

NON-COMPETE AGREEMENT

THIS NON-COMPETE AGREEMENT (the "Agreement") dated this _____ day of _____, _____

BETWEEN:

_____ of

(the "Employer")

OF THE FIRST PART

- AND -

_____ of

(the "Employee")

OF THE SECOND PART

BACKGROUND:

- A. The Employee is currently or may be employed as an employee with the Employer for the position of: _____ In addition to this responsibility or position, this Agreement also covers any position or responsibility now or later held with the Employer (the "Employment").

- B. As a result of the Employment, the Employee will receive from, or develop on behalf of the Employer, certain proprietary or confidential information (the "Confidential Information") and the Employer has sought assurance this will not be exploited to gain a competitive advantage.

IN CONSIDERATION OF and as a condition of the Employment and the Employer providing the Confidential Information to the Employee in addition to other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, the parties to this Agreement agree as follows:

Non-Competition

1. The Employee agrees that during the Employment and for a period of two (2) years after the end of that term, the Employee will not give advice or lend credit, money or the Employee's reputation to any natural person or business entity engaged in a competing business in any geographic area in which the Employer conducts its business, and the Employee will not, directly or indirectly, as employee, owner, sole proprietor, partner, director, member, consultant, agent, founder, co-venturer or otherwise, solely or jointly with others, engage in any business that is in competition with the business of the Employer within the following geographic area:

- _____

Non-Solicitation

2. The Employee understands and agrees that any attempt on the part of the Employee to induce other employees or contractors to leave the Employer's workforce, or any effort by the Employee to interfere with the Employer's relationship with its other employees and contractors would be harmful and damaging to the Employer. The Employee agrees that during the Employment, and for a period of five (5) years after the end of that term, the Employee will not in any way, directly or indirectly:

- a. Induce or attempt to induce any employee or contractor of the Employer to quit employment or retainer with the Employer;
- b. Otherwise interfere with or disrupt the Employer's relationship with its employees and contractors;
- c. Discuss employment opportunities or provide information about competitive employment to any of the Employer's employees or contractors; or
- d. Solicit, entice, or hire away any employee or contractor of the Employer for the purpose of an employment opportunity that is in competition with the Employer.

3. This non-solicitation obligation as described in this section will be limited to employees or contractors who were employees or contractors of the Employer during the period that the Employee was employed by the Employer.

4. During the Employment, and for five (5) years thereafter, the Employee will not divert or attempt to divert from the Employer any business the Employer had enjoyed, solicited, or

attempted to solicit, from its customers, prior to termination or expiration, as the case may be, of the Employment.

Confidential Information

5. The Employee acknowledges that, in any position the Employee may hold, in and as a result of the Employment, the Employee will, or may, be making use of, acquiring or adding to information which is confidential to the Employer (the "Confidential Information") and the Confidential Information is the exclusive property of the Employer.
6. The Confidential Information will include all data and information relating to the business and management of the Employer, including but not limited to, proprietary and trade secret technology and accounting records to which access is obtained by the Employee, including Work Product, Computer Software, Other Proprietary Data, Business Operations, Marketing and Development Operations, and Customer Information.
7. The Confidential Information will also include any information that has been disclosed by a third party to the Employer and is governed by a non-disclosure agreement entered into between that third party and the Employer.
8. The Confidential Information will not include information that:
 - a. Is generally known in the industry of the Employer;
 - b. Is now or subsequently becomes generally available to the public through no wrongful act of the Employee;
 - c. Was rightfully in the possession of the Employee prior to the disclosure to the Employee by the Employer;
 - d. Is independently created by the Employee without direct or indirect use of the Confidential Information; or
 - e. The Employee rightfully obtains from a third party who has the right to transfer or disclose it.
9. The Confidential Information will also not include anything developed or produced by the Employee during the Employment, including but not limited to, any intellectual property,

process, design, development, creation, research, invention, know-how, trade name, trade-mark or copyright that:

- a. Was developed without the use of equipment, supplies, facility or Confidential Information of the Employer;
- b. Was developed entirely on the Employee's own time;
- c. Does not result from any work performed by the Employee for the Employer; and
- d. Does not relate to any actual or reasonably anticipated business opportunity of the Employer.

