**COMPANY**

**Independent Contractor/Consultant Confidentiality and Assignment Agreement**

# This Independent Contractor/Consultant Confidentiality and Assignment Agreement (this “**Agreement**”) is entered into as of “{{Effective\_date}}”, “{{Year}}”, between “{{Company\_Name}}”, a “{{Company\_Type}}”(the “**Company**”) with offices at “{{Company\_address}}”and “{{Consultants\_Name}}”(the “**Consultant**”) with an address of “{{Consultants\_Address}}”.

In consideration and as a condition of Consultant's engagement or continued engagement by Company, Consultant agrees as follows:

# **Independent Contractor/Duties**. Subject to the terms and conditions of this Agreement, the Company hereby engages the Consultant as an independent contractor to perform the services set forth herein, and the Consultant hereby accepts such engagement. The Consultant’s duties, term of engagement, compensation and provisions for payment thereof shall be as set forth on Schedule A, which may be amended in writing from time to time by the Company and which is hereby incorporated by reference. In the event of a conflict in terms between this Agreement and Schedule A, the terms of this Agreement shall govern.

# **Termination**. Company may terminate the engagement of consultant hereunder at any time for any reason, or no reason. Consultant may terminate the engagement for any reason, or no reason, on not less than five (5) days prior written notice to Company. Consultant shall be entitled to only the fees earned prior to such termination.

# **Proprietary Information**. Consultant agrees that all information, whether or not in writing, concerning the Company’s business, technology, business relationships or financial affairs which the Company has not released to the general public (collectively, “Proprietary Information”) is and shall be the exclusive property of the Company. By way of illustration, Proprietary Information may include information or material which has not been made generally available to the public, such as: (a) *corporate information*, including plans, strategies, methods, policies, resolutions, negotiations or litigation; (b) *marketing information*, including strategies, methods, customer identities or other information about customers, prospect identities or other information about prospects, or market analyses or projections; (c) *financial information*, including cost and performance data, debt arrangements, equity structure, investors and holdings, purchasing and sales data and price lists; (d) *operational and technological information*, including plans, specifications, manuals, forms, templates, software, designs, methods, procedures, formulas, discoveries, inventions, improvements, concepts and ideas; and (e) *personnel information*, including personnel lists, reporting or organizational structure, resumes, personnel data, compensation structure, performance evaluations, termination arrangements and termination documents. Proprietary Information also includes information received in confidence by the Company from its customers, suppliers and/or other third parties.

# **Recognition of Company’s Rights**. Consultant shall not, at any time, without the Company’s prior written permission, either during or after Consultant's engagement, disclose any Proprietary Information to anyone outside of the Company, or use or permit to be used any Proprietary Information for any purpose other than the performance of Consultant's duties as a consultant of the Company. Consultant shall cooperate with the Company and use Consultant's best efforts to prevent the unauthorized disclosure of any or all Proprietary Information. Consultant shall deliver to the Company all copies of Proprietary Information in any form whatsoever, electronic or otherwise, in Consultant's possession or control upon the earlier of a request by the Company or termination of Consultant's engagement.

# **Rights of Others**. Consultant understands that theCompany is now and may hereafter be subject to non-disclosure or confidentiality agreements with third parties which require the Company to protect or refrain from use of that party's Proprietary Information. Consultant agrees to be bound by the terms of such agreements in the event Consultant has access to such Proprietary Information belonging to other parties.

# **Avoidance of Conflict of Interest/Restrictions**. Consultant shall advise the Chief Executive Officer, President or other designee of the Company at such time as any activity of either the Company or another business presents Consultant with a conflict of interest or the appearance of a conflict of interest as a consultant of the Company. Consultant shall take whatever action is requested by the Company to resolve any conflict or appearance of conflict which Company reasonably finds to exist.

