

## CONSULTANT CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

**This Consultant Confidentiality and Nondisclosure Agreement** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2006 by and between \_\_\_\_\_ (Consultant) and \_\_\_\_\_, a California Corporation (Corporation) at Santa Barbara, California with reference to the following facts and intentions:

**A.** Corporation is involved in various business enterprises in which businesses Consultant is or will be employed.

**B.** In the course of said employment, Consultant has and will be exposed to Confidential Information, as hereinafter defined, concerning the business of the Corporation.

**C.** The parties have executed this Agreement to protect the confidentiality of the Confidential Information during and after Consultant's past and current employment by Corporation in consideration of Consultant's employment and compensation by Corporation.

**NOW, THEREFORE, IT IS AGREED** as follows:

**1. Protection of Confidential Information.** The Consultant will not disclose or use, both during and after employment for any reason whatsoever, except as required in the course of her employment with Corporation, any of the current or future trade secrets, confidential knowledge, data, or other proprietary information of Corporation, including, without limitation, designs, logos, trademarks, names, sales, business plans, financial information, know-how, products, processes, computer programs, data bases, developmental or experimental work, contracts or agreements, customers, customer lists, customer information or other matter pertaining to any business of Corporation or any of its affiliates, clients, consultants, or licensees, which is confidential, material or important to the effective and successful operation of the business of the Corporation (Confidential Information).

Without regard to whether any of the foregoing matters would otherwise be deemed confidential or important, the Consultant hereby stipulates that, with respect to the Consultant's employment, said matters shall be deemed confidential, material and important and gravely affect the effective and successful conduct of Corporation's business.

**2. Noncompetition During Consulting.** Except with the express written consent of the Corporation, the Consultant agrees that she will not, during the period of her employment with Corporation:

(Rev. 8/5/10)

- a. Engage in any employment or activity, other than with the Corporation, in any business in which the Corporation is engaged or contemplates engagement;
- b. Induce any employee of, or consultant to, the Corporation to engage in any employment or activity prohibited by this Agreement;
- c. Solicit any customers or potential customers of the Corporation for sales or services similar to those performed by the Corporation, whether or not competitive with the Corporation's current business operations; and
- d. Engage in any other employment, occupation, consulting or other business activity directly related to the business in which the Corporation is now involved or becomes involved, or engage in any other activities which conflict with any obligations of Consultant to the Corporation.

**3. Third Party Information.** During the term of this Agreement and thereafter, Consultant shall hold confidential and proprietary information of third parties gained in the course of Corporation's business in the strictest confidence and shall not disclose it to any person, firm or corporation (except as to carry out the Corporation's business as consistent with Corporation's agreement with such third party) or use it for the benefit of anyone other than the Corporation without the express authorization of the president of the Corporation.

**4. Consultant Innovations.**

**a. Disclosure.** Consultant will promptly disclose in writing to Corporation all discoveries, designs, ideas, innovations, improvements, inventions, formulas, processes, techniques, know-how and data, whether patentable or registrable, made, conceived, reduced to practice or learned by Consultant (either alone or jointly with others) that are related or useful to the business of Corporation or which result from tasks assigned to Consultant by Corporation or from the use of premises or property owned, leased or otherwise acquired by Corporation (Innovations).

**b. Assignment of Innovations.** Consultant acknowledges and agrees that all Innovations belong to and shall be the sole property of the Corporation and shall be Innovations of the Corporation subject to the provisions of this Agreement. The Consultant hereby assigns to the Corporation all right, title and interest Consultant may have or may acquire in and to all Innovations. Consultant agrees to sign and deliver to the Corporation (either during or subsequent to her employment) such other documents as the Corporation deems desirable to evidence (1) an assignment of all rights of the Consultant, if any, in any Innovations to Corporation and/or (2) Corporation's ownership of such Innovations. Any provision of this Agreement requiring the Consultant to assign rights to an Innovation does not apply to any Innovation that qualifies under California Labor Code section 2870, which relates to an Innovation for which no equipment, supplies, facility or trade secret information of the Corporation was used, which was

developed entirely on the Consultant's own time, which does not relate to the business of the Corporation or to the Corporation's actual or demonstrable anticipated research or development, or which does not result from any work performed by the Consultant for the Corporation.

**c. Power of Attorney.** In the event Corporation is unable to secure Consultant's signature on any document necessary to apply for, prosecute, obtain or enforce any patent, copyright or other right or protection relating to any Innovation, whether due to mental or physical incapacity or any other cause, Consultant hereby irrevocably designates and appoints Corporation and each of its duly authorized officers and agents as her agent and attorney-in-fact to act for and in her behalf and stead to execute and file any such document and do all other lawfully permitted acts to further the prosecution, issuance and enforcement of patents, copyrights or other rights or protections with the same force and effect as if executed and delivered by the Consultant.

