

## INDEPENDENT CONTRACTOR UNILATERAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

FOR GOOD CONSIDERATION, and in consideration of the contemplated contractual relationship with \_\_\_\_\_ (the “Company”), \_\_\_\_\_ (the “Independent Contractor”), hereby agrees to the terms of this agreement (the “Agreement”):

### 1. CONFIDENTIAL INFORMATION

- (a) Company Information. The Independent Contractor agrees at all times during the term of its contract with the Company (the “Term”) and [for a period of \_\_\_\_\_ years] thereafter, to hold in strictest confidence, and not to use, except for the benefit of the Company, or to disclose to any person, firm, or corporation without written authorization of the Company, any Confidential Information of the Company. “Confidential Information” means any Company proprietary information, technical data, trade secrets or know-how, including, but not limited to, research, product plans, products, services, customer lists, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances or other business information disclosed to the Independent Contractor by the Company either directly or indirectly.
- (b) Exceptions. The foregoing obligations and restrictions do not apply to that part of the Confidential Information that the Independent Contractor can demonstrate:
  - (i) was available or became generally available to the public other than as a result of a disclosure by the Independent Contractor; or
  - (ii) was available, or became available, to the Independent Contractor on a non-confidential basis prior to its disclosure to the Independent Contractor by the Company or a Company representative, but only if such information was not made available through a breach of confidentiality owed to the Company; or
  - (iii) was requested or legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand, or similar process) or is required by a regulatory body to make any disclosure which is prohibited or otherwise constrained by this Agreement, provided, however, that the Independent Contractor shall: (A) provide the Company with prompt notice of any such request(s) so that the Company may seek an appropriate protective order or other appropriate remedy: and (B)

provide reasonable assistance to the Company in obtaining any such protective order. If such protective order or other remedy is not obtained or the Company grants a waiver hereunder, the Independent Contractor may furnish that portion (and only that portion) of the Confidential Information that, in the written opinion of counsel reasonably acceptable to the Company, the Independent Contractor is legally compelled or am otherwise required to disclose; provided, however, that the Independent Contractor shall use reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so disclosed.

- (c) Applicability to Employees and Subcontractors. The Independent Contractor shall not disclose any Confidential Information to any of its associates, members, employees, or subcontractors, except those employees or subcontractors who are required to have the Confidential Information in order to perform their duties in connection with the evaluation and continuation of a business relationship between the Independent Contractor and the Company. The Independent Contractor shall inform each such individual of the proprietary nature of the Confidential Information and of the terms and obligations of this Agreement. Each permitted employee, subcontractor, member, or associate to whom Confidential Information is disclosed shall sign a non-disclosure agreement substantially the same as this Agreement at the request of the Company.
- (d) Former Employer or Associate Information. The Independent Contractor will not, during the Term, improperly use or disclose any proprietary information or trade secrets of any former or concurrent employer or associate, and not bring onto the premises of the Company any unpublished document or proprietary information belonging to any such employer or associate unless consented to in writing by such employer or associate.
- (e) Third Party Information. The Independent Contractor recognizes that the Company has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes, and hereby agrees to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person, firm, or corporation or to use it except as necessary in carrying out its work for the Company consistent with the Company's agreement with such third party.

## 2. RETURN OF PROPERTY

At the end of the Term, the Independent Contractor will return to the Company, retaining no copies or notes, all documents relating to the Company's business including, but not limited to, reports, abstracts, lists, correspondence, information, computer files, computer disks, and all

other materials and all copies of such material, obtained by the Independent Contractor during its contractual relationship with the Company.

### 3. NO COMPANY LIABILITY.

All Confidential Information is provided “AS IS” and the Company makes no warranty regarding the accuracy or reliability of such information. Neither the Company nor any of its advisors or representatives shall have any liability to the Independent Contractor or any of its representatives resulting from the Independent Contractor’s use of the Confidential Information.

### 4. INDEPENDENT CONTRACTORS.

The parties are independent of each other. Nothing in this Agreement shall be construed to create an employment or joint relationship between the parties.

### 5. LEGAL AND EQUITABLE REMEDIES

The Independent Contractor recognizes that the Company may be irreparably damaged by any breach of this Agreement and that the Company shall be entitled to seek an injunction, specific performance, or other equitable remedy to prevent such competition or disclosure, and may entitle the Company to other legal remedies, including attorneys’ fees and costs.

### 6. SUCCESSIONS AND ASSIGNS

This Agreement will be binding on the heirs, executors, administrators, and other legal representatives of the Independent Contractor and will be for the benefit of the Company, its successors, and its assigns. The Independent Contractor may not assign any of its rights, or delegate any of its obligations, under this Agreement.

### 7. CONTINUING OBLIGATIONS

The obligations and rights described in this Agreement shall survive the end of the Term.

### 8. SEVERABILITY

Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provisions had never been contained herein.

### 9. COUNTERPARTS / ELECTRONIC SIGNATURES

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement, use of a facsimile, e-mail or other electronic medium shall have the same force and effect as an original signature.

#### 10. GOVERNING LAW

This Agreement shall be governed by the laws of the state of \_\_\_\_\_ without regard to its conflicts of law provisions.

IN WITNESS WHEREOF, the parties below hereby execute this Agreement on  
\_\_\_\_\_, 20\_\_\_\_.

INDEPENDENT CONTRACTOR:

\_\_\_\_\_

Name: \_\_\_\_\_

Accepted and Acknowledged

COMPANY:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_