



NAME: _____

QA ENGINEER AGREEMENT

In consideration of my employment within **INNOVAPATH** (the “Employer”) as a **QA Engineer** and other valuable consideration, I acknowledge and agree that:

PRELIMINARY MATTERS

1. **Defined Terms.** The italicized terms in this Agreement are defined in **Exhibit A** hereto.
2. ***Pre-existing Agreements or Arrangements.*** I warrant and agree that I have listed on **Exhibit B** all *Pre-existing Agreements or Arrangements*. The Employer expects me to abide by all restrictions or obligations that are contained in such *Pre-existing Agreements or Arrangements* and to avoid involvement, while employed by the Employer, in any matter that could pose a conflict as a result of confidential information or intellectual property obtained by me prior to my *Employment*. I further represent that none of these restrictions or obligations, including those set forth in any non-compete agreements with prior employers, is inconsistent with my acceptance of the Employer’s offer of *Employment* or my becoming, and serving as, a **QA Engineer** of the Employer.

PROTECTION OF OUR BUSINESS

3. **Confidentiality.** I acknowledge that, by virtue of my *Employment*, I will acquire and be exposed to, have access to, make use of and/or create *Confidential Information*. Therefore, I agree to hold in trust and confidence all such *Confidential Information*. I will not disclose any such *Confidential Information* to anyone outside the Employer without the prior written approval of an *Authorized Signatory*, except as required by my authorized duties for the Employer, nor use any such *Confidential Information* for any purpose other than for the benefit of the Employer.
4. **Third Party Information and Property.** I agree that during my *Employment*, I shall not use or disclose any confidential information or intellectual property of any former employer or other person or entity without the prior written authorization of such employer, person or entity and the prior written consent of an *Authorized Signatory*. If I were to use or disclose any such confidential information or intellectual property without prior consent, and any of the Employer become the subject of any claim from a third party regarding such unauthorized use or disclosure, I agree to hold harmless and indemnify the Employer for any legal defense costs and/or damages related to any such claim.
5. **Non-Solicitation/Non-compete.** During the period of my *Employment* I will not,



compete with Employer by soliciting or accepting any engagement with a *Project specific Innovapath Customer* other than through the Employer.

6. **Competing Activities and Conflict of Interest.** During the period of my *Employment* I will not, directly or indirectly, participate in or in any way render services or assistance to any business that is or may be competitive with the Employer, whether or not for compensation, or engage in any conduct which might result in, or create the appearance of using my position for private gain or other than for the benefit of the Employer, or otherwise create a conflict, or the appearance of a conflict, of interest with the Employer. Such conduct shall include, but not be limited to, having an undisclosed financial interest in any vendor or supplier of the Employer, accepting payments of any kind or gifts other than of a nominal value from vendors, clients or suppliers, or having an undisclosed relationship with a family member or other individual who is employed or associated with any entity in active or potential competition with the Employer, and which creates a conflict of interest. I represent and warrant that I am not currently aware of any present or past violation of this provision.

7. **Ownership of Works.**

a. I agree that the Employer owns all rights, title and interest in and to all *Works*.

b. I agree that all *Works* are deemed works made for hire under the United States copyright laws or equivalent laws of any applicable foreign jurisdiction, and all *Intellectual Property Rights* therein vest automatically in the Employer upon creation of the *Works*. I agree that, to the extent any *Work* is held not to be a work made for hire, I hereby irrevocably assign all *Intellectual Property Rights* in the *Work* to the Employer. I agree to keep and maintain adequate written records of all *Works* which shall be available to and remain the sole property of the Employer and, upon request of the Employer, to disclose any *Works* in order to permit the Employer to claim rights to which it may be entitled.

8. **Post-Employment Restriction re: Clients.** For a period of one year following the termination of my *Employment* for any reason, I will not, directly or indirectly, use Confidential Information to solicit or provide services to any client of the Employer to which I provided (or participated in a proposal to provide) services during the two-year period prior to termination of my *Employment*.

