

**MODEL CALIFORNIA EMPLOYEE CONFIDENTIALITY  
 AND INVENTION ASSIGNMENT AGREEMENT**

This Confidentiality And Invention Assignment Agreement (this "Agreement") is entered into on \_\_\_\_\_, 200\_, between \_\_\_\_\_ (the "Company"), and \_\_\_\_\_ (the "Employee").

The Employee acknowledges that the Company operates in a competitive environment and that it enhances its opportunities to succeed by establishing certain policies, including those included in this Agreement. This Agreement is designed to make clear that (a) the Employee will maintain the confidentiality of the Company's trade secrets; (b) the Employee will use those trade secrets for the exclusive benefit of the Company; (c) inventions that the Employee creates will be owned by the Company; (d) the Employee's prior and continuing activities separate from the Company will not conflict with the Company's development of its proprietary rights; and (e) when and if the Employee's employment with the Company terminates, he or she will not use his or her prior position with the Company to the detriment of the Company.

In consideration of **(check one or more boxes)**

- the commencement of Employee's employment
- Employee's promotion

and the compensation paid to Employee, Employee acknowledges and agrees with the Company as follows:

**1. Effectiveness.** This Agreement shall become effective on the earlier of (1) commencement of Employee's employment with the Company, or (2) the date and time at which any Confidential Information (as defined below) was or is first disclosed to Employee.

**2. Protection of the Company's Confidential Information.**

**a. Confidential Information.** The Company has and will develop, compile and own certain proprietary and confidential information that has great value in its business ("Confidential Information"). Confidential Information includes all information which is not generally known to the Company's competitors and the public, and which has or could have commercial value to the Company's business. It includes not only information disclosed by the Company (or its customers, affiliates or vendors) to Employee during the course of his or her employment with the Company, but also information developed or learned by the Employee himself or herself during the course of his or her employment with the Company, such as Inventions, as defined below. Confidential Information includes, but is not limited to, the following categories of information: *[tailor or replace following to fit Company's information]*: information regarding the Company's technology, computer programs, products, product specifications, techniques, inventions, discoveries, improvements, research, test results, or know-how; information regarding the Company's customers' and vendors' identities, characteristics, performance and agreements; information regarding the Company's affiliates', sub-affiliates' and

employees' characteristics, performance and agreements; and information regarding the Company's marketing, sales and business plans, strategies, forecasts, unpublished financial information, budgets, projections, and efforts.] Employee acknowledges that such information is secret, valuable and owned by the Company, and that the Company has exercised substantial efforts to preserve the information's secrecy.

**b. Protection of Confidential Information.** During and after his or her employment, Employee agrees to keep confidential, and not to disclose to any third party or to make any use of Confidential Information of the Company, except for the benefit of the Company and in the course of his or her employment with the Company. Employee also agrees not to remove or otherwise transmit Confidential Information or Inventions (as defined below) from the premises or possession of the Company without the express prior written consent of an authorized representative of the Company. Employee also agrees to not publish the results of his or her work through literature or speeches, without submitting such literature or speeches to the President of the Company at least ten (10) days before dissemination of such information for a determination of whether such disclosure may destroy trade secret status or be prejudicial to the interests of the Company or whether disclosure may constitute an invasion of its privacy. 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 Confidential Information of the Company may be highly prejudicial to its interests, an invasion of privacy, and an improper disclosure of trade secrets. Whenever the approval, designation, specification 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.

**c. Exclusive Employment and Non-Solicitation of Customers, Affiliates, Sub-Affiliates or Employees.** Employee acknowledges the highly confidential nature of information regarding the Company's customers, affiliates, sub-affiliates, employees, agents, independent contractors, suppliers, and consultants. The Employee will not during his or her employment or within one year after it ends, without the Company's express written consent, directly or indirectly (i) hire, solicit, recruit, or induce to leave the employ of the Company any employee, agent, independent contractor or consultant of the Company; (ii) use the Company's Confidential Information to solicit the business of any clients or customers of the Company (other than on behalf of the Company); or (iii) encourage to terminate or alter any relationship between (a) the Company, and (b) any customer, affiliate, sub-affiliate, employee, agent, independent contractor, supplier, consultant, or any other person or company. During the Employee's employment with the Company, he or she will not do anything to compete with the Company's present or contemplated business, nor will he or she plan or organize any competitive business activity. The Employee will not enter into any agreement that conflicts with his or her duties or obligations to the Company. The Employee agrees that such activities would necessarily and inevitably involve disclosure or use of Confidential Information in violation of this Agreement.