# **Developments**. Consultant shall make full andprompt disclosure to the Company of all inventions, discoveries, designs, developments, methods, modifications, improvements, processes, algorithms, databases, computer programs, formulae, techniques, trademarks, trade secrets, graphics, images, audio works or visual works and other works of authorship (collectively “Developments”), whether or not patentable or copyrightable, that are created, made, conceived or reduced to practice by Consultant (alone or jointly with others) or under Consultant's direction during the period of Consultant's engagement that relate directly to services rendered under this Agreement. Consultant acknowledges that all work performed by Consultant is on a “work for hire” basis, and Consultant hereby does assign and transfer and, to the extent any such assignment cannot be made at present, shall assign and transfer, to theCompany and its successors and assigns, all right, title and interest in all Developments that (a) relate to the business of the Company or any of the products or services being researched, developed, manufactured or sold by the Company or which may be used with such products or services; or (b) result from tasks assigned to Consultant by the Company; or (c) result from the use of premises or personal property (whether tangible or intangible) owned, leased or contracted for by the Company (paragraphs 7(a), (b) and (c) shall individually or collectively be referred to as “Company-Related Developments”), and all related patents, patent applications, trademarks, trademark applications, copyrights, copyright applications, and all other intellectual property rights in all countries and territories worldwide and under any international conventions (“Intellectual Property Rights”).

To preclude any possible uncertainty, Consultant sets forth on Exhibit A attached hereto a complete list of Developments that Consultant has, alone or jointly with others, conceived, developed or reduced to practice prior to the commencement of Consultant's engagement with the Company directly relating to the business of the Company that Consultant considers to be Consultant's property or the property of third parties and that Consultant wishes to have excluded from the scope of this Agreement (“Prior Inventions”). Consultant has also listed on Exhibit A all patents and patent applications directly relating to the business of the Company in which Consultant is named as an inventor, other than those which have been assigned to the Company (“Other Patent Rights”). If no such disclosure is attached, Consultant represents that there are no Prior Inventions or Other Patent Rights. If, in the course of Consultant's engagement with the Company, Consultant incorporates a Prior Invention and/or Other Patent Rights into a Company product, process or machine or other work done for the Company, Consultant hereby grants to the Company a nonexclusive, royalty-free, paid-up, irrevocable, worldwide license (with the full right to sublicense) to make, have made, modify, use, sell, offer for sale and import such Prior Invention and/or Other Patent Rights. Notwithstanding the foregoing, Consultant shall not incorporate, or permit to be incorporated, Prior Inventions and/or Other Patent Rights in any Company-Related Development without the Company’s prior written consent.

This Agreement does not obligate Consultant to assign to the Company any Development which, in the sole judgment of the Company, reasonably exercised, is developed entirely on Consultant's own time and does not relate to the business efforts or research and development efforts in which, during the period of Consultant's engagement, the Company actually is engaged or reasonably would be engaged, and does not result from the use of premises or equipment owned or leased by the Company. However, Consultant shall also promptly disclose to the Company any such Developments for the purpose of determining whether they qualify for such exclusion. Consultant understands that to the extent this Agreement is required to be construed in accordance with the laws of any state or country which precludes a requirement in a consulting agreement to assign certain classes of inventions made by a consultant, this paragraph 7 shall be interpreted not to apply to any invention which a court rules and/or the Company agrees falls within such classes. Consultant also hereby waives all claims to any moral rights or other special rights which Consultant may have or may have accrued in any Company-Related Developments.

# **Documents and Other Materials**. Consultant shall keep and maintain adequate and current records of all Proprietary Information and Company-Related Developments developed by Consultant during Consultant's engagement, which records shall be available to and remain the sole property of the Company at all times.

