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## Employee Confidentiality and Non-Disclosure Agreement-- Construction

***Purpose of the Form.*** This prevents an employee, whether a crew member, bookkeeper, office manager, job foreman, project manager, job superintendent, or any other employee from divulging confidential information to any third party without your written consent. In other words, using, selling, or transferring the information in any manner.

Many contractors mistakenly assume this only applies to copyrights, trademarks, patents, inventions, and other hard core trade secrets. This is not the case. Courts broadly define proprietary information as anything which is not disseminated publicly, which you have taken reasonable steps to keep confidential, and if it ended up in the hands of the competitors would give them an economic advantage. As such, it applies to the whole gamut of information in your office, including office procedures, profit and overhead determinations, financials, vendor and manufacturer pricing, customer lists, estimate sheets, spreadsheets, and almost anything else that you have spent time and money developing.

***How to Fill-Out.*** All needed clauses are already included. Simply add the personal information as prompted in the blank spaces or lines.

## EMPLOYEE CONFIDENTIALITY / NON-DISCLOSURE AGREEMENT

This EMPLOYEE CONFIDENTIALITY/NON-DISCLOSURE AGREEMENT AND ASSIGNMENT OF INVENTIONS (“Agreement”) is entered into by and between (Name of Company), referred to as “Company” including its affiliated companies, and (Name of employee), referred to as “Employee”.

In consideration of the commencement of Employee’s employment, the terms and conditions of that employment, and the compensation paid thereunder, Employee hereby acknowledges and agrees with the Company as follows:

1. **Effective date.** This Agreement shall become effective on the earlier of (1) the starting of Employee’s employment with the Company, or (2) the date on which any Confidential Information (as defined Paragraph 3 below) was or is first disclosed to Employee.

2. **Companies business.** Employee recognizes that Company is involved in a continuous program of research, marketing, development, design, implementation, and production as to:

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Employee understands that as a part of the employment with the Company, it will or may be expected to make contributions and inventions for the benefit of the Company.

3. **Confidentiality defined.** The Company has and will develop, record, and compile certain proprietary and Confidential Information that has great value to its business and customers. The Company has and also will have access to the Confidential Information of its clients. Confidential Information includes not only information from outside sources disclosed by the Company or its clients to employee, but also information developed or learned by employee during the course of his or her employment with the Company, including but not limited to Inventions as defined in Paragraph 5 below. Confidential Information is broadly defined so as to include all information that has or could have commercial value or other utility in the business in which the Company or its clients are engaged or in which they contemplate engaging. Confidential Information also includes all information which would be detrimental to the interests of the Company or its clients if there is an unauthorized disclosure, whether or not such information is specifically identified as Confidential Information by the Company or its clients. Confidential Information includes, but is not limited to any and all information concerning the product and/or services of the Company, processes, Company documentation and files (in any language), materials, formulas, trade secrets, Inventions, discoveries, improvements, research or development, test results, specifications, data, know-how, formats, marketing plans, reports, coded information, diagrams, flow-charts, business plans, strategies, forecasts, published or unpublished

financial information, budgets, projections, customer and supplier identities, customer and supplier characteristics, agreements, and any other tangible and intangible materials of any type whatsoever relating to the Company and its clients.

4. **Proprietary Information.** Also included within the definition of Confidential Information is all Company proprietary information. This refers to information (1) that is not known by actual or potential competitors of the Company or is generally unavailable to the public; (2) has been created, discovered, developed, or otherwise become known through the work and efforts of the Company, or has otherwise been assigned and/or conveyed to the Company; and (3) has actual or potential material economic value to the Company's present or future business.

5. **Inventions.** This term shall refer to all discoveries, developments, designs, improvements, inventions, formulas, software programs, processes, techniques, know-how, negative know-how, data, research, and technical data (whether or not patentable or registrable under patent, copyrights or similar statutes, including all rights obtained, registered, perfected, and enforced to protect those proprietary interests), and that are related to or useful in the Company's present or future business.

An invention is considered having been made during the period of Employee's employment if said invention was first conceived or first actually reduced to practice during such employment. Employee also agrees that any patent or copyright application filed within a year after termination of employment shall be presumed to relate to an invention made during such employment, unless the Employee can produce clear and convincing evidence otherwise.

