**EXAMPLE CORPORATION**

STARTER KIT

*Please be aware that we have prepared these agreements as a generic starting point for you. Although each of the documents has a brief description of its intended use, we recommend that before you use any of these documents, you review it carefully and discuss its terms with a qualified attorney. Using any of these agreements in the wrong situation or without understanding and abiding by its terms may have detrimental and unintended consequences.*

*There are also several places in each document where additional information will be required to customize the document to a given situation, such as providing names and addresses of the parties and selecting one of several alternative provisions; these places have been bracketed ([ ]) and highlighted for your convenience. Furthermore, these sample forms may not have all the protections you or the other party may need or desire.*

*In summary, these forms are only provided as a starting point for documenting business relationships that you may encounter on a regular basis. However, we strongly encourage that you consult with legal counsel in order to understand the implications of using any of these documents in a given situation.*

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| **OFFER LETTER**   1. When Used. Use this letter to offer employment positions to any prospective employee of EXAMPLE CORPORATION (“Company”). This letter may also be used to offer temporary employment by removing the brackets around “temporary” and completing the employment termination date. If this letter is being used for ordinary employment positions, the brackets and references to “temporary” should be removed. ***DO NOT USE THIS AGREEMENT WHEN RETAINING INDEPENDENT CONTRACTORS OR CONSULTANT SERVICES***. 2. To Be Completed Before Signing. Enter the position being filled, to whom the employee should report, the date, and the amount of compensation. Decide upon which employee benefits you wish to list at the end of the second paragraph, and describe commission or bonus plan opportunities, if appropriate.   The third, fourth and fifth paragraphs should either be completed, by filling in the necessary information or indicated blanks, or deleted as appropriate.  With respect to the seventh paragraph, decide whether to include the arbitration paragraph and, if this paragraph will be retained, insert the county in which you wish to have disputes arbitrated. Delete other brackets surrounding proposed text if you wish to retain the text in the letter. Be sure to have the appropriate Company authority sign the letter before mailing to the prospective employee.   1. Signature. To be effective, the prospective employee must return the letter signed and dated to Company and Company must retain a copy in the employee’s personnel file. |

OFFER LETTER

[On Company Letterhead]

[Date]

[Name]

[Address Line]

[Address Line]

**Re: [Temporary] Employment Agreement**

Dear [Name]:

On behalf of EXAMPLE CORPORATION (the “Company”), I am pleased to confirm our verbal offer of [temporary] employment to you for the position of \_\_\_\_\_\_\_\_\_\_\_\_\_, reporting to . This letter sets out the terms of your employment with the Company, which will start on [Month] \_\_\_, 200\_\_ [; we anticipate that your temporary employment with the Company will terminate on or about [date]].

[You will be paid a base salary of $\_\_\_\_\_\_\_ [every two weeks/semi-monthly] (which equals $\_\_\_\_\_\_\_\_ per year), less applicable tax and other withholdings.] OR [Your hourly pay rate will be $\_\_\_\_, less applicable tax and other withholdings, and you will be paid [every two weeks/semi-monthly] in accordance with the Company’s normal payroll procedure.] You will also be eligible to participate in various Company fringe benefit plans, including [list which apply: for example “group health insurance, 401(k), and vacation programs”]. [*Include information concerning commission or bonus plan participation if applicable.*]

[*ADD IF APPLICABLE*] The Company will also assist you in your relocation to the \_\_\_\_\_\_\_\_ area. [Describe specific relocation benefits being offered. Be sure to place a “cap” on the maximum amount available for each relocation benefit.] If you terminate your employment with the Company for any reason within [two years] after your employment start date, you agree to repay the Company the amount of any relocation benefits paid to you pursuant to this paragraph on the date of your termination.

[*ADD IF APPLICABLE*] The Company will pay you a “signing” bonus of $\_\_\_\_\_\_, less applicable tax and other withholdings, after you have successfully completed ninety [90] days employment with the Company. If you terminate your employment with the Company for any reason within [two years] after your employment start date, you agree to repay the Company the amount of your signing bonus on the date of your termination.

[*ADD IF APPLICABLE*] Subject to the approval of the Company’s Board of Directors, you will be granted an option to purchase \_\_\_\_\_ shares of Company common stock under the Company’s [incentive] stock option plan at an exercise price equal to the fair market value of that stock on your option grant date. Your option will vest over a period of [four] years, and will be subject to the terms and conditions of the Company’s stock option plan and standard form of stock option agreement, which you will be required to sign as a condition of receiving the option.

Your employment with the Company is “at will”; it is for no specified term, and may be terminated by you or the Company at any time, with or without cause or advance notice. As a condition of your employment, you will be required to sign the Company’s standard form of employee nondisclosure and assignment agreement, and to provide the Company with documents establishing your identity and right to work in the United States. Those documents must be provided to the Company within three days after your employment start date.

[*ADD OR REMOVE AFTER CONSULTING WITH LEGAL COUNSEL*] In the event of any dispute or claim solely related to or arising out of the termination of your employment with Company for any reason (including, but not limited to, any claims for breach of contract, wrongful termination, or age, sex, race, national origin, disability or other discrimination or harassment), you agree that all such disputes will be fully, finally and exclusively resolved by binding arbitration conducted by the American Arbitration Association in King County, Washington. You and Company hereby waive your respective rights to have any such disputes or claims tried by a judge or jury. This section will not apply to any claims for injunctive relief by Company or you, or to any claims by Company or you arising out of or related to proprietary and intellectual property rights.

This agreement and the non-disclosure [and stock option] agreement[s] referred to above constitute the entire agreement between you and the Company regarding the terms and conditions of your employment, and they supersede all prior negotiations, representations or agreements between you and the Company. The provisions of this agreement regarding “at will” employment [and arbitration] may only be modified by a document signed by you and an authorized representative of the Company.

[Name], we look forward to working with you at the Company. Please sign and date this letter on the spaces provided below to acknowledge your acceptance of the terms of this agreement.

|  |  |
| --- | --- |
|  | Sincerely,  EXAMPLE CORPORATION |
|  |  |
|  | By  [Name]  [Title] |

I agree to and accept employment with EXAMPLE CORPORATION on the terms and conditions set forth in this agreement.

Date: [Month ]\_\_\_, 20\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name]

|  |
| --- |
| **EMPLOYEE NONDISCLOSURE AND ASSIGNMENT AGREEMENT**   1. This agreement is to be signed by employees of EXAMPLE CORPORATION (“Company”) for new or continued employment by Company. For continued employment, Company should have the employee sign this agreement at the time a bonus, a promotion, or some other new or increased “benefit” is provided to the employee by Company. This agreement is intended to be used with the enclosed form of offer letter (or other separate employment agreement that does not already contain terms regarding confidentiality and intellectual property ownership). ***DO NOT USE THIS AGREEMENT WHEN RETAINING INDEPENDENT CONTRACTOR OR CONSULTANT SERVICES***. 2. To Be Completed Before Signing.   Definition of Company’s Business. Complete the definition of the Company’s business in Section 1 of the Agreement.  Exhibit A (“Prior Innovations”) must be completed prior to signing this agreement in accordance with Section 5 (“Disclosure and License of Prior Innovations”). If the employee has no such Prior Innovations, complete the form by checking the box next to “No Such Prior Innovations Exist.” *Do not leave Exhibit A incomplete.*  Non-Competition Clause. With respect to optional provision 9 of this Agreement, consult with an attorney about whether to include the non-compete provision, and the length of the non-competition obligation, if any, for particular employees. Where Company wishes an existing employee to agree to a non-competition clause following the start of that employee’s employment with Company, Company must provide some consideration, such as a bonus, promotion, or other new or increased “benefit” to the employee. We recommend that Company consult with a qualified attorney where it wishes to enter into a non-compete clause with a new or an existing employee.   1. Signature. Have the employee and an authorized representative of the Company sign and date the signature page. Company should retain a copy of this Agreement in the employee’s personnel file and in Company’s records. |

EMPLOYEE NONDISCLOSURE AND ASSIGNMENT AGREEMENT

This Agreement formalizes in writing certain understandings and procedures which have been in effect since the time I was initially employed by EXAMPLE CORPORATION (“Company”).

# Duties. In return for the compensation now and hereafter paid to me, I will perform such duties for Company as the Company may designate from time to time. During my employment with Company, I will devote my best efforts to the interests of Company, will not engage in other employment or in any activities that Company determines to be detrimental to its best interests and will otherwise abide by all of Company’s policies and procedures. For purposes of this Agreement, Company’s business means [DEFINE THE COMPANY’S BUSINESS] (the “Business”). Furthermore, I will not (a) reveal, disclose or otherwise make available to any person any Company password or key, whether or not the password or key is assigned to me or (b) obtain, possess or use in any manner a Company password or key that is not assigned to me. I will use my best efforts to prevent the unauthorized use of any laptop or personal computer, peripheral device, software or related technical documentation that the Company issues to me, and I will not input, load or otherwise attempt any unauthorized use of software in any Company computer, whether or not such computer is assigned to me.

# “Proprietary Information” Definition. “Proprietary Information” includes (a) any information that is confidential or proprietary, technical or non-technical information of Company, including for example and without limitation, information related to Innovations (as defined in Section 4 below), concepts, techniques, processes, methods, systems, designs, computer programs, source documentation, trade secrets, formulae, development or experimental work, work in progress, forecasts, proposed and future products, marketing plans, financial information, business plans, customers and suppliers and any other nonpublic information that has commercial value or (b) any information Company has received from others that Company is obligated to treat as confidential or proprietary, which may be made known to me by Company, a third party or otherwise that I may learn during my employment with Company.