All files, letters, notes, memoranda, reports, records, data, sketches, drawings, notebooks, layouts, charts, quotations and proposals, specification sheets, program listings, blueprints, models, prototypes, or other written, photographic or other tangible material containing Proprietary Information, whether created by Consultant or others, which come into Consultant's custody, control or possession, are the exclusive property of the Company to be used by Consultant only in the performance of Consultant's duties for the Company. Any property situated on the Company’s premises and owned by the Company, including without limitation computers, disks and other storage media, filing cabinets or other work areas, is subject to inspection by the Company at any time with or without notice. In the event of the termination of Consultant's engagement for any reason, Consultant shall deliver to the Company all files, letters, notes, memoranda, reports, records, data, sketches, drawings, notebooks, layouts, charts, quotations and proposals, specification sheets, program listings, blueprints, models, prototypes, or other written, photographic or other tangible material containing Proprietary Information, and other materials of any nature pertaining to the Proprietary Information of the Company and to Consultant's work, and shall not take or keep in Consultant's possession, or direct any party to do any of the foregoing.

# **Enforcement of Intellectual Property Rights**. Consultant shall cooperate fully with the Company, both during and after Consultant's engagement with the Company, with respect to the procurement, maintenance and enforcement of Intellectual Property Rights in Company-Related Developments. Consultant shall sign, both during and after the term of this Agreement, all papers, including without limitation, copyright applications, patent applications, declarations, oaths, assignments of priority rights, and powers of attorney, which the Company may deem necessary or desirable in order to protect its rights and interests in any Company-Related Development. If the Company is unable, after reasonable effort, to secure Consultant's signature on any such papers, Consultant hereby irrevocably designates and appoints each officer of the Company as Consultant's agent and attorney-in-fact to execute any such papers on Consultant's behalf, and to take any and all actions as the Company may deem necessary or desirable in order to protect its rights and interests in any Company-Related Development.

# **Non-Competition and Non-Solicitation**. Consultant understands and acknowledges that Company’s market for its existing and/or proposed products and/or services is worldwide. Consultant also understands and acknowledges that the competitors of Company’s existing and proposed products and/or services are located worldwide and that geographic boundaries do not define the scope of competition in this field. Further, Consultant understands and acknowledges that, during the course of Consultant's engagement with Company, Consultant shall be given access to and shall help develop Proprietary Information, which if such Proprietary Information were released to the general public or to a competitor, would place Company at a disadvantage with its competitors. Therefore, in order to protect the Company’s Proprietary Information and goodwill, during Consultant's engagement and for a period of twelve (12) months following the termination of Consultant's engagement for any reason (the “Restricted Period”), Consultant shall not engage in any activity that is, or is intended to be, Directly Competitive (as defined below) with those aspects of the Company business with which Consultant was concerned or with respect to which Consultant had access to Proprietary Information during Consultant's engagement with the Company. For the purposes hereof, an activity shall be deemed to be “Directly Competitive” \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. In addition, during the Restricted Period, Consultant shall not, other than for the benefit of the Company, (a) call upon, solicit, divert or take away any of the customers, business or prospective customers of the Company or any of its suppliers, and/or (b) solicit, entice or attempt to persuade any other consultant or any employee of the Company to leave the services of the Company for any reason. Consultant acknowledges and agrees that if Consultant violates any of the provisions of this paragraph 10, the running of the Restricted Period will be extended by the time during which Consultant engages in such violation(s).

# **Government Contracts**. Consultant acknowledges that the Company may have from time-to-time agreements with other persons or with the United States Government or its agencies which impose obligations or restrictions on the Company regarding inventions made during the course of work under such agreements or regarding the confidential nature of such work. Consultant agrees to comply with any such obligations or restrictions upon the direction of the Company. In addition to the rights assigned under paragraph 7, Consultant also assigns to the Company (or any of its nominees) all rights which Consultant has or has acquired in any Developments, full title to which is required to be in the United States under any contract between the Company and the United States or any of its agencies.