Duties and Obligations Concerning Confidential Information

10. The Employee agrees that a material term of this Agreement to keep all Confidential Information absolutely confidential and protect its release from the public. The Employee agrees not to divulge, reveal, report or use, for any purpose, any of the Confidential Information which the Employee has obtained or which was disclosed to the Employee by the Employer as a result of the Employment. The Employee agrees that if there is any question as to such disclosure then the Employee will seek out senior management of the Employer prior to making any disclosure of the Employer's information that may be covered by this Agreement.
11. The Employee agrees and acknowledges that the Confidential Information is of a proprietary and confidential nature and that any disclosure of the Confidential Information to a third party in breach of this Agreement cannot be reasonably or adequately compensated for in money damages, would cause irreparable injury to Employer, would gravely affect the effective and successful conduct of the Employer's business and goodwill, and would be a material breach of this Agreement.
12. The obligations to ensure and protect the confidentiality of the Confidential Information imposed on the Employee in this Agreement and any obligations to provide notice under this Agreement will survive the expiration or termination, as the case may be, of this Agreement and will continue indefinitely from the date of such expiration or termination.
13. The Employee may disclose any of the Confidential Information:
 - a. To a third party where Employer has consented in writing to such disclosure; or

- b. To the extent required by law or by the request or requirement of any judicial, legislative, administrative or other governmental body after providing reasonable prior notice to the Employer.
14. If the Employee loses or makes unauthorized disclosure of any of the Confidential Information, the Employee will immediately notify the Employer and take all reasonable steps necessary to retrieve the lost or improperly disclosed Confidential Information.

Avoiding Conflict of Opportunities

15. It is understood and agreed that any business opportunity relating to or similar to the Employer's current or anticipated business opportunities coming to the attention of the Employee during the Employment is an opportunity belonging to the Employer. Accordingly, the Employee will advise the Employer of the opportunity and cannot pursue the opportunity, directly or indirectly, without the written consent of the Employer.
16. Without the written consent of the Employer, the Employee further agrees not to:
- a. solely or jointly with others undertake or join any planning for or organization of any business activity competitive with the current or anticipated business activities of the Employer; and
 - b. directly or indirectly, engage or participate in any other business activities which the Employer, in its reasonable discretion, determines to be in conflict with the best interests of the Employer.
17. Without the written consent of the Employer, the Employee further agrees not to directly or indirectly, engage or participate in any other business activities which the Employer, in its reasonable discretion, determines to be in conflict with the best interests of the Employer.

Ownership and Title to Confidential Information

18. The Employee acknowledges and agrees that all rights, title and interest in any Confidential Information will remain the exclusive property of the Employer. Accordingly, the Employee specifically agrees and acknowledges that the Employee will have no interest in the Confidential Information, including, without limitation, no interest in know-how,

copyright, trade-marks or trade names, notwithstanding the fact that the Employee may have created or contributed to the creation of the Confidential Information.

19. The Employee waives any moral rights that the Employee may have with respect to the Confidential Information.
20. The Employee agrees to immediately disclose to the Employer all Confidential Information developed in whole or in part by the Employee during the Employment and to assign to the Employer any right, title or interest the Employee may have in the Confidential Information. The Employee agrees to execute any instruments and to do all other things reasonably requested by the Employer, both during and after the Employment, in order to vest more fully in the Employer all ownership rights in those items transferred by the Employee to the Employer.

Return of Confidential Information

21. The Employee agrees that, upon request of the Employer or upon termination or expiration, as the case may be, of the Employment, the Employee will turn over to the Employer all Confidential Information belonging to the Employer, including but not limited to, all documents, plans, specifications, disks or other computer media, as well as any duplicates or backups made of that Confidential Information in whatever form or media, in the possession or control of the Employee that:
 - a. May contain or be derived from ideas, concepts, creations, or trade secrets and other proprietary and Confidential Information as defined in this Agreement; or
 - b. is connected with or derived from the Employee's services to the Employer.

Remedies

22. The Employee agrees and acknowledges that the Confidential Information is of a proprietary and confidential nature and that any failure to maintain the confidentiality of the Confidential Information in breach of this Agreement cannot be reasonably or adequately compensated for in money damages and would cause irreparable injury to the Employer. Accordingly, the Employee agrees that the Employer is entitled to, in addition to all other rights and remedies available to it at law or in equity, an injunction restraining the Employee, any of its personnel, and any agents of the Employee, from directly or indirectly committing or engaging in any act restricted by this Agreement in relation to the Confidential Information.

Notices

- 23. In the event that the Employee is required in a civil, criminal or regulatory proceeding to disclose any part of the Confidential Information, the Employee will give to the Employer prompt written notice of such request so the Employer may seek an appropriate remedy or alternatively to waive the Employee's compliance with the provisions of this Agreement in regard to the request.