9. **Exceptions to Post-Employment Restriction re: Clients.** I understand that the obligations of Paragraph 10 will not apply for a period of three (3) years after my start date or the date of my promotion or transfer to clients of the Employer and/or certain specified kinds of services rendered to such clients that meet all of the following criteria: (a) are personal clients of mine who came to the Employer solely to avail themselves of certain specified kinds of services rendered by me and only as a result of my own independent recruitment efforts, which the Employer neither subsidized nor otherwise financially supported as part of a program of



client development, (b) are listed on **Exhibit C** expressly by name with respect to client and with sufficient specificity with respect to the kinds of service(s) that I will be permitted to render, and (c) are accepted and agreed to as to their listing on **Exhibit C** by an *Authorized Signatory* who has signed at the bottom of such Exhibit. I agree that after a period of three (3) years from my start date or the date of my promotion or transfer the Employer will have invested sufficient time, financial support and effort in developing and serving the clients listed on **Exhibit C** to support the application of the obligations of Paragraph 10 to those clients.

10. **Future Employment with Clients.** Except as otherwise provided herein, I understand that I am not prohibited from accepting employment with a client (or an affiliate of such client) of the Employer.

11. **Restriction re: Personnel and Contractors.** During my *Employment* and for one year thereafter, I will not, directly or indirectly, (a) solicit or attempt to solicit, or participate in the solicitation of or any attempt to solicit any *Personnel* to leave the Employer, or to join any firm or business with which I may be or become affiliated, (b) participate in the hiring or admission of any *Personnel*, or (c) cause a contractor of the Employer to cease providing services to, with, or on behalf of the Employer.

12. **Post-Employment Restrictions re: Innovapath Property.** Upon termination of my *Employment*: (a) I will not use or disclose *Innovapath Property*, including, but not limited to, *Confidential Information* and *Works*, for any purpose; (b) I will not retain or take with me any *Innovapath Property*; (c) I will immediately deliver to the Employer at any location that it designates, at my expense, within five (5) business days after the termination of my *Employment* or on an alternate date designated by the Employer, any *Innovapath Property* that I may then or thereafter hold or control; and (d) I agree, upon request from the Employer that is based on its reasonable belief that I may have *Innovapath Property* in electronic form in my possession, custody or control, to allow the Employer to inspect any of my personal or home computers, including smart phones, or tablet computers, or any device, media or location capable of storing electronic data, to determine whether any *Innovapath Property* resides on such computers, devices, media or locations and to permit the Employer to remove such *Innovapath Property*.

OTHER POST-EMPLOYMENT OBLIGATIONS

13. **Transition of Work and Cooperation.** Upon termination of my *Employment* for any reason, I will cooperate with the Employer in all matters relating to the completion of pending work and its orderly transfer. I will also cooperate fully with the Employer in connection with any threat of or actual legal proceeding against the Employer or any client, customer or licensor of the Employer arising out of any matter with or of which I had contact or knowledge during my *Employment*.

14. **Notification of Post-Employment Obligations.** I agree that prior to accepting employment or affiliation with another firm or business I will advise such firm or business of my



duties and obligations under this Agreement. After my *Employment* ends, I agree that the Employer shall be permitted to advise any firm or business with which I have accepted an offer of employment or affiliation concerning my duties and obligations under this Agreement.

OUR ENFORCEMENT RIGHTS AND REMEDIES IN THE EVENT OF A BREACH

15. **Equitable Relief and Attorney's Fees.** I acknowledge and agree that a breach of this Agreement, including, but not limited to, a breach of my duties and obligations under the terms and conditions of Paragraphs 3, 4, 5, 6, 7, 8, 10, 11, and 12 would cause irreparable harm to the Employer and that, in addition to other remedies, the Employer on behalf of itself or another the Employer is entitled to a temporary restraining order, an injunction or other equitable relief to prevent any such breach. I also acknowledge that, to the extent permitted by law, the Employer will be entitled to the payment of the Employer reasonable costs and attorney's fees incurred in enforcing this Agreement. I also acknowledge that, to the extent permitted by law, the Employer may request that a court extend the one year period following the termination of my *Employment*, as provided in Paragraphs 8 and 11, to correspond with the period that I participated in activities prohibited by Paragraphs 8 and 11.

