



Tuesday, October 21
9:00 am-10:30 am

403 Demystifying Trade Secrets: How to Identify and Protect Them

Melissa J. Cha

Associate General Counsel, Sales and Marketing
Palm, Inc.

Larisa R. Lacis

General Counsel
NeoPharm, Inc.

Kenneth A. Sprang

Chief Legal Officer and Secretary
Seamless NWS, Inc.

Faculty Biographies

Melissa J. Cha

Melissa J. Cha is associate general counsel at Palm, Inc. in Sunnyvale, California, a global leader and innovator of mobile products such as the Treo and Centro smartphones. At Palm, Ms. Cha manages the delivery of legal services to the sales and marketing teams, and oversees the worldwide trademarks portfolio. She structures, negotiates, and completes a wide variety of commercial transactions with wireless service operators, retailers, distributors, licensors, website operators, suppliers, and other business partners. She also advises on antitrust compliance, consumer marketing, privacy, and intellectual property matters.

Prior to joining Palm, Ms. Cha was with Wilson, Sonsini, Goodrich & Rosati PC in Palo Alto where she handled a range of technology transactions with Fortune 500 and start-up companies, as well as venture capital investors. She also worked at White & Case LLP in New York City on mergers and acquisitions, securities offerings, cross-border transactions, and financings.

She is active in the Wharton Alumni Association and various community service endeavors.

Ms. Cha graduated from the Wharton School of the University of Pennsylvania with general honors. She received her law degree from the University of Pennsylvania Law School, where she was part of the University Scholars Honors Program, editor of the law journal, and intern for the late Chief Judge Edward Becker and Judge Theodore McKee of the US Court of Appeals for the Third Circuit.

Laris R. Lacia

Larisa R. Lacia is general counsel at NeoPharm, Inc. in Lake Bluff, Illinois, a publicly traded biopharmaceutical company that researches, develops, and commercializes drug product candidates for various cancers and other diseases. At NeoPharm, Inc., Ms. Lacia oversees and advises the company on all legal aspects of the company.

Prior to becoming general counsel, Ms. Lacia was NeoPharm's intellectual property counsel, where she managed the company's worldwide patent, trademark and trade secret portfolios and also negotiated, drafted and reviewed various contracts, including confidential disclosure agreements, among other responsibilities. Prior to joining NeoPharm, Inc., Ms. Lacia practiced all aspects of intellectual property law in law firms in both Chicago and Los Angeles.

Ms. Lacia currently serves on the subcommittee of Biologue, a Chicago-area biotechnology/ pharmaceutical professionals networking and educational group. She is

also active in IPLAC (Intellectual Property Law Association of Chicago) Biotechnology and Corporate Committees. In addition, she is a member of ACC, ABA, and AIPLA.

Ms. Lacia received a JD from DePaul University College of Law in Chicago and a BS from the University of Michigan in Ann Arbor.

Kenneth A. Sprang

Kenneth A. Sprang is chief legal officer and secretary of Seamless NWS, Inc. in Washington, DC.

Previously, he was senior vice president, general counsel, and secretary of OnIt Digital, Inc., a start-up international interactive advertising company. Before joining OnIt, Mr. Sprang was general counsel to the Psychiatric Institute of Washington. Over the course of his career, Mr. Sprang has founded legal departments for several start-up companies, as well as working in the legal departments of Calgon Corporation, a former subsidiary of Merck & Co., Inc., and Cyclops Corporation. He also spent several years as a full-time law professor.

Mr. Sprang is a member of ACC and WMACCA, its Washington, DC chapter; the ABA and its labor section committee on the development of the law under the NLRA; and the DC and Maryland Bar Associations. He serves as pro bono general counsel to Boys To Men International and its Greater Washington and New England chapters, and he was formerly general counsel to Imago Relationships International and the Mankind Project International. He is also a member of the board of directors of Kidsave International and volunteers as an "operations consultant" to Kidsave's DC office. Mr. Sprang is the author of several books and articles on labor and employment and alternative dispute resolution.

Mr. Sprang received his BS from the Ohio State University and an MA from the University of Michigan. He earned his law degree at Case Western Reserve University School of Law.



WHAT IS A TRADE SECRET?

- *Any valuable business information that is not generally known and is subject to reasonable efforts to preserve confidentiality.*
- *Any formula, pattern, device or compilation of information which is used in one business, and which gives the owner an opportunity to obtain an advantage over competitors who do not know or use it.*



ATTRIBUTES OF TRADE SECRETS

- Shh! It's a **secret**--not generally known to the public;
- Confers some sort of economic benefit on its owner—benefit must lie in the fact that the trade secret is a **secret**, not just in the inherent value of the information that comprises the secret.
- Must make **reasonable** efforts to maintain secrecy.



UNIFORM TRADE SECRETS ACT

Information, including a formula, pattern, compilation, program device, method, technique, or process, that:

- Derives independent economic value, actual or potential, from no being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and*
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.*



BUT WE HAVE NO TRADE SECRETS.

- Not limited to inventions, products or idea.
- Every business has trade secrets!

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EXAMPLES OF TRADE SECRETS

- Customer lists
- Formulas (Coca Cola)
- Lab notebooks and test data
- Meeting minutes
- Blueprints
- Manufacturing processes

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MORE EXAMPLES

- Marketing analyses and strategic plans
- Financial information

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TRADE SECRET PROTECTION

- Governed by state law
- Require reasonable precautions to maintain confidentiality
- Term is perpetual, barring public disclosure or independent discovery

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Distinguishing Trade Secrets From Other Intellectual Property?

- How do trade secrets vary from
 - Copyrights
 - Trademarks
 - Patents

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Trade Secrets v. Copyrights

<p>TRADE SECRET</p> <ul style="list-style-type: none"> • Need not be reduced to any particular form • No registration required or desired. • State law controls. • Valid indefinitely so long as kept secret. 	<p>COPYRIGHT</p> <ul style="list-style-type: none"> • Available for "original works of authorship." • Come into being at the moment of creation. • Must be fixed in fixed form, i.e., "tangible medium of expression." • Federal registration not required but advisable. • Federal law controls. • Protection for author's life plus 70 years.
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Trade Secrets v. Patents

<p>TRADE SECRET</p> <ul style="list-style-type: none"> • Requires secrecy, value, and (in many states) use. • No application or registration required or desired. • No examination procedure. • Effective immediately • Valid indefinitely if kept secret. • Written or oral 	<p>PATENT</p> <ul style="list-style-type: none"> • Applies to inventions • Strict patentability standards, e.g., have utility, be novel and be non-obvious • Must file application within 1 year of public disclosure or offer for sale. • Strict examination procedure. • 1 to 5 years for issuance (vesting) • Valid for 20 years from date of application • Must be reduced to writing
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Trade Secrets v. Trademarks

<p>TRADE SECRETS</p> <ul style="list-style-type: none"> • Can be any confidential information. • No filing required or desired. • Term is perpetual if kept secret. • State law controls. 	<p>TRADEMARKS</p> <ul style="list-style-type: none"> • Trademark (or service mark) is a word, phrase, symbol or design, or a combination thereof that identifies and distinguishes your goods or services from those of others. • Filing not required, but preferable. • Term is perpetual if used in commerce. • Federal law is not exclusive, but provides greater rights than state law.
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Trade Secrets v. Patents (cont'd)

<p>TRADE SECRET</p> <ul style="list-style-type: none"> • Not precisely defined. • Not exclusive—others can develop independently • Governed by state law 	<p>PATENT</p> <ul style="list-style-type: none"> • Scope of protection precisely defined • Exclusive right to make, use, sell or offer to sell and import • Governed exclusively by federal law
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When Might I Opt on Trade Secrets

- When the secret is not patentable.
- When the likelihood is high that you can keep the secret for over 20 years (the life of a patent) and if others are not likely to come up with the same invention in a legitimate way.
- When the trade secret is not of sufficient value to be deemed worth a patent.
- When the secret relates to a manufacturing process rather than to a product, as products would be more likely to be reverse engineered.
- When you have applied for a patent and are waiting for the patent to be granted.

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HOW DO WE PROTECT OUR TRADE SECRETS

- Internal Protection
 - Employees
 - Policies and Procedures
- External Protection
 - Vendors
 - Contractors
 - Competitors

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Other Considerations

- Is it difficult to determine infringement by others?
 - E.g. manufacturing processes
- How prevalent are patents in your industry?
- What are your company's resources for procurement and enforcement?

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INTERNAL PROTECTION

Understand What Your Employees Do

- Lab/ R&D
 - Lab Notebooks
 - Test Results
- Marketing/ Sales/ Bus Development
- IT
 - Access to others' emails/ folders

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INTERNAL PROTECTION

- Clearly identify all trade secrets
- Limit access on need to know basis
- Restrict access to tangible secrets with sign in/out procedures
 - People
 - Items
- Restrict electronic access with passwords
- Label documents as confidential
- Establish consistent policies & procedures
- Address in practices with all new employees

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Employment Agreements

- Include NDA explicitly or by reference
- Any breach of the NDA is a breach of employment agreement and just cause for termination.
- Provide for economic consequences for breach.

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NDA's

- Broadly define “confidential information”
- Clearly prohibit disclosure
- Provide for quick equitable relief and shifting of attorneys’ fees and costs.
- Provide for maximum possible term—3 years is common

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NON-COMPETE AGREEMENTS

- In most states enforceable if reasonable in length of time and geography
- Not valid in California
- Effectively foreclose any use of confidential information for employee’s benefit
- Must be signed as condition of employment or supported by additional consideration if signed later.

