

CONFIDENTIALITY AND INVENTION AGREEMENT

This Confidentiality and Invention Agreement ("Agreement") is made and effective this [DATE],

BETWEEN: [CONSULTANT NAME] (the "Consultant"), a corporation organized and existing under the laws of the [STATE/PROVINCE], with its head office located at:

AND: [COMPANY NAME] (the "Company"), a corporation organized and existing under the laws of the [STATE/PROVINCE], with its head office located at:

In consideration of the Consultant relationship with the Company (which for purposes of this Agreement shall be deemed to include any subsidiaries or Affiliates of the Company), the receipt of confidential information while associated with the Company, and other good and valuable consideration, the undersigned Consultant, agrees that:

1. TERMS OF AGREEMENT

This Agreement shall continue in full force and effect for the duration of the relationship between the Consultant and the Company and shall continue thereafter until terminated through a written instrument signed by both parties.

For purposes of this Agreement, "Affiliate" shall mean any person or entity that shall directly or indirectly controls, is controlled by, or is under common control with the Company.

2. CONFIDENTIALITY

2.1. Definitions

"Proprietary Information" is all information and any idea whatever form, tangible or intangible, pertaining in any manner to the business of the Company, or any of its Affiliates, or its employees, clients, consultants, or business associates, which was produced by any employee or consultant of the Company in the course of his or her employment or consulting relationship or otherwise produced or acquired by or on behalf of the Company. All Proprietary Information not generally known outside of the Company's organization, and all Proprietary Information so known only through improper means, shall be deemed "Confidential Information." By example and without limiting the foregoing definition, Proprietary and Confidential Information shall include, but not be limited to:

- a. Formulas, research and development techniques, processes, trade secrets, computer programs, software, electronic codes, mask works, inventions, innovations, patents, patent applications, discoveries, improvements, data, know-how, formats, test results, and research projects;
- b. Information about costs, profits, markets, sales, contracts and lists of customers, and distributors;
- c. Business, marketing, and strategic plans; forecasts, unpublished financial information, budgets, projections, and customer identities, characteristics and agreements; and employee personnel files and compensation information.

Confidential Information is to be broadly defined, and includes all information that has or could have commercial value or other utility in the business in which the Company is engaged or contemplates engaging, and all information of which the unauthorized disclosure could be detrimental to the interests of the Company, whether or not such information is identified as Confidential Information by the Company.

2.2. Existence of Confidential Information

The Company owns and has developed and compiled, and will develop and compile, certain trade secrets, proprietary techniques and other Confidential Information which have great value to its business. This Confidential Information includes not only information disclosed by the Company to the Consultant, but also information developed or learned by the Consultant during the course of the relationship with the Company.

2.3. Protection of Confidential Information

The Consultant will not, directly or indirectly, use, make available, sell, disclose or otherwise communicate to any third party, other than in the assigned duties and for the benefit of the Company, any of the Company's Confidential Information, either during or after the relationship with the Company. In the event the Consultant desires to publish the results of the work for the Company through literature or speeches, the Consultant will submit such literature or speeches to the President of the Company at least 10 days before dissemination of such information for a determination of whether such disclosure may alter trade secret status, may be prejudicial to the interests of the Company, or may constitute an invasion of its privacy. The Consultant agrees not to publish, disclose or otherwise disseminate such information without prior written approval of the President of the Company. The Consultant acknowledges that the unauthorized disclosure of Confidential Information of the Company may be highly prejudicial to its interests, an invasion of privacy, and an improper disclosure of trade secrets.

2.4. Delivery of Confidential Information

Upon request or when the relationship with the Company terminates, the Consultant will immediately deliver to the Company all copies of any and all materials and writings received from, created for, or belonging to the Company including, but not limited to, those which relate to or contain Confidential Information.

2.5. Location and Reproduction

The Consultant shall maintain at its workplace only such Confidential Information as the Consultant has a current "need to know." The Consultant shall return to the appropriate person or location or otherwise properly dispose of Confidential Information once that need to know no longer exists. The Consultant shall not make copies of or otherwise reproduce Confidential Information unless there is a legitimate business need of the Company for reproduction.

2.6. Prior Actions and Knowledge

The Consultant represents and warrants that from the time of the first contact with the Company the Consultant holds in strict confidence all Confidential Information and has not disclosed any Confidential Information, directly or indirectly, to anyone outside the Company, or used, copied, published, or summarized any Confidential information, except to the extent otherwise permitted in this Agreement.