Employee shall promptly disclose to the Company all inventions, as defined herein, whether or not patentable or registrable under patent, copyright, or similar statutes, that (1) were made, conceived, or reduced to practice during employment; (2) learned by Employee, either alone or jointly with others; (3) are related to or useful in the business of the Company; (4) which result from tasks assigned to Employee; or (5) from the use of the premises owned, leased, or otherwise acquired by the Company. The Company shall receive such disclosures in confidence. Employee shall maintain complete written records of all such inventions, as described herein, and all work, study, and investigation done during employment, which records shall be the Company's property.

6. **Office procedures.** Employee acknowledges that it has received valuable documentation relative to the office procedures of Company. This includes, but is not limited to, office procedures, files, written and oral Company policy, agreements, forms, office procedure manuals, compilations, memos, employee handbook, instructions, and other related documentation. It is acknowledged that such information consists of protected trade secrets under applicable law. The Company has gone to great time and expense in preparing this documentation, which has its own independent value to the Company and its clients.

7. **Training.** Employee acknowledges that it has received valuable documentation, as to training, including but not limited to orientation, methodology, techniques, programs, strategy, customer relations enhancement, sales and marketing techniques, programs, and other oral and written documentation educating Employee in the procedures to be followed by Company. It is acknowledged that said training and the information received thereby consists of information which is proprietary and an intellectual property right. The Company has gone to great time and expense in preparing this documentation, which has its own independent value to the Company and its clients.

8. **Fiduciary duty of trust and confidence.** Employee expressly acknowledges that by virtue of the employer-employee relationship, it has a fiduciary duty of strict and utmost trust, confidence, and diligence toward Company. In performing its employment duties, Employee shall serve the interest of the Company and do nothing that would selfishly interfere with or damage Company, including its reputation and/or relationship with clients.

This employment also creates a duty of strict and utmost trust and confidence to the Company with respect to the Confidential Information and inventions herein provided. This constitutes a fiduciary duty which shall be taken seriously for the sole and exclusive benefit of Company. As such, the Employee shall exercise those fiduciary duties as to the tasks assigned to it, as well as resulting from the use of equipment, supplies, and facilities owned, leased, or contracted for by the Company.

9. **Specification of assigned work.** It is contemplated that during the course of employment, Employee will be engaged in work involving employers:

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All of the data described in the previous sentence, as well as the name of the project and the process, are considered Confidential Information as defined in this Agreement.

10. **Disclosure to third parties.** Employee shall not disclose or permit any third party or entity access to Confidential Information without Company's prior written permission, except that such disclosure or access shall be permitted to the extent required in the course of performing the Employee's tasks. However, such disclosure shall not be made unless said third party or entity executes a Confidentiality and Non-Disclosure Agreement in form and content acceptable to Company. Employee shall notify Company promptly and in writing if it has any knowledge of the possession or use of Confidential Information by any third party or entity that has not executed such a Confidentiality and Non-Disclosure Agreement.

11. **Exceptions.** Notwithstanding the foregoing provisions, Employee shall bear no liability to Company with respect to the Confidential Information if it is disclosed or used (1) publicly; (2) or known at the time of its disclosure through no fault of employee; (3) lawfully received by Employee from any third party or entity who had a legal right to disclose the information to Employee; (4) generated completely and independently by Employee, without

the violation of any previous employer confidentiality agreements, before being hired by Company; or (5) required to be disclosed under any law, governmental rule or regulation, or court order, provided, however, that before making any such disclosure, employee shall give Company (A) at least 10 working days prior written notice, along with the circumstances giving rise to one of the exceptions described herein and (B) in the case of disclosure pursuant to clause (5) above, a reasonable opportunity of Company to contest or prevent such disclosure from being required.

12. **Duty of Non-Disclosure.** Employee agrees that at all times during or after his or her employment, he or she will hold in trust, keep confidential, and not disclose to any third party or entity Confidential Information herein described, without the prior written consent of the Company. Specifically, Employee agrees not to disclose, divulge, use, appropriate, sell, transfer, publish, broadcast, or transmit directly or indirectly, either personally or through any agents or assigns. Employee further agrees that all such Confidential Information, including copies, reproductions, and facsimiles of such items, whether prepared by Employee or others are and shall remain exclusively the property of Company and shall not be removed, transmitted, or transported from Company premises without the prior written approval of the president of the Company.

The Employee shall not assist, encourage, direct, or aid any other person or entity in the disclosure of any Confidential Information described in this Agreement, without the prior written consent of the president of the Company in any of its dealings with customers and/or other third parties or entities. Employee shall duly advise said persons or entities of the existence and need for protection of the Confidential Information.