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EXTERNAL PROTECTION OF TRADE SECRETS

- Business Partners
- Customers and other outside parties
- Former Employees

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Customers and Other Outside Parties

- Same as for business partners

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Business Partners and Potential Partners

- Require execution of NDA **before** any discussions take place that could lead to disclosure.
- Clearly and specifically define confidential information
- Business signatory must take responsibility for all employees, representatives, and agents, or all persons must execute individually
- May use mutual NDA's
- Avoids antitrust issues as well

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FORMER EMPLOYEES

- Original NDA should remain effective —duty to maintain confidentiality continues if employment ends.
- Any severance or similar agreement should include reference to confidentiality obligations.
- Breach of NDA should result in forfeit of benefits.

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WHAT DO I DO WHEN MISAPPROPRIATION OR THEFT OCCURS?

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REMEDIES FOR TRADE SECRET MISAPPROPRIATION

- Uniform Trade Secrets Act
 - Adopted by all states and DC, excluding MA, NJ, NY, and TX
- Common Law
- Computer Fraud & Abuse Act
- Best Practices

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Investigating Potential Theft

- All Employees
 - Review computers for deleted emails
 - Review video surveillance cameras
- Lab/ R&D
 - Were policies breached?
 - Monitor ex-employee patent filings
- Keep investigation confidential
- Consider contacting law enforcement

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UNIFORM TRADE SECRETS ACT

Remedy for Misappropriation

“Misappropriation ” is

- Acquisition of trade secret of another by a one who knows or has reason to know that the trade secret was acquired by improper means, e.g., theft; or
- Disclosure or use of a another’s trade secret without consent by a person who
 - Obtained secret improperly or unlawfully; or
 - Knew, explicitly or should have known, that secret was (i) obtained improperly; (ii) acquired with duty to maintain secrecy; or (iii) obtained from one who owed duty of confidentiality or,
 - Before a material change of position, knew or should have known that it was a trade secret and knowledge was gained by accident or mistake..

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UNIFORM TRADE SECRETS ACT

- ❑ Equitable relief
 - Actual or threatened misappropriation may be enjoined.
 - Injunction is terminated when the trade secret has ceased to exist-- may be continued for reasonable period of time to eliminate commercial advantage otherwise derived from the misappropriation.
 - In exceptional circumstances, injunction may condition future use upon payment of reasonable royalty for as long as use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.
 - Court may compel affirmative acts to protect trade secret

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COMMON LAW EMPLOYEE OBLIGATION

- Employee has an obligation implied from the employment relationship, i.e., the employment “contract,” to “hold sacred” trade secrets or other confidential information acquired in the course of employment.
- Employee who has left employment is under implied obligation not to use trade secrets or other confidential information acquired in the course of employment, for the employee’s own benefit or that of a rival, to the detriment of the former employer. This last premise used most often to support injunctive relief, but has been applied to support damages as well.

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UNIFORM TRADE SECRETS ACT

- ❑ Damages
 - Unless award is inequitable, damages are available for actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss.
 - Alternatively, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a wrongdoer’s unauthorized disclosure or use of a trade secret.
 - If misappropriation is willful and malicious, e may recover exemplary damages of up to twice consequential damages.
 - Attorneys’ fees
- ❑ Uniform Act precludes common law tort claims, but not contractual or criminal claims.

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COMMON LAW RESTATEMENT OF TORTS--LIABILITY

One who discloses or uses another's trade secret, without a privilege to do so, is liable to the other if

- ❑ S/he discovered the secret by improper means, or
- ❑ Disclosure or use constitutes a breach of confidence reposed in holder of secret in disclosing the secret, or
- ❑ S/he learned the secret from a third person with notice of the facts that it was a secret and that third person discovered it by improper means or that third person's disclosure of it was otherwise a breach of his/her duty to the other, or
- ❑ S/he learned the secret with notice of the facts that it was a secret and that its disclosure was made by mistake.

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COMMON LAW REMEDIES FOR MISAPPROPRIATION

- Usual relief is injunction against defendant and accounting by defendant(s) profits received as a result of the misappropriation and use the trade secrets. Under quasi-contract theory, one who wrongfully uses a trade secret of another is under a duty of restitution for the value of the benefit thereby received.
- If a defendant innocently uses a trade secret and materially and prejudicially changes its position before learning that the information was confidential, damages should be in form of reasonable royalty arrangement, i.e., similar to patent infringement case. Reasonable royalty theory may be most appropriate when other theories would result in no recovery for the plaintiff or where damages are speculative and appropriate royalty can be established from existing contract negotiated at arm's length by holder of the secret with a third party and from the misappropriator's actual sales of the product containing the trade secret.
- Misappropriating party may be permitted to continue using the trade secret so long as royalty is paid to the original owner of the secret. Length of royalty turns on how long the trade secret owner could have kept the information confidential.

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COMMON LAW REMEDIES FOR MISAPPROPRIATION

- Punitive damages may be recovered if defendant's conduct is willful and wanton.
- Restatement of Torts Second expressly provides that a successful plaintiff in an action for the appropriation of a trade secret may recover punitive damages under the rules generally applicable to the award of punitive damages in tort actions.
- Cannot recover punitive damages of claim is based strictly in contract.

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COMPUTER FRAUD & ABUSE ACT 18 U.S.C. §. 1030

- ❑ Prohibits intentional unauthorized access, or access which exceeds authorization, when user accesses a computer without authorization or exceeds authorized access, and thereby obtains information from a "protected computer" of the conduct involved interstate or foreign communication. A "protected computer" is one used in interstate or foreign commerce, including computers outside the United States which affect interstate or foreign commerce or communication.
- ❑ Prohibits intentional unauthorized access, or access which exceeds authorization, with intent to defraud, which furthers the intended fraud and results in obtaining anything of value, unless the object of the fraud and the thing obtained consists only of the use of the computer and the value of such use is not more than \$5,000 in any 1-year period.
- ❑ Penalty of fine, imprisonment, or both.


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ECONOMIC ESPIONAGE ACT OF 1996 18 U.S.C. §§ 1831-1839


- ❑ Criminalizes the theft of trade secrets to benefit foreign powers.
- ❑ Criminalizes their theft for commercial or economic purposes.
- ❑ Penalties include fines and imprisonment

 **BEST PRACTICES**
POLICIES AND PROCEDURES


- Establish company-wide information security and protection program is essential.
- Program should cover all types of confidential information including information without commercial value, e.g., medical records, attorney-client communications.
- It should also deal with issues of business continuity and disaster planning for the secure and uninterrupted delivery of information during natural or man-made disasters—create formal information security and protection policy. Both legal and technical expertise are essential.
- Identify and prioritize business secrets based on their value and sensitivity.
- Review periodically with regular trade secret audits
- Use confidentiality or non-disclosure and non-compete clauses in an employment contracts.
- Establish similar rules and requirements for the protection of confidential information from contractors, consultants, vendors, customers, prospective or temporary staff, interns, visitors, non-employees working on site, etc.

 **BEST PRACTICES**
EMPLOYEE EDUCATION AND PRACTICE PROGRAM

- Remind employees leaving the company of their continuing responsibilities in that regard and of the need to return any information or document that may contain trade secrets.
- Require departing employees to sign a separation report attesting to the return of all confidential information and trade secrets .

 **BEST PRACTICES**
EMPLOYEE EDUCATION AND PRACTICE PROGRAM

- Educate all employees regarding importance of company trade secrets and preservation of confidentiality.
- Inform employees of company's policies regarding non-disclosure and train all employees regarding practical aspects of information .
 - Provide clear, consistent definitions of confidential information.
 - Illustrate with specific examples from work environment.
- Implement system for monitoring compliance.
- Audits should include process for evaluation and continuous improvement.
- When hiring company must exercise caution to avoid allegations that new employee has misappropriated trade secrets from former employer.
 - Newly hired employees should receive copy of information security and protection policy along with a briefing on the subject, and they agree to abide by the policy by signing an acknowledgement to that effect.
 - Periodical reminders of the policy and proper training in its implementation are necessary throughout the period of employment.

 **BEST PRACTICES**
RESTRICTING ACCESS

- Require security passes to trade secret document repository or a manufacturing or research and development facility.
- Label trade secrets and similar information confidential or secret.
- Limit access to key personnel and is disclosed who have signed confidentiality or non-disclosure agreement.
- A good confidentiality agreement is detailed and direct, and limits post-employment restrictions, if at all, in time and geographical scope.

**CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT
YOUR COMPANY, INC.**

This Confidentiality and Nondisclosure Agreement (the "Agreement") is made and entered into on this [DATE] day of [MONTH], 2008 (the "Effective Date"), by and between YOUR COMPANY, INC., a Delaware corporation, having its principle place of business at 1234 Springtime Ave, Your City, Your State 00000, United States ("YOUR COMPANY"), and [NAME OF RECIPIENT] whose mailing address is [ADDRESS, CITY, STATE ZIP], ("RECIPIENT").

YOUR COMPANY is willing to disclose to RECIPIENT certain confidential and proprietary information in order to permit YOUR COMPANY and RECIPIENT (i) to determine the desirability of entering into a possible business transaction or business relationship with one another; and/or (ii) to enable the parties to undertake and enter into a business transaction or a business relationship. The disclosure of such information is subject to the terms and conditions described in this Agreement.