# **Prior Agreements**. Consultant hereby represents that, except as Consultant has fully disclosed previously in writing to the Company, Consultant is not bound by the terms of any agreement with any other party to refrain from using or disclosing any trade secret or confidential or proprietary information in the course of Consultant's engagement with the Company or to refrain from competing, directly or indirectly, with the business of such other party. Consultant further represents that Consultant’s performance of all the terms of this Agreement as a consultant of the Company does not and shall not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by Consultant in confidence or in trust prior to Consultant's engagement with the Company. Consultant shall not disclose to the Company or induce the Company to use any confidential or proprietary information or material belonging to any other party. Consultant is solely liable for any breach of this paragraph 12.

# **Remedies Upon Breach**.Consultant understands that the restrictions contained in this Agreement are necessary for the protection of the business and goodwill of the Company and Consultant considers them to be reasonable for such purpose. Any breach or threatened breach of this Agreement, including, but not limited to, the restrictions set forth in paragraph 10 hereof, is likely to cause the Company substantial and irreparable damage. Consultant specifically agrees that the breach or threatened breach of paragraph 10 of this Agreement shall be deemed irreparable harm and therefore, in the event of such breach or threatened breach, theCompany, in addition to such other remedies which may be available at law or in equity, shall be entitled to specific performance and other injunctive relief without the necessity for posting a bond in connection therewith and shall be further entitled to reimbursement of reasonable legal fees and expenses incurred in connection therewith in addition to any other award of damages from the court.

# **Use of Voice, Image and Likeness**.Consultant gives the Company permission to use Consultant's voice, image, or likeness, with or without using Consultant's name, for the purposes of advertising and promoting the Company, or for other purposes deemed appropriate by the Company in its reasonable discretion, except to the extent expressly prohibited by law.

# **Publications and Public Statements**. Consultant shall obtain the Company’s written approval before publishing or submitting for publication any material that relates to Consultant's work at the Company and/or incorporates any Proprietary Information. To ensure that the Company delivers a consistent message about its products, services and operations to the public, and further in recognition that even positive statements may have a detrimental effect on the Company in certain securities transactions and other contexts, any statement about the Company which Consultant creates, publishes or posts during Consultant's period of engagement and for twelve (12) months thereafter, on any media accessible by the public, including but not limited to electronic bulletin boards, Internet-based chat rooms, and social media forums, such as Twitter and Facebook, must first be reviewed and approved in writing by an officer of the Company before it is released in the public domain.

# **Independent Contractor**. This Agreement shall not render the Consultant an employee, partner, agent of, or joint venturer with the Company for any purpose. The Consultant is and shall remain an independent contractor in its relationship with the Company. The Company shall not be responsible for withholding taxes with respect to the Consultant’s compensation hereunder. The Consultant shall have no claim against the Company hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker’s compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

# **No Employment Obligation**. Consultant understands that this Agreement does not create an obligation on theCompany or any other person to employ Consultant.

# **Survival and Assignment by the Company**. Consultant understands that Consultant's obligations under this Agreement shall continue in accordance with its express terms regardless of any changes in Consultant's compensation or benefits or other terms and conditions of Consultant's engagement. Consultant further understands that Consultant's obligations under this Agreement shall continue following the termination of Consultant's engagement regardless of the manner of such termination and shall be binding upon Consultant's heirs, executors and administrators. The Company shall have the right to assign this Agreement to its affiliates, successors and assigns. Consultant expressly consents to be bound by the provisions of this Agreement for the benefit of the Company or any parent, subsidiary or affiliate to whose employ Consultant may be transferred without the necessity that this Agreement be resigned at the time of such transfer.

# **Disclosure to Other Parties**. Consultant permits the Company to disclose this Agreement to any other party to whom Consultant may provide services, either at the present time or in the future.

# **Severability**. In case any provisions (or portions thereof) contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. If, moreover, any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, it shall be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable law as it shall then appear.

# **Choice of Law; Venue; Jurisdiction; and Attorneys' Fees**. This Agreement shall be deemed to be made and entered into in the State of New York, and shall in all respects be interpreted, enforced and governed under the laws of the State of New York, without regard to its conflicts of laws principles. Company and Consultant hereby agree and consent to the exclusive personal jurisdiction of the state and federal courts situated within the County of New York, State of New York for purposes of enforcing this Agreement, and waive any objection that they might have to personal jurisdiction or venue in those courts. The prevailing party in any such lawsuit shall be entitled to recover its reasonable attorneys' fees from the other party in addition to any other award of damages from the court.

