

## NON-DISCLOSURE AGREEMENT

Provider is subject to, and agrees to and acknowledges, the terms and conditions of this Non-Disclosure Agreement as a "Provider" hereunder with respect to Provider's performance of the Services on behalf of the Company under the Agreement (the "Agreement").

### RECITALS

A. Provider acknowledges that during the course of his or her relationship with the Company, the Provider may gain access to Confidential and Proprietary Information that belongs to the Company. This Agreement governs the Provider's obligation to refrain from disclosure of such Confidential and Proprietary Information.

B. The purposes of this Agreement are to make clear and further the Company's policies limiting the disclosure of Confidential and Proprietary Information.

### 1.0 CONFIDENTIAL OR PROPRIETARY INFORMATION.

1.1 Definition of Confidential and Proprietary Information. "Confidential" and "Proprietary" Information means any information: (a) from which the Company (or its customers, Clients, suppliers, joint venturers, licensors, distributors and others with whom the Company does business) derive independent economic value, actual or potential, from the fact that the information is not generally known to the public or to other persons who can obtain economic value from its disclosure or use, or (b) which is not generally known to the public and which, if disclosed, could cause embarrassment or other harm to the Company. Examples of Confidential and Proprietary Information include, but are not limited to: discoveries, improvements, processes, research, developments, products, designs, know-how, data, computer programs (including but not limited to all source code for those programs), formulae, business plans, business opportunities, information regarding pending transactions involving the Company, customer lists, financial data (both historical and projected), tax information and personnel information pertaining to the Company or third-party information disclosed to the Company.

1.2 Nondisclosure and Nonuse of Confidential and Proprietary Information. Provider will not disclose to any person in any manner, either before, during or after the Provider's relationship with the Company, any Confidential and Proprietary Information except to the extent necessary for the performance of the Provider's Services under the Provider Agreement. The Provider agrees to cooperate with the Company, and to use his or her best efforts, to prevent the unauthorized disclosure, use, publication or reproduction of any Confidential and Proprietary Information. The Provider will use Confidential and Proprietary Information solely for the benefit of the Company in the performance of Services under the Provider Agreement and not for his or her own use or any third party's benefit without prior written approval of an authorized representative of the Company in each instance.

1.3 Confidential and Proprietary Information of Others. The obligations of the Provider pursuant to this Agreement will also apply to Confidential and Proprietary Information belonging to the Company's customers, Clients, suppliers, joint venturers, licensors and others with whom the Company does business.

1.4 Ownership of Confidential and Proprietary Information. The Company will be the sole owner of all Confidential and Proprietary Information and any Derivatives thereof, which the Provider may develop in the course of his or her relationship with the Company. No license or other rights to Confidential and Proprietary Information is granted or implied. For purposes

of this Agreement, "Derivatives" mean (i) copyrightable or copyrighted material, any translation, abridgment, revision or other form in which an existing work may be recast, transformed or adapted; (ii) patentable or patented material, any improvement thereon; and (iii) material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected by copyright, patent and/or trade secret.

1.5 Return of Materials. Upon the termination of relationship with the Company for any reason, the Provider will immediately deliver to the Company all tangible materials containing or disclosing Confidential and Proprietary Information in the Provider's possession or under his or her control, whether those materials are written, graphical, machine-readable (such as computer files and databases) or in any other format, including all duplicate copies made. Furthermore, Provider is restricted from making unauthorized copies of such materials upon the cessation of relationship.

## 2.0 MISCELLANEOUS

2.1 Modification. Amendment. Provider's obligations under this Agreement may not be modified or terminated in whole or in part, or any right of the Company waived, unless the modification, termination or waiver is in writing and signed by an authorized officer of the Company. No waiver by the Company of the enforcement of any provision of this Agreement in any particular instance will be deemed a waiver of the Company's rights to enforce any other provision of this Agreement or to enforce the same provision in another instance.

2.2 Severability. If any provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction in any case, that provision will be construed by such court as broadly as possible to allow the provision to be enforceable to the maximum extent allowed by law. The unenforceability of any one provision will not impair the enforceability of any other provision.

2.3 Survival of Termination of Relationship. Provider's obligations under this Agreement will survive the cessation of the Provider's relationship, regardless of the manner in which that relationship ends.

2.4 Equitable Remedies. Notwithstanding the terms of Section 16 of the Provider Agreement, Provider acknowledges that any breach of this Agreement will likely cause irreparable harm to the Company for which money damages may not reasonably or adequately compensate the Company. Accordingly, Provider agrees that the Company will be entitled to injunctive relief to enforce this Agreement in addition to damages and other remedies available at law.

2.5 Not a Relationship Agreement. Adherence to this Agreement is a material term and condition of the Provider's relationship with the Company. However, this Agreement is not a relationship or employment contract and will not be construed as an agreement by the Company to employ the Provider for any specific term or to limit the Company's right to terminate the Provider's relationship at will.

2.6 Entire Agreement. Provider acknowledges receipt of a copy of this Agreement, and that this Agreement contains the complete agreement between the Company and the Provider concerning the subject matter contained herein, and supersedes all other prior or contemporaneous agreements or understandings, whether oral or written, between the parties with respect to that subject matter.

2.7 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state as set forth in the Provider Agreement.