

PRIVATE & CONFIDENTIAL

NONCOMPETITION, NONSOLICITATION, AND
NONDISCLOSURE AGREEMENT

THIS AGREEMENT ("Agreement") is made as of the above date by and between Company a Utah Limited Liability Company and the Receiver.

R E C I T A L S:

WHEREAS, Company desires to work with Receiver and Receiver desires to work with Company in the development of proprietary, innovative and novel designs on the terms and conditions of this Agreement;

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WHEREAS, during the working relationship Receiver will have access to Company's confidential and proprietary information and may have close contact with Company products, business practices and other items essential to Company business; and

WHEREAS, Company's business would suffer catastrophic competitive harm if its confidential, proprietary or otherwise not generally known information should be disclosed to its competitors or to the general public or if Receiver were to exploit the products, items or concepts gained while working with Company for the benefit of a competitor; and

WHEREAS, Company and Receiver agree that the restrictions contained in this Agreement are fair, reasonable and within the purview of the intended working relationship.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and promises of the Parties and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1. REPRESENTATIONS

- 1.1. Receiver warrants to Company that Receiver is not bound by any agreement, obligation or contract that either directly or indirectly limits, constricts or impedes Receiver's ability to enter into this Agreement.
- 1.2. Receiver acknowledges that it is a condition of this Agreement that Receiver agrees to be bound by the terms and conditions of this Agreement and that Company suffers a financial detriment by entering into this Agreement and such detriment paid on behalf of this Agreement constitutes consideration (which Receiver acknowledges to be adequate) for this Agreement.

ARTICLE 2. CONFIDENTIALITY

- 2.1. During the course of this Agreement, Receiver may have or may be provided access to Company's confidential information. Receiver agrees to maintain such information in accordance with the terms of this Agreement and any applicable separate nondisclosure agreement required by Company and executed by the Parties. At a minimum, Receiver agrees to maintain such information in confidence, to take all reasonable precautions to prevent unauthorized disclosure, and to use such information only within the scope of this Agreement until the information becomes publicly available through no fault of Receiver. Receiver's

employees who access Company's facilities will be required to sign a separate non-disclosure agreement prior to admittance to Company's facilities.

- 2.2. Receiver agrees that no information disclosed by Receiver to Company, in any form whatsoever, is the confidential information of any corporation, individual or association not a party to this Agreement.
- 2.3. Upon the cancellation or termination of this Agreement, Receiver agrees to return to Company all equipment, documents, papers, drawings, tabulations, reports and similar documentation which were furnished by Company to Receiver or which were prepared by Receiver in the performance of Receiver's services hereunder. Upon the termination or cancellation of this Agreement, Receiver shall make no further use or utilization of any such information without the prior written consent of an authorized representative of Company. Receiver agrees not to make any reproductions of any material provided by Company without Company's prior written consent.
- 2.4. During the duration of this Agreement and for no more than one year after the termination of this Agreement regardless of the reason for the termination, cessation or dissolution of this Agreement, Receiver shall not either directly or indirectly enter into agreements, act as a Receiver, independent contractor or other Receiver in contradiction to the present Agreement.

ARTICLE 3. NEW DEVELOPMENTS

- 3.1. Receiver shall assign to Company all right, title and interest to those things developed for Company including, but not limited to, patents, patent applications, inventions, designs, trademarks, copyrights, maskworks, discoveries, formulas, processes, plans, specifications, guidelines, graphics, notes, instructions, training materials, software, software programs, software documentation, films, videotapes, slides, scripts, processes, records, drawings, illustrations, instructor guides, student materials, masters, tapes, copyrightable works or other ideas or materials developed or conceived by Receiver, its employees, subcontractors or agents especially and uniquely for Company, or from proprietary and/or confidential information or materials belonging to Company, during the term of and arising out of services performed under this Agreement. Receiver specifically acknowledges that the agreed compensation herein is adequate consideration to Receiver for this Agreement and that all products, materials and rights, including copyrights and maskworks, made hereunder are "works for hire." Upon Company's request, Receiver agrees to execute an Assignment of Copyright or patent rights to

Company on deliverables accepted by Company and, in addition to the deliverables contracted and accepted, to make all items described in this section available to Company.