- 24. If the Employee loses or fails to maintain the confidentiality of any of the Confidential Information in breach of this Agreement, the Employee will immediately notify the Employer and take all reasonable steps necessary to retrieve the lost or improperly disclosed Confidential Information.

- 25. Any notices or delivery required in this Agreement will be deemed completed when hand-delivered, delivered by agent, or seven (7) days after being placed in the post, postage prepaid, to the parties at the addresses contained in this Agreement or as the parties may later designate in writing.

- 26. The addresses for any notice to be delivered to any of the parties to this Agreement are as follows:
 - a. _____

 - b. _____

Representations

- 27. In providing the Confidential Information, the Employer makes no representations, either expressly or impliedly as to its adequacy, sufficiency, completeness, correctness or its lack of defect of any kind, including any patent or trademark infringement that may result from the use of such information.

Termination

28. This Agreement will automatically terminate on the date that the Employment terminates or expires, as the case may be. Except as otherwise provided in this Agreement, all rights and obligations under this Agreement will terminate at that time.

Assignment

29. Except where a party has changed its corporate name or merged with another corporation, this Agreement may not be assigned or otherwise transferred by either party in whole or part without the prior written consent of the other party to this Agreement.

Amendments

30. This Agreement may only be amended or modified by a written instrument executed by both the Employer and the Employee.

Governing Law

31. This Agreement will be construed in accordance with and governed by the laws of

Definitions

32. For the purpose of this Agreement the following definitions will apply:
- a. 'Work Product' means work product information, including but not limited to, work product resulting from or related to work or projects performed or to be performed for the Employer or for customers of the Employer, of any type or form in any stage of actual or anticipated research and development.
 - b. 'Computer Software' means computer software resulting from or related to work or projects performed or to be performed for the Employer or for customers of the Employer, of any type or form in any stage of actual or anticipated research and development, including but not limited to, programs and program modules, routines and subroutines, processes, algorithms, design concepts, design specifications (design notes, annotations, documentation, flowcharts, coding sheets, and the like), source code, object code and load modules, programming, program patches and system designs.

- c. 'Other Proprietary Data' means information relating to the Employer's proprietary rights prior to any public disclosure of such information, including but not limited to, the nature of the proprietary rights, production data, technical and engineering data, test data and test results, the status and details of research and development of products and services, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights and trade secrets).
- d. 'Business Operations' means operational information, including but not limited to, internal personnel and financial information, vendor names and other vendor information (including vendor characteristics, services and agreements), purchasing and internal cost information, internal services and operational manuals, and the manner and methods of conducting the Employer's business.
- e. 'Marketing and Development Operations' means marketing and development information, including but not limited to, marketing and development plans, price and cost data, price and fee amounts, pricing and billing policies, quoting procedures, marketing techniques and methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of the Employer which have been or are being considered.
- f. 'Customer Information' means customer information, including but not limited to, names of customers and their representatives, contracts and their contents and parties, customer services, data provided by customers and the type, quantity and specifications of products and services purchased, leased, licensed or received by customers of the Employer.

General Provisions

- 33. Time is of the essence in this Agreement.
- 34. This Agreement may be executed in counterpart.
- 35. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

- 36. The clauses, paragraphs, and subparagraphs contained in this Agreement are intended to be read and construed independently of each other. If any part of this Agreement is held to be invalid, this invalidity will not affect the operation of any other part of this Agreement.

- 37. The Employee is liable for all costs, expenses and expenditures including, and without limitation, the complete legal costs incurred by the Employer in enforcing this Agreement as a result of any default of this Agreement by the Employee.

- 38. The Employer and the Employee acknowledge that this Agreement is reasonable, valid and enforceable. However, if a court of competent jurisdiction finds any of the provisions of this Agreement to be too broad to be enforceable, it is the intention of the Employer and the Employee that such provision be reduced in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable, bearing in mind that it is the intention of the Employee to give the Employer the broadest possible protection to maintain the confidentiality of the Confidential Information.

- 39. No failure or delay by the Employer in exercising any power, right or privilege provided in this Agreement will operate as a waiver, nor will any single or partial exercise of such rights, powers or privileges preclude any further exercise of them or the exercise of any other right, power or privilege provided in this Agreement.

- 40. This Agreement will inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns, as the case may be, of the Employer and the Employee.

- 41. This Agreement constitutes the entire agreement between the parties and there are no further items or provisions, either oral or otherwise.

IN WITNESS WHEREOF _____ and _____ have duly affixed their signatures under hand and seal on this _____ day of _____, _____.