2.7. Third-Party Information

The Consultant acknowledges that the Company has received and in the future will receive from third parties their confidential information subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. The Consultant agrees that it will at all times hold all such confidential information in the strictest confidence and not to disclose or use it, except as necessary to perform the obligations hereunder and as is consistent with the Company's agreement with such third parties.

2.8. Third Parties

The Consultant represents that the relationship with the Company does not and will not breach any agreements with or duties to a former employer or any other third party. The Consultant will not disclose to the Company or use on its behalf any confidential information belonging to others and will not bring onto the premises of the Company any confidential information belonging to any such party unless consented to in writing by such party.

3. PROPRIETARY RIGHTS, INVENTIONS AND NEW IDEAS

3.1. Definition

The term "Subject Ideas or Inventions" includes any and all ideas, processes, trademarks, service marks, inventions, designs, technologies, computer hardware or software, original works of authorship, formulas, discoveries, patents, copyrights, copyrightable works products, marketing and business ideas, and all improvements, know-how, data, rights, and claims related to the foregoing that, whether or not patentable, which are conceived, developed or created which: (1) relate to the Company's current or contemplated business; (2) relate to the Company's actual or demonstrably anticipated research or development; (3) result from any work performed by the Consultant for the Company; (4) involve the use of the Company's equipment, supplies, facilities or trade secrets; (5) result from or are suggested by any work done by the Company or at the Company's request, or any projects specifically assigned to the Consultant; or (6) result from the access to any of the Company's memoranda, notes, records, drawings, sketches, models, maps, customer lists, research results, data, formulae, specifications, inventions, processes, equipment or other materials (collectively, "Company Materials").

3.2. Company Ownership

All right, title and interest in and to all Subject Ideas and Inventions, including but not limited to all registrable and patent rights which may subsist therein, shall be held and owned solely by the Company, and where applicable, all Subject Ideas and Inventions shall be considered works made for hire. The Consultant shall mark all Subject Ideas and Inventions with the Company's copyright or other proprietary notice as directed by the Company and shall take all actions deemed necessary by the Company to protect the Company's rights therein. In the event that the Subject Ideas and Inventions shall be deemed not to constitute works made for hire, or in the event that the Consultant should otherwise, by operation of law, be deemed to retain any rights (whether moral rights or otherwise) to any Subject Ideas and Inventions, the Consultant agrees to assign to the Company, without further consideration, its entire right, title and interest in and to each and every such Subject Idea and Invention.

3.3. Disclosure

The Consultant agrees to disclose promptly to the Company full details of any and all Subject Ideas and Inventions.

3.4. Maintenance of Records

The Consultant agrees to keep and maintain adequate and current written records of all Subject Ideas and Inventions and their development made by the Consultant (solely or jointly with others) during the term of the relationship with the Company. These records will be in the form of notes, sketches, drawings, and any other format that may be specified by the Company. These records will be available to and remain the sole property of the Company at all times.

3.5. Determination of Subject Ideas and Inventions

The Consultant further agrees that all information and records pertaining to any idea, process, trademark, service mark, invention, technology, computer hardware or software, original work of authorship, design, formula, discovery, patent, copyright, product, and all improvements, know-how, rights, and claims related to the foregoing ("Intellectual Property"), that the Consultant does not believe to be a Subject Idea or Invention, but that is conceived, developed, or reduced to practice by the Company (alone by the Consultant or with others) during the relationship with the Company and for one (1) year thereafter, shall be disclosed promptly by the Consultant to the Company. The Company shall examine such information to determine if in fact the Intellectual Property is a Subject Idea or Invention subject to this Agreement.

3.6. Access

Because of the difficulty of establishing when any Subject Ideas or Inventions are first conceived by the Consultant, or whether it results from the access to Confidential Information or Company Materials, the Consultant agrees that any Subject Idea and Invention shall, among other circumstances, be deemed to have resulted from its access to Company Materials if: (1) it grew out of or resulted from the work with the Company or is related to the business of the Company, and (2) it is made, used, sold, exploited or reduced to practice, or an application for patent, trademark, copyright or other proprietary protection is filed thereon, by the Consultant or with its significant aid, within one year after termination of the relationship with the Company.