# Ownership and Nondisclosure of Proprietary Information. All Proprietary Information is the sole property of Company, Company’s assigns, Company’s customers and Company’s suppliers, as applicable. Company, Company’s assigns, Company’s customers and Company’s suppliers, as applicable, are the sole and exclusive owners of all patents, copyrights, mask works, trade secrets and other rights in and to the Proprietary Information. I will not disclose any Proprietary Information to anyone outside Company, and I will use and disclose Proprietary Information to those inside Company only as may be necessary in the ordinary course of performing my duties as an employee of Company. If I have any questions as to whether information constitutes Proprietary Information, or to whom, if anyone, inside Company, any Proprietary Information may be disclosed, I will consult with my manager at Company.

# “Innovations” Definition. In this Agreement, “Innovations” means all discoveries, designs, developments, improvements, inventions (whether or not protectable under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protectable under copyright laws), trade secrets, know-how, ideas (whether or not protectable under trade secret laws), mask works, trademarks, service marks, trade names and trade dress.

# Disclosure and License of Prior Innovations. I have listed on Exhibit A (“Prior Innovations”), attached hereto, all Innovations relating in any way to Company’s Business or demonstrably anticipated research and development or business, which were conceived, reduced to practice, created, derived, developed, or made by me prior to my employment with Company (collectively, the “Prior Innovations”). I represent that I have no rights in any such Company-related Innovations other than those Innovations listed on Exhibit A. If nothing is listed on Exhibit A (“Prior Innovations”), I represent that there are no Prior Innovations at the time of signing this Agreement. I hereby grant to Company and Company’s designees a royalty-free, irrevocable, worldwide, fully paid-up license (with rights to sublicense through multiple tiers of sublicensees) to practice all patent, copyright, moral right, mask work, trade secret and other intellectual property rights relating to any Prior Innovations that I incorporate, or permit to be incorporated, in any Innovations that I, solely or jointly with others, conceive, develop or reduce to practice during my employment with Company (the “Company Innovations”). Notwithstanding the foregoing, I will not incorporate, or permit to be incorporated, any Prior Innovations in any Company Innovations without Company’s prior written consent.

# Future Innovations. I will disclose promptly in writing to Company all Innovations conceived, reduced to practice, created, derived, developed, or made by me during the term of my employment and for three (3) months thereafter, whether or not I believe such Innovations are subject to this Agreement, to permit a determination by Company as to whether or not the Innovations should be considered Company Innovations. Company will receive any such information in confidence.

# Disclosure and Assignment of Company Innovations. I will promptly disclose and describe to Company all Company Innovations. I hereby do and will assign to Company or Company’s designee all my right, title, and interest in and to any and all Company Innovations. To the extent any of the rights, title and interest in and to Company Innovations cannot be assigned by me to Company, I hereby grant to Company an exclusive, royalty-free, transferable, irrevocable, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to practice such non-assignable rights, title and interest. To the extent any of the rights, title and interest in and to Company Innovations can neither be assigned nor licensed by me to Company, I hereby irrevocably waive and agree never to assert such non-assignable and non-licensable rights, title and interest against Company or any of Company’s successors in interest.

# Exclusion from Assignment. I understand that my obligation to assign, license or waive a claim with respect to any Innovation must comply with the requirements of RCW 49.44.140. Pursuant to this Washington statute, Section 7 of this Agreement (Disclosure and Assignment of Company Innovations) does not apply to, and I do not assign my rights to any Innovation (whether a Company Innovation or otherwise) when I can prove that: (a) I developed the Innovation entirely on my own time; (b) I did not use Company equipment, supplies, facilities , or trade secret information in its development; (c) the Innovation does not relate (i) directly to the Business of Company, or (ii) to the actual or demonstrably anticipated research or development of Company; and (d) the Innovation does not result from any work performed by me for Company. This Section will be construed to apply to all Innovations with which I am involved from this date forward, as well as all Company Innovations with which I have been involved since my employment with Company began.

# [OPTIONAL] Non-Competition. For a period of [one year] after termination of my employment, I will not directly or indirectly, whether as an owner, director, officer, manager, consultant, agent or employee, accept employment or engage in activities that compete with the Business or with the reasonably anticipated planned product developments of Company as of my termination date. I acknowledge that due to the nature of the Company’s Business, there is no restriction on the geographical scope of my non-competition obligations to Company. I acknowledge that Company competes on a worldwide basis and that the geographical scope of these limitations is reasonable and necessary for the protection of Company’s trade secrets and other Proprietary Information. I further acknowledge that if a court of competent jurisdiction finds this non-competition provision invalid or unenforceable due to unreasonableness in time, geographic scope, or scope of the Business, then such court will interpret and enforce this provision to the maximum extent that such court deems reasonable.

# Cooperation in Perfecting Rights to Innovations. I agree to perform, during and after my employment, all acts that Company deems necessary or desirable to permit and assist Company, at its expense, in obtaining and enforcing the full benefits, enjoyment, rights and title throughout the world in the Innovations as provided to Company under this Agreement. If Company is unable for any reason to secure my signature to any document required to file, prosecute, register or memorialize the assignment of any rights or application or to enforce any right under any Innovations as provided under this Agreement, I hereby irrevocably designate and appoint Company and Company’s duly authorized officers and agents as my agents and attorneys‑in‑fact to act for and on my behalf and instead of me to take all lawfully permitted acts to further the filing, prosecution, registration, memorialization of assignment, issuance, and enforcement of rights under such Innovations, all with the same legal force and effect as if executed by me. The foregoing is deemed a power coupled with an interest and is irrevocable.

# Employment at Will. I acknowledge that my employment will be of indefinite duration and that either Company or I will be free to terminate my employment at any time with or without cause. I also acknowledge that any representations to the contrary are unauthorized and void, unless contained in a formal written employment contract signed by an officer of Company.

# Return of Materials. At any time upon Company’s request, and when my employment with Company is over, I will return all materials (including, without limitation, documents, drawings, papers, diskettes and tapes) containing or disclosing any Proprietary Information (including all copies thereof), as well as any keys, pass cards, identification cards, computers, printers, pagers, personal digital assistants or similar items or devices that the Company has provided to me. I will provide Company with a written certification of my compliance with my obligations under this Section.

# No Violation of Rights of Third Parties. During my employment with Company, I will not (a) breach any agreement to keep in confidence any confidential or proprietary information, knowledge or data acquired by me prior to my employment with Company or (b) disclose to Company, or use or induce Company to use, any confidential or proprietary information or material belonging to any previous employer or any other third party. I am not currently a party, and will not become a party, to any other agreement that is in conflict, or will prevent me from complying, with this Agreement.

# Survival. This Agreement (a) will survive my employment by Company; (b) does not in any way restrict my right to resign or the right of Company to terminate my employment at any time, for any reason or for no reason; (c) inures to the benefit of successors and assigns of Company; and (d) is binding upon my heirs and legal representatives.

# No Solicitation. During my employment with Company and for one (1) year thereafter, I will not solicit, encourage, or cause others to solicit or encourage any employees of Company to terminate their employment with Company.

# No Disparagement. During my employment with Company and after the termination thereof, I will not disparage Company, its products, services, agents or employees.

# Injunctive Relief. I agree that if I violate this Agreement, Company will suffer irreparable and continuing damage for which money damages are insufficient, and Company will be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including money damages if appropriate).

# Notices. Any notice required or permitted by this Agreement will be in writing and will be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when actually delivered; (b) by overnight courier, upon written verification of receipt; (c) by facsimile transmission, upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notices to me will be sent to any address in Company’s records or such other address as I may provide in writing. Notices to Company will be sent to Company’s Human Resources Department or to such other address as Company may specify in writing.

# Governing Law; Forum. This Agreement will be governed by the laws of the United States of America and by the laws of the State of Washington, as such laws are applied to agreements entered into and to be performed entirely within Washington between Washington residents. Company and I each irrevocably consent to the exclusive personal jurisdiction of the federal and state courts located in King County, Washington, as applicable, for any matter arising out of or relating to this Agreement, except that in actions seeking to enforce any order or any judgment of such federal or state courts located in King County, Washington, such personal jurisdiction will be nonexclusive.

# Severability. If a court of law holds any provision of this Agreement to be illegal, invalid or unenforceable, (a) that provision will be deemed amended to provide Company the maximum protection permitted by applicable law and (b) the legality, validity and enforceability of the remaining provisions of this Agreement will not be affected.

# Waiver; Modification. If Company waives any term, provision or breach by me of this Agreement, such waiver will not be effective unless it is in writing and signed by Company. No waiver will constitute a waiver of any other or subsequent breach by me. This Agreement may be modified only if both Company and I consent in writing.

# Entire Agreement. This Agreement represents my entire understanding with Company with respect to the subject matter of this Agreement and supersedes all previous understandings, written or oral.

I certify and acknowledge that I have carefully read all of the provisions of this Agreement and that I understand and will fully and faithfully comply with such provisions.

|  |  |
| --- | --- |
| COMPANY: | EMPLOYEE: |
| EXAMPLE CORPORATION |  |
| By: | By: |
| Title | Title |
| Dated: | Dated: |

Exhibit A

PRIOR INNOVATIONS

Check one of the following:

[ ] NO SUCH PRIOR INNOVATIONS EXIST.