16. **Liquidated Damages: Client Fees.** I agree that the precise amount of damages flowing from a breach under Paragraph 8 would be impracticable or extremely difficult to ascertain in an actual amount. Therefore, I agree that in the event of a breach under Paragraph 8, the Employer shall be entitled to receive, as liquidated damages, payment from me of an amount equal to 50% of all fees received by or owed to me (or any person or entity with which I am associated) in connection with such breach. Such percentage shall be paid within thirty days after each fee payment is received and in respect of all services in connection with such breach during the two years following the termination of my *Employment* for any reason.

17. **Liquidated Damages: Compensation.** I agree that the precise amount of damages flowing from a breach under Paragraph 11 would be impracticable or extremely difficult to ascertain in actual amount. Therefore, I agree that in the event of a breach under Paragraph 11, the Employer shall be entitled to receive, as liquidated damages, payment from me of an amount equal to the annual compensation, inclusive of overtime, bonuses, and sales incentives, received by or owed to any person who leaves the Employer in connection with my breach over his or her last twelve months at the Employer. Such amount shall be paid within thirty days from the mailing of a written notice to me advising of the amount due.

18. **Right of Inspection.** I agree to permit the Employer (or to use my best efforts to enable the Employer) to inspect my books and records (and the books and records of any entity which employs or is associated or affiliated with me), upon request and at reasonable times, to enable the Employer to confirm the calculations described above and to verify compliance with Paragraphs 8 and 11. The Employer shall keep confidential any proprietary information obtained, except as may be necessary or desirable to enable the Employer to enforce its rights



under this Agreement and except as may be required by any statute, court or administrative order to decree or government ruling or regulation.

MISCELLANEOUS

19. **Governing Law; Choice of Forum; Jury Waiver.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the Parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law. I agree to submit to jurisdiction before venue of, the courts of Monterey County in the State of California, and I waive any right to raise questions of personal jurisdiction or venue in any action the Employer may bring against me in any such court. To the extent permitted by law, I also agree to waive any right to trial by jury with respect to any matter related to this Agreement. I further agree to accept service of process from the Employer when that process is either sent to my last known address by certified mail or served by any other means permitted under the law of the state or district in which the Employer may bring an action against me.

20. **Modifications.** My obligations hereunder may not be changed or modified, released, discharged, abandoned or terminated, in whole or in part, except by an instrument in writing which expressly refers to and attaches this agreement and is signed by an *Authorized Signatory*.

21. **Severability.** Every provision of this Agreement is intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such term or provision will be enforced to the maximum extent permitted by law and, in any event, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

22. **Blue-Penciling.** If any court determines that any provision of this Agreement, or any part hereof, or the application of any such provision, or any part hereof, to any person or circumstance is unenforceable or void, such court shall have the power to modify such provision, or any part hereof, to the extent necessary to render it legal and enforceable while preserving its intent, or if such modification is not possible, by substituting therefore another provision that is legal and enforceable and that achieves the same objective.

23. **Waiver.** None of my obligations under this Agreement shall be deemed to have been waived by the Employer except by an instrument in writing which expressly refers to and attaches this agreement and is signed by an *Authorized Signatory*. No such waiver shall be deemed to be a waiver of any other or further obligation I have under this Agreement.

24. **Integration.** This Agreement, the Employer's employment application, and any documentation promoting me or transferring me to the Employer, contain the entire understanding between me and the Employer or any other the Employer with respect to the subject matter hereof and supersedes all prior representations, warranties, and agreements with respect to such subject matter, and no representations, warranties or other covenants exist with respect to such subject matter that are not contained or expressly referred to herein. Notwithstanding the foregoing, any written agreement between the Employer and me with



respect to the subject matter hereof that was signed by me prior to the effective date of this Agreement shall remain valid and enforceable according to the terms of such agreement with respect to all acts and omissions occurring prior to the effective date of this Agreement. In the event of a conflict between this Agreement and the employment application or any other document purporting to set forth terms and conditions of my *Employment*, this Agreement will control.