3.7. Assistance

The Consultant further agrees to assist the Company in every proper way (but at the Company's expense) to obtain and from time to time enforce patents, copyrights or other rights or registrations on said Subject Ideas and Inventions in any and all countries, and to that end will execute all documents necessary:

- a. To apply for, obtain and vest in the name of the Company alone (unless the Company otherwise directs) letters patent, copyrights or other analogous protection in any country throughout the world and when so obtained or vested to renew and restore the same; and;
- b. To defend any opposition proceedings in respect of such applications and any opposition proceedings or petitions or applications for revocation of such letters patent, copyright or other analogous protection; and;
- c. To cooperate with the Company (but at the Company's expense) in any enforcement or infringement proceeding on such letters patent, copyright or other analogous protection.

3.8. Authorization to Company

In the event the Company is unable, after reasonable effort, to secure the Consultant's signature on any patent, copyright or other analogous protection relating to a Subject Idea and Invention, whether because of the Consultant's physical or mental incapacity or for any other reason whatsoever, the Consultant hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as its agent and attorney-in-fact, to act for and on its behalf and stead to execute and file any such application, applications or other documents and to do all other lawfully permitted acts to further the prosecution, issuance, and enforcement of letters patent, copyright or other analogous rights or protections thereon with the same legal force and effect as if executed by the Consultant. The Consultant's obligation to assist the Company in obtaining and enforcing patents and copyrights for Subject Ideas and Inventions in any and all countries shall continue beyond the termination of the relationship with the Company, but the Company shall compensate the Consultant at a reasonable rate after such termination for time actually spent by the Consultant at the Company's request on such assistance.

3.9. Acknowledgement

The Consultant acknowledges that there are no currently existing ideas, processes, inventions, discoveries, marketing or business ideas or improvements which I desire to exclude from the operation of this Agreement. To the best of the Consultant's knowledge, there is no other contract to assign inventions, trademarks, copyrights, ideas, processes, discoveries or other intellectual property that is now in existence between the Consultant and any other person (including any business or governmental entity).

3.10. No Use of Name

The Consultant shall not at any time use the Company's name or any the Company trademark(s) or trade name(s) in any advertising or publicity without the prior written consent of the Company.

4. COMPETITIVE ACTIVITY

4.1. Acknowledgment

The Consultant acknowledges that the pursuit of the activities forbidden by Section 4.2 below would necessarily involve the use, disclosure or misappropriation of Confidential Information.

4.2. Prohibited Activity

To prevent the above-described disclosure, misappropriation and breach, the Consultant agrees that during the relationship and for a period of one (1) year thereafter, without the Company's express written consent, the Consultant shall not, directly or indirectly, (i) employ, solicit for employment, or recommend for employment any person employed by the Company (or any Affiliate); and (ii) engage in any present or contemplated business activity that is or may be competitive with the Company (or any Affiliate) in any state where the Company conducts its business, unless the Consultant can prove that any action taken in contravention of this subsection (ii) was done without the use in any way of Confidential Information.

5. REPRESENTATIONS AND WARRANTIES

The Consultant represents and warrants (i) that it has no obligations, legal or otherwise, inconsistent with the terms of this Agreement or with its undertaking a relationship with the Company; (ii) that the performance of the services called for by this Agreement do not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party; (iii) that the Consultant will not use in the performance of its responsibilities for the Company any confidential information or trade secrets of any other person or entity; and (iv) that the Consultant has not entered into or will enter into any agreement (whether oral or written) in conflict with this Agreement.

6. TERMINATION OBLIGATIONS

- a. Upon the termination of the relationship with the Company or promptly upon the Company's request, the Consultant shall surrender to the Company all equipment, tangible Proprietary Information, documents, books, notebooks, records, reports, notes, memoranda, drawings, sketches, models, maps, contracts, lists, computer disks (and other computer-generated files and data), any other data and records of any kind, and copies thereof (collectively, "Company Records"), created on any medium and furnished to, obtained by, or prepared by the Consultant in the course of or incident to the relationship with the Company, that are in its possession or under its control.
- b. The consultant's representations, warranties, and obligations contained in this Agreement shall survive the termination of the relationship with the Company.

- c. Following any termination of the relationship with the Company, the Consultant will fully cooperate with the Company in all matters relating to its continuing obligations under this Agreement.
- d. The Consultant hereby grants consent to notification by the Company to any of its future companies the Consultant consults with about its rights and obligations under this Agreement.
- e. Upon termination of its relationship with the Company, the Consultant will execute a Certificate acknowledging compliance with this Agreement in the form reasonably requested by the Company.