NOW THEREFORE, in consideration of the foregoing premises and mutual promises hereinafter contained, RECIPIENT agrees as follows:

1. **DEFINITIONS.** As used in this Agreement, the words below are defined as follows:

- A. **Affiliate** of a party means any other entity directly or indirectly controlling, controlled by or under common control with that party as of the date of this Agreement, e.g., a subsidiary or parent corporation.
- B. **Confidential Information** means and refers to all confidential or proprietary information, documents, and materials, whether printed or in machine-readable form or otherwise, including, but not limited to, processes, hardware, software, inventions, trade secrets, ideas, designs, research, and know-how; business methods, production plans, marketing and branding plans, and merger plans; and identity of shareholders, directors, or employees;

Programs, and procedures relating to the business operations of YOUR COMPANY, including, but not limited to organizational structure, management, marketing and branding strategies, products and services, customer service, human resource and employee benefit policies, programs, and services, and internal communication processes and technology tools;

All inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements to any such inventions, and all patents, including, patent applications, and patent disclosures, both domestic and foreign, together with all reissues, continuations, continuations-in-part, revisions, extensions, and re-examinations thereof. Such inventions include, but are not limited to, all products created, designed, and marketed by YOUR COMPANY, its successors or assigns and any parent, subsidiary or affiliate YOUR COMPANY;

All marks, whether protected under federal, state, provincial, local, or international law or international treaty, including trademarks, service marks, trade dress, logos, slogans, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated with any such marks, and all applications, registrations, and renewals in connection therewith. Writings and other works subject to copyright protection under any federal, state, provincial, or local, or international copyright act or other law or international treaty, including, without limitation, the U.S. Copyright Act, including all copyrighted works, specifically but not limited to, copyrightable works, and all applications, registrations, and renewals in connection therewith;

All mask works and all applications, registrations, and renewals in connection therewith;

All trade secrets and confidential business information (including, without limitation, ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer information and lists, and supplier information and lists, current and potential customer or client information and lists, current and potential product information and lists, pricing and cost information, business and marketing plans and proposals, and financial information and forecasts);

All computer software (including data, disks, licenses, source code, and related documentation);

All other proprietary and intangible rights, property, and assets, whether actual or potential;

All web sites and domain names; and

All copies and tangible embodiments thereof (in whatever form or medium).

Confidential Information shall include all information that should reasonably have been understood by RECIPIENT, because of legends or other markings, the circumstances of disclosure, or the nature of the information itself, to be proprietary and confidential to YOUR COMPANY, regardless of whether such information is marked "Confidential" or "Proprietary."

The term **Confidential Information** shall *not* include information which: (i) was or is obtained by RECIPIENT from a third party which third party, to the actual knowledge of RECIPIENT, was or is lawfully in possession of such information and was or is not in violation of any contractual or legal obligation to YOUR COMPANY or other third party with respect to such information; (ii) is or becomes part of the public domain through no fault of RECIPIENT or its Representatives; (iii) was or is independently ascertained or developed by RECIPIENT or its Representatives; or (iv) is approved for disclosure and release by written authorization of YOUR COMPANY.

- C. **Control** means (i) the legal, beneficial or equitable ownership, directly or indirectly, of at least a majority of the equity interests of an entity; or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity or the election of a majority of the board of directors or comparable governing body of an entity, whether through the ownership of voting securities, by contract or otherwise
- D. **Recipient** ("RECIPIENT") refers to the person or enterprise named above and who has executed this Agreement in connection with its receipt of any written or oral proprietary or other Confidential Information from YOUR COMPANY.
- E. **Representatives** refers to the directors, officers, employees, agents or other representatives, including, without limitation, attorneys, accountants, consultants, investment bankers, financial advisors and lenders of RECIPIENT and its Affiliates.
- F. **Review Material** refers to reports, notes, analyses, compilations, files, data, forecasts, studies, memoranda or other documents which contain or otherwise reflect Confidential Information, including, without limitation, materials created by RECIPIENT.
2. **CONFIDENTIALITY OF DISCUSSIONS AND RELATIONSHIP.** Except as required by law or as permitted by Paragraph 7 of this Agreement, neither RECIPIENT nor its Representatives will, without the prior written consent of YOUR COMPANY, disclose to any person (A) the fact that Confidential Information has been made available to RECIPIENT; (B) the fact that discussions or negotiations are taking place or have taken place between the parties concerning a possible business transaction or business relationship between the parties; or (C) any of the terms, conditions or other facts with respect to any such potential or actual business relationship or transaction, including the status of any discussions.
3. **DUTY OF CARE.** Subject to Paragraphs 5 and 7 of this Agreement, RECIPIENT agrees to use the same degree of care in protecting and using the Confidential Information received pursuant to this Agreement as RECIPIENT would use in protecting its own Confidential Information. In no case will RECIPIENT use less than a reasonable degree of care to maintain the confidentiality of the Confidential Information received.
4. **TIME LIMIT OF CONFIDENTIALITY.** Both any Review Material and the Confidential Information will be kept confidential for a period of three (3) years from the date of disclosure of the same. Neither RECIPIENT nor any of its Representatives will, without the prior written consent of YOUR COMPANY, disclose the Review Material or the Confidential Information, in whole or in part, in any manner whatsoever.

5. **LIMITATIONS ON USE OF INFORMATION.** RECIPIENT agrees that with respect to the YOUR COMPANY's Confidential Information RECIPIENT will:
 - A. Not use the Review Material or the Confidential Information other than for the purpose described in or otherwise intended by this Agreement.
 - B. Not use the Review Material or the Confidential Information to compete, either directly or indirectly, with YOUR COMPANY, notwithstanding the provisions of Paragraph 7 below or any other provision of this Agreement to the contrary.
 - C. Reveal the Review Material and the Confidential Information only to its Representatives who need to know the same for the purpose of evaluating and/or entering into a business relationship or transaction with YOUR COMPANY and who are informed by RECIPIENT of the confidential nature of the same; and
 - D. At YOUR COMPANY's request, promptly return to YOUR COMPANY any and all Confidential Information disclosed under this Agreement (including copies forwarded to Representatives), together with all copies thereof, and destroy all Review Material (and confirm such destruction in writing to YOUR COMPANY). Alternatively, at YOUR COMPANY's sole discretion, RECIPIENT may destroy all Confidential Information and Review Material and confirm such destruction in writing to YOUR COMPANY. Provided, however, that RECIPIENT may retain one copy of any Review Material in its confidential, restricted access files for archival purposes, which copy shall be maintained in accordance with the provisions of this Agreement.
 - E. Not use the Confidential Information or Review Information to recruit, solicit, retain, or hire employees of YOUR COMPANY.
6. **LIABILITY FOR REPRESENTATIVES.** RECIPIENT will be responsible for any breach of this Agreement by its Representatives.
7. **LEGALLY ORDERED DISCLOSURE.** If RECIPIENT or anyone to whom it transmits Review Material pursuant to this Agreement is requested or required to disclose any Confidential Information, any of the Review Material, or any other factor matter disclosure of which is prohibited by this Agreement, by administrative or judicial action (including without limitation by deposition, interrogatory, request for information in legal proceedings, subpoena, civil investigative demand, order, statute, rule, request or other requirement promulgated or imposed by a judicial, regulatory, self-regulatory, legislative body or governmental agency), RECIPIENT, if legally permitted, will promptly after notice of such action notify YOUR COMPANY of such action to give YOUR COMPANY the opportunity to seek any legal remedies available to it for the purpose of maintain Review Material, Confidential Information and any other matter disclosure of which is prohibited by this Agreement, in confidence. If such protective order or other remedy is not obtained, or YOUR COMPANY waives compliance with the provisions of this Agreement, RECIPIENT will furnish only that portion of the Confidential Information, Review Material or other information which is required or requested, and RECIPIENT will use reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to all such documents, data, or information which is disclosed.
8. **COVENANTS.** YOUR COMPANY hereby represents to RECIPIENT that the disclosure of the Confidential Information will not violate any proprietary rights of third parties, including, without limitation, confidential relationships, patent and copyright rights, or other trade secrets, and that the disclosure will not violate any contractual obligations which YOUR COMPANY may have to any third party. YOUR COMPANY further warrants that it has the right to disclose all Confidential Information that it discloses to RECIPIENT pursuant to this Agreement.
9. **REPRESENTATIONS AND WARRANTIES.** Except as otherwise provided herein, YOUR COMPANY makes norepresentation or warranty, express or implied, with respect to any Confidential Information and RECIPIENT agrees that it is entitled to rely solely on the representations and warranties made to it by YOUR

COMPANY in any final definitive agreement regarding a possible transaction. Confidential Information is provided "as is" with all faults and YOUR COMPANY shall not be liable for the accuracy or completeness of the Confidential Information. Moreover, unless and until a definitive agreement is entered into, neither YOUR COMPANY nor RECIPIENT will be under any legal obligation of any kind whatsoever with respect to such transaction except for the matters specifically agreed to in this Agreement.

10. **TITLE TO CONFIDENTIAL INFORMATION.** All the Confidential Information disclosed to, delivered to, or acquired by RECIPIENT from YOUR COMPANY hereunder shall be and remain the sole property of YOUR COMPANY.
11. **NO OBLIGATION CREATED BY DISCLOSURE.** Disclosure of the Confidential Information disclosed by YOUR COMPANY to RECIPIENT shall not constitute any option, grant, or license to RECIPIENT of such Confidential Information under any patent, know-how, or other rights heretofore, now, or hereinafter held by YOUR COMPANY. It is understood and agreed that the disclosure by YOUR COMPANY of the Confidential Information hereunder shall not result in any obligation on the part of YOUR COMPANY to enter into any further agreement with RECIPIENT with respect to the subject matter hereof or otherwise.
12. **EQUITABLE REMEDIES.** RECIPIENT further acknowledges that remedies at law may be inadequate to protect YOUR COMPANY against breach of this Agreement, and RECIPIENT hereby agrees in advance that YOUR COMPANY shall be entitled to seek injunctive relief in the event of a breach of this Agreement. Such relief shall not be deemed to be the exclusive relief for a breach by RECIPIENT of this Agreement but shall be in addition to all other remedies available at law or equity to YOUR COMPANY.
13. **SUCCESSORS AND ASSIGNS.** This Agreement is binding on the parties, their successors and assigns. No modification of this Agreement shall be effective unless in writing and signed by both parties hereto.
14. **NOTICES.** All notices, demands, requests or other communications given under this Agreement shall be in writing and be given by personal delivery, certified mail, return receipt requested, or nationally recognized overnight courier service to the address set forth below or as may subsequently in writing be requested.

