

9. Confidential Information

9.1. For purposes of this Agreement, "Confidential Information" means;

9.1.1. unless otherwise specified in writing by the Company, all information of any nature whatsoever described or otherwise made available by the Company to the Contractor; and

9.1.2. any other information designated as Confidential Information, in writing or verbally, proprietary to the Company relating to its past, present or future research, product, marketing, or business activities including, without limitation, computer programs, code, documentation, algorithms, names, and expertise of employees and consultants, know-how, trade secrets, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical and financial information, product development plans, forecasts, strategies, customer information, customer data or other information.

9.2. Confidential Information does not include, or any of the foregoing items which are;

9.2.1. already known to the Contractor without restriction on use or disclosure prior to first receipt from the Company or become available to the public other than by breach of this Agreement by the Contractor or

9.2.2. released for general disclosure by an official release or announcement made by the Company or

9.2.3. rightfully received by the Contractor from a third party without breach of any obligation of confidentiality and without restriction on subsequent disclosure or

9.2.4. independently developed by the Contractor without access to Confidential Information or

9.2.5. required to be disclosed by a court of competent jurisdiction provided the Company is given prompt prior notice in writing of such requirement and the scope of such disclosure is limited to the extent possible.

9.3. The Contractor agrees to treat as secret and confidential all Confidential Information and to not at any time for any reason disclose or permit to be disclosed to any third party or otherwise make use of or permit to be made use of any Confidential Information and upon termination of this Agreement for whatever reason the Contractor shall deliver up to the Company all working papers, computer disks and tapes or other material and copies provided to, or prepared by him pursuant either to this Agreement, or to any previous obligation owed by the Contractor to the Company.

9.4. The Contractor hereby agrees to be bound by confidentiality undertakings entered into by the Company with its actual or prospective clients, developers, customers, suppliers and other third parties with which it has or intends to have a business relationship, which undertakings may be more onerous than the undertakings in this Agreement, and provided that the Company has given a copy of such confidentiality undertakings to the Contractor, the Contractor will acknowledge in writing that he has received a copy of, and agrees to be bound by, such confidentiality undertakings.

9.5. Upon termination of this Agreement for whatever reason, the Contractor shall promptly return to the Company or destroy (at the Company's sole discretion) any and all materials that incorporate any of the Company's Confidential Information and all copies thereof.

9.6. The Contractor agrees that the obligations of confidentiality contained in this Agreement shall apply and have full force and effect in respect of any and all Confidential Information of which the Contractor becomes aware before, during, and after the duration of this Agreement.

10. Restrictions.

10.1. The Contractor shall;

- 10.1.1. not use Confidential Information for his own use or for any purpose whatsoever including, without limitation, for commercial use or resale, except the Contractor may make use of Confidential Information for carrying out the Services in the manner expressly provided for in this Agreement;
- 10.1.2. not disclose Confidential Information to any third party, individual, corporation or other entity without the prior consent, in writing, of the Company, and the Contractor shall limit disclosure of Confidential Information to only such authorized parties having a need to know such information for carrying out the Services and who have signed nondisclosure agreements in place with obligations no less restrictive than those set forth herein;
- 10.1.3. take all reasonable care, no less than the care the Company takes with respect to its own confidential information, to protect the secrecy of, and avoid the unauthorized disclosure or use of, Confidential Information; and
- 10.1.4. promptly notify the Company, in writing, of any misuse, misappropriation or unauthorized disclosure of Confidential Information that may come to the attention of the Contractor.

11. Remedies.

- 11.1. The Contractor acknowledges his obligations to protect Confidential Information are essential to the business interests of the Company and that disclosure of Confidential Information in breach of this Agreement may cause the Company immediate, substantial and irreparable harm, the value of which would be extremely difficult to determine. Accordingly, the Contractor agrees, in addition to any other remedies that may be available in law, equity or otherwise, that the Company shall be entitled to seek injunctive relief against any such breach or threatened breach of this Agreement.
- 11.2. The provisions of this Clause 11 shall survive termination of this Agreement for whatever cause.

12. Intellectual Property Rights

- 12.1. For the purposes of this Agreement Intellectual Property Rights shall mean; all and/or any intellectual and industrial property rights, including moral rights, (and/or any part thereof) of whatever nature and howsoever arising including but not limited to patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how, goodwill, database rights, domain names and other rights in the nature of or similar to intellectual property rights (whether registered or unregistered and whether vested, contingent and/or future) and all applications for and rights to apply for the same, anywhere in the world including but not limited to all renewals, reversions, revivals, and extensions of all of the foregoing rights.
- 12.2. In the event that any Intellectual Property Rights are created by the Contractor in connection with the provision of Services under this Agreement, the Contractor acknowledges that such worldwide Intellectual Property Rights shall vest absolutely in the Company, and Contractor hereby assigns to the Company all such Intellectual Property Rights which may exist now or at any time in the future in any work created by him (alone or jointly with others) in the course of performing the Services.
- 12.3. At the request and expense of the Company, the Contractor shall do all things and sign all documents reasonably necessary in the opinion of the Company to enable the Company to obtain, defend and enforce its rights in any intellectual property so produced, whether registerable or not and whether patentable or not.
- 12.4. The provisions of this Clause 12 shall survive termination of this Agreement for whatever cause.