# **Notices**. Any notices or other communications required to be given hereunder shall be in writing and shall be validly made to another party if personally served, or if sent by overnight mail by a nationally recognized courier such as United Parcel Service, Federal Express, etc. If such notice, demand or other communication is given by overnight mail, such notice shall be conclusively deemed given one (1) day after deposit thereof with the overnight courier addressed to the party to whom such notice, demand or other communication is to be given as follows:

If to the Consultant: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

If to the Company: COMPANY

With a copy to: Rosenberg Fortuna &

Laitman, LLP

666 Old Country Road

Suite 810

Garden City, NY 11530

Attn: Arthur S. Laitman, Esq.

Any party hereto may change its address for purposes of this paragraph by written notice given in the manner provided above.

# **Headings**. The section headings used in this Agreement are intended for reference purposes only and shall not affect the interpretation of this Agreement.

# **Counterparts**. This Agreement may be executed in counterparts (which may be exchanged by facsimile), each of which shall be deemed an original, but which together shall constitute one and the same instrument.

# **Waiver**. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy under this Agreement shall operate as a waiver thereof.

# **Remedies Not Exclusive**. Except as expressly set forth herein, no remedy hereunder is intended to be exclusive of any other remedy available hereunder or at law or in equity.

# **No Strict Construction**. If an ambiguity or question arises with respect to any provision of this Agreement, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring either party by virtue of authorship of any of the provisions of this Agreement.

# **Acknowledgments**. Consultant acknowledges to Company that Consultant: (i) has reviewed this Agreement with competent counsel of Consultant's choosing before executing this Agreement; (ii) has carefully read and understands the terms of this Agreement; and (iii) has signed this Agreement freely and voluntarily and without duress or coercion and with full knowledge and understanding of its significance and consequences of the terms of this Agreement.

**Additional Conditions:**

**CONSULTANT UNDERSTANDS THAT THIS AGREEMENT AFFECTS IMPORTANT RIGHTS. BY SIGNING BELOW, CONSULTANT CERTIFIES THAT CONSULTANT HAS READ IT CAREFULLY AND UNDERSTANDS IT COMPLETELY.**

**IN WITNESS WHEREOF**,the undersigned has executed this Agreement as a sealed instrument as of the date set forth below.

**CONSULTANT: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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

Type or print name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Social Security Number/Identification Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

To: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

From: COMPANY

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SUBJECT: **Prior Inventions**

The following is a complete list of all inventions or improvements relevant to the subject matter of my engagement by the Company that have been made or conceived or first reduced to practice by me alone or jointly with others prior to my engagement by the Company:

No inventions or improvements

See below:

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

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The following is a list of all patents and patent applications in which I have been named as an inventor:

None

See below:

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

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**SCHEDULE A**

**DUTIES AND FEE**

**DUTIES:** Consultant is knowledgeable and experienced in the discipline of\_\_\_\_\_\_\_\_\_\_ and makes his living by the provision of services in that discipline. The Consultant is willing to perform consulting services for the Company, and the Company desires to retain Consultant to provide consulting services for the Company subject to and in accordance with the terms and conditions set forth herein.

**FEE:** The Company shall pay Consultant during the term of this Agreement for services rendered by Consultant the sum of $\_\_\_\_\_\_\_\_\_\_\_USD per hour/weekly/monthly (the “Fee”) for the performance of duties that are specifically requested and authorized in advance by the Company on an "as required" basis to be determined by the Company. Payment shall be made to Consultant consistent with Company's normal and customary payroll practices. Consultant shall be solely responsible for the payment of any and all taxes which become due and payable as a result of the performance hereunder.