If to YOUR COMPANY:

Your Company, Inc.
 Attn.: John Doe, President
 1234 Springtime Ave
 Your City, Your State 00000

With a copy to:

Your Attorney, Esquire
 Address
 City, State Zip

If to RECIPIENT:

[NAME OF RECIPIENT]
 [Attention: NAME]
 [ADDRESS]

15. **GENERAL**

- A. **Waiver.** YOUR COMPANY' waiver of any breach or failure to enforce any of the terms and conditions of this Agreement at any time shall not in any way affect, limit, or waive YOUR COMPANY' right thereafter to enforce and compel strict compliance with every term and condition hereof.
- B. **Governing Law.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California, without regard to principles of conflicts of law.
- C. **Complete Agreement.** This Agreement constitutes the complete agreement between the parties hereto and supersedes and cancels any and all prior communications and agreements between the parties with respect to the disclosure of Confidential Information related to the Transaction described herein and the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives have executed this Mutual Confidentiality and Nondisclosure Agreement upon the date first set forth above.

YOUR COMPANY, INC. [NAME OR RECIPIENT]

By: _____
 John Doe, President
 Name: _____
 Title: _____

MUTUAL CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Mutual Confidentiality and Nondisclosure Agreement (the "Agreement") is made and entered into on this DATE day of [MONTH], 2008 (the "Effective Date"), by and between Your Company, Inc., a Delaware corporation, having its principle place of business at XXX South Town Road, Your City, Your State 10056 ("YC"), and [NAME OF COMPANY], which has its principle place of business at [ADDRESS, CITY, STATE ZIP], ("COMPANY").

YC and COMPANY are each willing to disclose to one another certain confidential and proprietary information in order to permit YC and COMPANY (i) to determine the desirability of entering into a possible business transaction or business relationship with one another; and/or (ii) to enable the parties to undertake and enter into a business transaction or a business relationship. The disclosure of such information is subject to the terms and conditions described in this Agreement.

NOW THEREFORE, in consideration of the foregoing premises and mutual promises hereinafter contained, YC and COMPANY agree as follows:

1. **DEFINITIONS.** As used in this Agreement, the words below are defined as follows:
 - A. **Affiliate** of a party means any other entity directly or indirectly controlling, controlled by or under common control with that party as of the date of this Agreement, e.g., a subsidiary or parent corporation.
 - B. **Confidential Information** means and refers to all confidential or proprietary information, documents, and materials, whether printed or in machine-readable form or otherwise, including, but not limited to, processes, hardware, software, inventions, trade secrets, ideas, designs, research, know-how, business methods, production plans, marketing and branding plans, and merger plans; and identity of shareholders, directors, or employees;
 - Programs, and procedures relating to and including but not limited to organizational structure, management, marketing and branding strategies, products and services, customer service, human resource and employee benefit policies, programs, and services, and internal communication processes and technology tools;
 - All inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements to any such inventions, and all patents, including, patent applications, and patent disclosures, both domestic and foreign, together with all reissues, continuations, continuations-in-part, revisions, extensions, and re-examinations thereof. Such inventions include, but are not limited to, all products created, designed, and marketed by either party, its successors or assigns and any parent, subsidiary or affiliate of either party;
 - All marks, whether protected under federal, state, provincial, local, or international law or international treaty, including trademarks, service marks, trade dress, logos, slogans, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated with any such marks, and all applications, registrations, and renewals in connection therewith. Writings and other works subject to copyright protection under any federal, state, provincial, or local, or international copyright act or other law or international treaty, including, without limitation, the U.S. Copyright Act, including all copyrighted works, specifically but not limited to, copyrightable works, all copyrights, and all applications, registrations, and renewals in connection therewith;
 - All mask works and all applications, registrations, and renewals in connection therewith;
 - All trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer information and lists, and supplier information and lists, current and potential customer or client information and lists, current and potential product information

and lists, pricing and cost information, business and marketing plans and proposals, and financial information and forecasts);

All computer software (including data, disks, licenses, source code, and related documentation);

All other proprietary and intangible rights, property, and assets, whether actual or potential;

All web sites and domain names; and

All copies and tangible embodiments thereof (in whatever form or medium).

Confidential Information shall include all information that should reasonably have been understood by RECEIVING PARTY, because of legends or other markings, the circumstances of disclosure, or the nature of the information itself, to be proprietary and confidential to DISCLOSING PARTY, regardless of whether such information is marked "Confidential."

The term **Confidential Information** shall *not* include information which: (i) was or is obtained by RECEIVING PARTY from a third party which third party, to the actual knowledge of RECEIVING PARTY, was or is lawfully in possession of such information and was or is not in violation of any contractual or legal obligation to DISCLOSING PARTY or other third party with respect to such information; (ii) is or becomes part of the public domain through no fault of RECEIVING PARTY or its Representatives; (iii) was or is independently ascertained or developed by RECEIVING PARTY or its Representatives; or (iv) is approved for disclosure and release by written authorization of DISCLOSING PARTY.

- C. **Control** means (i) the legal, beneficial or equitable ownership, directly or indirectly, of at least a majority of the equity interests of an entity; or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity or the election of a majority of the board of directors or comparable governing body of an entity, whether through the ownership of voting securities, by contract or otherwise
- D. **Disclosing Party** ("DISCLOSING PARTY") refers to either YC or COMPANY in connection with its disclosure of any written or oral information to the other party.
- E. **Receiving Party** ("RECEIVING PARTY") refers to either YC or COMPANY in connection with its receipt of any such written or oral information from the other party.
- F. **Representatives** refers to the directors, officers, employees, agents or other representatives, including, without limitation, attorneys, accountants, consultants, investment bankers, financial advisors and lenders of RECEIVING PARTY and its Affiliates.
- G. **Review Material** refers to reports, notes, analyses, compilations, files, data, forecasts, studies, memoranda or other documents which contain or otherwise reflect Confidential Information, including, without limitation, materials created by RECEIVING PARTY.
2. **CONFIDENTIALITY OF DISCUSSIONS AND RELATIONSHIP.** Except as required by law or as permitted by Section 7 of this Agreement, neither party nor its Representatives will, without the prior written consent of the other party, disclose to any person (A) the fact that Confidential Information has been made available to RECEIVING PARTY; (B) the fact that discussions or negotiations are taking place or have taken place between the parties concerning a possible business transaction or business relationship between the parties; or (C) any of the terms, conditions or other facts with respect to any such potential or actual business relationship or transaction, including the status of any discussions.
3. **DUTY OF CARE.** Subject to Sections 5 and 7 of this Agreement, each RECEIVING PARTY agrees to use the same degree of care in protecting and using the Confidential Information received pursuant to this Agreement as RECEIVING PARTY would use in protecting its own Confidential Information. In no case will RECEIVING PARTY use less than a reasonable degree of care to maintain the confidentiality of the Confidential Information received.

4. **TIME LIMIT OF CONFIDENTIALITY.** Both any Review Material and the Confidential Information will be kept confidential for a period of three (3) years from the date of disclosure of the same. Neither RECEIVING PARTY nor any of its Representatives will, without the prior written consent of DISCLOSING PARTY, disclose the Review Material or the Confidential Information, in whole or in part, in any manner whatsoever.
5. **LIMITATIONS ON USE OF INFORMATION.** The parties agree that with respect to the other party's Confidential Information RECEIVING PARTY will:
- A. Not use the Review Material or the Confidential Information other than for the purpose described in or otherwise intended by this Agreement.
- B. Not use the Review Material or the Confidential Information to compete, either directly or indirectly, with DISCLOSING PARTY, notwithstanding the provisions of Paragraph 7 below or any other provision of this Agreement to the contrary.
- C. Reveal the Review Material and the Confidential Information only to its Representatives who need to know the same for the purpose of evaluating and/or entering into a business relationship or transaction with DISCLOSING PARTY and who are informed by RECEIVING PARTY of the confidential nature of the same; and
- D. At DISCLOSING PARTY's request, promptly return to DISCLOSING PARTY any and all Confidential Information disclosed under this Agreement (including copies forwarded to Representatives), together with all copies thereof, and destroy all Review Material (and confirm such destruction in writing to DISCLOSING PARTY). Alternatively, RECEIVING PARTY may destroy all Confidential Information or Review Material and confirm such destruction in writing to DISCLOSING PARTY. Provided, however, that RECEIVING PARTY may retain one copy of any Review Material in its confidential, restricted access files for archival purposes, which copy shall be maintained in accordance with the provisions of this Agreement.
- E. Not use the Confidential Information or Review Information to recruit, solicit, retain, or hire employees of DISCLOSING PARTY.
6. **LIABILITY FOR REPRESENTATIVES.** RECEIVING PARTY will be responsible for any breach of this Agreement by its Representatives.
7. **LEGALLY ORDERED DISCLOSURE.** If RECEIVING PARTY or anyone to whom it transmits Review Material pursuant to this Agreement is requested or required to disclose any Confidential Information, any of the Review Material, or any other factor matter disclosure of which is prohibited by this Agreement, by administrative or judicial action (including without limitation by deposition, interrogatory, request for information in legal proceedings, subpoena, civil investigative demand, order, statute, rule, request or other requirement promulgated or imposed by a judicial, regulatory, self-regulatory, legislative body or governmental agency), RECEIVING PARTY, if legally permitted, will promptly after notice of such action notify DISCLOSING PARTY of such action to give DISCLOSING PARTY the opportunity to seek any legal remedies available to it for the purpose of maintain Review Material, Confidential Information and any other matter disclosure of which is prohibited by this Agreement, in confidence. If such protective order or other remedy is not obtained, or DISCLOSING PARTY waives compliance with the provisions of this Agreement, RECEIVING PARTY will furnish only that portion of the Confidential Information, Review Material or other information which is required or requested, and RECEIVING PARTY will use reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to all such documents, data, or information which is disclosed.
8. **COMPETITION.** The parties hereto understand that each may now market or have under development products and/or services which are competitive with products or services now offered or which may be offered by the other. Subject to the terms and conditions of this Agreement, and except as otherwise provided in this Agreement, discussions and/or communications between the parties hereto will not serve to impair the right of either party to develop, make, use, procure, protect, and/or market products or services now or in the