OR

[ ] YES, SUCH PRIOR INNOVATIONS EXIST AS DESCRIBED BELOW (include basic description of each Prior Innovation):

|  |
| --- |
| CONFIDENTIALITY AGREEMENT  (DISCLOSURES **BY** EXAMPLE CORPORATION)   1. When Used. EXAMPLE CORPORATION (“Company”) should use this agreement when it intends to engage in discussions in which Company will be **disclosing** confidential information, **including information that is technical**, to any party. DO **NOT** USE THIS AGREEMENT IF COMPANY WILL BE **RECEIVING** CONFIDENTIAL INFORMATION OF ANOTHER PARTY; IN SUCH SITUATION, USE ONE OF THE MUTUAL CONFIDENTIALITY AGREEMENTS OR THE CONFIDENTIALITY AGREEMENT FOR DISCLOSURES **TO** COMPANY. 2. To Be Completed Before Signing. Fill in the “Effective Date” and the recipient’s name and address, and check the appropriate box identifying whether the recipient is an individual, partnership, limited liability partnership, corporation, or limited liability company. 3. Signature. Have both parties sign the signature page and describe the purpose for the disclosures following the signature block. For disclosures by Company of any tangible materials (documents, manuals, diskettes, tapes, cartridges, drawings, sketches, designs, etc.), you may wish to have the recipient complete a Confidential Materials Release Form (a form of which is also provided) before disclosing the materials. |

CONFIDENTIALITY AGREEMENT

(DISCLOSURES **BY** EXAMPLE CORPORATION)

This Agreement is made and entered into, as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (“Effective Date”), by and between EXAMPLE CORPORATION (“Company”), having a principal place of business at [STREET ADDRESS, CITY, STATE, ZIP], and [RECIPIENT NAME], a(n)  individual,  partnership,  limited liability partnership,  corporation,  limited liability company (check the appropriate box) of the state of \_\_\_\_\_\_\_\_\_\_\_\_, having a principal place of business at [RECIPIENT ADDRESS] (“Recipient”).

# Definition of Confidential Information. “Confidential Information” means (a) any technical and non‑technical information related to the Company’s business and current, future and proposed products and services of Company, including for example and without limitation, information concerning research, development, design details and specifications, financial information, procurement requirements, engineering and manufacturing information, customer lists, business forecasts, sales information, marketing plans and business plans; and (b) any information that may be made known to Recipient and which Company has received from others that Company is obligated to treat as confidential or proprietary, whether or not marked as confidential.

# Nondisclosure and Nonuse Obligations. Recipient will not use, disseminate or in any way disclose any Confidential Information to any person, firm or business, except to the extent necessary for the purpose described below the signatures to this Agreement (the “Purpose”). Furthermore, Recipient may not disclose the existence of any negotiations, discussions or consultations in progress between the parties to any form of public media without the prior written approval of Company. Recipient will treat all Confidential Information with the same degree of care as Recipient accords to Recipient’s own confidential information, but in no case less than reasonable care. Recipient will disclose Confidential Information only to those of its employees who have a need to know such information to assist Recipient with respect to the Purpose. Recipient certifies that each such employee will have agreed, either as a condition of employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those terms and conditions applicable to Recipient under this Agreement. Recipient will immediately give notice to Company of any unauthorized use or disclosure of the Confidential Information. Recipient will assist Company in remedying any such unauthorized use or disclosure of the Confidential Information.

# Exclusions from Nondisclosure and Nonuse Obligations. Recipient’s obligations under Section 2 (Nondisclosure and Nonuse Obligations) will not apply to any Confidential Information that Recipient can document (a) was in the public domain at or subsequent to the time such Confidential Information was communicated to Recipient by Company through no fault of Recipient; (b) was rightfully in Recipient’s possession free of any obligation of confidence at or subsequent to the time such Confidential Information was communicated to Recipient by Company; or (c) was developed by employees, contractors or agents of Recipient independently of and without reference to any Confidential Information. A disclosure of any Confidential Information (i) in response to a valid order by a court or other governmental body or (ii) as otherwise required by law will not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that Recipient will provide prompt prior written notice thereof to Company to enable Company to seek a protective order or otherwise prevent such disclosure.

# Ownership and Return of Confidential Information and Other Materials. All Confidential Information, and any Derivatives (defined below) thereof, whether created by Company or Recipient, will be the property of Company and no license or other rights to Confidential Information or Derivatives is granted or implied hereby. For purposes of this Agreement, “Derivatives” will mean: (a) for copyrightable or copyrighted material, any translation, abridgment, revision or other form in which an existing work may be recast, transformed or adapted; (b) for patentable or patented material, any improvement thereon; and (c) for material protected by trade secret, any new material derived from such existing trade secret material, including new material that may be protected under copyright, patent and/or trade secret laws. Recipient hereby does and will assign to Company all of Recipient’s rights, title in interest and interest in and to the Derivatives. All materials (including, without limitation, documents, drawings, papers, diskettes, tapes, models, apparatus, sketches, designs and lists) that Company furnishes to Recipient (whether or not they contain or disclose Confidential Information) are the property of Company. Within five (5) days after any request by Company, Recipient will destroy or deliver to Company, at Company’s option, (i) all such Company-furnished materials and (ii) all materials in Recipient’s possession or control (even if not Company-furnished) that contain or disclose any Confidential Information. Recipient will provide Company a written certification of Recipient’s compliance with Recipient’s obligations under this Section.

# No Warranty. All Confidential Information is provided “AS IS” and without any warranty, express, implied or otherwise, regarding such Confidential Information’s accuracy or performance. Recipient acknowledges and agrees that Company is not responsible or liable for any decisions made by Recipient in reliance upon disclosures made pursuant to this Agreement.

# No Export. Recipient will obtain any licenses or approvals the U.S. government or any agency thereof requires prior to exporting, directly or indirectly, any technical data acquired from Company pursuant to this Agreement or any product utilizing any such data.

# Term. This Agreement will govern all communications from Company to Recipient that are made from the Effective Date to the date on which either party receives from the other party written notice that subsequent communications will not be so governed; provided, however, that Recipient’s obligations under Section 2 (Nondisclosure and Nonuse Obligations) will continue in perpetuity with respect to Confidential Information of Company that Recipient has previously received unless such obligations no longer apply pursuant to Section 3 (Exclusions from Nondisclosure and Nonuse Obligations).

# No Assignment. Recipient will not assign or transfer any rights or obligations under this Agreement without the prior written consent of Company.

# Injunctive Relief. A breach of this Agreement will cause irreparable and continuing damage to Company for which money damages are insufficient, and Company will be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including money damages if appropriate).

# Notices. Any notice required or permitted by this Agreement will be in writing and will be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when actually delivered; (b) by overnight courier, upon written verification of receipt; (c) by facsimile transmission, upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notice will be sent to the addresses set forth above or to such other address as either party may provide in writing.

# Governing Law; Forum; Legal Fees. This Agreement will be governed in all respects by the laws of the United States of America and by the laws of the State of Washington, as such laws are applied to agreements entered into and to be performed entirely within Washington between Washington residents. Each of the parties irrevocably consents to the exclusive personal jurisdiction of the federal and state courts located in King County, Washington, as applicable, for any matter arising out of or relating to this Agreement, except that in actions seeking to enforce any order or any judgment of such federal or state courts located in King County, Washington, such personal jurisdiction will be nonexclusive. If a proceeding is commenced to resolve any dispute that arises between the parties with respect to the matters covered by this Agreement, the prevailing party in such proceeding will be entitled to receive its reasonable attorneys’ fees, expert witness fees and out‑of‑pocket costs incurred in connection with such proceeding, in addition to any other relief to which such prevailing party may be entitled.

# Severability. If a court of law holds any provision of this Agreement to be illegal, invalid or unenforceable, (a) that provision will be deemed amended to achieve an economic effect that is as near as possible to that provided by the original provision and (b) the legality, validity and enforceability of the remaining provisions of this Agreement will not be affected.

# Waiver; Modification. If Company waives any term, provision or Recipient’s breach of this Agreement, such waiver will not be effective unless it is in writing and signed by Company. No waiver will constitute a waiver of any other or subsequent breach by Recipient. This Agreement may be modified only if authorized representatives of both parties consent in writing.

# Entire Agreement. This Agreement constitutes the entire agreement with respect to the Confidential Information disclosed hereunder and supersedes all prior or contemporaneous agreements concerning such Confidential Information, written or oral.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

|  |  |
| --- | --- |
| “Company”  EXAMPLE CORPORATION  By:  Name:  Title: | “Recipient”  [RECIPIENT NAME]  By:  Name:  Title: |

Purpose:

|  |
| --- |
| CONFIDENTIALITY AGREEMENT  (DISCLOSURES **TO** EXAMPLE CORPORATION)   1. When Used. EXAMPLE CORPORATION (“Company”) should use this agreement when it intends to engage in discussions with another party in which Company is **receiving** confidential information from the other party (the “Disclosing Party”), **including information that is technical**. Do **not** use this agreement if COMPANY will **also** BE **disclosING** COMPANY’s confidential information to Disclosing Party; IN SUCH SITUATION, USE ONE OF THE MUTUAL CONFIDENTIALITY AGREEMENTS. 2. To Be Completed Before Signing. Fill in the “Effective Date” and the discloser’s name and address, and check the appropriate box identifying whether Disclosing Party is an individual, partnership, limited liability partnership, corporation, or limited liability company. 3. Signature. Have both parties sign the signature page. For disclosures to Company of any tangible materials (documents, manuals, diskettes, tapes, cartridges, drawings, sketches, designs, etc.), you may wish to have the discloser complete a Confidential Materials Release Form (a form of which is also provided) before the Company receives the materials. |

CONFIDENTIALITY AGREEMENT  
(DISCLOSURES **TO** EXAMPLE CORPORATION)

This Agreement is made and entered into, as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (“Effective Date”), by and between EXAMPLE CORPORATION (“Company”), having a principal place of business at [ADDRESS, CITY, STATE, ZIP], and [DISCLOSER NAME], a(n)  individual,  partnership,  limited liability partnership,  corporation,  limited liability company (check the appropriate box) of the state of \_\_\_\_\_\_\_\_\_\_\_\_, having a principal place of business at [DISCLOSER ADDRESS] (“Disclosing Party”).

