



## Employee Confidentiality, Assignment of Inventions and Non-Competition Agreement

**Document 4063A**

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[NAME OF COMPANY]

**EMPLOYEE CONFIDENTIALITY, ASSIGNMENT OF INVENTIONS  
AND NON-COMPETITION AGREEMENT**

THIS EMPLOYEE CONFIDENTIALITY, ASSIGNMENT OF INVENTIONS AND NON-COMPETITION AGREEMENT (this “**Agreement**”) is entered into by and between [NAME OF COMPANY], a [\_\_\_\_] [corporation/limited liability company] (the “**Company**”), and [NAME OF EMPLOYEE] (the “**Employee**”) as of [\_\_\_\_], 20[\_\_\_\_].

WHEREAS, the parties believe it is in their mutual interests to enter into this Agreement, which is a condition of Employee’s employment by the Company;

NOW THEREFORE, in consideration of the premises and mutual covenants contained in this Agreement, the parties agree as follows:

**1. Definitions.**

For purposes of this Agreement, the following terms have the following definitions:

1.1 “**Confidential Information**” means proprietary techniques and confidential information that the Company develops, compiles or owns, or that the Company receives under conditions of confidentiality from the persons with which it has business relationships. Confidential Information may be disclosed to or developed, learned or acquired by Employee in the course of Employee’s employment with the Company, whether or not related to Employee’s duties. Confidential Information is broadly defined, and includes all information that has or could have commercial value or other utility in the businesses in which the Company is engaged or in which it contemplates engaging, and all information that, if disclosed without authorization, could be detrimental to the interests of the Company or the persons with which it has business relationships, whether or not this information is specifically identified as confidential.

Confidential Information includes, whether communicated orally or in writing:

(a) technical information, including research programs and methods, product development plans, functional and technical specifications, technology, inventions, ideas, concepts, designs, drawings, analysis, research, methods, techniques, processes, computer software, data, patent applications, and other technical know-how and materials;

(b) business information, including business plans, sales and marketing research, materials and plans, accounting and financial information, cost data, customer information, personnel records and the like; and

(c) any other valuable information of the Company relating to the business affairs or fields of interest of the Company,

Confidential Information may take the form of software, audio or video tapes, computer media, printouts, records, databases, manuals, letters, notebooks, reports, blueprints, drawings, sketches

or photographs, including copies, whether produced by Employee or others, all of which at all times shall remain the property of the Company or the person from which the Company obtained such materials.

Notwithstanding the foregoing, Confidential Information does not include information already known or previously independently developed by Employee and freely usable by Employee before Employee's employment by the Company, information in the public domain through no wrongful act of Employee, or information previously received by Employee from a third party who was free to disclose it.

1.2 **"Invention(s)"** means any and all inventions, discoveries, original works of authorship, developments, improvements, formulas, techniques, concepts, data and ideas (whether or not patentable or registrable under copyright or similar statute) made, conceived, reduced to practice, or learned by Employee, either alone or jointly with others, that (a) result from work performed by Employee for the Company, (b) utilize the equipment, supplies, facilities, or Confidential Information, (c) are made, conceived or completed during Employee's normal business hours as an employee of the Company, or (d) are related to the business or the actual or demonstrably anticipated research or development of the Company.

1.3 **"Trade Secret(s)"** means all information, know-how, concepts, data, ideas and materials, however embodied, relating to the business of the Company or to entities with which the Company has business relationships, which have not been released publicly by an authorized representative of the Company and have not otherwise lawfully entered the public domain.

## **2. Employee's Prior Knowledge and Relationships.**

2.1 Prior Knowledge. Except as disclosed by Employee on Exhibit A to this Agreement, Employee does not possess any Confidential Information, other than information learned from the Company.

2.2 Prior Relationships. Employee has no other agreements, relationships, or commitments to any other person that conflict with Employee's obligations to the Company under this Agreement. Employee will not use or disclose to the Company, or induce the Company to use or disclose, any confidential information, trade secret, or proprietary information or material belonging to any third party without the consent of such party. Employee represents and warrants that Employee has returned all property and confidential information belonging to all prior employers. [In the event Employee is sued for breach of any obligation or agreement to which Employee is a party or is bound, Employee agrees to indemnify the Company fully for all liabilities, costs, verdicts, judgments, settlements, attorney fees and other losses incurred by the Company.]