future which may be competitive with those offered by the other, nor require either party to disclose any planning or other related competitive information to the other.

9. **COVENANTS.** Each party hereby represents to the other that the disclosure of the Confidential Information, as may be the case, will not violate any proprietary rights of third parties, including, without limitation, confidential relationships, patent and copyright rights, or other trade secrets, and that the disclosure between the parties will not violate any contractual obligations which YC or COMPANY may have to any third party. Each party further warrants that it has the right to disclose all Confidential Information that it discloses to the other party pursuant to this Agreement.
10. **REPRESENTATIONS AND WARRANTIES.** Except as otherwise provided herein, neither party makes any representation or warranty, express or implied, with respect to any Confidential Information and RECEIVING PARTY agrees that it is entitled to rely solely on the representations and warranties made to it by DISCLOSING PARTY in any final definitive agreement regarding a possible Transaction. Confidential Information is provided "as is" with all faults and DISCLOSING PARTY shall not be liable for the accuracy or completeness of the Confidential Information. Moreover, unless and until a definitive agreement is entered into, neither DISCLOSING PARTY nor RECEIVING PARTY will be under any legal obligation of any kind whatsoever with respect to such Transaction except for the matters specifically agreed to in this Agreement.
11. **LIMITATIONS ON LIABILITY.** Neither party shall be liable for any indirect, incidental, or consequential damages of any nature or kind resulting from or arising in connection with this Agreement.
12. **TITLE TO CONFIDENTIAL INFORMATION.** All the Confidential Information disclosed to, delivered to, or acquired by RECEIVING PARTY from DISCLOSING PARTY hereunder shall be and remain the sole property of DISCLOSING PARTY.
13. **NO OBLIGATION CREATED BY DISCLOSURE.** Disclosure of the Confidential Information disclosed by one party to the other shall not constitute any option, grant, or license to RECEIVING PARTY of such Confidential Information under any patent, know-how, or other rights heretofore, now, or hereinafter held by DISCLOSING PARTY. It is understood and agreed that the disclosure by either party hereto of the Confidential Information hereunder shall not result in any obligation on the part of either party to enter into any further agreement with the other with respect to the subject matter hereof or otherwise.
14. **EQUITABLE REMEDIES.** Each party hereto further acknowledges that remedies at law may be inadequate to protect DISCLOSING PARTY against breach of this Agreement, and the parties hereby agree in advance that either party shall be entitled to seek injunctive relief in the event of a breach of this Agreement. Such relief shall not be deemed to be the exclusive relief for a breach by either party of this Agreement but shall be in addition to all other remedies available at law or equity to the other party.
15. **SUCCESSORS AND ASSIGNS.** This Agreement is binding on the parties, their successors and assigns. No modification of this Agreement shall be effective unless in writing and signed by both parties hereto.
16. **TERM.** This Agreement will terminate three (3) years after the Effective Date, or may be terminated by either party at any time, for any reason or no reason, upon written notice to the other party. Sections 7, 8, 9, 10, 12, 14 and 15 will survive any such expiration or termination.
17. **NOTICES.** All notices, demands, requests or other communications given under this Agreement shall be in writing and be given by personal delivery, certified mail, return receipt requested, or nationally recognized overnight courier service to the address set forth below or as may subsequently in writing be requested.

If to YC:

Your Company, Inc.
 Attn.: _____
 XXX South Town Road
 Your City, YS 10056

With a copy to:

Attorney, General Counsel
 Address
 City, State

If to COMPANY:

[NAME OF COMPANY]
 [Attention: NAME]
 [ADDRESS]

18. **GENERAL**

- A. **Waiver.** Either party's waiver of any breach or failure to enforce any of the terms and conditions of this Agreement at any time shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance with every term and condition hereof.
- B. **Governing Law.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Your State, without regard to principles of conflicts of law.
- C. **Complete Agreement.** This Agreement constitutes the complete agreement between the parties hereto and supersedes and cancels any and all prior communications and agreements between the parties with respect to the disclosure of Confidential Information related to the Transaction described herein and the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives have executed this Mutual Confidentiality and Nondisclosure Agreement upon the date first set forth above.

Your Company, Inc

[NAME OR COMPANY]

By: _____
 John Doe
 President and Managing Director

By: _____
 Name: _____
 Title: _____

MUTUAL NON-DISCLOSURE AGREEMENT¹

Sample 2

It is understood and agreed that the parties to this Agreement would each like to provide the other with certain information that may be considered confidential. To ensure the protection of such information and in consideration of the agreement to exchange said information, the parties agree as follows:

1. The confidential information to be disclosed under this Agreement ("Confidential Information") can be described as and includes:

Technical and business information relating to proprietary ideas, patentable ideas and/or trade secrets, existing and/or contemplated products and services, research and development, production, costs, profit and margin information, finances and financial projections, customers, clients, marketing, and current or future business plans and models, regardless of whether such information is designated as "Confidential Information" at the time of its disclosure.

In addition to the above, Confidential Information shall also include, and the parties shall have a duty to protect, other confidential and/or sensitive information which is (a) disclosed as such in writing and marked as confidential (or with other similar designation) at the time of disclosure; and/or (b) disclosed by in any other manner and identified as confidential at the time of disclosure and is also summarized and designated as confidential in a written memorandum delivered within thirty (30) days of the disclosure.

2. The parties shall use the Confidential Information only for the purpose of evaluating potential business, employment and/or investment relationships.
3. The parties shall limit disclosure of Confidential Information within its own organization to its directors, officers, partners, members and/or employees having a need to know and shall not disclose Confidential Information to any third party (whether an individual, corporation, or other entity) without prior written consent. The parties shall satisfy its obligations under this paragraph if it takes affirmative measures to ensure compliance with these confidentiality obligations by its employees, agents, consultants and others who are permitted access to or use of the Confidential Information.
4. This Agreement imposes no obligation upon the parties with respect to any Confidential Information (a) that was possessed before receipt; (b) is or becomes a matter of public knowledge through no fault of receiving party; (c) is rightfully received from a third party not owing a duty of confidentiality; (d) is disclosed without a duty of confidentiality to a third party by, or with the authorization of the disclosing party; or (e) is independently developed.
5. The parties warrant that they have the right to make the disclosures under this Agreement.
6. This Agreement shall not be construed as creating, conveying, transferring, granting or conferring upon either party any rights, license or authority in or to the information exchanged, except the limited right to use Confidential Information specified in paragraph 2. Furthermore and specifically, no license or conveyance of any intellectual property rights is granted or implied by this Agreement.

7. Neither party has an obligation under this Agreement to purchase any service, goods, or intangibles from the other party. Furthermore, both parties acknowledge and agree that the exchange of information under this Agreement shall not commit or bind either party to any present or future contractual relationship (except as specifically stated herein), nor shall the exchange of information be construed as an inducement to act or not to act in any given manner.
8. Neither party shall be liable to the other in any manner whatsoever for any decisions, obligations, costs or expenses incurred, changes in business practices, plans, organization, products, services, or otherwise, based on either party's decision to use or rely on any information exchanged under this Agreement.
9. If there is a breach or threatened breach of any provision of this Agreement, it is agreed and understood that the non-breaching party shall have no adequate remedy in money or other damages and accordingly shall be entitled to injunctive relief; provided however, no specification in this Agreement of any particular remedy shall be construed as a waiver or prohibition of any other remedies in the event of a breach or threatened breach of this Agreement.
10. This Agreement states the entire agreement between the parties concerning the disclosure of Confidential Information and supersedes any prior agreements, understandings, or representations with respect thereto. Any addition or modification to this Agreement must be made in writing and signed by authorized representatives of both parties. This Agreement is made under and shall be construed according to the laws of the State of _____, U.S.A. In the event that this agreement, is breached, any and all disputes must be settled in a court of competent jurisdiction in the State of _____, U.S.A.
11. If any of the provisions of this Agreement are found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision(s) shall be deemed modified to the limited extent required to permit enforcement of the Agreement as a whole.

WHEREFORE, the parties acknowledge that they have read and understand this Agreement and voluntarily accept the duties and obligations set forth herein.