# Definition of Confidential Information. “Confidential Information” means trade secrets, know‑how, inventions, techniques, processes, algorithms, software programs, schematics, software source documents, contracts, customer lists, financial information, sales information and marketing plans concerning Disclosing Party’s business that is valuable, not generally known to the public and disclosed to Company in written form and marked “Confidential” or, if disclosed orally, summarized in writing where such summary is marked “Confidential” and sent to Company no later than thirty (30) days after such disclosure.

# Confidentiality Obligations. Company will use reasonable care to disclose Confidential Information only to those employees or consultants of Company as reasonably necessary for the purpose of evaluating the commercial potential of a business relationship with Disclosing Party and for any other purpose that Disclosing Party may hereafter authorize in writing.

# Exclusions from Nondisclosure and Nonuse Obligations. Company’s obligations under Section 2 (Confidentiality Obligations) will not apply to any Confidential Information that Company can demonstrate (a) was in the public domain at or subsequent to the time such Confidential Information was communicated to Company by Disclosing Party through no fault of Company; (b) was in Company’s possession free of any obligation of confidence at or subsequent to the time such Confidential Information was communicated to Company by Disclosing Party; (c) was developed by employees, contractors or agents of Company independently of and without reference to any Confidential Information; (d) was known to Company at the time of disclosure; or (e) was approved for release by written authorization of Disclosing Party. A disclosure of any Confidential Information (i) in response to a valid order by a court or other governmental body; (ii) as otherwise required by law; or (iii) necessary to establish the rights of either party under this Agreement will not be considered to be a breach of this Agreement; provided, however, that Company will provide prompt prior written notice thereof to Disclosing Party to enable Disclosing Party to seek a protective order or otherwise prevent such disclosure.

# Ownership of Materials. All materials (including, without limitation, documents, drawings, papers, diskettes, tapes, models, apparatus, sketches, designs and lists) that Disclosing Party furnishes to Company, which are designated in writing to be the property of Disclosing Party, are the property of Disclosing Party. Within five (5) days after any written request by Disclosing Party, Company will destroy or deliver to Disclosing Party, at Disclosing Party’s option, all materials it received from Disclosing Party (including any copies thereof).

# Independent Development. Company may currently or in the future be developing information internally, or receiving information from other parties that may be similar to the Confidential Information. Accordingly, nothing in this Agreement will be construed as a representation or inference that Company will not develop or have developed products or services that, without violation of this Agreement, might compete with the products or systems disclosed by the Confidential Information.

# Disclosure of Third Party Information. Disclosing Party will not communicate any information to Company in violation of the proprietary rights of any third party.

# Term. This Agreement will govern all communications from Disclosing Party to Company from the Effective Date and will remain in full force and effect for a period of two (2) years, unless such obligations terminate earlier pursuant to Section 3 (Exclusions from Nondisclosure and Nonuse Obligations).

# Notices. Any notice required or permitted by this Agreement will be in writing and will be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when actually delivered; (b) by overnight courier, upon written verification of receipt; (c) by facsimile transmission, upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notice will be sent to the addresses set forth above or to such other address as either party may provide in writing.

# Governing Law; Forum. This Agreement will be governed in all respects by the laws of the United States of America and by the laws of the State of Washington, as such laws are applied to agreements entered into and to be performed entirely within Washington between Washington residents. Each of the parties irrevocably consents to the exclusive personal jurisdiction of the federal and state courts located in King County, Washington, as applicable, for any matter arising out of or relating to this Agreement, except that in actions seeking to enforce any order or any judgment of such federal or state courts located in King County, Washington, such personal jurisdiction will be nonexclusive.

# Severability. If a court of law holds any provision of this Agreement to be illegal, invalid or unenforceable, (a) that provision will be deemed amended to achieve an economic effect that is as near as possible to that provided by the original provision and (b) the legality, validity and enforceability of the remaining provisions of this Agreement will not be affected thereby.

# Waiver; Modification. If a party waives any term, provision or a party’s breach of this Agreement, such waiver will not be effective unless it is in writing and signed by the party against whom such waiver is asserted. No waiver by a party of a breach of this Agreement by the other party will constitute a waiver of any other or subsequent breach by such other party. This Agreement may be modified only if authorized representatives of both parties consent in writing.

# Entire Agreement. This Agreement constitutes the entire agreement with respect to the Confidential Information disclosed hereunder and supersedes all prior or contemporaneous agreements concerning such Confidential Information, written or oral

# IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

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| “Company”  EXAMPLE CORPORATION  By:  Name:  Title: | “Disclosing Party”  [DISCLOSER NAME]  By:  Name:  Title: |

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| MUTUAL CONFIDENTIALITY AGREEMENT WITH SUPPLEMENT   1. When Used. EXAMPLE CORPORATION (“Company”) should use this agreement when either Company and another party will **both** **disclose** confidential information, including technical information, pursuant to a Supplement, the form of which is attached to this agreement, that identifies the specific confidential information that each party proposes to disclose to the other, subject to advance consent by the recipient of the confidential information. 2. To Be Completed Before Signing. Fill in the Effective Date, the other party’s (“Other Party’s”) name and address, check the appropriate box identifying whether the Other Party is an individual, partnership, limited liability partnership, corporation, or limited liability company, and complete the Supplement. 3. Signature. Have the Other Party sign the signature page. |

MUTUAL NON-DISCLOSURE AGREEMENT

This Agreement is made and entered into, as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, (“Effective Date”) by and between EXAMPLE CORPORATION, with a principal place of business at [ADDRESS, CITY, STATE ZIP] ("Company"), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a(n)   individual,   partnership,   limited liability partnership,   corporation,   limited liability company (check the appropriate box) of the state of \_\_\_\_\_\_\_\_\_\_\_\_, having a principal place of business at [ADDRESS] (“Other Party”).

The parties are engaged in discussions that may result in a business relationship or transaction. The parties desire to disclose confidential and proprietary information (“Confidential Information”) in order to assist one another in evaluating the possible relationship or transaction. Each party will make the disclosures only if the other party agrees to maintain the confidentiality of its Confidential Information.

1. Disclosure. Neither party (a “Disclosing Party”) will disclose Confidential Information to the other party (a “Recipient”) until the subject matter of such disclosure has been described in a “Supplement” to this Agreement, signed by the parties prior to the disclosure. Each Supplement will contain a description of the Confidential Information to be disclosed and the purpose for such disclosure (the "Project") written in a non-confidential manner. Any additional terms and conditions for the particular disclosure of Confidential Information beyond the terms and conditions contained in this Agreement will be specified in the applicable Supplement pertaining to such additional terms and conditions of the particular disclosure. Each Supplement will be substantially in the form attached hereto as Exhibit A, and will be incorporated into this Agreement by this reference. The parties acknowledge and agree that the amount of Confidential Information to be disclosed resides solely in the discretion of the Disclosing Party and that disclosure of Confidential Information of any nature will not obligate the Disclosing Party to disclose any further Confidential Information.

2. Duty of Non-Disclosure. A Recipient will not use, disseminate, or in any way disclose any Confidential Information of Disclosing Party to any person, firm or business, except to the extent necessary to evaluate the contemplated relationship or transaction. Recipient will treat all Confidential Information of Disclosing Party with the same degree of care as it accords to its own Confidential Information, but in no case less than reasonable care. Recipient will disclose Confidential Information of the Disclosing Party only to those of Recipient’s employees who need to know such information, and will not disclose it to any other parties, including subsidiaries or associated companies, without express, written consent of Disclosing Party. Recipient certifies that Recipient’s employees have previously agreed, either as a condition of employment or in order to obtain the Confidential Information of Disclosing Party, to be bound by terms and conditions substantially similar to, but in no case less restrictive than, those terms and conditions applicable to such Recipient under this Agreement. Recipient will employ all reasonable steps to protect the Disclosing Party’s Confidential Information from unauthorized or inadvertent disclosure or use, including, without limitation, all steps that it takes to protect its own Confidential Information. In the event Recipient proposes to disclose Confidential Information to an unaffiliated consultant or agent, it will obtain the written consent of Disclosing Party and arrange for the execution by the consultant or agent of a nondisclosure agreement in a form satisfactory to Disclosing Party.

3. Duty to Mark Confidential Information. A Disclosing Party will mark all Confidential Information provided in a tangible form to Recipient in a manner that indicates such materials are Confidential Information, and subject to the limited use and non-disclosure obligations provided in this Agreement. If Disclosing Party provides Confidential Information orally, then Disclosing Party will summarize such Confidential Information in a writing and mark such summary as “Confidential,” and send the marked summary to Recipient no later than thirty (30) days following such oral disclosure.

4. Exceptions. Recipient will have no obligation to keep confidential Confidential Information that (a) is known to Recipient prior to receipt from Disclosing Party, directly or indirectly, from a source other than one having any obligation of confidentiality to Disclosing Party, (b) becomes known (independently of disclosure by Disclosing Party) to Recipient, directly or indirectly, from a source other than one having an obligation of confidentiality to Disclosing Party, (c) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by Recipient, or (d) Recipient can demonstrate was developed by Recipient independently of and without reference to any Confidential Information disclosed to it by Disclosing Party. A disclosure of any portion of Confidential Information, either (i) in response to a valid order by a court or other governmental body, or (ii) otherwise as required by law, will not be considered to be a breach of this Agreement, provided, however, that Recipient will provide prompt prior written notice thereof to Disclosing Party to enable Disclosing Party to seek a protective order or otherwise prevent such disclosure. Any such disclosure by Recipient of the Confidential Information of Disclosing Party, will, in no way, be deemed to change, affect or diminish the confidential and proprietary status of such Confidential Information.

5. No Warranties. The parties acknowledge and agree that a Disclosing Party supplies Confidential Information on an “AS IS” basis and without express or implied warranties of any kind. The parties further acknowledge and agree that neither party is responsible nor liable for any business decision made by the other in reliance on disclosures made pursuant to this Agreement.

