, Independent Contractor shall pay Client and its affiliates, owners, employees, officers, directors, agents and representatives for any damage, loss, penalty, cost or expense incurred by Client as a result of or in connection with that usage or disclosure. Any individuals, businesses, partnerships, limited liability companies, or other legal entities that directly or indirectly control, are controlled by, or share common control with such party to this Agreement are referred to in this Agreement as "affiliates." The term "control" as used herein shall mean the direct or indirect possession of power to cause the direction of management or policies (whether a contract-based or other method of ownership of securities).

7. NO PUBLIC COMMENT. Without first obtaining Client's prior written consent, Independent Contractor shall not directly or indirectly make any public comments, statements, or communications regarding, or in any other way 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 therewith.

8. NOTICE OF UNAUTHORIZED USE OR DISCLOSURE. Any unauthorized use or disclosure of Confidential Information by Independent Contractor or any third party shall be reported to Client immediately. To regain possession of the Confidential Information and prevent its further unauthorized use or disclosure, Independent Contractor will cooperate with Client in every reasonable manner.

9. OWNERSHIP AND RETURN OF CONFIDENTIAL INFORMATION. The Client shall own and retain ownership of all Confidential Information disclosed to Independent Contractor. The Independent Contractor shall promptly return all Confidential Information (including all originals, copies, reproductions, and summaries of such Confidential Information) upon the written request of the Client, or certify its destruction in writing, and shall maintain the confidentiality and secrecy of such information in accordance with this Agreement.

10. NO LICENSE. Nothing in this Agreement should be interpreted as granting Independent Contractor any rights or licenses in or to any Confidential Information that Client disclosed to Independent Contractor as a result of this Agreement, including, without limitation, any rights or licenses under any current or pending patent, patent application, copyright, trademark, service mark, trade secret, or other proprietary information.

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.** Each party hereto shall be deemed an independent contractor pursuant to 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. This Agreement shall not be construed as a joint venture, pooling arrangement, partnership, teaming effort, or agency arrangement. Furthermore, the Independent Contractor is not granted any ownership rights in the Confidential Information or the finished service or product that results from the use of the Confidential Information under this Agreement. Terms, 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. Furthermore, this Agreement does not imply any waiver of any patent, trademark, copyright, trade secret, unfair competition, fair trade or related rights or actions. The failure to enforce any provision of this Agreement shall not constitute a waiver of that provision.

14. **BINDING AGREEMENT.** All corporations controlling Independent Contractor or controlled by Independent Contractor, and all subsidiaries, successors, assigns, legal representatives, shall be bound by this Agreement, and it shall benefit Client and its subsidiaries, successors, assigns, legal representatives, as well as all corporations controlling Client or controlled by Client.

15. **INJUNCTIVE RELIEF.** Independent Contractor acknowledges and agrees that any unauthorized use or disclosure of Confidential Information will result in irreparable harm to Client. Because there may not be an adequate legal remedy available to Client in the event of such unauthorized use or disclosure, Client shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be necessary. These remedies shall be in addition to all other remedies at law or in equity and shall not be deemed to be the sole remedy for any breach of this Agreement.

16. **PREVAILING PARTY.** The prevailing party is entitled to recover reasonable attorneys' fees and costs if either party hires counsel to enforce any rights arising out of or related to this Agreement.

17. **GOVERNING LAW.** The laws of the State of _____ shall govern the interpretation and application of this Agreement, and the Recipient hereby submits to the exclusive jurisdiction of the courts located within said state.

18. **ASSIGNMENT.** The Independent Contractor may not assign this Agreement without the prior written consent of the Client.

19. **ENTIRE AGREEMENT.** This Agreement supersedes all prior and subsequent communications, reports, and understandings between the parties with regard to the protection of confidential information. It contains the entire understanding between the parties in this regard. Any amendment to a provision must be made in writing and signed by an authorized representative of both parties in order to be enforceable.

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 included only for reference and do not limit or otherwise affect how the provisions are to be interpreted.

22. **COUNTERPARTS.** A facsimile signature is also acceptable when executing this agreement in one or more counterparts. Each counterpart is treated as an original, and all counterparts together make up a single, identical document.

IN WITNESS WHEREOF, The parties to this agreement have signed on the dates indicated below and acknowledged their agreement to its terms.

INDEPENDENT CONTRACTOR:

Signature of Independent Contractor _____ Date: _____

Name in Print: _____

Company: _____

Title: _____

CLIENT:

Signature of Client _____ Date: _____

Name in Print: _____

Company: _____

Title: _____