**d. Prior Knowledge and Inventions.** Except as disclosed on Exhibit A to this Agreement, Employee does not know anything about the Company's Confidential Information, other than that which he or she learned from the Company. Employee also has disclosed on Exhibit A a complete list of all Inventions and information proprietary to Employee and which Employee wants to exclude from the application of this Agreement.

e. **Proprietary Information or Trade Secrets of Others.** Employee will not disclose to the Company, or use, or induce the Company to use, any proprietary information or trade secrets of others. Employee represents and warrants that he or she has returned all property and confidential information belonging to all prior employers. Employee further represents and warrants that he or she has no other agreements, relationships or commitments to any other person or entity that conflict with Employee's obligations to the Company under this Agreement.

### 3. **Inventions.**

a. **Disclosure of Inventions.** Employee promptly will disclose in writing to the Company all discoveries, developments, designs, ideas, improvements, inventions, formulas, processes, techniques, know-how, and data (whether or not patentable or registrable under copyright or similar statutes) made, conceived, reduced to practice, or learned by Employee (either alone or jointly with others) during the period of his or her employment, that are related to or useful in the business of the Company, or which result from tasks assigned to Employee by the Company, or from the use of premises owned, leased, or otherwise acquired by the Company. For the purposes of this Agreement, all of the foregoing are referred to as Inventions.

b. **Assignment/Ownership of Inventions.** Employee acknowledges and agrees that all Inventions other than those listed in Exhibit A belong to and shall be the sole property of the Company and shall be Inventions of the Company subject to the provisions of this Agreement. Employee assigns to the Company all right, title, and interest Employee may have or may acquire in and to all Inventions. Employee agrees to sign and deliver to the Company (either during or subsequent to his or her employment) such other documents as the Company considers desirable to evidence the assignment of all rights of Employee, if any, in any Inventions to the Company and the Company's ownership of such Inventions. Any provision in this Agreement requiring Employee to assign rights to an Invention does not apply to any invention that qualifies under California Labor Code § 2870, which section is reproduced in the attached Written Notification to Employee (Exhibit B).

c. **Power of Attorney.** In the event the Company is unable to secure Employee's signature on any document necessary to apply for, prosecute, obtain, or enforce any patent, copyright, or other right to protection relating to any Invention, whether due to mental or physical incapacity or any other cause, Employee hereby irrevocably designates and appoints the Company and each of its duly authorized officers and agents as his or her agent and attorney-in-fact, to act for and in his or her behalf and stead 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 with the same force and effect as if executed and delivered by the Employee.

### 4. **Termination of Employment.**

a. **Delivery of Documents and Data Upon Termination of Employment.** In the event of termination (voluntary or otherwise) of Employee's employment with the Company, Employee agrees, promptly and without request, to deliver to and inform the Company of all documents and data pertaining to his or her employment and the Confidential Information and Inventions of the Company, whether prepared by Employee or otherwise coming into his or her possession or control, and to sign Exhibit C to this Agreement. Employee will not retain any written or

other tangible material containing any information concerning or disclosing any of the Confidential Information or Inventions of the Company. Employee recognizes that the unauthorized taking of any of the Company's trade secrets is a crime under California Penal Code § 499(c) and is punishable by imprisonment in state prison or in a county jail for a time not exceeding one year, or by a fine not exceeding five thousand dollars (\$5,000), or by both such fine and such imprisonment. Employee further recognizes that such unauthorized taking of the Company's trade secrets also could result in civil liability under California's Uniform Trade Secrets Act (Civil Code §§ 3426-3426.11), and that willful misappropriation may result in an award against Employee for triple the amount of the Company's damages and the Company's attorneys' fees in collecting such damages.

**b. Obligations of Employee After Termination of Employment.** In the event of termination (voluntary or otherwise) of Employee's employment with the Company, Employee agrees that he or she will protect the value of the Confidential Information and Inventions of the Company and will prevent their misappropriation or disclosure. Employee will not disclose or use to his or her benefit (or the benefit of any third party) or to the detriment of the Company any Confidential Information or Invention.

**5. Injunctive Relief.** Because Employee's breach of this Agreement may cause the Company irreparable harm for which money is inadequate compensation, Employee agrees that the Company will be entitled to injunctive relief to enforce this Agreement, in addition to damages and other available remedies.

**6. Attorneys' Fees.** [Optional] If any action is necessary to enforce this Agreement, the prevailing party shall be entitled to recover its attorneys' fees.

