

NON-COMPETE AGREEMENT

(INDEPENDENT CONTRACTOR)

This **Independent Contractor Non-Compete Agreement (“Agreement”)** is made between _____ (“Company”) having an address at

_____ and _____ (“Contractor”) having an address at _____. Company and Contractor are parties to this Agreement.

RECITALS

A. Company and Contractor are participating in mutual discussions (the “Discussions”) regarding a business venture involving Company’s proprietary information, intellectual property or other trade secret information, and more specifically:

B. In connection with these Discussions, Company and Contractor will each provide to each other certain Confidential Information (as defined in this Agreement).

C. Company and Contractor wish to provide the Confidential Information to each other on the terms and conditions set forth herein.

D. Furthermore, in consideration of the Confidential Information, Company and Contractor agree to the non-compete agreement set forth herein.

NOW, THEREFORE, in consideration of the receipt by the parties of the Confidential Information, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Confidential Information. For purposes of this Agreement, “Confidential Information” shall mean any information or material that is proprietary to a party or designated as Confidential Information by a party and not generally known by non-party personnel, including but not limited to, all confidential and proprietary information relating to the business of the parties, and includes (but is not limited to) business plans, marketing plans, financial projections and other financial information, intellectual property matters, web site content and development, trade secrets, contracts, customer lists, vendors and employee matters. The term Confidential Information includes information in both oral and written form, or contained in any other type of storage medium. Information relating to the providing party’s consultants, employees, customers, vendors, research and development, software, or marketing plans is also considered Confidential Information.

2. Agents & Employees. All Confidential Information disclosed by the disclosing

party (the “Owner”) to the receiving party (the “Recipient”) shall be treated by the Recipient and by its agents and employees, as confidential and shall be maintained by the Recipient and its agents and employees in confidence and shall not be disclosed to anyone in any form without the prior written consent of the Owner. The Confidential Information shall not be used by the Recipient or its agents or employees other than in connection with the Discussions.

3. Communication of Confidential Information. The Recipient shall transmit the Confidential Information for the purposes of the Discussions only to those persons who are informed by the Recipient of the confidential nature of the Confidential Information, who shall have previously agreed to be bound by the terms and conditions of this Agreement and who are required to see the Confidential Information in connection with the Discussions. In any event, the Recipient shall be responsible for any breach of this Agreement by any of its agents or employees.

4. Exclusions. The following shall not be deemed to constitute Confidential Information and shall not be subject to the restrictions set forth in this Agreement.

(a). Information that is known by the Recipient at the time of receipt from the Owner, and that is not subject to any other nondisclosure agreement between the parties.

(b). Information that is now or later becomes generally known in the industry through no fault of the Recipient, is later distributed or generally disclosed to the public by the Owner or is obtained from a third party by the Recipient and the Recipient believes that the third party has a legal right to transmit the information.

(c). Information that is otherwise lawfully developed by the Recipient, or lawfully acquired by the Recipient from a third party. “Lawfully developed” shall mean information that is independently developed as shown by the books and records of the developer. “Lawfully acquired” shall mean acquired from a third party without restrictions on further disclosure when the third party had the right to provide the information to the party receiving the information.

5. Return or Destruction. The Confidential Information, including the analyses, compilations, studies or other documents, tapes or software prepared or delivered by the Owner will be returned to the Owner or destroyed immediately upon the request of the Owner, and the Recipient shall not retain any copies thereof.

6. Notice of Disclosure. In the event that the Recipient or anyone to whom the Recipient transmits the Confidential Information becomes legally compelled to disclose the Confidential Information, the Recipient shall provide the Owner with prompt written notice so that the Owner may seek a protective order or other appropriate remedy. The Recipient shall cooperate with the Owner in its efforts to obtain such remedies, but the Recipient shall not be required to undertake litigation or legal proceedings in its name. In the event that the Recipient is legally obligated to disclose any Confidential Information, the Recipient shall furnish only the portion of the Confidential Information which is legally required and will exercise its reasonable best efforts to assure that confidential treatment will be accorded the Confidential Information.

7. Accurateness. Although each providing party has endeavored to include in the Confidential Information certain information which it considers to be relevant for the purpose of the Discussions, the parties acknowledge that each providing party makes no representation or warranty as to the accuracy or completeness of the Confidential Information. Each receiving party agrees that neither the providing party nor any of its directors, officers, employees, affiliates, agents, advisers or representatives shall have any liability to the receiving party or to any of its representatives resulting from the use of the Confidential Information, except in accordance with representations and warranties that may be made in any definitive agreement entered into by the parties with respect to the Discussions.

8. Discussions. The parties understand and agree that no agreement with respect to the Discussions shall be deemed to exist unless and until a mutually acceptable and final definitive written agreement has been executed by the parties. Company and Recipient each reserve the right, at any time and without any liability, to (i) reject any proposals from the other party, (ii) terminate negotiations with the other party regarding the Discussions, or (iii) enter into a transaction similar to the Discussions with a third party without notice to the other party; provided that no such event will relieve either party from its obligations under this Agreement.

9. Independent Contractor. Contractor will be and act as an independent contractor and not as an employee of Company and will provide services under this Agreement without any supervision from Company. Because Contractor is an independent contractor, Contractor will not be entitled to any benefits that Company may make available to its employees and Company will not withhold or make payments for state or federal income tax or social security, make unemployment insurance or disability insurance contributions or obtain workers' compensation insurance on Contractor's behalf. Company will issue Contractor a 1099 form with respect to Contractor's compensation under this Agreement.