- 3.2. Company agrees that Receiver's pre-existing resource materials, software programs and other personally developed materials, material developed for other employers (such as UC Irvine.), all standard "off the shelf" type materials (generally known or published information) and materials and software, hardware or course product developed from such materials shall remain the sole and separate property of Receiver. Receiver grants Company an irrevocable, non-exclusive, worldwide, royalty free license, with the right to sublicense, to use, make, have made, lease, sell, distribute or otherwise dispose of such materials which are incorporated into the deliverables provided by Receiver to Company pursuant to this Agreement.
- 3.3. Receiver agrees to assist Company at Company's expense in obtaining, registering, perfecting and enforcing all trademarks, copyrights, or other proprietary rights necessary to protect Company's exclusive interest in deliverables developed for Company pursuant to this Agreement. This includes the disclosure of all pertinent information, the execution of applications, specifications, oaths and assignments and any other documents required by Company to acquire the desired protection.
- 3.4. Receiver represents that Receiver has the power and authority to bind itself to the obligations contained herein.
- 3.5. Receiver agrees that it will have no claim, nor will Receiver assist in or cooperate with any other third party (including a past or present employer) in a claim, to the Company intellectual property rights arising out of the work performed for Company under this Agreement. Further, Receiver agrees not to assert, nor will Receiver assist in or cooperate with any other third party (including a past or present employer) to assert, any Company intellectual property claims against any Company products incorporating, (1) any work product created for or delivered to Company under this Agreement, or (2) any subsequent improvement or modification made by Receiver to such work product.
- 3.6. Nothing herein shall be construed as an implied patent or copyright license to any Company patents, copyrights, maskworks or trade secrets under this Agreement, either directly or by implication, estoppel or otherwise.

ARTICLE 4. RESTRICTIVE COVENANTS

- 4.1. Receiver agrees not to disclose or communicate, in any manner, while this Agreement is in force with Receiver or for one year after termination of this Agreement, information about

Company, its operations, clientele, or any other information, that relates to the business of Company including, but not limited to the following:

- a. Lists of employees, customers or any other clients of Company;
 - b. Lists of vendors, suppliers, or any other individuals or companies whose services, products, or facilities are used by Company;
 - c. The business development practices or products of Company;
 - d. The marketing strategies of Company;
 - e. The internal operations of Company;
- 4.2. Neither Receiver nor Company shall, during the term of this Agreement and for a period of one year immediately following termination of this Agreement, either directly or indirectly, call on, solicit, or take away, or attempt to call on, solicit, or take away, any of the clients of either Party with whom Company or Receiver meets, become acquainted with, or learns of during the terms of this Agreement, either for either Parties' own benefit, or for the benefit of any other person, firm, corporation or organization.
- 4.3. Neither Receiver nor Company shall, during the term of this Agreement and for a period of one year immediately following termination of this Agreement, either directly or indirectly, recruit any of the other Parties' employees for the purpose of any outside business.
- 4.4. For good consideration and as an inducement for the Parties to enter into this Agreement with the other, each Party agrees not to directly or indirectly compete with the business of the other and its successors and assigns during the period of this Agreement and for a period of one year following termination of this Agreement and notwithstanding the cause or reason for termination.

ARTICLE 5. MISCELANEOUS PROVISIONS

- 5.1. From time to time during the execution of this Agreement, Receiver will have access to Company' property and Receiver acknowledges that Receiver shall have no right to the exclusive property of Company without limitation.
- 5.2. Receiver agrees the scope and duration of the restrictions contained herein are reasonable considering the nature of Company' business. Receiver further acknowledges that any breach of the provisions contained herein will cause irreparable harm to Company and that any legal or equitable remedy will be inadequate to repair such a breach. As such, Company will be entitled to seek out and receive injunctive relief to stop and prevent future harm or injury from

such breach. Receiver further agrees to bear all legal fees and costs associated with a violation of this Agreement.

