Founder Invention, Non-Disclosure, Non-Competition
and Non-Solicitation Agreement

This Founder Invention, Non-Disclosure, Non-Competition and Non-Solicitation Agreement (the “**Agreement**”) is made by and between \_\_\_\_\_\_\_\_, a [STATE] [TYPE OF ENTITY] (the “**Company**”), and \_\_\_\_\_\_\_\_\_\_ (the “**Founder**”).

In consideration of the Service (as defined below) or the continued Service of the Founder by the Company, the Company and the Founder hereby agree as follows.

Service

The Founder acknowledges that Founder’s Service or continuance of Service is contingent upon the Founder’s entry into and performance of this Agreement. The Founder further acknowledges that the nature of the Company’s business is such that protection of the Company’s proprietary and confidential information is critical to the survival and success of the Company’s business.

For purposes of this Agreement, “**Service**” shall mean (a) employment by the Company or a parent or subsidiary thereof and/or (b) the provision of services to the Company or a parent or subsidiary thereof as an advisor, officer, consultant or member of the Board of Directors.

Notwithstanding the foregoing, the Founder acknowledges that this Agreement does not constitute a contract of employment, does not imply that the Company will continue the Founder’s Service for any period of time and does not change the at-will nature of the Founder’s Service to the Company

Proprietary and Confidential Information

The Founder agrees that:

all information and know-how, whether or not in writing, of a private, secret or confidential nature concerning the Company’s business or financial affairs (collectively, “**Proprietary Information**”) is and shall be the exclusive property of the Company. By way of illustration, but not limitation, Proprietary Information may include discoveries, ideas, inventions, products, product improvements, product enhancements, processes, methods, techniques, formulas, compositions, compounds, negotiation strategies and positions, projects, developments, plans (including business and marketing plans), research data, clinical data, financial data (including sales costs, profits, pricing methods), personnel data, computer programs (including software used pursuant to a license agreement), customer, prospect and supplier lists, and contacts at or knowledge of customers or prospective customers of the Company. The Founder will not disclose any Proprietary Information to any person or entity other than employees of the Company or use the same for any purposes (other than in the performance of the Founder’s duties in providing Service) without written approval by an officer of the Company, either during or after Founder’s Service, unless and until such Proprietary Information has become public knowledge without fault by the Founder. While providing Service, the Founder will use the Founder's best efforts to prevent unauthorized publication or disclosure of any of the Company’s Proprietary Information;

all files, documents, letters, memoranda, reports, records, data, sketches, drawings, models, laboratory notebooks, program listings, computer equipment or devices, computer programs or other written, photographic, or other tangible or intangible material containing Proprietary Information, whether created by the Founder or others, which come into the Founder’s custody or possession, shall be and are the exclusive property of the Company to be used by the Founder only in the performance of the Founder’s duties for the Company and shall not be copied or removed from the Company premises except in the pursuit of the business of the Company. All such materials or copies thereof and all tangible property of the Company in the custody or possession of the Founder shall be delivered to the Company, upon the earlier of (i) a request by the Company or (ii) termination of the Founder’s Service for any reason. After such delivery, the Founder shall not retain any such materials or copies thereof or any such tangible property; and

the Founder’s obligation not to disclose or to use information and materials of the types set forth in paragraphs 2(a) and 2(b) above, and the Founder’s obligation to return materials and tangible property, set forth in paragraph 2(b) above, also extends to such types of information, materials and tangible property of customers of the Company or suppliers to the Company or other third parties who may have disclosed or entrusted the same to the Company or to the Founder in the course of the Company’s business.

Developments

The Founder has attached hereto, as Exhibit A, a list describing all discoveries, ideas, inventions, improvements, enhancements, processes, methods, techniques, developments, software, and works of authorship, whether patentable or not (collectively, “**Developments**”), which were created, made, conceived or reduced to practice by the Founder prior to the Founder’s Service and which are owned by Founder, which relate directly or indirectly to the current or anticipated future business of the Company, and which are not assigned to the Company hereunder (collectively, “**Unassigned** **Prior Developments**”); or, if no such list is attached, Founder represents that there are no Unassigned Prior Developments. Founder agrees not to incorporate any Unassigned Prior Developments into any Company product, material, process or service without prior written consent of an officer of the Company. If Founder does incorporate any Unassigned Prior Development into any Company product, material, process or service, Founder hereby grants to the Company a non-exclusive, worldwide, perpetual, transferable, irrevocable, royalty-free, fully-paid right and license to make, have made, use, offer for sale, sell, import, reproduce, modify, prepare derivative works, display, perform, transmit, distribute and otherwise exploit such Unassigned Prior Development and to practice any method related thereto.

The Founder has attached hereto, as Exhibit B, a list describing all Developments which have been created, made, conceived or reduced to practice by the Founder or under Founder’s direction or jointly with others prior to the date hereof and which relate directly or indirectly to the business of the Company, other than Unassigned Prior Developments.