In the event Employee desires to publish the results of his or her work for the Company through literature or speeches, Employee agrees to submit such literature or speeches to the president of the Company at least 30 days before dissemination. Employee agrees not to publish, disclose, or otherwise disseminate such information without prior written approval of the president. Employee acknowledges that he or she is aware that the unauthorized disclosure of such information may be highly prejudicial to the interests of the Company, an invasion of privacy, and an improper disclosure of trade secrets. Whenever the approval or other act of the president is required under this Agreement, the president may, by written designation, authorize an agent of the Company to perform such act.

13. **Damage due to disclosure.** Employee acknowledges that the Confidential Information is essential for the Company's business operations, and any unauthorized disclosure would cause substantial damage to the Company's interest as well as that of its clients, as well as the Company's business standing.

14. **Employee's due care.** During the term of this Agreement and at all times thereafter, Employee shall take reasonable steps to maintain the confidentiality of the information herein described. Specifically, Employee shall use at least the same degree of care, but in no event less than a reasonable degree of care, to maintain the confidentiality that it would use to maintain the confidentiality of its own proprietary information.

15. **Prior knowledge.** Employee does not know anything about the Company's Confidential Information, other than the information he or she has thus far learned from the Company. Employee has also disclosed on Schedule "B" a complete list of all inventions proprietary to Employee of which Employee wishes to exclude from the provisions of this Agreement. The Company agrees to receive and hold all such disclosures in confidence.

16. **Prior commitments.** Employee represents that it has no other contracts, relationships, understandings, or commitments to any other person or entity that may conflict with Employee's obligations under this Agreement.

17. **Confidential Information of others.** Employee will not disclose to the Company, or use any proprietary information or trade secrets acquired from others. Employee warrants that he or she has returned all property and Confidential Information belonging to all prior employers.

18. **Confidential Information of third parties.** Company has received, and in the future will receive, from third parties or entities certain confidential information, subject to the Company's duty to maintain the confidentiality of such information. Employee agrees to hold all such Confidential Information in strict confidence, as if same had been developed and/or created by Company itself. Employee shall not disclose, use, induce, or assist in the use or disclosure of any such confidential information without the Company's prior written consent, except as may be necessary in the ordinary course of performing Employee's duties and consistent with the Company's agreement with such third party or entity.

19. **Company's rights to inventions and patents.** Employee agrees that any inventions made by Employee, either alone or jointly with others, during the term of this Agreement that are (1) made with Company's equipment, supplies, facilities, trade secrets, or time; (2) that relate to the business of Company or Company's reasonably anticipated research and/or development; or (3) that result from any work performed by Employee for Company shall belong exclusively to Company.

20. **Execution of documents and cooperation.** Employee shall execute all documents for use in applying for, registering, obtaining, and enforcing Company rights, as the Company may direct. The Employee's duty to assist the Company or any person designated by it in obtaining and enforcing said rights shall continue past any termination of employment. However, after termination of employment, Employee shall be compensated at a reasonable hourly rate, plus reimbursement for expenses, for time actually spent for such assistance. If because of the Employee's physical or mental incapacity, it is not possible or practical for the

Employee to sign any such documents, Employee irrevocably appoints Company and its agents as attorneys-in-fact to act for and on behalf of Employee in executing and filling out said applications and other documents.

21. **Employee's retained rights.** Employee shall not be deemed to have assigned any invention rights to Company that the Employee developed entirely on his or her own time without using the Company's equipment, supplies, facilities, or trade secret information.

However, notwithstanding the above, all such inventions shall be assigned to Company regardless of whether the Employee developed them on his or her own time if (1) they relate, at the time of conception or reduction to practice to Company's business or actual or demonstrably anticipated research or development of the Company or (2) result from any work performed by Employee for Company.

Employee has described in Exhibit "A" all inventions that have been made or conceived or first reduced to practice by Employee or others working jointly with Employee, that are to be excluded from the provisions of this Agreement. Employee represents that this is a complete and accurate list.

22. **Assignment of inventions.** Employee hereby assigns to the Company all right, title, and interest Employee may have or may acquire in any inventions, as defined herein. Employee agrees to assign and deliver the Company documents that the Company considers desirable to evidence this assignment.

23. **Ownership of books, records, and papers.** All records of the Company, including but not limited to customer lists, accounts of customers, records relating in any manner to customers, memoranda, reports, data, lists, and any other Company papers, whether maintained in physical or electronic media, whether prepared by Company or otherwise coming into Company's possession shall be the exclusive property of Company. All such Company records shall be returned upon termination of Employment. Any such records purchased by Employee shall nevertheless be returned, although Company shall have the obligation to reimburse for the actual cost thereof.