Date _____ Worldwide Widget Company
 By _____
 John A. Doe, Executive Vice President
 123 Madison Avenue
 Any City, Any State Zip

Date _____ Your Company
 By _____
 Sally A. Jones, President
 321 Lexington Avenue
 Your City, Your State Zip

¹ Courtesy of White & Quinn, P.C. and www.ipwatchdog.com

**CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT
YOUR COMPANY , INC.**

This Confidentiality and Nondisclosure Agreement (the "Agreement") is made and entered into on this [DATE] day of [MONTH], 2008 (the "Effective Date"), by and between YOUR COMPANY , INC., a Delaware corporation, having its principle place of business at 1234 Springtime Ave, Your City, Your State 1234, United States ("YOUR COMPANY"), and [NAME OF COMPANY] which has its principle place of business at [ADDRESS, CITY, STATE ZIP], ("RECIPIENT").

YOUR COMPANY is willing to disclose to RECIPIENT certain confidential and proprietary information in order to permit YOUR COMPANY and RECIPIENT (i) to determine the desirability of entering into a possible business transaction or business relationship with one another; and/or (ii) to enable the parties to undertake and enter into a business transaction or a business relationship. The disclosure of such information is subject to the terms and conditions described in this Agreement.

NOW THEREFORE, in consideration of the foregoing premises and mutual promises hereinafter contained, RECIPIENT agrees as follows:

1. **DEFINITIONS.** As used in this Agreement, the words below are defined as follows:

- A. **Affiliate** of a party means any other entity directly or indirectly controlling, controlled by or under common control with that party as of the date of this Agreement, e.g., a subsidiary or parent corporation.
- B. **Confidential Information** means and refers to all confidential or proprietary information, documents, and materials, whether printed or in machine-readable form or otherwise, including, but not limited to, processes, hardware, software, inventions, trade secrets, ideas, designs, research, and know-how; business methods, production plans, marketing and branding plans, and merger plans; and identity of shareholders, directors, or employees;

Programs, and procedures relating to the business operations of YOUR COMPANY, including, but not limited to organizational structure, management, marketing and branding strategies, products and services, customer service, human resource and employee benefit policies, programs, and services, and internal communication processes and technology tools;

All inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements to any such inventions, and all patents, including, patent applications, and patent disclosures, both domestic and foreign, together with all reissues, continuations, continuations-in-part, revisions, extensions, and re-examinations thereof. Such inventions include, but are not limited to, all products created, designed, and marketed by YOUR COMPANY, its successors or assigns and any parent, subsidiary or affiliate YOUR COMPANY;

All marks, whether protected under federal, state, provincial, local, or international law or international treaty, including trademarks, service marks, trade dress, logos, slogans, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated with any such marks, and all applications, registrations, and renewals in connection therewith. Writings and other works subject to copyright protection under any federal, state, provincial, or local, or international copyright act or other law or international treaty, including, without limitation, the U.S. Copyright Act, including all copyrighted works, specifically but not limited to, copyrightable works, all copyrights, and all applications, registrations, and renewals in connection therewith;

All mask works and all applications, registrations, and renewals in connection therewith;

All trade secrets and confidential business information (including, without limitation, ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and

techniques, technical data, designs, drawings, specifications, customer information and lists, and supplier information and lists, current and potential customer or client information and lists, current and potential product information and lists, pricing and cost information, business and marketing plans and proposals, and financial information and forecasts);

All computer software (including data, disks, licenses, source code, and related documentation);

All other proprietary and intangible rights, property, and assets, whether actual or potential;

All web sites and domain names; and

All copies and tangible embodiments thereof (in whatever form or medium).

Confidential Information shall include all information that should reasonably have been understood by RECIPIENT, because of legends or other markings, the circumstances of disclosure, or the nature of the information itself, to be proprietary and confidential to YOUR COMPANY, regardless of whether such information is marked "Confidential" or "Proprietary."

The term **Confidential Information** shall *not* include information which: (i) was or is obtained by RECIPIENT from a third party which third party, to the actual knowledge of RECIPIENT, was or is lawfully in possession of such information and was or is not in violation of any contractual or legal obligation to YOUR COMPANY or other third party with respect to such information; (ii) is or becomes part of the public domain through no fault of RECIPIENT or its Representatives; (iii) was or is independently ascertained or developed by RECIPIENT or its Representatives; or (iv) is approved for disclosure and release by written authorization of YOUR COMPANY.

- C. **Control** means (i) the legal, beneficial or equitable ownership, directly or indirectly, of at least a majority of the equity interests of an entity; or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity or the election of a majority of the board of directors or comparable governing body of an entity, whether through the ownership of voting securities, by contract or otherwise
- D. **Recipient** ("RECIPIENT") refers to the person or enterprise named above and who has executed this Agreement in connection with its receipt of any written or oral proprietary or other Confidential Information from YOUR COMPANY.
- E. **Representatives** refers to the directors, officers, employees, agents or other representatives, including, without limitation, attorneys, accountants, consultants, investment bankers, financial advisors and lenders of RECIPIENT and its Affiliates.
- F. **Review Material** refers to reports, notes, analyses, compilations, files, data, forecasts, studies, memoranda or other documents which contain or otherwise reflect Confidential Information, including, without limitation, materials created by RECIPIENT.
2. **CONFIDENTIALITY OF DISCUSSIONS AND RELATIONSHIP.** Except as required by law or as permitted by Paragraph 7 of this Agreement, neither RECIPIENT nor its Representatives will, without the prior written consent of YOUR COMPANY, disclose to any person (A) the fact that Confidential Information has been made available to RECIPIENT; (B) the fact that discussions or negotiations are taking place or have taken place between the parties concerning a possible business transaction or business relationship between the parties; or (C) any of the terms, conditions or other facts with respect to any such potential or actual business relationship or transaction, including the status of any discussions.
3. **DUTY OF CARE.** Subject to Paragraphs 5 and 7 of this Agreement, RECIPIENT agrees to use the same degree of care in protecting and using the Confidential Information received pursuant to this Agreement as RECIPIENT would use in protecting its own Confidential Information. In no case will RECIPIENT use less than a reasonable degree of care to maintain the confidentiality of the Confidential Information received.

4. **TIME LIMIT OF CONFIDENTIALITY.** Both any Review Material and the Confidential Information will be kept confidential for a period of three (3) years from the date of disclosure of the same. Neither RECIPIENT nor any of its Representatives will, without the prior written consent of YOUR COMPANY, disclose the Review Material or the Confidential Information, in whole or in part, in any manner whatsoever.
5. **LIMITATIONS ON USE OF INFORMATION.** RECIPIENT agrees that with respect to the YOUR COMPANY' Confidential Information RECIPIENT will:
- A. Not use the Review Material or the Confidential Information other than for the purpose described in or otherwise intended by this Agreement.
- B. Not use the Review Material or the Confidential Information to compete, either directly or indirectly, with YOUR COMPANY, notwithstanding the provisions of Paragraph 7 below or any other provision of this Agreement to the contrary.
- C. Reveal the Review Material and the Confidential Information only to its Representatives who need to know the same for the purpose of evaluating and/or entering into a business relationship or transaction with YOUR COMPANY and who are informed by RECIPIENT of the confidential nature of the same; and
- D. At YOUR COMPANY's request, promptly return to YOUR COMPANY any and all Confidential Information disclosed under this Agreement (including copies forwarded to Representatives), together with all copies thereof, and destroy all Review Material (and confirm such destruction in writing to YOUR COMPANY). Alternatively, at YOUR COMPANY's sole discretion, RECIPIENT may destroy all Confidential Information and Review Material and confirm such destruction in writing to YOUR COMPANY. Provided, however, that RECIPIENT may retain one copy of any Review Material in its confidential, restricted access files for archival purposes, which copy shall be maintained in accordance with the provisions of this Agreement.
- E. Not use the Confidential Information or Review Information to recruit, solicit, retain, or hire employees of YOUR COMPANY.
6. **LIABILITY FOR REPRESENTATIVES.** RECIPIENT will be responsible for any breach of this Agreement by its Representatives.
7. **LEGALLY ORDERED DISCLOSURE.** If RECIPIENT or anyone to whom it transmits Review Material pursuant to this Agreement is requested or required to disclose any Confidential Information, any of the Review Material, or any other factor matter disclosure of which is prohibited by this Agreement, by administrative or judicial action (including without limitation by deposition, interrogatory, request for information in legal proceedings, subpoena, civil investigative demand, order, statute, rule, request or other requirement promulgated or imposed by a judicial, regulatory, self-regulatory, legislative body or governmental agency), RECIPIENT, if legally permitted, will promptly after notice of such action notify YOUR COMPANY of such action to give YOUR COMPANY the opportunity to seek any legal remedies available to it for the purpose of maintain Review Material, Confidential Information and any other matter disclosure of which is prohibited by this Agreement, in confidence. If such protective order or other remedy is not obtained, or YOUR COMPANY waives compliance with the provisions of this Agreement, RECIPIENT will furnish only that portion of the Confidential Information, Review Material or other information which is required or requested, and RECIPIENT will use reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to all such documents, data, or information which is disclosed.
8. **COVENANTS.** YOUR COMPANY hereby represents to RECIPIENT that the disclosure of the Confidential Information will not violate any proprietary rights of third parties, including, without limitation, confidential relationships, patent and copyright rights, or other trade secrets, and that the disclosure will not violate any contractual obligations which YOUR COMPANY may have to any third party. YOUR COMPANY further

warrants that it has the right to disclose all Confidential Information that it discloses to RECIPIENT pursuant to this Agreement.