## **3. Protection of Confidential Information.**

3.1 Obligations of Employee. At all times during the term of this Agreement, Employee will hold in trust, keep confidential and not disclose to any third party, or make any use of, the Confidential Information of the Company or of the persons with which the Company has business relationships, except as may be desirable or necessary in the course of Employee's

employment, without the prior written consent of the Company. Employee agrees to abide by policies established by the Company for the protection of Confidential Information, and to take reasonable precautions to safeguard Confidential Information, including the protection of documents from theft, unauthorized duplication and discovery of contents, and restrictions on access by other persons. Employee further agrees not to cause the transmission, removal, or transport of any Confidential Information from the Company's facilities, except as necessary or desirable in the course of Employee's employment with the Company, without the prior written approval of the Company.

**3.2 Acknowledgements of Employee.** Employee acknowledges and agrees that:

(a) Confidential Information constitutes a valuable asset of the Company, and is owned solely by the Company or the person from whom the Company received it;

(b) unauthorized use or disclosure of Confidential Information may be highly prejudicial to the interests of its owner, an invasion of privacy, or a misappropriation or improper disclosure of trade secrets; and

(c) unauthorized use or disclosure to third parties of Confidential Information during employment will lead to disciplinary action, up to and including immediate termination, and any unauthorized use or disclosure at any time during the term of this agreement may lead to legal action by the Company.

**4. Employee's Obligations upon Termination of Employment.**

4.1 Return of Company Property. Upon separation from employment with the Company for any reason, Employee will promptly deliver to the Company all Company documents and materials (including all copies) pertaining to (i) Employee's employment, (ii) Confidential Information, and (iii) Inventions, whether prepared by Employee or otherwise in Employee's possession or control, except that Employee may retain personal copies of records relating to Employee's employment and this Agreement.

4.2 Termination Certificate. Employee agrees to sign a Termination Certificate in the form of set forth in Exhibit B to this Agreement promptly upon separation from employment.

4.3 Notification of New Employer. In the event that Employee is separated from employment with the Company for any reason, Employee hereby agrees to notify the Company of Employee's new employment arrangements and agrees that the Company may inform Employee's new employer of Employee's obligations under this Agreement.

**5. Inventions.**

5.1 Disclosure. Employee will promptly disclose to the Company in writing all Inventions which the Employee creates or of which the Employee becomes aware [while employed by the Company] [during the term of this Agreement].

5.2 Assignment of Inventions. Employee hereby agrees to assign to the Company or its designee, without royalty or other consideration to Employee, all right, title, and interest

**Employee Confidentiality, Assignment of Inventions 3**  
**and Noncompetition Agreement**

Employee may have, or may acquire, in and to all Inventions, including any patent or copyright issued with respect to such Inventions. Employee agrees that the Company or its designee will be the sole owner of all domestic and foreign patents, patent rights, copyrights, and other rights pertaining to all these Inventions. Employee further agrees that all copyrightable materials that Employee prepares, individually or in cooperation with others, that is specifically requested by the Company or commissioned for use as a contribution to a collective work, or as a supplementary work, a compilation, or an instructional text, as these terms are defined by 17 U.S.C. Section 101, will be considered a “work made for hire,” as that term is defined by 17 U.S.C. Section 101.

5.3 Execution of Documents. Whenever requested by the Company during the term of this Agreement, Employee will promptly sign and deliver to the Company any and all applications, assignments and other documents that the Company considers necessary or desirable in order to apply for, obtain, and maintain letters patent of the United States and foreign countries for any Inventions, to assign and convey to the Company or its designee the sole and exclusive right, title, and interest in and to any Inventions or any applications or patents thereon, or to provide any other evidence of the assignment of all rights of Employee, if any, in any Inventions required to be assigned to the Company pursuant to this Agreement (the “**Assigned Inventions**”) and the Company’s ownership of these Inventions, without royalty or any other further consideration to Employee.