6. Ownership and Return of Confidential Information. Confidential Information will be deemed the property of Disclosing Party and nothing in this Agreement will be construed as conferring any rights upon Recipient, by license or otherwise, in any Confidential Information. Upon request from Disclosing Party at any time, Recipient will, at Disclosing Party’s option, return or destroy all Confidential Information to Recipient no later than five (5) days following such a request, and certify such destruction or return in writing to Disclosing Party.

7. Independent Development. Disclosing Party understands that Recipient may currently or in the future be developing information internally, or receiving information from other parties that may be similar to Disclosing Party’s Confidential Information. Nothing in this Agreement will be construed as a representation or inference that Recipient will not develop products or services, or have products or services developed for it that, without violation of this Agreement, compete with the products or systems contemplated by Disclosing Party’s Confidential Information.

8. Disclosure of Third Party Information. The Disclosing Party will not communicate any information to Company in violation of the proprietary rights of any third party.

9. Injunctive Relief. The parties acknowledge and agree that monetary damages would not be a sufficient remedy for any breach of obligations under this Agreement and that a Disclosing Party will be entitled to injunctive relief as a remedy for any such breach by the Recipient. Such remedy will not be deemed the exclusive remedy for a breach of Recipient’s obligations under this Agreement, but will be in addition to all other available legal and equitable remedies.

10. Term. This Agreement will govern all communications between Disclosing Party and Recipient from the Effective Date and remain in full force and effect for five (5) years.

11. Binding Effect. This Agreement will benefit and be binding upon the parties and their respective successors and assigns.

12. Governing Law; Venue. This Agreement will be governed by, and construed in accordance with the laws of the State of Washington without giving effect to any conflict of laws principles to the contrary. Venue for any disputes arising under this Agreement will lie exclusively in the state or federal courts located in King County, Washington. The parties irrevocably waive any right to raise *forum non conveniens* or any other argument that King County, Washington is not the proper venue, and irrevocably consent to personal jurisdiction in the state and federal courts of Washington.

13. Attorneys Fees. The prevailing party in any such action will be entitled to recover its reasonable attorney fees and costs in such action and upon any appeals.

14. Non-Waiver; Modification. No failure or delay by either party in exercising any right, power, or remedy under this Agreement will operate as a waiver of any such right, power or remedy. No waiver or modification of any provision of this Agreement will be effective unless in writing and signed by both parties.

15. Entire Agreement. This Agreement, together with the Supplements, constitutes the entire agreement with respect to the Confidential Information disclosed hereunder and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information.

IN WITNESS WHEREOF, the parties through their duly authorized representatives have executed this Agreement as of the Effective Date.

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| “Company”  EXAMPLE CORPORATION  By:  Name:  Title: | “Other Party”  [OTHER PARTY]  By:  Name:  Title: |

**Exhibit A**

Supplement No. \_\_

To Mutual Non-Disclosure Agreement Between EXAMPLE CORPORATION and Other Party

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| --- | --- |
| **Name and Address of**  **EXAMPLE CORPORATION Contact** | **Name and Address of**  **Contact at Other Party** |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  STREET ADDRESS  CITY, STATE, ZIP | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| EXAMPLE CORPORATION | Other Party |
| Tel : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Tel: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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Effective Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Ending Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**1. Confidential Information**

(a) EXAMPLE CORPORATION may disclose Confidential Information pertaining to:

(b) Other Party may disclose Confidential Information pertaining to

**2. Purpose of Disclosure (the "Project"):**

**3. Additional Terms and Conditions:**

Accepted by:

EXAMPLE CORPORATION OTHER PARTY

By: By:

Name: Name:

Title: Title:

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| MUTUAL CONFIDENTIALITY AGREEMENT (LONG FORM)   1. When Used. EXAMPLE CORPORATION (“Company”) should use this agreement when Company and another party will **both** **disclose** to the other party any of such disclosing party’s confidential information, **including information that is technical**. 2. To Be Completed Before Signing. Fill in the “Effective Date” and the other party’s name and address, and check the appropriate box identifying whether the other party is an individual, partnership, limited liability partnership, corporation or limited liability company. 3. Description of “Confidential Information.” Company must select one of three options in Section 1 for describing what constitutes “Confidential Information” based on the Company’s role as both a recipient and a discloser of confidential information. In order for the Company to understand more fully the impact of each of these options, we have provided the options in declining order of protection to Company from the perspective of Company **in the position of a “Recipient”** **more so than a “Disclosing Party**.” That is, if Company were receiving “Confidential Information,” Company would be most protected if the Disclosing Party were required to mark all information that Disclosing Party wanted Company to treat as confidential under this agreement. On the other hand, Company would have greater obligations (and therefore, less protection) if Disclosing Party’s information could be considered confidential simply by the circumstances of disclosure. 4. Signature. Have both parties sign the signature page and describe the purpose for the disclosures following the signature block. For disclosures by or to Company of any tangible materials (documents, manuals, diskettes, tapes, cartridges, drawings, sketches, designs, etc.), each party may wish to have the other complete a Confidential Materials Release Form (a form of which is also provided) before disclosing or receiving (as applicable) the materials. |

MUTUAL CONFIDENTIALITY AGREEMENT (LONG FORM)

This Agreement is made and entered into, as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (“Effective Date”), by and between EXAMPLE CORPORATION (“Company”), having a principal place of business at [STREET ADDRESS, CITY, STATE, ZIP], and [OTHER PARTY NAME], a(n)  individual,  partnership,  limited liability partnership,  corporation,  limited liability company (check the appropriate box) of the state of \_\_\_\_\_\_\_\_\_\_\_\_, having a principal place of business at [OTHER PARTY ADDRESS] (“Other Party”).

# Definition of Confidential Information. “Confidential Information” means (a) any technical and non‑technical information related to a party’s business and current, future and proposed products and services of each of the parties, including for example and without limitation, each party’s respective information concerning research, development, design details and specifications, financial information, procurement requirements, engineering and manufacturing information, customer lists, business forecasts, sales information and marketing plans and (b) any information a party has received from others that may be made known to the other party and which such party is obligated to treat as confidential or proprietary; provided, however, that any such information disclosed by a party to this Agreement (the “Disclosing Party”) will be considered Confidential Information of Disclosing Party by the other party (the “Recipient”), only if such information **[OPTION 1:** (i) is provided as information fixed in tangible form or in writing (e.g., paper, disk or electronic mail), is conspicuously designated as “Confidential” (or with some other similar legend) or (ii) if provided orally, is identified as confidential at the time of disclosure and confirmed in writing within thirty (30) days of disclosure**] [OPTION 2:** is identified at the time of disclosure as “Confidential” (or with some other similar legend)**] [OPTION 3:** would be considered confidential based on the circumstances surrounding its disclosure by a reasonable person familiar with the Disclosing Party’s business and the industry in which Disclosing Party operates**]**.

# Nondisclosure and Nonuse Obligations. Recipient will not use, disseminate, or in any way disclose any of Disclosing Party’s Confidential Information to any person, firm or business, except to the extent necessary for the purpose described below the signatures to this Agreement (the “Purpose”). Furthermore, neither party may disclose the existence of any negotiations, discussions or consultations in progress between the parties to any form of public media without the prior written approval of the other party. Recipient will treat all of Disclosing Party’s Confidential Information with the same degree of care as Recipient accords to Recipient’s own Confidential Information, but not less than reasonable care. Recipient will disclose Disclosing Party’s Confidential Information only to those of Recipient’s employees, consultants and contractors who need to know such information. Recipient certifies that each such employee, consultant and contractor will have agreed, either as a condition to employment or in order to obtain Disclosing Party’s Confidential Information, to be bound by terms and conditions substantially similar to those terms and conditions applicable to Recipient under this Agreement. Recipient will immediately give notice to Disclosing Party of any unauthorized use or disclosure of Disclosing Party’s Confidential Information. Recipient will assist Disclosing Party in remedying any such unauthorized use or disclosure of Disclosing Party’s Confidential Information.

# Exclusions from Nondisclosure and Nonuse Obligations. Recipient’s obligations under Section 2 (Nondisclosure and Nonuse Obligations) will not apply to any of Disclosing Party’s Confidential Information that Recipient can document: (a) was in the public domain at or subsequent to the time such Confidential Information was communicated to Recipient by Disclosing Party through no fault of Recipient; (b) was rightfully in Recipient’s possession free of any obligation of confidence at or subsequent to the time such Confidential Information was communicated to Recipient by such Disclosing Party; (c) was developed by employees or agents of Recipient independently of and without reference to any of Disclosing Party’s Confidential Information; or (d) was communicated by Disclosing Party to an unaffiliated third party free of any obligation of confidence. A disclosure by Recipient of any of Disclosing Party’s Confidential Information (i) in response to a valid order by a court or other governmental body; (ii) as otherwise required by law; or (iii) necessary to establish the rights of either party under this Agreement will not be considered to be a breach of this Agreement by such Recipient; provided, however, such Recipient will provide prompt prior written notice thereof to such Disclosing Party to enable Disclosing Party to seek a protective order or otherwise prevent such disclosure.

