

# Unilateral Confidentiality and Non-Compete Agreement

This Unilateral Confidentiality and Non-Compete Agreement ("Agreement") made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, between the Parties identified below as **COMPANY A** and **COMPANY B**.

**COMPANY A:**

COMPANY:

Address:

City, State Zip

Tel:

Fax:

e-mail:

**COMPANY A:**

COMPANY:

Address:

City, State Zip

Tel:

Fax:

e-mail:

## RECITALS

**A. COMPANY A** and **COMPANY B** are engaged in discussions in contemplation of a business relationship or in furtherance of a business relationship.

**B.** In the course of dealings between the **COMPANY A** and **COMPANY B**, **COMPANY A** will have access to or have disclosed to it information relating to **COMPANY B** which is of a confidential nature, as that term is later defined in this Agreement, including but not limited to the following:

**C. COMPANY B** desires to establish and set forth **COMPANY A's** obligations with respect to the **COMPANY B's** Confidential Information.

## 1.0 AGREEMENT

In consideration of the terms and conditions herein, **COMPANY A** agrees to the following:

**1.1 "Confidential Information"** as used in this Agreement shall mean all technical and nontechnical information including but not limited to patents, copyrights, trademarks, trade secrets, passwords and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, computer architecture and protocols, software programs, software source documents, and formulae related to current, future and proposed products, and services of **COOMPANY B**, and includes without limitation its respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising, and marketing plans and information.

**1.2 COMPANY A** agrees that it shall not make use of, disseminate, or in any way circulate within its own organization any Confidential Information of **COOMPANY B** which is supplied to or obtained by it in writing, orally or by observation, except to the extent with personnel or authorized representatives of **COOMPANY B**; and any purpose **COOMPANY B** may hereafter authorize in writing.

**1.3 COMPANY A** agrees that it shall disclose Confidential Information of **COOMPANY B** only to those of its employees who need to know such information and who have first agreed to be bound by the terms and conditions of this Agreement.

**1.4 COMPANY A** agrees that it shall treat all Confidential Information

of **COOMPANY B** in a professional manor subject to the same degree of care as other similar professions treat similar Confidential Information.

**1.5 COMPANY A** further agrees that it shall not publish, copy, or disclose any Confidential Information of **COOMPANY B** to any third party and that it shall use its best efforts to prevent inadvertent disclosure of such Confidential Information to any third party.

**1.6** Confidential information shall not include the following:

a) information that at the time of disclosure is in the public domain;

b) information that after disclosure is published or otherwise becomes part of the public domain through no fault of the **COMPANY A** (but only after, and only to the extent that, it is published or otherwise becomes part of the public domain);

c) information that the **COMPANY A** can show already was in the possession of the **COMPANY A** at the time of disclosure and that without breach of any obligation **COMPANY A** is free to disclose to others;

d) information that the **COMPANY A** can show was received by them after the time of disclosure from a third party who did not acquire it directly or indirectly from the **COOMPANY B** under any obligation of confidence and that without breach of any obligation of confidence is free to disclose to others.

e) was independently developed by the receiving party,

without reference to Confidential Information received hereunder and not in breach of this Agreement; or

f) was communicated in response to a valid order by a court or other governmental body, or was otherwise required by law.

**1.7 COMPANY A** will neither make nor permit to be made, except in pursuant to this Agreement and for the sole use and account of the **COOMPANY B** or its representatives, any copies, reproductions, abstracts or summaries of any reports, records, papers or other documents (i.e., photographs, drawings, maps, field note books, etc.) of the **COOMPANY B** or its affiliates which may come into the **COMPANY A** possession in any way.

**1.8** All data, information and records in whatsoever form and in whatsoever medium recorded, and any and all copies thereof, relating to the **COMPANY** that the **COMPANY A** shall prepare, use, acquire or come into contact with in the course of his service with the **COOMPANY B**; shall be and remain the sole property of the **COOMPANY B** and shall immediately be returned within ten (10) business days upon request or termination of this Agreement.

**1.9 COMPANY A** party acquires no license under intellectual property rights, pursuant to this Agreement.

**1.10 COMPANY A** will not export, directly or indirectly, any technical data acquired from **COOMPANY B** pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. government or any agency thereof at the time of export requires an export license or other government approval without first obtaining such license or approval.

**1.11 COMPANY A** acknowledges that the unauthorized disclosure of Confidential Information will diminish the value to **COOMPANY B** of the proprietary interests that are the subject of this Agreement, if **COMPANY A** breaches any of its obligations hereunder, **COOMPANY B** shall be entitled to seek equitable relief to protect its interests therein, including but not limited to injunctive relief, in addition to any and all other rights and remedies available at law or equity.

**1.12** It is understood and agreed that the **COMPANY A** may carry on other business and professional activities that do not conflict, correlate, parallel, impedes or inhibits in any way, shape, or form, or reasonable facsimile thereof with the obligations of this Agreement with a similar professional industry as practiced by the **COOMPANY B** while executing this Agreement.

**1.13** The **COMPANY A** hereby agrees not to directly or indirectly compete with the business of the **COOMPANY B** and its successors and assigns during the period of this Agreement. The term "not compete" as used herein shall mean that the **COMPANY A** shall not own, manage, operate, consult or to be employee in a business substantially similar to or competitive with the present business of the **COOMPANY B** or such other business activity in which the **COMPANY** may substantially engage during the term of this Agree-

ment.

**2.0 TERM OF AGREEMENT.**

**2.1 Term.** The term of this Agreement shall commence as of the date hereof and shall continue for a period of \_\_\_\_\_ (\_\_\_\_) \_\_\_\_\_ (*weeks, months, years*). The terms and conditions of this Contract are open to negotiations, modifications or changes at the request of either the **COMPANY A** or the **COOMPANY B** at any time, not unreasonably withheld by either Party.

**3.0 GENERAL PROVISIONS.**

**3.1 Choice of Law.** This Agreement shall be governed and construed in accordance with the laws of the State of \_\_\_\_\_, excluding its choice of law rules, and any and all litigation arising from or relating to this Agreement shall be commenced and maintained in \_\_\_\_\_ County, \_\_\_\_\_.

**3.2 Sole Agreement.** This Agreement is the entire confidentiality and non-compete agreement between the Party's and there are no terms or conditions, express or implied, other than those stated in this Agreement. This Agreement may be amended or modified only after mutually agreed upon terms and conditions in a duplicate letter signed by the same.

**3.3 Binding Agreement.** The provisions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

**3.4 Notices.** All written notices of intent hereunder shall be mailed by certified or registered mail to the addresses above, until some other address is designated in a notice so given.

**3.6 Litigation.** If any litigation arises between the Parties with respect to this Agreement or the subject matter thereof, the prevailing party in such litigation shall be entitled to costs incurred and actual attorney's fees.

**3.7 Severability.** If any part, term or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the United States or the State of \_\_\_\_\_ or the County of \_\_\_\_\_, the validity of the remaining portions or provision shall not be affected and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

**3.8 Headings.** Headings used herein are for convenience of reference only.

**3.9 Time.** Time shall be of the essence hereof.

**3.10** By signing below, the undersigned representative warrants and represents that he or she has full authority to execute this Agreement on **COMPANY A's** behalf and to bind **COMPANY A** to the terms hereof.

IN WITNESS WHEREOF, the parties have executed this Contract on the dates written below.

**COMPANY A**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

(COMPANY A)

**COMPANY B**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

(COMPANY B)