The Founder agrees to assign and hereby assigns to the Company (or any person or entity designated by the Company) all the Founder’s right, title and interest in and to all Developments listed in Exhibit B and all Developments which are created, made, conceived or reduced to practice by the Founder or under the Founder’s direction or jointly with others during the Founder’s Service, whether or not during normal working hours or on the premises of the Company (collectively, “**Assigned Developments**”), in each case together with all related patents, patent applications, copyrights and copyright applications.

The Founder acknowledges that each original work of authorship which is made by the Founder (solely or jointly with others) within the scope of and during the period of Founder’s Service and which is protectable by copyright is a “work made for hire,” as that term is defined in the United States Copyright Act.

The foregoing provisions of this Section 3 shall not apply to Developments which do not relate to the business or research and development conducted or planned to be conducted by the Company at the time such Development is created, made, conceived or reduced to practice and which are made and conceived by the Founder not during normal working hours, not on the Company’s premises and not using the Company’s tools, devices, equipment or Proprietary Information.

The Founder understands that, to the extent this Agreement shall be construed in accordance with the laws of any state which precludes a requirement in an employee agreement to assign certain classes of inventions made by an employee, this paragraph 3(b) shall be interpreted not to apply to any invention which a court rules and/or the Company agrees falls within such classes. The Founder also hereby waives all claims to moral rights in any Assigned Developments.

The Founder agrees to cooperate fully with the Company, both during and after the Founder’s Service, with respect to the procurement, maintenance and enforcement of copyrights, patents and other intellectual property rights (both in the United States and foreign countries) relating to Assigned Developments. The Founder shall sign all papers, including, without limitation, copyright applications, patent applications, declarations, oaths, formal assignments, assignments of priority rights, and powers of attorney, which the Company may deem necessary or desirable in order to protect its rights and interests in any Assigned Development. The Founder further agrees that if the Company is unable, after reasonable effort, to secure the signature of the Founder on any such papers, any executive officer of the Company shall be entitled to execute any such papers as the agent and the attorney-in-fact of the Founder, and the Founder hereby irrevocably designates and appoints each executive officer of the Company as the Founder’s agent and attorney-in-fact to execute any such papers on the Founder’s behalf, and to take any and all actions as the Company may deem necessary or desirable in order to protect its rights and interests in any Assigned Development, under the conditions described in this sentence.

Non-Competition and Non-Solicitation

Non-Competition and Non-Solicitation. While the Founder provides Service and for a period of one (1) year after the termination or cessation of such Service for any reason, the Founder will not directly or indirectly:

in the geographical areas that the Company does business or has done business at the time of the Founder’s termination, engage or assist others in engaging in any business or enterprise (whether as owner, partner, officer, director, employee, consultant, investor, lender or otherwise, except as the holder of not more than 1% of the outstanding stock of a publicly-held company) that is competitive with the Company’s business, including but not limited to any business or enterprise that develops, manufactures, markets, licenses, sells or provides any product or service that competes with any product or service developed, manufactured, marketed, licensed, sold or provided, or planned to be developed, manufactured, marketed, licensed, sold or provided, by the Company while the Founder provided Service;

either alone or in association with others, solicit, divert or take away, or attempt to divert or take away, the business or patronage of any of the actual or prospective clients, customers, accounts or business partners of the Company which were contacted, solicited, or served by the Company during the Founder’s Service; or

either alone or in association with others (1) solicit, induce or attempt to induce, any employee or independent contractor of the Company to terminate his or her service or other engagement with the Company, or (2) hire or recruit, or attempt to hire or recruit, or engage or attempt to engage as an independent contractor, any person who was employed or otherwise engaged by the Company at any time during the term of the Founder’s Service; provided, that this clause (2) shall not apply to the recruitment or hiring or other engagement of any individual whose service or other engagement with the Company has been terminated for a period of six months or longer.

**Extension.** If the Founder violates the provisions of any of the preceding paragraphs of this Section 4, the Founder shall continue to be bound by the restrictions set forth in such paragraph until a period of one (1) year has expired without any violation of such provisions.

**Notice of New Business Activity.** The Founder agrees that during the non-competition and non-solicitation period, the Founder will give notice to the Company of each new business activity the Founder plans to undertake, at least (10) business days prior to beginning any such activity. The notice shall state the name and address of the individual, corporation, association or other entity or organization (“**Entity**”) for whom such activity is undertaken and the name of the Founder’s business relationship or position with the Entity. The Founder further agrees to provide the Company with other pertinent information concerning such business activity as the Company may reasonably request in order to determine the Founder’s continued compliance with Founder’s obligations under this Agreement.