# Ownership and Return of Confidential Information and Other Materials. All of Disclosing Party’s Confidential Information, and any Derivatives (defined below) thereof, whether created by such Disclosing Party or Recipient, are the property of Disclosing Party and no license or other rights to such Disclosing Party’s Confidential Information or Derivatives is granted or implied hereby. For purposes of this Agreement, “Derivatives” will mean: (a) for copyrightable or copyrighted material, any translation, abridgment, revision or other form in which an existing work may be recast, transformed or adapted; (b) for patentable or patented material, any improvement thereon; and (c) for material that is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected under copyright, patent and/or trade secret laws. All materials (including, without limitation, documents, drawings, papers, diskettes, tapes, models, apparatus, sketches, designs and lists) furnished by Disclosing Party to Recipient (whether or not they contain or disclose Disclosing Party’s Confidential Information) are the property of such Disclosing Party. Within five (5) days after any request by Disclosing Party, Recipient will destroy or deliver to Disclosing Party, at Disclosing Party’s option, (i) all such Disclosing Party-furnished materials and (ii) all materials in Recipient’s possession or control (even if not Disclosing Party-furnished) that contain or disclose any of such Disclosing Party’s Confidential Information. Recipient will provide Disclosing Party a written certification of Recipient’s compliance with Recipient’s obligations under this Section.

# Independent Development. Recipient may currently or in the future be developing information internally, or receiving information from other parties that may be similar to such Disclosing Party’s Confidential Information. Accordingly, nothing in this Agreement will be construed as a representation or inference that Recipient will not develop or have developed products or services, that, without violation of this Agreement, might compete with the products or systems contemplated by such Disclosing Party’s Confidential Information.

# Disclosure of Third Party Information. Neither party will communicate any information to the other in violation of the proprietary rights of any third party.

# No Warranty. All Confidential Information is provided by Disclosing Party “AS IS” and without any warranty, express, implied or otherwise, regarding such Confidential Information’s accuracy or performance. Recipient acknowledges and agrees that Disclosing Party will not be responsible or liable for any decisions made by Recipient in reliance upon disclosures made pursuant to this Agreement.

# No Export. Recipient will obtain any licenses or approvals the U.S. government or any agency thereof requires prior to exporting, directly or indirectly, any technical data acquired from Disclosing Party pursuant to this Agreement or any product utilizing any such data.

# Term. This Agreement will govern all communications between the parties from the Effective Date and remain in full force and effect for a period of five (5) years; provided, however, that a Recipient’s obligations under Section 2 (Nondisclosure and Nonuse Obligations) will continue in perpetuity with respect to the Disclosing Party’s Confidential Information that such Recipient has previously received unless such obligations no longer apply pursuant to Section 3 (Exclusions from Nondisclosure and Nonuse Obligations).

# No Assignment. Neither party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld.

# Injunctive Relief. A breach by Recipient of this Agreement will cause irreparable and continuing damage to Disclosing Party for which money damages are insufficient, and Disclosing Party will be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including money damages if appropriate).

# Notices. Any notice required or permitted by this Agreement will be in writing and will be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when delivered personally; (b) by overnight courier, upon written verification of receipt; (c) by or facsimile transmission, upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notice will be sent to the addresses set forth above or to such other address as either party may provide in writing.

# Governing Law; Forum. This Agreement will be governed in all respects by the laws of the United States of America and by the laws of the State of Washington, as such laws are applied to agreements entered into and to be performed entirely within Washington between Washington residents. Each of the parties irrevocably consents to the exclusive personal jurisdiction of the federal and state courts located in King County, Washington, as applicable, for any matter arising out of or relating to this Agreement, except that in actions seeking to enforce any order or any judgment of such federal or state courts located in King County, Washington, such personal jurisdiction will be nonexclusive.

# Severability. If a court of law holds any provision of this Agreement to be illegal, invalid or unenforceable, (a) that provision will be deemed amended to achieve an economic effect that is as near as possible to that provided by the original provision and (b) the legality, validity and enforceability of the remaining provisions of this Agreement will not be affected thereby.

# Waiver; Modification. If a party waives any term, provision or a party’s breach of this Agreement, such waiver will not be effective unless it is in writing and signed by the party against whom such waiver is asserted. No waiver by a party of a breach of this Agreement by the other party will constitute a waiver of any other or subsequent breach by such other party. This Agreement may be modified only if authorized representatives of both parties consent in writing.

# Entire Agreement. This Agreement constitutes the entire agreement with respect to the Confidential Information disclosed hereunder and supersedes all prior or contemporaneous agreements concerning such Confidential Information, written or oral.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

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| --- | --- |
| “Company”  EXAMPLE CORPORATION  By:  Name:  Title: | “Other Party”  [OTHER PARTY NAME]  By:  Name:  Title: |

Purpose:

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| MUTUAL CONFIDENTIALITY AGREEMENT (SHORT FORM)  1. When Used. EXAMPLE CORPORATION (“Company”) should use this form when either (a) Company and another party will **both** **disclose** to the other party any of such disclosing party’s confidential information **and none of the information to be disclosed is technical**, **or** (b) when Company is **receiving** confidential information from another party who desires Company to sign a confidentiality agreement, and will not accept Company’s form titled “Confidentiality Agreement (Disclosures to Company).”  2. To Be Completed Before Signing. Fill in the “Effective Date” and the other party’s name and address, and check the appropriate box identifying whether the other party is an individual, partnership, limited liability partnership, corporation or limited liability company.  3. Signature. Have both parties sign the signature page. For disclosures by or to Company of any tangible materials (documents, manuals, diskettes, tapes, cartridges, drawings, sketches, designs, etc.), each party may wish to have the other complete a Confidential Materials Release Form (a form of which is also provided) before disclosing or receiving (as applicable) the materials. |

# MUTUAL CONFIDENTIALITY (SHORT FORM)

# This Agreement is made and entered into, as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (“Effective Date”), by and between EXAMPLE CORPORATION (“Company”), having a principal place of business at [STREET ADDRESS, CITY, STATE, ZIP], and [OTHER PARTY NAME], a(n)  individual,  partnership,  limited liability partnership,  corporation,  limited liability company (check the appropriate box) of the state of \_\_\_\_\_\_\_\_\_\_\_\_, having a principal place of business at [OTHER PARTY ADDRESS] (“Other Party”)

# Definitions. Company and Other Party recognize that there is a need to disclose to one another certain confidential information of each party for the purposes of evaluating whether to enter into a business relationship, and if they do, in carrying out their rights and obligations under that business relationship (the “Business Purpose”), and to protect such confidential information from unauthorized use and disclosure. The term “Confidential Information” will mean any confidential, proprietary and trade secret information of the disclosing party which is (a) delivered in a tangible form that bears a “confidential,” “proprietary,” “secret,” or similar legend, and (b) discussions relating to such information, whether those discussions occur concurrent with, or following disclosure of the information.

# Obligations of Receiving Party. For two (2) years following initial disclosure of any Confidential Information, the receiving party (“Recipient”) will (a) hold the other party’s (“Disclosing Party”) Confidential Information in confidence, (b) not disclose the Confidential Information to third parties, and (c) not use any Confidential Information for any purpose except for the Business Purpose. The Recipient will treat all of Disclosing Party’s Confidential Information with at least the same degree of care that it uses to protect its own confidential and proprietary information, but no less than a reasonable degree of care under the circumstances. The Recipient may disclose the Confidential Information to its employees and contractors with a bona fide need to know in order to fulfill the Business Purpose, and who have signed a nondisclosure agreement at least as protective of the disclosing party’s rights as those terms and conditions applicable to Recipient under this Agreement; provided that it is understood that barring a separate written agreement, access to Disclosing Party’s Confidential Information will not restrict Recipient’s assignment of any employees or contractors or restrict in any way Recipient’s product plans. The Recipient will not make any copies of the Confidential Information received from Disclosing Party except as necessary for its employees and contractors with a need to know to carry out the Business Purpose. Any copies which are made will be identified as belonging to the disclosing party and marked “confidential” or with a similar legend.

# Exclusions from Obligation of Confidentiality. The Recipient will not be liable for the use or disclosure of any Confidential Information which: (a) is now, or hereafter becomes, through no act or failure to act on the part of Recipient, generally known or available to the public; (b) is rightfully acquired by Recipient before receiving the information from Disclosing Party and without restriction as to use or disclosure; (c) is hereafter rightfully furnished to Recipient by a third party, without restriction as to use or disclosure; (d) is independently developed by employees of Recipient without reference to Disclosing Party’s Confidential Information; or (e) is generally made available to third parties by Disclosing Party without restriction on disclosure. A disclosure by Recipient in response to either a valid order by a court or other governmental body, or as otherwise required by law, will not be considered to be a breach of this Agreement; provided that Recipient provided Disclosing Party prompt prior written notice of the intended disclosure sufficient to enable Disclosing Party to seek a protective order or otherwise prevent such disclosure, and provided further that Recipient provides all cooperation to Disclosing Party at Disclosing Party’s request and expense to prevent such disclosure.

# No Obligation of Disclosure. Neither party has any obligation to disclose Confidential Information to the other. Either party may, at any time: (a) cease giving Confidential Information to the other party without any liability, and/or (b) request in writing the return of all or part of its Confidential Information previously disclosed, and all copies thereof, and Recipient will promptly comply with such request. Recipient will provide Disclosing Party written certification of Recipient’s compliance with Recipient’s obligations under this Section within thirty (30) days of such request.

# Termination. Either party may terminate this Agreement at any time without cause upon written notice to the other party and Recipient’s rights to use or disclose any of Disclosing Party’s Confidential Information will terminate; provided that each party’s obligations with respect to Confidential Information disclosed during the term of this Agreement will survive any termination or expiration of this Agreement.

# Ownership. All Confidential Information of each party, as Disclosing Party, will remain the property of such party and no license or other rights to such party’s Confidential Information is granted or implied hereby.

# Warranty. All Confidential Information is provided “AS IS” and without any warranty, express, implied or otherwise, regarding such Confidential Information’s completeness, accuracy or performance. Recipient acknowledges and agrees that Disclosing Party will not be responsible or liable for decisions made by Recipient in reliance upon disclosures made pursuant to this Agreement.