9. **REPRESENTATIONS AND WARRANTIES.** Except as otherwise provided herein, YOUR COMPANY makes norepresentation or warranty, express or implied, with respect to any Confidential Information and RECIPIENT agrees that it is entitled to rely solely on the representations and warranties made to it by YOUR COMPANY in any final definitive agreement regarding a possible transaction. Confidential Information is provided "as is" with all faults and YOUR COMPANY shall not be liable for the accuracy or completeness of the Confidential Information. Moreover, unless and until a definitive agreement is entered into, neither YOUR COMPANY nor RECIPIENT will be under any legal obligation of any kind whatsoever with respect to such transaction except for the matters specifically agreed to in this Agreement.
10. **TITLE TO CONFIDENTIAL INFORMATION.** All the Confidential Information disclosed to, delivered to, or acquired by RECIPIENT from YOUR COMPANY hereunder shall be and remain the sole property of YOUR COMPANY.
11. **NO OBLIGATION CREATED BY DISCLOSURE.** Disclosure of the Confidential Information disclosed by YOUR COMPANY to RECIPIENT shall not constitute any option, grant, or license to RECIPIENT of such Confidential Information under any patent, know-how, or other rights heretofore, now, or hereinafter held by YOUR COMPANY. It is understood and agreed that the disclosure by YOUR COMPANY of the Confidential Information hereunder shall not result in any obligation on the part of YOUR COMPANY to enter into any further agreement with RECIPIENT with respect to the subject matter hereof or otherwise.
12. **EQUITABLE REMEDIES.** RECIPIENT further acknowledges that remedies at law may be inadequate to protect YOUR COMPANY against breach of this Agreement, and RECIPIENT hereby agrees in advance that YOUR COMPANY shall be entitled to seek injunctive relief in the event of a breach of this Agreement. Such relief shall not be deemed to be the exclusive relief for a breach by RECIPIENT of this Agreement but shall be in addition to all other remedies available at law or equity to YOUR COMPANY.
13. **SUCCESSORS AND ASSIGNS.** This Agreement is binding on the parties, their successors and assigns. No modification of this Agreement shall be effective unless in writing and signed by both parties hereto.
14. **NOTICES.** All notices, demands, requests or other communications given under this Agreement shall be in writing and be given by personal delivery, certified mail, return receipt requested, or nationally recognized overnight courier service to the address set forth below or as may subsequently in writing be requested.

If to YOUR COMPANY:

Your Company, Inc.
Attn.: Jane Doe, President
1234 Springtime Ave
Your City, Your State 00000

With a copy to:

Your Attorney, Esquire
Address
City, State Zip

If to RECIPIENT:

[NAME OF RECIPIENT]
[Attention: NAME]
[ADDRESS]

**Sample Confidentiality and Non-Compete Provisions
Executive Employment Contract**

15. **GENERAL**

- A. **Waiver.** YOUR COMPANY' waiver of any breach or failure to enforce any of the terms and conditions of this Agreement at any time shall not in any way affect, limit, or waive YOUR COMPANY' right thereafter to enforce and compel strict compliance with every term and condition hereof.
- B. **Governing Law.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California, without regard to principles of conflicts of law.
- C. **Complete Agreement.** This Agreement constitutes the complete agreement between the parties hereto and supersedes and cancels any and all prior communications and agreements between the parties with respect to the disclosure of Confidential Information related to the Transaction described herein and the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives have executed this Mutual Confidentiality and Nondisclosure Agreement upon the date first set forth above.

YOUR COMPANY , INC.

[NAME OR RECIPIENT]

By: _____
Jane Doe, President
Name: _____

By: _____

Title: _____

8. **Non-Solicitation/Non-Servicing Agreement and Protection of Confidential Information.**

A. The Executive agrees that his services hereunder are of a special, unique, extraordinary and intellectual character, and his position with the Company places him in a position of confidence and trust with the clients and employees of the Company. The Executive acknowledges that the rendering of services to the clients of the Company necessarily requires the disclosure to the Executive of confidential information and trade secrets of the Company (such as, without limitation, marketing plans, budgets, media plans, communications plans, creative ideas, designs, company policies, client preferences and policies, and identity of appropriate personnel of clients with sufficient authority to influence a shift in suppliers). The parties hereto agree that in the course of the Executive's employment with the Company, the Executive has and will continue to develop a personal relationship with the Company's clients and a knowledge of those clients' affairs and requirements, and that the relationship of the Company with its established clientele will therefore be placed in the Executive's hands in confidence and trust. The Executive consequently agrees that it is reasonable and necessary for the protection of the confidential information, trade secrets, goodwill and business of the Company that the Executive make the covenants contained herein. Accordingly, the Executive agrees that during the period that he is employed by the Company and thereafter for the longer of (i) the period the Company continues to make severance payments to the Executive under paragraph 6(e) above or (ii) two years after the Date of Termination, he will not, as an individual, consultant, partner, shareholder, or in association with any other person, business or enterprise, except on behalf of the Company, directly or indirectly, and regardless of the reason for his ceasing to be employed by the Company:

- (i) attempt in any manner to solicit or accept from any client business of the type performed by the Company or to persuade any client to cease to do business or to reduce the amount of business which any such client has customarily done or is reasonably expected to do with the Company, whether or not the relationship between such member of the Company and such client was originally established in whole or in part through his efforts; or
- (ii) employ as an employee or retain as a consultant any person who is then or at any time during the preceding twelve months was an employee of or exclusive consultant to the Company, or persuade or attempt to persuade any employee of or exclusive consultant to the Company to leave the employ of the Company or to become employed as an employee or retained as a consultant by anyone other than by the Company; or
- (iii) render to or for any client any services of the type rendered by the Company.

As used in Paragraph 8 hereof, the term "**Company**" will include the Company, XYZ and each member of the XYZ Group and each of their subsidiaries (if any) and the term "**client**" will mean (1) anyone who is a client of the Company or XYZ on the Date of Termination or, if the Executive's employment shall not have terminated, at the time of the alleged prohibited conduct (any such applicable date being called the "**Determination Date**"); (2) anyone who was a client of the Company or XYZ at any time during the one year period immediately preceding the Determination Date; (3) any prospective clients to whom the Company or XYZ had made a new business presentation (or similar offering of services) at any time during the two-year period immediately preceding the Determination Date; and (4) any prospective client to whom the Company or XYZ or another member of the XYZ Group conducting business in the United States made a new business presentation (or similar offering of services) at any time within six months after the Date of Termination (but only if the initial discussions between the Company, XYZ or such other XYZ Group member and such prospective client relating to the rendering of services occurred prior to the Date of Termination, and only if employees of the Company or XYZ participated in such discussion or the preparation of such solicitation). In addition, if the client is part of a group of companies which conducts business through more than one entity, division or operating unit, whether or not separately incorporated (a "**Client Group**"), the term "**client**" as used herein will include each entity, division and operating unit of the Client Group where the same management group of the Client Group has the decision making authority or significant influence with respect to contracting for services of the type rendered by the Company or XYZ.

B. In the course of Executive's employment with the Company he will acquire and have access to confidential or proprietary information about the Company, XYZ and other members of the XYZ Group and/or their respective clients, including, but not limited to, trade secrets, methods, models, passwords, access to computer files, financial information and records, computer software programs, agreements and/or contracts with clients, client contacts, client preferences, marketing and/or creative policies and ideas, data processing programs and files, advertising campaigns, marketing plans, media plans and budgets, practices, concepts, strategies, and information about or received from clients and other companies with which the Company, XYZ or the other members of the XYZ Group do business. The foregoing will be collectively referred to as "**confidential information**." The Executive agrees that he will not at any time (whether during the Term or after termination of this Agreement), disclose to anyone any confidential information or trade secret of the Company, XYZ or any other member of the XYZ Group, or any client of the Company, XYZ or any other member of the XYZ Group, or utilize such confidential information or trade secret for his own benefit, or for the benefit of third parties and all memoranda, notes, records or other documents compiled by him or made available to him during the Term pertaining to the business of the Company, XYZ or any other member of the XYZ Group and their clients will be the property of the Company, XYZ or the applicable member of the XYZ Group, as the case may be, and will be delivered immediately to the Company on the termination of his employment or, upon request, at any other time. It is understood that the Executive is free to use information that is in the public domain (not as a result of a breach of this Agreement). The term "confidential information or trade secret" does not include information which (i) becomes generally available to the public other than by breach of this

provision, (ii) the Executive learns from a third party who is not under an obligation of confidence to the Company, XYZ or any member of the XYZ Group and (iii) the Executive learns by virtue of his experience in the industry, generally, which is not in any way manifested in proprietary property of the Company, XYZ or any member of the XYZ Group. In the event that the Executive becomes legally required to disclose any confidential information or trade secret, he will provide the Company with prompt notice thereof so that the Company, XYZ or the applicable member of the XYZ Group may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this paragraph 8(B) to permit a particular disclosure. In the event that such protective order or other remedy is not obtained, or that the Company waives compliance with the provisions of this paragraph 8(b) to permit a particular disclosure, the Executive will furnish only that portion of the confidential information or trade secret which he is legally required to disclose and will cooperate with the efforts of the Company, XYZ or the applicable member of the XYZ Group to obtain a protective order or other reliable assurance that confidential treatment will be accorded the confidential information or trade secret.

C. If the Executive commits a breach or, in the Company's reasonable judgment, is about to commit a breach, of any of the provisions of paragraphs 8(a) or (b) above, the Company, XYZ or the applicable member of the XYZ Group will have the right to have the provisions of this Agreement specifically enforced (including, without limitation, through pursuit of injunctive relief) by the mediator or arbitrator appointed under paragraph 19 or by any court having equity jurisdiction without being required to post bond or other security and without having to prove the inadequacy of the available remedies at law, it being acknowledged and agreed that money damages will not provide an adequate remedy to the Company, XYZ or the applicable member of the XYZ Group, as the case may be. In addition, the Company, XYZ or the applicable member of the XYZ Group, as the case may be, may take all such other actions and remedies available to it under law or in equity and will be entitled to such damages as it can show it has sustained by reason of such breach.