25. **At Will.** Nothing in this Agreement shall create a contract of employment between the Employer and me or a specific term of employment for me. My employment with the Employer is and shall remain “at will”, which means that I may resign my employment, or the Employer may terminate my employment, or change my position pay or duties, for any reason or no reason, with or without notice, with or without cause.

26. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

I have read the foregoing, understand it, and agree to comply with its terms.

Signature

Date

Printed Name

SSN



EXHIBIT A

The definitions below apply to the italicized terms that appear in the Agreement (including the exhibits):

Attest Client – attest client (customer or an affiliate of such client) of Employer.

Authorized Signatory – a partner, principal, officer or other person who is authorized to sign on behalf of the Employer.

Confidential Information – any information not generally known to the public, in any *Form*, that (1) relates to the operation of the Employer or provides the Employer with a competitive advantage, (2) consists of *PII* or other personal information about *Personnel*, client and other third party personnel, independent contractors, subcontractors, agents, vendors, suppliers or others which the Employer or another Employer receives in the course of business, and (3) all other information entrusted to the Employer or another Employer by clients and other third parties. *Confidential Information* includes, but is not limited to, *Intellectual Property*, supplier information, designs, business or marketing plans, forecasts and financial information, tax returns, tax identification numbers, agreements, client or prospective client lists, specific information about clients or prospective clients such as preferences for specific products and services, client or prospective client needs based on financial history and past purchases of services, client or prospective client development plans, specific rates charged to a client or offered to a prospective client and other business or client records. *Confidential Information* also includes, but is not limited to, debit or credit card information, employment applications, organization charts, performance ratings and other personnel records.

Innovapath Property – *Confidential Information*, *Systems*, equipment, debit and credit cards issued in connection with my *Employment*, furniture, facilities and any and all other materials owned, licensed or leased by the Employer including, without limitation, computerized or electronic information and all copies thereof in any form or media, created by, furnished to, obtained by or prepared by me in the course of my employment in any capacity.

Electronic Communications – all text, audio, video, images, information, data, files and attachments created, displayed, sent, received, posted, accessed or stored, whether deleted or not, by means of the *Systems*.

Employment – the nature of my relationship with the Employer when I work as a **QA Engineer** pursuant to this Agreement. Alternatively, and depending on context, *Employment* is the period of time during which this relationship persists.

Form - paper, computer disc, USB drive, website; any other tangible or electronic medium by which information may be stored or accessed; and human memory.



Intellectual Property - works of authorship (including, without limitation, books, articles, data compilations, software and other copyrightable materials), materials, patents, inventions, designs, techniques, methodologies, processes, discoveries, know-how, ideas, trade secrets, moral rights, trademarks and other indicia of origin together with the goodwill therein, and all patent applications, copyright and trademark applications and registrations, and extensions and renewals thereof, throughout the world.

Intellectual Property Rights – all rights, title and interest, including copyright, trade secret, patent, trademark, and other intellectual property rights.

Personnel – partners, principals, members, officers and employees of the Employer.

PII – information (excluding business contact information such as an individual’s name and one or more of the following: organization name, organizational title, organizational role, business address, business telephone number (including business cell phone number and business email address) relating to an identified or identifiable natural person. An identifiable natural person is a natural person who can be identified, directly or indirectly, by reference to an identification number or factors specific to his or her physical, physiological, mental, economic, cultural or social identity. Set forth below is a non-exclusive list of information that constitutes *PII* when such information relates to an identified or identifiable natural person:

- Account number (bank account, credit card, etc.)
- Address
- Biometric identifier
- Certificate or license number
- Date of birth
- Government identifiers (such as social security numbers or driver’s license numbers)
- Name*
- Personnel Number
- Photograph or video identifiable to an individual
- Vehicle identifier or serial number
- Other information related to an individual that may directly or indirectly identify that individual (e.g., salary, performance rating, purchase history, call history, etc.)