10. Term. The term of this Agreement (the "Term") will commence as of the Effective Date and continue for: _____

11. Termination. This Agreement will be subject to early termination upon the occurrence of any one of the following events: _____

12. Equipment. Equipment that is separately owned by each Party shall remain separate and distinct property of each Party unless alternatively agreed to in writing. Routine inspections and maintenance of equipment and supplies shall be in accordance with the manufacturer's recommendations. The owner of the applicable equipment is responsible for the costs associated with these routine inspections and maintenance, repair and replacement of such equipment.

13. Arbitration Clause. Any claim, dispute or controversy between the Parties or claim by either Party against the other Party arising from or relating to this Agreement or the relationships which result from this Agreement, no matter against whom made, including the applicability of this arbitration clause and the validity of the entire

Agreement, shall be resolved by neutral binding arbitration by the National Arbitration Forum, under the Code of Procedure then in effect. Any arbitration hearing at which you appear will take place in the County of _____ State of _____. Information may be obtained, and claims may be filed at any National Arbitration Forum office, <http://www.arbitration-forum.com/>, or at P.O. Box 50191, Minneapolis, Minnesota 55405.

This agreement to arbitrate is made pursuant to a transaction involving intrastate commerce and shall be governed by and interpreted under the laws in the State of _____. Any award of the arbitrator(s) may be entered as a judgment in any court having jurisdiction. In the event a court having jurisdiction finds any portion of this Agreement unenforceable, that portion shall not be effective, and the remainder of the agreement shall remain effective. Nothing in this Agreement shall be construed to prevent either Party's use of bankruptcy, replevin, judicial foreclosure or any other prejudgment or provisional remedy relating to any collateral, security or property interests for contractual debts now or hereafter owed by either Party to the other under this Agreement.

The Parties understand that they would have had a right or opportunity to litigate disputes through a court and to have a judge or jury decide their case, but they choose to have any disputes decided through arbitration.

14. Representations and Warranties of Contractor. Contractor represents and warrants to Company that the following statements are true and correct:

- (a). Employ or otherwise contract for services with all Contractor personnel.
- (b). Follow and cause all personnel to follow all protocols established by Company.
- (c). Comply with all applicable laws and regulations in connection with this Agreement performed by Contractor.
- (d). Maintain all books and records relating to this Agreement performed by Contractor and pay all undisputed obligations of the business related in a timely and reasonable manner.
- (e). Provide and maintain all equipment, facilities, and supplies necessary for performance of this Agreement by Contractor, all of said equipment, facilities, and supplies will be the sole property of Contractor, unless otherwise agreed by the Parties.
- (f). Electronic content created by Contractor for the Company is the exclusive ownership of the Company.
- (g). Maintain liability insurance with respect to services performed under this Agreement.
- (h). Provide notice to Company upon the occurrence of any event which may have a material adverse effect Contractor's ability to fulfill its obligations under this Agreement, including any:
 - (i). Change in the license or certification or any denial, suspension, revocation, termination or relinquishment of any license of any Contractor personnel.
 - (ii). Event that may affect Contractor's ability to perform its obligations under this Agreement.

(iii). Failure or inability of Contractor to comply with the terms of this Agreement.

15. Disclaimer. Company disclaims any liability of the Representations and Warranties by Contractor.

16. Non-compete. During the Term of this Agreement and for a period of _____ after the termination of this Agreement, Contractors agrees to the following non-compete terms:

(a). Contractor shall not engage in any employment, consulting, or other activity involving _____

_____ that competes with the business, proposed business or business interests of Company, and Contractor will not assist any other person or entity in doing so, without Company's prior written consent.

(b). Contractor will not solicit any of Company's clients or prospective clients to perform any services for such clients or prospective clients involving _____, and Contractor shall not assist any other person or entity in doing so, without Company's prior written consent.

17. General Provisions.

(a). Severability. If any provision of this Agreement is or becomes invalid under any provision of federal, state or local law, such invalidity shall not affect the validity and enforceability of any other provision hereof.

(b). Integration and Amendments. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and no amendment, change or modification shall be effective unless in writing and signed by both Parties hereto.

(c). Applicable Law. This is made under and shall be governed by and construed in accordance with the laws of the State of _____. The venue for any action to interpret or enforce this Agreement shall be in the County of _____ State of _____.

(d). Assignment. Neither party may assign this Agreement. Any attempt to assign this Agreement shall be void.

(e). Waiver. The waiver of a breach of any provision of this Agreement by either Party shall not operate or be construed as a waiver of any subsequent breach.

(f). Headings. The headings used in this Agreement are included for purposes of convenience of reference only and shall not affect the construction or interpretation of any of its terms.

(g). Construction. Throughout this Agreement, the singular shall include the plural and the plural shall include the singular, all genders shall be deemed to include other genders, wherever the context so requires, and the terms "including," "include" or derivatives thereof, unless otherwise specified, shall be interpreted in as broad a sense as possible to mean "including, but not limited to," or "including, by way of example and not limitation."

(h). Further Acts. Upon reasonable request from either Party, from time

to time, each Party shall execute and deliver such additional documents and instruments and take such other actions as may be reasonably necessary to give effect to the intents and purposes of this Agreement.

(i) Attorneys' Fees. In the event of any litigation or arbitration proceedings between the parties hereto concerning the subject matter of this Agreement, the prevailing party in such litigation or proceeding shall be awarded, in addition to the amount of any judgment or other award entered therein, the costs and expenses, including reasonable attorneys' fees, incurred by the prevailing Party in the litigation or proceeding.

(j) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

THE PARTIES have duly executed this Agreement to be effective as of the Effective Date, notwithstanding the actual date of execution.

COMPANY

By: _____ Date: _____

Name: _____

INDEPENDENT CONTRACTOR

By: _____ Date: _____

Name: _____