

MUTUAL CONFIDENTIALITY AGREEMENT

This Mutual Confidentiality Agreement (this “**Agreement**”) between Designcraft, Inc., an Illinois corporation (“**Designcraft**”) and _____ having a place of business at _____ (“**Company**”) takes effect on _____. Designcraft and Company are each individually referred to as a “**Party**,” and collectively, the “**Parties**.” This Agreement sets forth the obligations of each Party with respect to certain technological and other proprietary information disclosed to the other Party.

In consideration of the mutual promises and terms and conditions set forth below the Parties agree as follows:

1. **Definition of Confidential Information.** For purposes of this Agreement:
 - (a) the term “Confidential Information” means all information conveyed by one Party (the “Disclosing Party”) to the other Party (the “Receiving Party”), that is proprietary or confidential to either Party, whether now in existence or hereafter developed, and whether disclosed in writing, orally, or visually. Confidential Information may include, but is not limited to, information of the following or similar nature: financial plans and records, marketing plans, business strategies and relationships with third parties, customer lists, present and proposed products and services, prototypes, samples, component parts or portions of any of same, CAD files, renderings, screen captures, images, photographs, diagrams or any other digital representation of the finished products or of work in progress, trade secrets, computer software programs (including, without limitation, object and source code), descriptions of software functions and features, performance standards, specifications, information regarding either Parties products (including technical information and performance information), information regarding either Parties customers and suppliers, founders, employees, and affiliates. Confidential Information also includes the terms and conditions of this Agreement and all alterations, changes, innovations and or accessions to one or more of the aforementioned ideas and other work product that are made, conceived of, authored, developed or reduced to practice by either Party, whether individually or jointly, or with others, relating to business, products or product plans, or that of either Parties clientele, that result from the discussions and or the interaction between Parties as herein defined.
 - (b) the term “Confidential Information” does not include information which the Receiving Party can demonstrate to be any of the following: (i) generally available to the public through no act or omission on the part of the Receiving Party or its officers, employees or representatives; (ii) known to the Receiving Party prior to its receipt from the Disclosing Party; (iii) disclosed to the Receiving Party at any time by a third party without violation of any obligation of confidentiality under this Agreement or under any other agreement; or (iv) independently developed by the Receiving Party without using the Confidential Information disclosed to the Receiving Party.
2. **Mutual Obligations of Confidentiality and Nonuse.** The Receiving Party will do the following with regard to the Confidential Information of the Disclosing Party:
 - (a) hold the Confidential Information in strict confidence;
 - (b) use the Confidential Information only for the strictly limited purposes of the internal evaluation or subsequent performance of a business relationship with the Disclosing Party, as contemplated by this Agreement and any other agreements between the Parties and for no other purpose whatsoever;
 - (c) take such steps as may be reasonably necessary to prevent the disclosure of Confidential Information to others with not less than the same degree of care which the Receiving Party uses to prevent the unauthorized use, dissemination or publication of its own most valuable confidential and proprietary information (but with at least the same degree of care used by a reasonably prudent business person);
 - (d) not disclose such Confidential Information to any third party who is not an agent of such party who is similarly bound by terms of a confidentiality and non-disclosure agreement for any purpose whatsoever

without (i) the prior written approval from the Disclosing Party, and (ii) the agreement on the part of such third party to be bound by the terms of this Agreement;

- (e) permit access to the Confidential Information only to its employees and or agents who (i) reasonably require access to Confidential Information for the limited purpose set forth in section 2(b), (ii) are informed by the Receiving Party of the confidential nature of the Confidential Information, and (iii) are directed by the Receiving Party to treat the Confidential Information in a manner consistent with the terms of this Agreement or have written confidentiality restrictions in place;
- (f) acknowledge that the Confidential Information is and will at all times remain the property of the Disclosing Party and
- (g) will cause their respective employees and or agents to honor the terms of this Agreement.