# Injunctive Relief. A breach by Recipient of any of the promises or agreements contained herein may result in irreparable and continuing damage to Disclosing Party for which there will be no adequate remedy at law, and Disclosing Party will be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including monetary damages if appropriate).

9. General. Neither party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party, and any attempted assignment or transfer without such prior written consent will be null and void. If any provision of this Agreement is held by a court of law to be illegal, invalid or unenforceable that provision will be deemed amended to achieve an economic effect that is as near as possible to that provided by the original provision. This Agreement will be governed by the laws of the State of Washington without reference to conflict of laws principles. Each of the parties irrevocably consents to the exclusive personal jurisdiction of the federal and state courts located in King County, Washington, as applicable, for any matter arising out of or relating to this Agreement. Recipient will obtain any licenses or approvals the U.S. government or any agency thereof requires prior to exporting, directly or indirectly, any technical data acquired from Disclosing Party pursuant to this Agreement or any product utilizing any such data. This Agreement constitutes the entire agreement with respect to the Confidential Information disclosed hereunder and supersedes any and all prior or contemporaneous oral or written agreements, negotiations, communications, understandings and terms, whether express or implied regarding the Confidential Information. No subsequent alteration, waiver, amendment, change or addition to this Agreement (“Amendment”) will be binding and valid unless in writing and signed by the parties, and then such Amendment will be effective only in the specific instance and for the specific purpose stated.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

|  |  |
| --- | --- |
| “Company”  EXAMPLE CORPORATION  By:  Name:  Title: | “Other Party”  [OTHER PARTY NAME]  By:  Name:  Title: |

|  |
| --- |
| **CONFIDENTIAL MATERIALS RELEASE FORM**   1. When Used. EXAMPLE CORPORATION (“Company”) may wish to use this form to **track** all tangible confidential material that Company **discloses to** or **receives from** a third party. Use this form in conjunction with any Confidentiality Agreement under which Company will be disclosing or receiving confidential information, whether the agreement is provided by Company or provided by the receiving party. Such a tracking system is useful for determining precisely what information was given to whom. For example, at the termination of a confidential relationship, most contracts require the return or destruction of all disclosed materials. This tracking system can help track the accomplishment of that obligation. In addition, such a system can be useful in future infringement scenarios. |

CONFIDENTIAL MATERIALS RELEASE FORM

To:

From:

Date:

Contact Person:

All materials released under this form are covered by the terms and conditions of:

Name of Contract:

Date of Contract:

Description of Materials Released:

Additional Restrictions and Comments:

Acknowledged and Agreed to by:

EXAMPLE CORPORATION Accepting Party:

Date: Date:

Signature Signature

Print Name Print Name

Please sign above, print name and date and return to:

EXAMPLE CORPORATION

STREET ADDRESS

CITY, STATE, ZIP

|  |
| --- |
| **INDEPENDENT CONTRACTOR**  **SERVICES AGREEMENT**   1. When Used. This agreement is to be used by EXAMPLE CORPORATION (“Company”) **when contracting to receive services to be performed by a third party**, including technical services. The services to be performed would be described in the Project Assignments in Exhibit A. 2. To Be Completed Before Signing. Fill in the “Effective Date,” and the independent contractor’s (“Contractor”) name and address, and check the appropriate box identifying whether Contractor is an individual, partnership, limited liability partnership, corporation, or limited liability company. Fill in the date the agreement terminates in Section 9. Meet with the manager responsible for overseeing Contractor’s project and complete the Project Assignment form in Exhibit A. 3. Signature. Contractor must sign the signature page and all Project Assignments. 4. Indemnity. The agreement does not require Contractor to indemnify Company for intellectual property infringement claims, but there is a limited indemnity in Section 8. If Company desires to include a provision whereby Contractor would indemnify Company for infringement or any other claims, please contact [LAWYER AND/OR LAWFIRM] for further assistance. 5. Confidentiality. The agreement contains a confidentiality provision so there is no need to sign a separate confidentiality agreement with the contractor. If a separate confidentiality agreement has already been signed, the provisions of this agreement, as drafted, will supersede the prior agreement. |

INDEPENDENT CONTRACTOR SERVICES AGREEMENT

This Agreement is made and entered into, as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (“Effective Date”), by and between EXAMPLE CORPORATION (“Company”), having a principal place of business at [STREET ADDRESS, CITY, STATE, ZIP], and [CONTRACTOR NAME], a(n)  individual,  partnership,  limited liability partnership,  corporation,  limited liability company (check the appropriate box) of the state of \_\_\_\_\_\_\_\_\_\_\_\_, having a principal place of business at [CONTRACTOR ADDRESS] (“Contractor”).

# Engagement of Services. Company may issue Project Assignments to Contractor in the form attached to this Agreement as Exhibit A (Project Assignment). A Project Assignment will become binding when both parties have signed it and once signed, Contractor will be obligated to provide the services as specified in such Project Assignment. The terms of this Agreement will govern all Project Assignments and services undertaken by Contractor for Company. Contractor will not subcontract or otherwise delegate performance of any work to third parties (“Subcontractors”) without, in each instance, first executing an agreement with each Subcontractor that contains (a) confidentiality provisions substantially similar to Contractor’s confidentiality obligations under this Agreement, and (b) intellectual property rights provisions that, among other things, assign all Company Innovations (defined below) resulting from such Subcontractor’s work to Contractor. Company will have the right to approve the form of such confidentiality and assignment agreements between Contractor and Subcontractors, or to provide its own form of agreement for execution by Subcontractors. Upon request by Company, Contractor will provide copies of all confidentiality and proprietary rights assignment agreements executed by Subcontractors performing services for Company’s benefit.

# Compensation; Timing. Company will pay Contractor the fee set forth in each Project Assignment for the services provided as specified in such Project Assignment. If provided for in the Project Assignment, Company will reimburse Contractor’s expenses no later than thirty (30) days after Company’s receipt of Contractor’s invoice, provided that reimbursement for expenses may be delayed until such time as Contractor has furnished reasonable documentation for authorized expenses as Company may reasonably request. Upon termination of this Agreement for any reason, Contractor will be (a) paid fees on the basis stated in the Project Assignment(s) and (b) reimbursed only for expenses that are incurred prior to termination of this Agreement and which are either expressly identified in a Project Assignment or approved in advance in writing by an authorized Company manager.

# Independent Contractor Relationship. Contractor’s relationship with Company is that of an independent contractor, and nothing in this Agreement is intended to, or will be construed to, create a partnership, agency, joint venture, employment or similar relationship. Contractor will not be entitled to any of the benefits that Company may make available to its employees, including, but not limited to, group health or life insurance, profit‑sharing or retirement benefits. Contractor is not authorized to make any representation, contract or commitment on behalf of Company unless specifically requested or authorized in writing to do so by a Company manager. Contractor is solely responsible for, and will file, on a timely basis, all tax returns and payments required to be filed with, or made to, any federal, state or local tax authority with respect to the performance of services and receipt of fees under this Agreement. Contractor is solely responsible for, and must maintain adequate records of, expenses incurred in the course of performing services under this Agreement. No part of Contractor’s compensation will be subject to withholding by Company for the payment of any social security, federal, state or any other employee payroll taxes. Company will regularly report amounts paid to Contractor by filing Form 1099‑MISC with the Internal Revenue Service as required by law.

# Disclosure and Assignment of Work Resulting from Project Assignments.

## “Innovations” and “Company Innovations” Definitions. “Innovations” means all discoveries, designs, developments, improvements, inventions (whether or not protectable under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protectable under copyright laws), trade secrets, know-how, ideas (whether or not protectable under trade secret laws), mask works, trademarks, service marks, trade names and trade dress. “Company Innovations” means Innovations that Contractor, solely or jointly with others, conceives, develops or reduces to practice related to any Project Assignment.

## Disclosure and Assignment of Company Innovations. Contractor agrees to maintain adequate and current records of all Company Innovations, which records will be and remain the property of Company. Contractor agrees to promptly disclose and describe to Company all Company Innovations. Contractor hereby does and will assign to Company or Company’s designee all of Contractor’s right, title and interest in and to any and all Company Innovations and all associated records. To the extent any of the rights, title and interest in and to Company Innovations cannot be assigned by Contractor to Company, Contractor hereby grants to Company an exclusive, royalty-free, transferable, irrevocable, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to practice such non-assignable rights, title and interest. To the extent any of the rights, title and interest in and to the Company Innovations can neither be assigned nor licensed by Contractor to Company, Contractor hereby irrevocably waives and agrees never to assert such non-assignable and non-licensable rights, title and interest against Company or any of Company’s successors in interest.

## Assistance. Contractor agrees to perform, during and after the term of this Agreement, all acts that Company deems necessary or desirable to permit and assist Company, at its expense, in obtaining, perfecting and enforcing the full benefits, enjoyment, rights and title throughout the world in the Company Innovations as provided to Company under this Agreement. If Company is unable for any reason to secure Contractor’s signature to any document required to file, prosecute, register or memorialize the assignment of any rights under any Company Innovations as provided under this Agreement, Contractor hereby irrevocably designates and appoints Company and Company’s duly authorized officers and agents as Contractor’s agents and attorneys-in-fact to act for and on Contractor’s behalf and instead of Contractor to take all lawfully permitted acts to further the filing, prosecution, registration, memorialization of assignment, issuance and enforcement of rights under such Company Innovations, all with the same legal force and effect as if executed by Contractor. The foregoing is deemed a power coupled with an interest and is irrevocable.