24. **Use of Company's trade name or trademark.** Employee shall not, either during or after the term of this Agreement, use or permit the use of any Company trade name or trademark in any similar business. However, the Employee may use such Company trade name or trademark if it clearly indicates that the other business is a separate entity distinct from Company, and as long as nothing is contained therein which suggests the other company has any prior or current affiliation with Company.

25. **Honor code.** Employee shall abide at all times with the Company honor code. If any other Employee breaches his or her fiduciary duty, violates Company policy, or breaches any terms of employment, Employee shall immediately notify an appropriate manager.

26. **Publicity.** Except with the prior written consent of Company, no employee shall issue or cause the publication of any press release or other public announcement concerning Company business.

27. **Liability for negligence.** Employee acknowledges that it has the obligation of due care to perform its duties competently. Upon the negligent failure to exercise due care, employee may be liable for all actual damages suffered by Company under the principles of common law negligence.

28. **Trade libel.** Employee acknowledges that it is forbidden from making, directly or indirectly, any verbal or written statements concerning the Company to anyone in a disparaging, misleading, or negative manner. This prohibition shall apply to statements made to any past or current clients.

29. **Conflicting agreements.** Employee warrants that it shall not enter into any agreement, either written or oral, which shall conflict with the provisions of this Agreement.

30. **Agreements with other companies.** Employee shall not bring to the Company, or use in employment, any materials or documents of a former employer that are not generally available to the public, unless the Employee first obtains the express written authorization of any such former employer. Employee shall not perform any act which violates any agreement entered into with any former employer.

31. **At-will employment.** Employment and compensation can be terminated, with or without cause, with or without notice, for any reason or no reason at all, at any time, at the sole and exclusive option of Company. Company may exercise this right in its absolute discretion. Nothing contained in this Agreement shall limit or otherwise alter the at-will relationship between the parties.

32. **Delivery of documents upon termination.** Upon termination of employment, Employee agrees, promptly and without request, to deliver all documents and files pertaining to his or her employment, as well as confidential information and inventions. Employee will not retain any written or other tangible material containing any information concerning or disclosing any of the confidential information or inventions of Company. Employee recognizes that the unauthorized taking of trade secrets may be a crime. Further, Employee recognizes that any such unauthorized taking may also result in civil liability and that willful misappropriation may result in an award for triple the amount of the Company's actual damages, as well as attorney's fees and costs.

33. **Noninterference after termination.** In the event of termination, Employee agrees that it will protect the value of any confidential information and inventions and will prevent any disclosure, use, or misappropriation by any other third party or entity. Employee further agrees that for a period of one year following termination, it shall not interfere with the business of Company by inducing any employee or employees to leave Company's employ or by inducing a consultant to sever the consultant's relationship with Company.

34. **Injunctive relief.** It is hereby acknowledged that any breach by Employee of this Agreement will cause Company irreparable damage for which monetary relief would be inadequate compensation. Accordingly, Employee agrees that Company will be entitled to injunctive and other equitable relief to enforce this Agreement in addition to monetary damages and other available relief.

35. **Attorney's fees.** In any action or arbitration relating to this Agreement or enforcing any of its terms, whether in contract or tort, as to any cause of action or claim for relief, and

pertaining to any damages alleged suffered by either party, the prevailing party shall be entitled to reasonable attorney's fees and costs.

36. **Condition to employment.** Employee acknowledges and agrees that the provisions in this Agreement are a material condition to his or her employment.

37. **Amendments.** This Agreement may not be changed, modified, or amended, in any way, except by a written instrument signed by both parties. This Agreement shall be binding on the heirs, executors, administrators, and other legal representatives or assigns of Employee, as well as that of Company.

38. **Governing law.** This Agreement and any dispute arising from the relationship between the parties shall be governed by the laws of the State of (Describe State).

39. **Entire agreement.** This Agreement and the exhibits constitute the final, complete, and exclusive statement of the terms and conditions between the parties relative to the subject matter of this Agreement. This supersedes all prior and/or contemporaneous understandings or agreements. No party has been induced to enter into this Agreement by, nor is any party relying on any representation or warranty outside this Agreement.

40. **Severability.** If any court finds a provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall remain valid, and shall be interpreted so as best to effect the intention of the parties.