**7. Understanding.** Employee acknowledges and agrees that the protections set forth in this Agreement are a material condition to his or her employment with compensation by the Company.

**8. Amendment and Binding Effect.** This Agreement may not be amended except by an instrument in writing signed by both parties. This Agreement shall be binding on the heirs, executors, administrators, and other legal representatives and assigns of Employee, and is for the benefit of the Company and its successors and assigns.

**9. Governing Law.** This Agreement shall be governed by the laws of the State of California.

**10. Entire Understanding.** This Agreement expresses the entire understanding of the parties about the described subject matter, superseding all prior or contemporaneous agreements and understanding (whether oral or written) between the parties with respect to the subject matter.

**11. Cumulative Remedies.** Each and all of the several rights and remedies provided for in this Agreement shall be cumulative. No one right or remedy shall be exclusive of the others or of any right or remedy allowed in law or in equity. No waiver or indulgence by the Company of any failure by Employee to keep or perform any promise or condition of this Agreement shall be a waiver of any preceding or succeeding breach of the same or any other promise or condition. No waiver by the Company of any right shall be construed as a waiver of any other right. Any waiver by the Company or

by the Employee must be in writing and signed by either the Employee, if he or she is seeking to waive any of his or her rights under this Agreement, or by an officer of the Company (other than the Employee) or some other person duly authorized by the Company. The Company shall not be required to give notice to enforce strict adherence to the terms of this Agreement.

**12. Severability.** If a court finds any provision of this Agreement invalid or unenforceable as applied to any circumstance, the remainder of this Agreement and the application of such provision to other persons or circumstances shall be interpreted so as best to effect the intent of the parties hereto. The parties further agree to replace any such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business, and other purposes of the void or unenforceable provision.

**13. Employment at Will.** This Agreement is not an employment agreement. I understand that my employment and compensation can be terminated, with or without cause, and with or without notice, at any time. Nothing contained in this Agreement shall limit or otherwise alter the foregoing.

Employee has read this Agreement and understands its terms. Employee has completely filled out Exhibit A to this Agreement and has signed and received a copy of Exhibit B, the written notification to Employee setting forth California Labor Code § 2870.

Dated: \_\_\_\_\_  
[Employee's Typed Name]

Dated: \_\_\_\_\_  
[Typed Name of Company Official]

**EXHIBIT A**

**EMPLOYEE STATEMENT**

**1. Confidential Information.** Except as set forth below, I acknowledge at this time that I know nothing about the business or the Confidential Information or Inventions of the Company, except information that has been disclosed to me by the Company (if none, so state): [specify information previously known about the Company].

**2. Prior Inventions.** Except as set forth below, I acknowledge at this time that I have not made or reduced to practice (alone or jointly with others) any Inventions (if none, so state): [specify inventions].

**3. Conflicting Relationships.** Except as set forth below, I acknowledge that I have no other current or prior agreements, relationships, or commitments that conflict with my relationship with the Company under my Confidentiality and Invention Assignment Agreement (if none, so state): [specify any conflicts].

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

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

**EXHIBIT B**

**WRITTEN NOTIFICATION TO EMPLOYEE**

In accordance with California Labor Code § 2872, you are hereby notified that your Confidentiality and Invention Assignment 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 and that was developed entirely on your own time, and 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.

Following is the text of California Labor Code § 2870:

- (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.

I hereby acknowledge receipt of this written notification.

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

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

**EXHIBIT C**

**TERMINATION CERTIFICATION**

This is to certify that I do not have in my possession, nor have I failed to return, any Confidential Information (as defined in my Confidentiality and Invention Assignment Agreement with the Company (the "Agreement") or copies of such information, or other documents or materials, equipment, or other property belonging to the Company.

I further certify that I have complied with and will continue to comply with all of the terms of the Agreement, including the reporting of any Inventions (as defined in the Agreement) conceived or made by me that are covered by the Agreement.

I further agree that, in compliance with the Agreement, I will preserve as confidential and not use any Confidential Information, Inventions, or other information that has or could have commercial value or other utility in the business in which the Company is engaged or in which it contemplates engaging. I will not participate in the unauthorized disclosure or use of information that could be detrimental to the interests of the Company, whether or not such information is identified as Confidential Information by the Company.

On termination of my employment with the Company I will be employed by \_\_\_\_\_ in \_\_\_\_\_ Division, and will be working in connection with the following listed projects:

Dated: \_\_\_\_\_ [Typed Name of Employee]