## Out-of-Scope Innovations. If Contractor incorporates or permits to be incorporated any Innovations relating in any way, at the time of conception, reduction to practice, creation, derivation, development or making of such Innovation, to Company’s business or actual or demonstrably anticipated research or development but which were conceived, reduced to practice, created, derived, developed or made by Contractor (solely or jointly) either unrelated to Contractor’s work for Company under this Agreement or prior to the Effective Date (collectively, the “Out-of-Scope Innovations”) into any of the Company Innovations, then Contractor hereby grants to Company and Company’s designees a non-exclusive, royalty-free, irrevocable, worldwide, fully paid-up license (with rights to sublicense through multiple tiers of sublicensees) to practice all patent, copyright, moral right, mask work, trade secret and other intellectual property rights relating to such Out-of-Scope Innovations. Notwithstanding the foregoing, Contractor agrees that Contractor will not incorporate, or permit to be incorporated, any Innovations conceived, reduced to practice, created, derived, developed or made by others or any Out-of-Scope Innovations into any Company Innovations without Company’s prior written consent.

# Confidentiality.

## Definition of Confidential Information. “Confidential Information” means (a) any technical and non-technical information related to the Company’s business and current, future and proposed products and services of Company, including for example and without limitation, Company Innovations, Company Property (as defined in Section 6 (“Ownership and Return of Confidential Information and Company Property”)), and Company’s information concerning research, development, design details and specifications, financial information, procurement requirements, engineering and manufacturing information, customer lists, business forecasts, sales information and marketing plans and (b) any information that may be made known to Contractor and that Company has received from others that Company is obligated to treat as confidential or proprietary.

## Nondisclosure and Nonuse Obligations. Except as permitted in this Section, Contractor will not use, disseminate or in any way disclose the Confidential Information. Contractor may use the Confidential Information solely to perform Project Assignment(s) for the benefit of Company. Contractor will treat all Confidential Information with the same degree of care as Contractor accords to Contractor’s own confidential information, but in no case will Contractor use less than reasonable care. If Contractor is not an individual, Contractor will disclose Confidential Information only to those of Contractor’s employees who have a need to know such information. Contractor certifies that each such employee will have agreed, either as a condition of employment or in order to obtain the Confidential Information, to be bound by terms and conditions at least as protective as those terms and conditions applicable to Contractor under this Agreement. Contractor will immediately give notice to Company of any unauthorized use or disclosure of the Confidential Information. Contractor will assist Company in remedying any such unauthorized use or disclosure of the Confidential Information. Contractor agrees not to communicate any information to Company in violation of the proprietary rights of any third party.

## Exclusions from Nondisclosure and Nonuse Obligations. Contractor’s obligations under Section 5.2 (Nondisclosure and Nonuse Obligations) will not apply to any Confidential Information that Contractor can demonstrate (a) was in the public domain at or subsequent to the time such Confidential Information was communicated to Contractor by Company through no fault of Contractor; (b) was rightfully in Contractor’s possession free of any obligation of confidence at or subsequent to the time such Confidential Information was communicated to Contractor by Company; or (c) was developed by employees of Contractor independently of and without reference to any Confidential Information communicated to Contractor by Company. A disclosure of any Confidential Information by Contractor (i) in response to a valid order by a court or other governmental body or (ii) as otherwise required by law will not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that Contractor will provide prompt prior written notice thereof to Company to enable Company to seek a protective order or otherwise prevent such disclosure.

# Ownership and Return of Confidential Information and Company Property. All Confidential Information and any materials (including, without limitation, documents, drawings, papers, diskettes, tapes, models, apparatus, sketches, designs and lists) furnished to Contractor by Company, whether delivered to Contractor by Company or made by Contractor in the performance of services under this Agreement and whether or not they contain or disclose Confidential Information (collectively, the “Company Property”), are the sole and exclusive property of Company or Company’s suppliers or customers. Contractor agrees to keep all Company Property at Contractor’s premises unless otherwise permitted in writing by Company. Within five (5) days after any request by Company, Contractor will destroy or deliver to Company, at Company’s option, (a) all Company Property and (b) all materials in Contractor’s possession or control that contain or disclose any Confidential Information. Contractor will provide Company a written certification of Contractor’s compliance with Contractor’s obligations under this Section.

# Observance of Company Rules. At all times while on Company’s premises, Contractor will observe Company’s rules and regulations with respect to conduct, health, safety and protection of persons and property.

# No Conflict of Interest. During the term of this Agreement, Contractor will not accept work, enter into a contract or accept an obligation inconsistent or incompatible with Contractor’s obligations, or the scope of services to be rendered for Company, under this Agreement. Contractor warrants that, to the best of Contractor’s knowledge, there is no other existing contract or duty on Contractor’s part that conflicts with or is inconsistent with this Agreement. Contractor agrees to indemnify Company from any and all loss or liability incurred by reason of the alleged breach by Contractor of any services agreement with any third party.

# Term and Termination.

## Term. This Agreement is effective as of the Effective Date set forth above and will terminate on unless terminated earlier as set forth below.

## Termination by Company. Except during the term of a Project Assignment, Company may terminate this Agreement without cause at any time, with termination effective fifteen (15) days after Company’s delivery to Contractor of written notice of termination. Company also may terminate this Agreement (a) immediately upon Contractor’s breach of Section 4 (Disclosure and Assignment of Work Resulting from Project Assignments), 5 (Confidentiality) or 10 (Noninterference with Business), or (b) immediately for a material breach by Contractor if Contractor’s material breach of any other provision under this Agreement or obligation under a Project Assignment is not cured within ten (10) days after the date of Company’s written notice of breach.

## Termination by Contractor. Contractor may terminate this Agreement without cause at any time, with termination effective fifteen (15) days after Contractor’s delivery to Company of written notice of termination. Contractor also may terminate this Agreement immediately for a material breach by Company if Company’s material breach of any provision of this Agreement is not cured within ten (10) days after the date of Contractor’s written notice of breach.

## Effect of Expiration or Termination. Upon expiration or termination of this Agreement, Company will pay Contractor for services performed under this Agreement as set forth in each then pending Project Assignment(s). The definitions contained in this Agreement and the rights and obligations contained in this Section and Sections 4 (Disclosure and Assignment of Work Resulting from Project Assignments), 5 (Confidentiality), 6 (Ownership and Return of Confidential Information and Company Property), 10 (Noninterference with Business) and 11 (General Provisions) will survive any termination or expiration of this Agreement.

# Noninterference with Business. During this Agreement, and for a period of two (2) years immediately following the termination or expiration of this Agreement, Contractor agrees not to solicit or induce any employee or independent contractor to terminate or breach an employment, contractual or other relationship with Company.

# General Provisions.

## Successors and Assigns. Contractor may not subcontract or otherwise delegate Contractor’s obligations under this Agreement without Company’s prior written consent. Subject to the foregoing, this Agreement will be for the benefit of Company’s successors and assigns, and will be binding on Contractor’s assignees.

## Injunctive Relief. Contractor’s obligations under this Agreement are of a unique character that gives them particular value; Contractor’s breach of any of such obligations will result in irreparable and continuing damage to Company for which money damages are insufficient, and Company will be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including money damages if appropriate).

## Notices. Any notice required or permitted by this Agreement will be in writing and will be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when actually delivered; (b) by overnight courier, upon written verification of receipt; (c) by facsimile transmission, upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notice will be sent to the addresses set forth above or to such other address as either party may provide in writing.

## Governing Law; Forum. This Agreement will be governed in all respects by the laws of the United States of America and by the laws of the State of Washington, as such laws are applied to agreements entered into and to be performed entirely within Washington between Washington residents. Each of the parties irrevocably consents to the exclusive personal jurisdiction of the federal and state courts located in King County, Washington, as applicable, for any matter arising out of or relating to this Agreement, except that in actions seeking to enforce any order or any judgment of such federal or state courts located in King County, Washington, such personal jurisdiction will be nonexclusive.

## Severability. If a court of law holds any provision of this Agreement to be illegal, invalid or unenforceable, (a) that provision will be deemed amended to achieve an economic effect that is as near as possible to that provided by the original provision and (b) the legality, validity and enforceability of the remaining provisions of this Agreement will not be affected thereby.

## Waiver; Modification. If Company waives any term, provision or Contractor’s breach of this Agreement, such waiver will not be effective unless it is in writing and signed by Company. No waiver by a party of a breach of this Agreement will constitute a waiver of any other or subsequent breach by Contractor. This Agreement may be modified only by mutual written agreement of authorized representatives of the parties.

## Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or contemporaneous agreements concerning such subject matter, written or oral.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

|  |  |
| --- | --- |
| “Company”  EXAMPLE CORPORATION  By:  Name:  Title: | “Contractor”  [CONTRACTOR NAME]  By:  Name:  Title: |

EXHIBIT A

PROJECT ASSIGNMENT

|  |  |
| --- | --- |
| Services | Milestones |
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| Acceptance Criteria | Acceptance Procedure |
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Payment of Fees. Fee will be **(CHECK ONE)**:

[ ] a fixed price for completion of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ ] based on a rate per hour of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ ] other, as follows **(describe payment)**:

If either party for any reason terminates this Project Assignment or the Independent Contractor Services Agreement that governs it, fees will be paid based on **(CHECK ONE)**:

[ ] Contractor time spent.

[ ] the proportion of the deliverables furnished Company, as determined by Company.

[ ] other, as follows **(describe payment)**:

Expenses. Company will reimburse Contractor for the following expenses incurred in connection with this Project Assignment upon receipt of proper documentation of those expenses from Contractor **(describe expenses)**:

NOTE: This Project Assignment is governed by the terms of an Independent Contractor Services Agreement in effect between Company and Contractor. Any item in this Project Assignment that is inconsistent with such agreement is invalid.

IN WITNESS WHEREOF, the parties have executed this Project Assignment as of the later date below.

|  |  |
| --- | --- |
| “Company”  EXAMPLE CORPORATION  By:  Name:  Title:  Date: | “Contractor”  [CONTRACTOR NAME]  By:  Name:  Title:  Date: |