D. The parties acknowledge that the type and periods of restriction imposed in the provisions of paragraphs 8(a) and (b) above are fair and reasonable and are reasonably required for the protection of the Company and the goodwill associated with the business of the Company; and that the provisions of this paragraph 8 have been specifically negotiated by sophisticated commercial parties. It is further understood and agreed that the clients of the Company, XYZ and the other members of the XYZ Group may be serviced from any location and accordingly it is reasonable that the covenants set forth herein are not limited by narrow geographic area but generally by the location of such clients and potential clients. The parties hereto specifically acknowledge that the Executive's being restricted from soliciting and servicing clients as contemplated by this Agreement will not prevent him from being employed or earning a livelihood in the type of business conducted by the Company and, more specifically, from rendering customer management advisory services to third parties as long as such third parties are not "clients" within the meaning as set forth in this Agreement. If any of the covenants contained in paragraphs 8(A) or (B), or any part thereof, is held to be unenforceable by reason of its extending for too great a period of time or over too great a geographic area or by reason of its being too extensive in any other respect, the parties agree (i) such covenant will be interpreted to extend only over the maximum period

of time for which it may be enforceable and/or over the maximum geographic areas as to which it may be enforceable and/or over the maximum extent in all other respects as to which it may be enforceable all as determined by the court or other tribunal making such determination and (ii) in its reduced form, such covenant will then be enforceable.

9. **Intellectual Property.** During the Term, the Executive will disclose to the Company all ideas, inventions and business plans developed by him during such period which relate directly or indirectly to the business of the Company, XYZ and/or their subsidiaries, including without limitation, any design, logo, slogan or campaign or any process, operation, product or improvement which may be patentable or copyrightable. The Executive agrees that all patents, licenses, copyrights, tradenames, trademarks, service marks, advertising campaigns, promotional campaigns, designs, logos, slogans and business plans developed or created by the Executive in the course of his employment hereunder, either individually or in collaboration with others, will be deemed works for hire and the sole and absolute property of the Company. The Executive agrees, that at the Company's request and expense, he will take all steps necessary to secure the rights thereto to the Company by patent, copyright or otherwise.

Employee Secrecy Agreement Relating to Inventions, Patents, and Trade Secret Information¹

In consideration of my employment by Joyce Corporation (hereinafter referred to as "the Corporation"), and of the salary or wages paid to me in connection with such employment, and for other good and valuable considerations, I agree as follows:

1. I recognize that during my employment I will receive, develop, or otherwise acquire information which is of a secret or confidential nature. Except as authorized in writing by the Corporation I will not disclose or use directly or indirectly, during or after my employment with the Corporation, any information of the Corporation I obtain during the course of my employment relating to inventions, products, product specifications, processes, procedures, machinery, apparatus, prices, discounts, manufacturing costs, business affairs, future plans, ideas, technical data, customer lists, or other information which is of a secret or confidential nature (whether or not acquired or developed by me).
2. I will communicate to the Corporation promptly and fully all discoveries, improvements, and inventions (hereinafter called "inventions") made or conceived by me (either solely or jointly with others) during my employment and for six months thereafter which are along the lines of the actual or anticipated business, work, or investigations of the Corporation or which result from or are suggested by any work I may do for the Corporation; and such inventions, whether patented or not, shall be and remain the sole and exclusive property of the Corporation or its nominees.
3. I will keep and maintain adequate and current written records of all such inventions, in the form of notes, sketches, drawings, and reports relating thereto, which records shall be and remain the property of and available to the Corporation at all times. All such records shall remain on the premises of the corporation at all times.
4. I will, during and after my employment, without charge to the Corporation, but at its request and expense, assist the Corporation and its nominees in every proper way to obtain and vest in it or them title to patents on such inventions in all countries by executing all necessary or desirable documents, including applications for patents and assignments thereof.
5. This Agreement shall be binding on my heirs, legal representatives, and assigns, and shall inure to the benefit of any successors and assigns of the Corporation.
6. This Agreement supersedes all previous agreements, written or oral, relating to the

¹ Melvin F. Jager, 3 TRADE SECRETS LAW Appendix B (Westlaw 2008)

above subject matter, and shall not be changed orally.

7. This Agreement shall be construed according to the laws of the State of Illinois.

Date: _____ Employee's Signature _____
 Witness: _____ Name _____
 Accepted And Agreed To
 YOUR COMPANY
 By _____
 Jane Doe, Director Human Resources

EMPLOYEE PATENT AND TRADE SECRET AGREEMENT²

Memorandum of Agreement by and between the undersigned, hereinafter designated as "Employee" and _____, hereinafter designated as the "Corporation."
 The Corporation is engaged in numerous fields of business and activities, including research and development in the various existing and projected fields of the Corporation's business, with the object of making discoveries and developing improvements, including patentable inventions, and to extend the Corporation's business into new fields.

During employment by the Corporation the Employee will have access to information concerning one or more of the Corporation's activities, including research and development work, plant design, construction and operation of plants and equipment, other confidential information originating in the Corporation or disclosed to the Corporation by others under an agreement to hold the same confidential; and the Employee may make discoveries and improvements which relate to or are useful in the business or activities in which the Corporation is or may become engaged, that may or may not involve patentable discoveries and inventions. Because of these circumstances, the employee and the Corporation mutually agree to the following terms of employment:

1. In consideration of employment by the Corporation during such time as shall be mutually agreeable to the Corporation and the Employee, the Employee agrees not to utilize any such information as described above for his own benefit or to disclose any such information to which he may have access to anyone outside the Corporation or to any officer or employee of the Corporation not also having access to such information.
2. All records pertaining to the above-noted information, whether developed by Employee or others, are and shall remain the property of the Corporation.
3. Employee agrees to disclose in writing, if so requested, to his immediate supervisor or to the Corporate Patent Department any discoveries or improvements as above specified that he may make during the period of his employment by the Corporation or by its predecessors or successors in business. All such discoveries and improvements are and shall remain the property of the Corporation.
4. Employee also agrees to assign to the Corporation any such discoveries or improvements which the Corporation may deem to be patentable inventions, whether or not such inventions were reduced to practice during the period of his employment, and to execute all patent applications, assignments and other documents necessary to vest in the Corporation the entire right, title and interest in and to said inventions and in and to any patents

² Melvin F. Jager, 3 TRADE SECRETS LAW Appendix B (Westlaw 2008)

SIMPLE CONFIDENTIALITY AGREEMENT¹

obtainable therefor in the United States and foreign countries. The Corporation shall assume the entire expense of preparing, filing and prosecuting applications for patents for any such inventions, through patent counsel appointed by the Corporation.

5. The Employee shall not be obligated to assign any inventions which relate to or would be useful in any business or activities in which the Corporation is or may become engaged which were conceived and reduced to practice prior to his employment with the Corporation, provided that all such inventions are listed at the time of employment on the back of this Agreement.
6. The Employee shall not be obligated to assign to the Corporation any invention made by him while in the Corporation's employ but not relating to any business or activities in which the Corporation is or may become engaged, unless the same relates to or is based on confidential or proprietary information to which the Employee shall have access during and by virtue of his employment, or arises out of work assigned to him by the Corporation.
7. The Employee shall not be obligated to assign any inventions which may be wholly conceived by Employee after he leaves the employ of the Corporation unless such inventions shall involve the utilization of confidential or proprietary information obtained while in the employ of the Corporation.
8. This Agreement supercedes any and all prior agreements concerning patent and trade secret rights between the Corporation and the Employee.
9. This Agreement shall inure to the benefit of the Corporation, its successors, assignees and designees, and is binding upon the successors, assigns, executors and administrators and other legal representatives of the Employee.
10. This Agreement shall be construed according to the laws of the State of Illinois.

Date: _____ Employee's Signature _____
 Witness: _____ Name _____
 Accepted And Agreed To
 YOUR COMPANY
 By _____
 Jane Doe, Director Human Resources

It is understood and agreed to that the below identified discloser of confidential information may provide certain information that is and must be kept confidential. To ensure the protection of such information, and to preserve any confidentiality necessary under patent and/or trade secret laws, it is agreed that

1. The Confidential Information to be disclosed can be described as and includes:

Invention description(s), technical and business information relating to proprietary ideas and inventions, ideas, patentable ideas, trade secrets, drawings and/or illustrations, patent searches, existing and/or contemplated products and services, research and development, production, costs, profit and margin information, finances and financial projections, customers, clients, marketing, and current or future business plans and models, regardless of whether such information is designated as "Confidential Information" at the time of its disclosure.

2. The Recipient agrees not to disclose the confidential information obtained from the discloser to anyone unless required to do so by law.
3. This Agreement states the entire agreement between the parties concerning the disclosure of Confidential Information. Any addition or modification to this Agreement must be made in writing and signed by the parties.
4. If any of the provisions of this Agreement are found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision(s) shall be deemed modified to the limited extent required to permit enforcement of the Agreement as a whole.

WHEREFORE, the parties acknowledge that they have read and understand this Agreement and voluntarily accept the duties and obligations set forth herein.

Date _____ Recipient of Confidential Information:

 Name _____
 Date _____ Discloser of Confidential Information:

 Name _____

¹ Courtesy of White & Quinn, P.C. and www.ipwatchdog.com.