5.4 Assistance to the Company. Whenever requested by the Company, both during and after employment during the term of this Agreement, Employee will assist the Company, at the Company’s expense, in obtaining, maintaining, defending, registering and from time to time enforcing, in any and all countries, the Company’s right to the Assigned Inventions and related intellectual property rights. This assistance may include testifying or delivering evidence in a suit or other proceeding, executing all documents deemed by the Company to be necessary or convenient for use in applying for, obtaining, and enforcing patents, copyrights, or other rights, and executing all necessary assignments to the Company or its designee. If the Company requires assistance from Employee after termination of Employee’s employment, Employee will be compensated for time actually spent in providing assistance at an hourly rate equivalent to Employee’s salary or wages upon termination of employment.

5.5 Power of Attorney. If the Company cannot obtain Employee’s signature on any document necessary to apply for, prosecute, obtain or enforce any patent, copyright or other right or protection relating to any Invention, whether due to Employee’s mental or physical incapacity or any other reason, Employee hereby irrevocably designates and appoints the Company and each of its duly authorized officers and agents as Employee’s agent and attorney-in-fact to act for, and to act on Employee’s behalf, to execute and file any such document and to do all other lawfully permitted acts to further the prosecution, issuance, and enforcement of patents, copyrights, or other rights or protections relating to the Assigned Inventions, with the same force and effect as if executed and delivered by Employee.

5.6 Records of Inventions. Employee agrees to keep adequate and current written records of all Inventions in the form of notes, sketches, drawings and/or reports, which records are, and will remain, the property of the Company and will be available to the Company at all times.

5.7 Excluded Inventions. Employee represents that any inventions, original works of authorship, discoveries, concepts or ideas, if any (“**Excluded Inventions**”), to which Employee presently has any right, title or interest, and which were previously conceived either wholly or in part by Employee and that Employee desires to exclude from the operation of this Agreement, are identified on Exhibit A to this Agreement. Employee represents that the list contained in Exhibit A is complete to the best of Employee’s knowledge, and that the exclusion of such Inventions from this Section 5 (Inventions) will not materially affect Employee’s ability to perform all obligations under this Agreement. The Company agrees to receive and hold all disclosures relating to Excluded Inventions in confidence.

[5.8 Labor Code. This Section 5 (Inventions) does not apply to an Invention that is subject to the provisions of Section [\_\_\_\_] of the [STATE] Labor Code, which is reprinted in its entirety in Exhibit C attached hereto.]

## **6. Non-Competition and Non-Solicitation.**

6.1 Non-Competition. Employee agrees that, during Employee’s term of employment with the Company [and for a period of [NUMBER (\_\_\_\_)] thereafter], Employee will not establish or act, directly or indirectly, by way of ownership, management or otherwise, whether or not for compensation, as a consultant, employer, employee, agent, principal, partner, stockholder (other than ownership of less than 5% of the outstanding capital stock of a publicly-traded corporation), officer, director or in any other representative or individual capacity for, any business that (i) is similar to, (ii) is directly competitive with, or (iii) provides goods or services to any aspect of the business in which the Company is engaged or contemplates engaging. While employed with the Company, Employee will not undertake any planning for any outside business competitive with the Company.

6.2 No Conflicts. Employee agrees not to enter into any agreement that contains any term that may conflict, either actually or potentially, with the terms of this Agreement.

6.3 Business Opportunities. Employee agrees that, while employed by the Company, Employee will not take for Employee’s own use, and will promptly notify the Company of, any and all business opportunities of which Employee becomes aware that relate, directly or indirectly, to the current or reasonably anticipated future business of the Company.

6.4 No Solicitation of Company Employees and Consultants. Employee agrees that, both during employment and for a period of [NUMBER (\_\_\_\_)] months following separation from employment for any reason, Employee will not disrupt, damage, impair or interfere with the Company’s business by recruiting, soliciting or otherwise inducing any of the Company’s employees or exclusive consultants to enter into employment or an exclusive consulting relationship with any other business entity that competes with the Company.