- 5.3. Neither Party will be responsible for its failure to perform due to causes beyond its reasonable control including, but not limited to, acts of God, fire, theft, war, riot, embargoes or acts of civil or military authorities.
- 5.4. Each Party is responsible for obtaining all legal clearances required for this Agreement. Receiver shall indemnify, defend and hold the Company harmless from and against any and all claims, suits, demands, damages, losses and expenses, without limitation, arising from any breach, misrepresentation, or other fault of Receiver. Likewise, Company shall indemnify, defend and hold Receiver harmless from and against any and all claims, suits, demands, damages, losses and expenses without limitation arising from any breach, misrepresentation, or other fault of Company.
- 5.5. This Agreement may be altered, or amended, modified or superseded only in writing executed by both Parties.
- 5.6. The Parties shall defend, indemnify and hold harmless each other and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement; and (b) all losses or expenses in any way suffered, incurred, or paid by the other Party as a result of or in any way arising out of, following, or consequential to transactions between the Parties whether under this Agreement, or otherwise (including without limitation reasonable attorneys' fees and expenses), except for losses caused by the gross negligence or willful misconduct of either Party.
- 5.7. No Party shall be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by such Party. No delay or omission on the part of any Party in exercising any right shall operate as a waiver of such right or any other right. A waiver by a Party of a provision of this Agreement shall not prejudice or constitute a waiver of that Party's right to otherwise demand strict compliance with that provision of or any other provision of this Agreement. No prior waiver by a Party, nor any course of dealing or course of performance between the Parties, shall constitute a waiver of any of the Party's obligations as to any future transactions.
- 5.8. In any litigation, arbitration, or other proceeding by which one Party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any

rights or obligations under this Agreement, the non-breaching Party shall be awarded its reasonable attorney fees, and costs and expenses incurred.

- 5.9. This Agreement has been prepared after extensive discussions between and among the Parties. Each Party has had ample opportunity to review the Agreement with and obtain advice from their respective legal counsel. In construing this Agreement, the rule of interpretation of ambiguous terms against the drafting Party shall have no application. As used herein, all words in any gender shall be deemed to include the masculine, feminine, or neuter gender. All singular words shall include the plural, and all plural words shall include the singular, as the context may require. The language of this Agreement shall be construed as a whole, according to its fair meaning and intent.
- 5.10. Transmission and receipt of a digitally signed PDF, scanned email, emailed image or facsimile copy of this document with facsimile signature(s) shall be binding on the Parties. This Agreement may be amended in like fashion.
- 5.11. The Parties agree to comply in all material respects with the requirements of all laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith, in the aggregate, could not reasonably be expected to have a material adverse effect.
- 5.12. Any notice to be given hereunder by any party to the other may be effected either by personal delivery in writing, or by U.S. mail, registered or certified, postage prepaid with return receipt requested, or another means as effective. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of five (5) days after being mailed as indicated above.
- 5.13. If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, those invalid sections shall be severed, and the remaining provisions shall continue to be in full force and effect without being impaired or invalidated in any way.
- 5.14. This Agreement, and any applicable appendix noted herein, are incorporated herein by reference which constitutes the entire Agreement between the Parties. Neither Party has made any representation or promise, except as contained herein, that will be claimed as enforceable by either Party hereafter. The headings in this Agreement are for convenience only and shall not be interpreted to limit or affect in any way the meaning of the language contained in this

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Agreement. Any purported assignment or delegation in violation of this Paragraph shall be null and will be considered a breach of this Agreement. This Agreement shall be governed by, and construed under, the laws of the State of Utah. Each and every Party agrees that jurisdiction and venue for all purposes shall lie only in the County of Salt Lake, in the State of Utah, and as a result of signing this Agreement subjects itself to jurisdiction and venue in said situs. Any provisions of this Agreement which contemplate or require performance after termination of this Agreement shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date and year first above written.