* Note: When an individual’s name is used with *PII* that is not business contact information, it is included in the definition of *PII*.

Pre-existing Agreements or Arrangements – agreements or arrangements that (1) relate to any *Pre-existing Creations*; or (2) may affect my ability to comply with the requirements of this Agreement, including all contractual and other restrictions or obligations with other parties, including any post-employment restrictions and required notifications to the extent applicable under 18 U.S.C. §207 and 48 CFR 3.104-4, that may or will impose limitations on my



professional activities during my *Employment* (such as any non-compete agreements with prior employers and the one year ban on lobbying contacts).

Pre-existing Creations – any *Intellectual Property* and *Intellectual Property Rights* that were developed or created by me, alone or with others, or otherwise acquired by me, before the period of my employment in any capacity with the Employer, in which I claim any ownership or right.

Project specific Innovapath Customer - shall mean any person or entity to which you would be introduced to or would be reporting to, directly or indirectly, for purposes of an assignment hereunder.

Systems – the communications systems or any part of such systems that the Employer owns, licenses or operates and approves for use, including, but not limited to, e-mail, text messaging, instant messaging, local area network, wide area network, Internet, extranet, collaborative tools (e.g., blogs, wikis), computers (laptop, desktop, or tablet), servers, air cards, Personal Digital Assistants, cell phones, telephones, smart phones, voicemail, or any device, media or location capable of storing electronic data.

Works - all *Intellectual Property*, in any *Form*, created by me, alone or with other others, during the period of my *Employment* that (1) is created within the scope of my *Employment*; (2) relates in any manner to the actual or anticipated business, research, or development of the Employer results from any work assigned to or performed by me, alone or with others, for the Employer; or (4) is created with the use of Employer *Property*.



EXHIBIT B

Pre-existing Creations; Pre-existing Agreements or Arrangements

I understand and agree that the Employer makes no attempt to verify my claim of ownership to any of the *Pre- existing Creations* listed, and makes no admission that any *Pre- existing Creations* listed are owned by me.

<u>Title</u>	<u>Date</u>	<u>Brief Description</u>
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____No *Pre-existing Creations, Pre-existing Agreements or Arrangements*

Signature

Date

Name (Print)

ACCEPTED AND AGREED TO:
INNOVAPATH INC.

By: _____
Signature

Its: *Authorized Signatory*

Date

An *Authorized Signatory's* signature is required only if *Pre-existing Creations* or *Pre-existing Agreements or Arrangements* are listed pursuant to Paragraphs 2 and 9 of this Agreement. The signature of an *Authorized Signatory* indicates his or her judgment made in light of Paragraph 2 that *Pre-existing Creations*, if any, are described and explained in sufficient detail so that the likelihood of confusion between the **QA Engineer** *Pre-existing Creations* and the *Intellectual Property* of the Employer can be avoided or minimized in the future and further indicates that the *Pre-existing Agreements or Arrangements* have been obtained and reviewed and that the *Authorized Signatory* is satisfied that such *Pre-existing Agreements or Arrangements* will not interfere with the **QA Engineer** ability to comply with the requirements of this Agreement.



EXHIBIT C

Exceptions to Post-employment Restrictions: re: Clients

[none, unless otherwise specified]

As specified in Paragraph 9, I agree that after a period of three (3) years from my start date or the date of my promotion or transfer, as the case may be, the Employer will have invested sufficient time, financial support and effort in developing and serving the clients listed on Exhibit C to support the application of the obligations of Paragraph 8 to those clients.

Name of Client

Specified Kind of Services(s) Permitted

ACCEPTED AND AGREED TO:
INNOVAPATH INC.

By: _____
Signature

Its: *Authorized Signatory*

Date

An *Authorized Signatory*'s signature is required only if information is provided pursuant to Paragraph 9 of this Agreement. The signature of an *Authorized Signatory* indicates his or her judgment that criteria in Paragraph 9 have been fully satisfied, the clients listed have been properly identified, and the kinds of services permitted have been described with sufficient specificity.