6.5 No Solicitation of Company Customers. Employee also agrees that, both during employment and for a period of [NUMBER (\_\_\_\_)] [months/years] following separation from employment for any reason, Employee will not (a) call on, solicit, or take away (directly or indirectly), or (b) attempt to call on, solicit or take away (directly or indirectly) any Company customer or potential customer whom the Company has identified during the term of Employee’s

employment with the Company, either for Employee's own benefit or for the benefit of another person or entity, and will Employee not solicit or induce any customer or potential customer to terminate a business relationship with the Company.

**7. Non-Disparagement.** Employee agrees that, during the term of this Agreement, Employee will not make comments, whether oral or in writing, that tend to disparage or injure the Company, its officers, directors, agents, employees, products and services, provided, however, that nothing in this Agreement will be construed to preclude Employee from complying with the terms of a validly issued subpoena.

**8. At-Will Employment.** This Agreement expressly defines certain obligations of Employee that will apply during and after Employee's employment with the Company. This Agreement is not a contract of employment and does not alter the employment relationship between Employee and the Company, which at all times remains "at will" and can be terminated by either party, with or without cause and with or without advance notice.

**9. Injunctive Relief.** Employee acknowledges that it would be difficult for the Company to measure actual damages resulting from any breach by Employee of Section 2 through Section 7 of this Agreement, and that money damages alone would be an inadequate remedy for any such breach. Accordingly, Employee agrees that if Employee breaches any provision of Section 2 through Section 7, the Company will be entitled, in addition to any other remedies it may have, to specific performance, injunctions, or other appropriate orders to correct or restrain any such breach by Employee, without showing or proving any actual damage sustained by the Company or posting any bond or other security.

**[10. Attorney Fees.** If any action is necessary to enforce this Agreement, including any action under Section 9 (Injunctive Relief) the prevailing party will be entitled to recover its reasonable costs and attorney fees, including reasonable expert witness fees.]

**11. Term; Survival.** This Agreement shall take effect upon the earlier of (a) the Employee's first day of employment with the Company and (b) the first day that Employee receives Confidential Information from the Company, and shall terminate on the date [NUMBER (\_\_\_)] months following the last day of Employee's employment with the Company (the "**Termination Date**"). The parties hereto explicitly agree that their rights and obligations hereunder will survive termination of Employee's employment with the Company until the Termination Date.

**12. Communications; Acknowledgements.** Employee agrees that upon the request of the Company, Employee will meet with representatives of the Company to review the terms of this Agreement and Employee's obligations hereunder. Employee will keep the Company advised of Employee's home address and business address during the term of this Agreement so the Company can contact Employee regarding Employee's post-employment obligations hereunder. Employee has carefully read this Agreement and understands its terms. Employee has completely filled out Exhibit A, and has received a copy of Exhibit C, Written Notification to Employee of [STATE] Labor Code]. Employee signs this Agreement freely and voluntarily.

### 13. Miscellaneous.

13.1 Governing Law; Jurisdiction; Venue. This Agreement will be construed in accordance with and governed by the laws of the [\_\_\_\_], without giving effect to the conflict of law principles of the [\_\_\_\_]. Employee and the Company specifically agree that any legal action relating to this Agreement will be instituted and prosecuted in the courts in [COUNTY NAME] County, [STATE]. Each party hereby waives the right to change venue, and consents to personal jurisdiction for purposes of any action arising under this Agreement.

13.2 Successors and Assigns. Except as otherwise expressly provided in this Agreement, this Agreement will be binding on, and will inure to the benefit of, the successors and permitted assigns of the parties to this Agreement. Nothing in this Agreement is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights or obligations under or by reason of this Agreement, except as expressly provided in this Agreement.