**Disclosure of this Agreement.** For a period of one year after the termination or cessation of the Founder’s Service for any reason, the Founder agrees to notify any potential employer or prospective business associate of the terms and existence of this Agreement and the Founder’s continuing obligations to the Company hereunder. The Founder hereby authorizes the Company to notify others, including but not limited to customers of the Company and any of the Founder’s future employers or prospective business associates, of the terms and existence of this Agreement and the Founder’s continuing obligations to the Company hereunder.

Obligations to Third Parties

The Founder represents that, except as the Founder has disclosed in writing to the Company on Exhibit A attached hereto, the Founder is not bound by the terms of any agreement with any previous employer or other party to refrain from using or disclosing any trade secret or confidential or proprietary information in the course of the Founder’s Service, to refrain from competing, directly or indirectly, with the business of such previous employer or any other party or to refrain from soliciting employees, customers or suppliers of such previous employer or other party. The Founder further represents that the Founder’s performance of all the terms of this Agreement and the performance of the Founder’s duties as an employee of the Company do not and will not conflict with or breach any agreement with any prior employer or other party (including, without limitation, any nondisclosure or non-competition agreement), and that the Founder will not disclose to the Company or induce the Company to use any confidential or proprietary information or material belonging to any previous employer or others.

Scope of Disclosure Restrictions

Nothing in this Agreement or elsewhere prohibits the Founder from reporting possible violations of state or federal law or regulation to any government agency, regulator, or legal authority, or making other disclosures that are protected under the whistleblower provisions of state or federal law or regulation.  The Founder is not required to notify the Company that the Founder has made any such reports or disclosures; provided, however, that nothing herein authorizes the disclosure of information the Founder obtained through a communication that was subject to the attorney-client privilege, unless disclosure of the information would otherwise be permitted by an applicable law or rule.  Further, pursuant to the Defend Trade Secrets Act: “An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret [as defined in the Economic Espionage Act] that (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.  An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.”

United States Government Obligations

The Founder acknowledges that the Company from time to time may have agreements with other persons or with the United States Government, or agencies thereof, which impose obligations or restrictions on the Company regarding inventions made during the course of work under such agreements or regarding the confidential nature of such work. The Founder agrees to be bound by all such obligations and restrictions which are made known to the Founder and to take all action necessary to discharge the obligations of the Company under such agreements.

Governing Law/Venue/Equitable Remedies

This Agreement will be governed by and construed in accordance with the internal laws of the State of [New York] without giving effect to any choice or conflict of law provision or rule. Each Party irrevocably submits to the exclusive jurisdiction and venue of the federal and state courts of New York in any legal suit, action or proceeding arising out of or based upon this Agreement or the Services provided hereunder.

The Founder acknowledges that the restrictions contained in this Agreement are necessary for the protection of the business and goodwill of the Company and are considered by the Founder to be reasonable for such purpose. The Founder agrees that any breach or threatened breach of this Agreement is likely to cause the Company substantial and irrevocable damage which is difficult to measure. Therefore, in the event of any such breach or threatened breach, the Founder agrees that the Company, in addition to such other remedies which may be available, shall have the right to obtain an injunction from a court restraining such a breach or threatened breach without posting a bond and the right to specific performance of the provisions of this Agreement and the Founder hereby waives the adequacy of a remedy at law as a defense to such relief.

Assignment

This Agreement shall be binding upon and inure to the benefit of both parties and their respective successors and assigns, including any corporation with which, or into which, the Company may be merged or which may succeed to the Company’s assets or business, provided, however, that the obligations of the Founder are personal and shall not be assigned by the Founder. The Founder expressly consents to be bound by the provisions of this Agreement for the benefit of the Company or any subsidiary or affiliate thereof to whose Service the Founder may be transferred without the necessity that this Agreement be re-signed at the time of such transfer.

Entire Agreement/Modification

This Agreement, together with any exhibits and schedules attached hereto, contains the entire agreement of the Parties with respect to its subject matter, and supersedes all previous agreements, negotiations, proposals, and understandings of the Parties, both written and oral, which are of no further force or legal effect. This Agreement may only be amended, modified or supplemented by a subsequent written agreement executed by Contractor and the Company.

Severability

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

Counterparts and Delivery

This Agreement may be executed by the Parties separately in counterparts, and facsimile or electronic (PDF) copies of the separately-executed Agreement shall, upon exchange by delivery, facsimile, or PDF/email between the Parties or their counsel, have the same force and effect as if a mutually-signed, single original agreement had been executed.

**[Remainder of page intentionally left blank]**

IN WITNESS WHEREOF, the parties have agreed to and executed this Agreement as of the date set forth above.

|  |  |
| --- | --- |
|  | **FOUNDER** |
|  |  |
|  | By: |  |
|  | Name:Date: |  |
|  |  |  |
|  |  |  |
|  | **[COMPANY]** |
|  |  |  |
|  | By: |  |
|  | Name: |  |
|  | Title:Date: |  |