

# EMPLOYEE NON-DISCLOSURE AGREEMENT

This **Employee Non-Disclosure Agreement ("Agreement")** has been entered into on \_\_\_\_\_, 20\_\_\_\_. between the parties set forth below

## PARTIES

EMPLOYER NAME: \_\_\_\_\_  
("Employer")

EMPLOYER ADDRESS: \_\_\_\_\_  
(Mailing Address)

AND

EMPLOYEE NAME: \_\_\_\_\_  
("Employee")

EMPLOYEE ADDRESS: \_\_\_\_\_  
(Mailing Address)

This Confidentiality and Nondisclosure Agreement (this "Agreement") is made and entered into by and between the Employer and the Employee 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 Employer to Employee 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:** Examples of confidential information would be, but are not limited to documents, records, information and data (whether verbal, electronic or written), drawings, models, apparatus, sketches, designs, schedules, product plans and developments, 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 Employer's business, assets, operations or contracts, furnished to Employee and/or

Employee'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. Any and all compilations, work products, and other data or material created by, under the employee's possession or control, and containing, including, referring to or otherwise reflecting any confidential information are also considered to be confidential information. Confidential Information may be disclosed orally, in writing, electronically, or in another way.

2. **FORM OF DISCLOSURE.** Confidential information may be expressed verbally, visually, orally, through demonstration, or in some other way that is not permanently recorded, whether or not it has been specifically designated as proprietary or confidential.

3. **PERIOD OF CONFIDENTIALITY AND NON-USE.** The Confidential Information that Employee (including its affiliates, employees, agents, and consultants) receives from Employer shall be kept strictly confidential for a period of [TIME PERIOD] following the Effective Date and shall not be disclosed to any third party or used for the benefit of Employee or any other party, unless necessary to carry out the obligations of Employee to Employer under any business transaction it may enter into with Employer. Employee must take at least as much care to prevent disclosing or using Confidential Information as it does with respect to its own similar-importance confidential, proprietary, and secret information any case using no less than a reasonable degree of care. Employee must restrict access to all confidential information to only those employees, agents, and representatives who "need to know" it to fulfill Employee's obligations to Employer under any business agreement it might enter into with Employer. Confidential information will only be used to fulfill Employee's obligations to Employer under any business agreement it might enter into. Employee is responsible for making sure all of its affiliates, staff members, officers, directors, owners, agents, consultants, and representatives who have access to Confidential Information are bound by and abide by the terms of this Agreement.

4. **EXCLUSIONS.** Information will not be considered confidential information, and employees will not be bound by any restrictions on use or confidentiality obligations with regard to any information that:

4.1. was known, in the possession of, and documented by the Employee prior to the disclosure of the information by the Employer without the Employee's breach of contract; or

4.2. is made known to the public without Employee's fault or through a breach of an obligation to the Employer; or

is legitimately obtained from a third party who is not subject to limitations on the use and disclosure of such information in favor of the Employer; or

4.4. is authorized by the employer in writing to be released; however, unless the employer receives notice of the employee's prior knowledge, possession, or receipt of the information from a third party within thirty (30) days of receiving it from the employer or the third party, respectively, it will be assumed conclusively that the employee did not previously have the information in his or her knowledge, possession, or possession.

5. **DISCLOSURES REQUIRED BY LAW.** In the event Employee is requested or required by a government or court order, or similar process, to disclose any Confidential Information supplied to it by Employer, Employee shall provide Employer with prompt notice of such request so that

Employer may seek an appropriate protective order and/or waive Employee's compliance with the provisions of this Agreement.

**6. INDEMNIFICATION.** Employee is obligated to pay back, hold harmless, and indemnify Employer, its affiliates, owners, employees, officers, directors, agents, and representatives from any harm, loss, penalty, cost, or expense sustained by Employer as a result of or in connection with the use or disclosure of the Confidential Information contrary to the terms of this Agreement by Employee, its affiliates, owners, employees, directors, officers, consultants, agents, or representatives, or any other party. 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" refers to having the ability to directly or indirectly cause the direction of management or policies (whether through ownership of securities (either legally or contractually)).

**7. NO PUBLIC COMMENT.** Without the prior written consent of the Employer, Employee 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.** Employee will cooperate with Employer in every reasonable way to help regain possession of the Confidential Information and stop its further unauthorized use or disclosure. Employee shall notify Employer immediately upon learning of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by Employee or any third party.

**9. OWNERSHIP AND RETURN OF CONFIDENTIAL INFORMATION.** Employer shall own and retain ownership of all Confidential Information disclosed to Employee. Employee must immediately return all confidential information, including all originals, copies, reproductions, and summaries of such information, upon the written request of the employer, or certify its destruction in writing, and keep it secret and confidential in accordance with this agreement.

**10. NO LICENSE.** Nothing in this Agreement should be interpreted as granting Employee any rights or licenses in or to any Confidential Information that Employer discloses to Employee as a result of this Agreement, including, without limitation, any rights or licenses under any current or future patent, patent application, copyright, trademark, service mark, trade secret, or other proprietary information owned, licensed, or otherwise owned by Employer.

**11. SURVIVAL.** Until all Confidential Information has been given back to the Employer or the destruction of it has been certified in writing to the Employer, Employee shall be bound by the confidentiality obligations set forth in this Agreement.

**12. RELATIONSHIP.** This Agreement cannot be interpreted as a partnership, joint venture, pooling arrangement, team effort, or agency agreement. The relationship between the Parties shall be one of Employer and Employee, and any additional financial arrangements shall be set forth in a separate document.

**13. NO WAIVER.** By signing this Agreement, each party retains all legal rights to invention and development that it had at the time. Additionally, no rights or actions under the patent, trademark, copyright, trade secret, unfair competition, fair trade, or related laws are implied by

this Agreement. Failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof.

14. **BINDING AGREEMENT.** Employer and all of its subsidiaries, successors, assigns, legal representatives, and all other corporations controlling Employee or controlled by Employee are bound by the terms of this agreement, which also benefits Employer and all of its subsidiaries, successors, assigns, legal representatives, and all other corporations controlling Employer or controlled by Employer.

15. **INJUNCTIVE RELIEF.** Employee acknowledges and agrees that any unauthorized use or disclosure of Confidential Information will result in irreparable harm to Employer and that there may not be an adequate legal remedy available to Employer in the form of monetary damages. As a result, Employer 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 party that prevails in any legal action to enforce any rights arising out of or related to this Agreement may be entitled to reasonable attorneys' fees and costs.

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 Employee consents to venue and jurisdiction in and by the state and federal courts in the jurisdiction of the Employer.

18. **ASSIGNMENT.** This Agreement may not be assigned by Employee without the prior written consent of Employer.

19. **ENTIRE AGREEMENT.** All prior and subsequent communications, reports, and agreements between the parties regarding the protection of confidential information are superseded by this Agreement, which sets forth the parties' complete understanding 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 determines in its sole discretion that any provision of this Agreement (or any portion thereof) is invalid, unlawful, or unenforceable for any reason, and if all rights to appeal the decision have been exhausted or the time period during which any appeal of the decision may be perfected has expired, (i) the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected by such determination.

21. **THE HEADINGS IN THIS AGREEMENT.** 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.

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

EMPLOYEE

**Signature of Employee** \_\_\_\_\_ Date: \_\_\_\_\_

Name on Print: \_\_\_\_\_

EMPLOYER

**Signature of Employer** \_\_\_\_\_ Date: \_\_\_\_\_

Name on Print: \_\_\_\_\_

Company: \_\_\_\_\_

Title: \_\_\_\_\_