7. INJUNCTIVE RELIEF

The Consultant acknowledges that its failure to carry out any obligation under this Agreement, or a breach by the Consultant of any provision herein, will constitute immediate and irreparable damage to the Company, which cannot be fully and adequately compensated in money damages and which will warrant preliminary and other injunctive relief, an order for specific performance, and other equitable relief. The Consultant further agrees that no bond or other security shall be required in obtaining such equitable relief and hereby consents to the issuance of such injunction and to the ordering of specific performance. The Consultant also understands that other action may be taken and remedies enforced against the Consultant.

8. MODIFICATION

No modification of this Agreement shall be valid unless made in writing and signed by both parties.

9. BINDING EFFECT

This Agreement shall be binding upon the Consultant, its heirs, executors, assigns and administrators and is for the benefit of the Company and its successors and assigns.

10. GOVERNING LAW

This Agreement shall be construed in accordance with, and all actions arising under or in connection therewith shall be governed by, the internal laws of the State of [STATE/PROVINCE],

11. INTEGRATION

This Agreement sets forth the parties' mutual rights and obligations with respect to proprietary information, prohibited competition, and intellectual property. It is intended to be the final, complete, and exclusive statement of the terms of the parties' agreements regarding these subjects. This Agreement supersedes all other prior and contemporaneous agreements and statements on these subjects, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of the Company, now or in the future, apply to the Consultant and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control unless changed in writing by the Company.

12. NOT EMPLOYMENT

This Agreement is not an employment agreement as the Consultant is an independent consultant. The Consultant understands that the Company may terminate its association with it at any time, with or without cause, subject to the terms of any separate written consulting agreement executed by a duly authorized officer of the Company.

13. CONSTRUCTION

This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not limitation, this Agreement shall not be construed against the party responsible for any language in this Agreement. The headings of the paragraphs hereof are inserted for convenience only, and do not constitute part of and shall not be used to interpret this Agreement.

14. ATTORNEYS' FEES

Should either the Consultant or the Company, or any heir, personal representative, successor or permitted assign of either party, resort to legal proceedings to enforce this Agreement, the prevailing party in such legal proceeding shall be awarded, in addition to such other relief as may be granted, attorneys' fees and costs incurred in connection with such proceeding.

15. SEVERABILITY

If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place or circumstance, shall be held to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.

16. RIGHTS CUMULATIVE

The rights and remedies provided by this Agreement are cumulative, and the exercise of any right or remedy by either the Company or the Consultant (or by that party's successor), whether pursuant hereto, to any other agreement, or to law, shall not preclude or waive that party's right to exercise any or all other rights and remedies. This Agreement will inure to the benefit of the Company and its successors and assigns.

17. NONWAIVER

The failure of either the Company or the Consultant, whether purposeful or otherwise, to exercise in any instance any right, power or privilege under this Agreement or under law shall not constitute a waiver of any other right, power or privilege, nor of the same right, power or privilege in any other instance. Any waiver by the Company or by the Consultant must be in writing and signed by either the Consultant, if the Consultant is seeking to waive any of its rights under this Agreement, or by an officer of the Company or some other person duly authorized by the Company.

18. NOTICES

Any notice, request, consent or approval required or permitted to be given under this Agreement or pursuant to law shall be sufficient if it is in writing, and if and when it is hand delivered or sent by regular mail, with postage prepaid, to the Consultant's principal office, or to the Company's principal office, as the case may be.

19. AGREEMENT TO PERFORM NECESSARY ACTS

The Consultant agree to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this Agreement.

20. ASSIGNMENT

This Agreement may not be assigned without the Company's prior written consent.

21. COMPLIANCE WITH LAW

The Consultant agrees to abide by all federal, state, and local laws, ordinances and regulations.

22. ACKNOWLEDGMENT

The Consultant acknowledges having had the opportunity to consult legal counsel in regard to this Agreement, having read and understand this Agreement, that the Consultant is fully aware of its legal effect, and that it has entered into it freely and voluntarily and based on its own judgment and not on any representations or promises other than those contained in this Agreement.

CAUTION: THIS AGREEMENT CREATES IMPORTANT OBLIGATIONS OF TRUST AND AFFECTS THE CONSULTANT'S RIGHTS TO INVENTIONS AND OTHER INTELLECTUAL PROPERTY THE CONSULTANT MAY DEVELOP.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COMPANY

CONSULTANT

Authorized Signature

Authorized Signature

Print Name and Title

Print Name and Title