13.3 Notices. All notices and other communications required or permitted hereunder will be in writing and will be delivered by hand or sent by overnight courier, fax or e-mail to:

if to the Company:

\_\_\_\_\_  
\_\_\_\_\_

fax: \_\_\_\_\_

e-mail: \_\_\_\_\_

Attention: \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_

fax: \_\_\_\_\_

e-mail: \_\_\_\_\_

Attention: \_\_\_\_\_

if to the Employee:

\_\_\_\_\_  
\_\_\_\_\_

fax: \_\_\_\_\_

e-mail: \_\_\_\_\_

Attention: \_\_\_\_\_



[with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
fax: \_\_\_\_\_  
e-mail: \_\_\_\_\_  
Attention: \_\_\_\_\_]

Each party may furnish an address substituting for the address given above by giving notice to the other parties in the manner prescribed by this Section 13.3 (Notices). All notices and other communications will be deemed to have been given upon actual receipt by (or tender to and rejection by) the intended recipient or any other person at the specified address of the intended recipient.

13.4 Severability. In the event that any provision of this Agreement is held to be unenforceable under applicable law, this Agreement will continue in full force and effect without such provision and will be enforceable in accordance with its terms.

13.5 Construction. The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (a) references to the plural include the singular, the singular the plural, and the part the whole, (b) references to one gender include all genders, (c) “or” has the inclusive meaning frequently identified with the phrase “and/or,” (d) “including” has the inclusive meaning frequently identified with the phrase “including but not limited to” or “including without limitation,” and (e) references to “hereunder,” “herein” or “hereof” relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time.

13.6 Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements and understandings other than this Agreement relating to the subject matter hereof.

13.7 Amendment and Waiver. This Agreement may be amended only by a written agreement executed by the parties hereto. No provision of this Agreement may be waived except by a written document executed by the party entitled to the benefits of the provision. No waiver of a provision will be deemed to be or will constitute a waiver of any other provision of this Agreement. A waiver will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver.

13.8 Counterparts. This Agreement may be in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.

*[The remainder of this page has been intentionally left blank.]*

IN WITNESS WHEREOF, the undersigned have executed this Employee Confidentiality, Assignment of Inventions and Non-Competition Agreement as of the date first written above.

COMPANY

[NAME OF COMPANY]

By: \_\_\_\_\_

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

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

EMPLOYEE

\_\_\_\_\_  
[Name of Employee]

**INITIAL EMPLOYEE INFORMATION**

1. Prior Knowledge of Confidential Information as required by Section 2.1:
  
2. Excluded Inventions pursuant to Section 5.7:

## FORM OF TERMINATION CERTIFICATION

This is to certify that I do not have in my possession, and I have not failed to return, any devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, sketches, materials, equipment, other documents or property or any reproductions of any of these items belonging to the Company, its subsidiaries, affiliates, successors or assigns (collectively the “**Company**”).

I further certify that I have complied with, and will for the remainder of its term continue to comply with, all the terms of my Employee Confidentiality, Assignment of Inventions and Non-Competition Agreement with the Company dated as of [\_\_\_\_] (the “**Agreement**”), a copy of which is attached hereto as Exhibit A, including the reporting of any Inventions or original works of authorship, as defined in the Agreement, conceived or made by me (jointly or with others) that are covered by the Agreement.

In accordance with Section 4.3 (Notification of New Employer) of the Agreement, I hereby notify the Company that upon the termination of my employment with the Company, I will be employed by [\_\_\_\_] and will be engaged in the following project(s): [\_\_\_\_]

Dated: [\_\_\_\_], 20[\_\_]

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

Address for Notifications:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**WRITTEN NOTIFICATION TO EMPLOYEE OF [STATE] LABOR CODE**

In accordance with [CITE LABOR CODE], you are hereby notified that your Employee Confidentiality, Assignment of Inventions and Non-Competition Agreement does not require you to assign to the Company any invention for which no equipment, supplies, facility, or trade secret information of the Company was used, that was developed entirely on your own time, and that does not relate to the business of the Company or to the Company's actual or demonstrably anticipated research or development, or does not result from any work performed by you for the Company.

The text of [STATE] Labor Code is set forth below.

[CITE LABOR CODE]

**INVENTION ON OWN TIME -- EXEMPTION FROM AGREEMENT**

[(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.]