3. **Exceptions to Obligations of Confidentiality.** If the Receiving Party is requested or required by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or other process to disclose any Confidential Information, such Receiving Party will provide the Disclosing Party with prompt notice of such request so that the Disclosing Party may seek an appropriate protective order or waive compliance with the provisions of this Agreement. If the Receiving Party is compelled by obligation of law to disclose Confidential Information to any tribunal or else stand liable for contempt or suffer other censure or penalty (in the absence of such a protective order or waiver by the Disclosing Party), the Receiving Party agrees to furnish only that portion of the Confidential Information which it is advised by written opinion of its counsel is legally required and to exercise reasonable efforts to obtain assurances that confidential treatment will be accorded such Confidential Information. A Receiving Party shall promptly notify a Disclosing Party of any lawful process or subpoena calling for disclosure and provide the Disclosing Party with an opportunity to obtain a protective order or move to quash any subpoena issued a Receiving Party.
4. **Designcraft and Company Rights.** Nothing contained herein shall be deemed to transfer to the Company any proprietary rights Designcraft has in its processes and or other developments, technology or proprietary processes, inventions or the like that Designcraft has made to such processes or methodologies that Designcraft uses for the Company and or which is used for the Company to produce the result the Company is looking for Designcraft to produce for the Company. Neither party is transferring to the other any proprietary property rights or interests such party has in any intellectual property that such party and or its employees or agents has created.
5. **Non-solicitation of Employees.** Parties agree that for a period of one (1) year following the last performance of services for Customer by Designcraft, Parties agree that they shall not solicit any employee for purposes of offering or providing any employment to such employee. In the event either Party violates the terms of this anti-solicitation provision, the Party shall be responsible for one half of the last salary payable annually to such employee as of such employee's termination. This fee shall be a liquidated damage provision and is not a penalty and is calculated to provide Party with a sum of money that will permit the Party to find and employ a substitute candidate and the parties agree that this is a reasonable calculation of what would otherwise be damages of Parties that are difficult to calculate.
6. **Return of Materials.** Upon request of a Disclosing Party, the Receiving Party will return to the Disclosing Party or destroy all documents and other writings, samples or prototypes supplied by the Disclosing Party, together with all copies of any such documents or other writings, and an officer of the Receiving Party will certify to the return or destruction of all tangible Confidential Information and references to such Confidential Information and the destruction of any references to such Confidential Information on electronic or other intangible media.
7. **Injunctive Relief.** Each Party acknowledges that a breach by it of any one or more of the terms of this Agreement may cause irreparable harm to the Disclosing Party and that damages would be difficult to determine. Accordingly, in the event of a default, the Disclosing Party may be entitled to, in addition to all other legal remedies available to the Disclosing Party, injunctive relief restraining the Receiving Party from any further or continued breach of its obligations hereunder. In addition, the Disclosing Party shall be entitled to reasonable attorneys' fees and costs incurred by it in enforcing any remedies available to Disclosing Party hereunder.
8. **No Grant of Rights.** No license, intellectual property right or other ownership or use right is conveyed by this Agreement, except the limited right to use Confidential Information described in Section 2 of this Agreement.
9. **Governing Law and Jurisdiction.** The Parties agree that any dispute arising from the terms of this Agreement shall be governed in accordance with the laws of the State of Illinois and all disputes shall be venued exclusively in state or

federal courts situated in Chicago, Illinois.

10. **Waiver.** Any failure on the part of a Party to insist upon the performance of this Agreement or any part of this Agreement will not constitute a waiver of any right under this Agreement.
11. **Termination.** During the term of this agreement and for a period of three (3) years following the Effective Date, or the last performance of services of Designcraft for Customer, whichever is the latter, Parties agree that obligations with respect to Confidential Information disclosed during the term of this Agreement will survive the expiration or any termination of this Agreement for, in the case of Confidential Information that is a trade secret, the life of such trade secret, and in the case of Confidential Information that is not a trade secret, a period of five (5) years following expiration or termination of this Agreement.
12. **No Assignment.** Neither Party may assign this Agreement or any of its rights or obligations under this Agreement without obtaining prior written consent of the other Party.
13. **Entire Agreement; Amendments.** This Agreement represents the entire Agreement between the Parties regarding its subject matter and supersedes all prior discussions, agreements and understandings of every kind and nature between them regarding the same. This Agreement shall not be amended except by an agreement in writing executed by the Parties.
14. **Severability.** Should any individual provisions of this Agreement be or become invalid, this shall not affect the validity of the Agreement as a whole. Any invalid provision shall be replaced by such valid provisions as comes closest to the economic intentions of the Parties.
15. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument. Signature pages delivered by facsimile to this Agreement or any document delivered under this Agreement will be binding to the same extent as an original.

The Parties have executed this Mutual Confidentiality Agreement to be made effective as of the date first written above.

FOR DESIGNCRAFT:

By: _____
Signature

Name (Printed)

Title

Date

FOR CUSTOMER:

By: _____
Signature

Name (Printed)

Title

Date