41. **No Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in this Agreement shall be effective unless it is in writing and signed by each party. No waiver by Company of any breach or failure shall be deemed a waiver of any other breach or failure, nor shall any such waiver constitute a continuing waiver unless agreed in writing.

42. **Effective Date.** This Agreement shall be effective as of the first day the Employee renders services to Company.

43. **Arbitration.** Any and all disputes between the parties, on any basis, whether at law or equity, and pertaining to any causes of action, whether equitable, contractual, or tortious, and pertaining to any alleged damages, whether general, compensatory, special, consequential, or punitive shall be determined by private, binding arbitration. This shall include issues as to the interpretation, enforcement, breach, and performance of this Agreement. Allegations of fraud relating to this Agreement, including fraud in the inducement, performance, or otherwise shall not effect this provision, which has been knowingly entered into after each party being given the opportunity to seek independent legal advice. The voiding of this contract, or any of its provisions, by fraud, mutual mistake, reformation, rescission or otherwise shall not affect the validity of this provision, which is expressly determined to be valid and severable.

Said binding arbitration shall be conducted by a single arbitrator. Parties waive discovery with the exception of (1) each side having the right to propound a single set of

Request for Production of Documents and (2) each side having one day set for depositions of the other parties' representatives and employees. The parties confer jurisdiction upon the arbitrator for any and all pre-judgment provisional remedies, including but not limited to attachment, claim and delivery, temporary restraining orders, preliminary injunctions, rescission, reformation, and specific performance. The parties waive their rights to any law and motion matters, including but not limited to demurrers, motions to strike, summary judgment, or adjudication and judgment on the pleadings. Motions in limine, not exceeding 5 per side, shall be presented 10 days before the arbitration.

Any award from the arbitrator shall become a judgment of any court of competent jurisdiction and shall not be subject to appeal. All parties will bear equally the cost paid to the arbitrator which will be considered costs of suit to the prevailing party.

Arbitration shall be held within 30 miles of the principal place of business of Company.

**CAUTION: THIS AGREEMENT AFFECTS YOUR RIGHTS TO INVENTIONS YOU MAKE DURING YOUR EMPLOYMENT, AND RESTRICTS YOUR RIGHTS TO DISCLOSE OR USE THE COMPANY'S CONFIDENTIAL INFORMATION DURING OR SUBSEQUENT TO YOUR EMPLOYMENT.**

**EMPLOYEE HAS READ THIS AGREEMENT CAREFULLY AND UNDERSTANDS ITS TERMS. EMPLOYEE HAS COMPLETELY FILLED OUT SCHEDULE "A" TO THIS AGREEMENT.**

**I HAVE READ ALL OF THE PROVISIONS OF THIS AGREEMENT, AND I UNDERSTAND THEM COMPLETELY. BY MY SIGNATURE BELOW I REPRESENT THAT THIS AGREEMENT IS THE ONLY STATEMENT MADE BY OR ON BEHALF OF THE COMPANY UPON WHICH I HAVE RELIED IN SIGNING THIS AGREEMENT.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Company Name)

By \_\_\_\_\_  
(Signature and Title)

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Employee)

**EXHIBIT "A"**  
**EXISTING INVENTIONS**

The following is a complete list of all inventions or improvements relative to the subject matter of employment by Company that have been made or conceived of, or first reduced to practice by me, alone or jointly with others, before employment with Company:

## INSTRUCTION SHEET

Please follow the following instructions to insure the maximum effectiveness of this document.

**Review.** Both parties should be given the time to read, review, and understand the document. Sitting down with the other party and discussing the terms is healthy and is to be encouraged. Many times it is a good idea for both sides to review the document overnight before making a final decision.

**Signatures.** Both parties should sign where indicated. It is recommended you use blue ink. Modern copy machines are so efficient it is hard to distinguish the difference between a copy and one signed in black ink.

**Copies.** Each party to the agreement should walk away with their own signed copy. A third copy should be kept for the company file. For this reason, you should have an original and two copies available (a total of three documents). Forget the concept of "original document". The courts don't care which document came out of the printer first: They are only interested in the original ink signatures. For this reason a copy is the same as the original, as long as it bears the original ink signatures.

**No formalities.** There is no need to witness, notarize, or initial each page of this document.

**Exhibits/Attachments.** If there is reference to exhibits or attachments in the agreement, they sometimes will be printed out at the end of the document for your use. If they are not, type your own exhibit and staple it to the agreement.