**5. Nondisclosure After Term.** In the event of termination (voluntary or otherwise) of Consultant's employment with Corporation:

a. Consultant agrees that she will protect the value of the Confidential Information and Innovations of the Corporation and will prevent the misappropriation or nondisclosure thereof. Consultant will not disclose or use to her benefit (or to the benefit of any third party) or to the detriment of the Corporation, any Confidential Information or Innovations. Consultant further agrees that for a period of three (3) years immediately following termination of Consultant's employment with the Corporation, Consultant will not interfere with the business of Corporation by inducing an employee to leave the Corporation's employ or by inducing a contractor or consultant to sever the contractor's or consultant's relationship with the Corporation.

b. Consultant further agrees that for a period of three years from the date of termination with Corporation, not to undertake employment with a business or enterprise competitive with Corporation if the loyal and complete fulfillment of duties of such competitive employment would inherently demand or require that Consultant reveal Confidential Information or Innovations which she acquired while in the employ of Corporation.

## **6. General Provisions.**

**a. Other Instruments.** The parties shall, whenever and as often as reasonably requested by the other party, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all documents and instruments as may be necessary, expedient or proper in the reasonable opinion of the requesting party to carry out the intent and purposes of this Agreement, provided that the requesting party shall bear the cost and expense of such further instruments or documents (except that each party shall bear its own attorneys' fees).

**b. Construction.** The provisions of this Agreement should be liberally construed to effectuate its purposes. The language of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against either party, as each party has participated in the drafting of this Agreement and had the opportunity to have their counsel review it. Consultant recognizes that S. Timothy Buynak and Hatch and Parent only represent the Corporation in the negotiation and execution of this Agreement. Whenever the context and construction so requires, all words used in the singular shall be deemed to be used in the plural, all masculine shall include the feminine and neuter, and vice versa.

**c. Severability.** If any term, provision, covenant or condition of this Agreement shall be or become illegal, null, void or against public policy, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected, impaired or invalidated thereby. The term, provision, covenant or condition that is so invalidated, voided or held to be unenforceable shall be modified or changed by the parties to the extent possible to carry out the intentions and directives stated in this Agreement.

**d. Successors and Assigns.** This Agreement shall be binding on and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors and permitted assigns, except as restricted by this Agreement.

**e. Waiver.** No waiver of any provision or consent to any action shall constitute a waiver of any other provision or consent to any other action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a party to provide a waiver in the future except to the extent specifically stated in writing. Any waiver given by a party shall be null and void if the party requesting such waiver has not provided a full and complete disclosure of all material facts relevant to the waiver requested. No waiver shall be binding unless executed in writing by the party making the waiver.

**f. Governing Law.** The validity and interpretation of this Agreement shall be governed by the laws of the State of California without giving effect to the principles of conflict of laws, with venue for all purposes proper only in the County of Santa Barbara, State of California.

**g. Notices.** All notices, approvals, acceptances, demands and other communications required or permitted under this Agreement, to be effective shall be in writing and shall be delivered in person or by U.S. mails (postage prepaid, certified, return receipt requested) or by Federal Express or other similar overnight delivery service to the party to whom the notice is directed at the address of such party as follows:

Corporation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any written communication given by mail shall be deemed delivered two (2) business days after such mailing date and any written communication given by overnight delivery service shall be deemed delivered one (1) business day after the dispatch date. Either party may change its address by giving the other party written notice of its new address as herein provided.

**h. Attorneys' Fees.** If any legal proceeding (lawsuit, arbitration, etc.) including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover actual attorneys' fees and costs, which may be determined by the court in the same action or in a separate action brought for that purpose. The attorneys' fees award shall be made as to fully reimburse for all attorneys' fees, paralegal fees, costs and expenses actually incurred in good faith, regardless of the size of the judgment, it being the intention of the parties to fully compensate for all attorneys' fees, paralegal fees, costs and expenses paid or incurred in good faith.

**i. Remedies.** Each party acknowledges that a remedy at law for any breach or attempted breach of this Agreement will be inadequate, agrees that each other party shall be entitled to specific performance and injunctive and other equitable relief in case of any such breach or attempted breach, and further agrees to waive any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief.

**j. Waiver of Jury Trial Rights.** The parties irrevocably waive their respective rights to trial by jury of any cause of action, claim, counterclaim, or cross-complaint in any action, proceeding and/or hearing brought to enforce or interpret the provisions of this Agreement or on any matter whatsoever arising out of or in any way connected with this Agreement and its enforcement.

**k. Entire Agreement and Amendment.** In conjunction with the matters considered herein, this Agreement, as well as the concurrent Consultant Agreement, contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature binding except as stated in this Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party

waives their right to claim, contest or assert that this Agreement was modified, canceled, superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

**IN WITNESS WHEREOF**, the parties hereto have signed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 2006, at Santa Barbara, California.

**Corporation**

\_\_\_\_\_

By \_\_\_\_\_

**Consultant**

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