

PROPRIETARY INFORMATION AND INVENTIONS AGREEMENT

Preston Gates & Ellis

THIS PROPRIETARY INFORMATION AND INVENTION OWNERSHIP AGREEMENT (the "Agreement"), dated as of _____, 200__ (the "Effective Date"), is by and between _____, an individual with an address _____ (the "Employee"), and _____, Inc., an Oregon corporation, with its principal place of business at _____, Oregon 97____ ("Company"). Employee, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby represents to, and agrees with the Company as follows:

[COMMENT: This Agreement is generally intended to assist the Company concerning the following:

- 1. Establish that inventions and other "Developments" (see Section 2.1 below) created by Employee during the course of his/her employment are owned by the Company.*
- 2. Establish that all proprietary and confidential information of the Company is owned by Company; and*
- 3. Provide protections against an employee from disclosing Developments or this proprietary/confidential information to any third party.*

This document, however, is not intended to serve as an employment agreement between Company and Employee. See Section 5.11 below on this point.]

1. Consideration for Agreement.

[COMMENT: OPTION #1 IF AGREEMENT IS SIGNED PRIOR TO COMMENCEMENT OF EMPLOYMENT: Employee acknowledges and agrees that Employee is entering into this Agreement upon Employee's initial employment with the Company, and Employee understands that this Agreement is a condition to employment with the Company.

OPTION #2 CAREFUL ANALYSIS MUST BE GIVEN TO INSURE THAT COMPANY GIVES REAL AND ADEQUATE CONSIDERATION TO AN EXISTING EMPLOYEE. THIS ISSUE SHOULD BE DISCUSSED WITH COMPANY'S COUNSEL. THE FOLLOWING IS A POSSIBLE STATEMENT: To the extent that Employee began work for the Company before executing this Agreement, Employee acknowledges the receipt of valuable consideration for Employee's execution of this Agreement.]

2. Developments.

[COMMENT: The definition of Developments is intentionally broad.]

2.1 "Developments" Defined. For the purposes of this Agreement, "Developments" shall mean all ideas, concepts, designs, inventions, creative works, discoveries, products, specifications, computer software programs, databases, original works of art and authorship, formulas, processes, compositions of matter, improvements, blueprints, drawings, photographs, charts, graphs, notebooks, other notes, all other documents, all other information, mask works, trade secrets and all other materials, as well as any improvements thereto, and related sales, business, and marketing plans, made, conceived, discovered, developed or reduced to practice by Employee alone or with others at any time or times during Employee's employment with the Company, including all documents and other media that contains any of the above, that (i) relates to the business of the Company or any customer of, or supplier to, the Company or any of the products or services being developed, manufactured, or sold by the Company or that may be used in relation therewith; (ii) results from tasks assigned to Employee by the Company; or (iii) results from the use of premises or personal property (whether tangible or intangible) owned, leased, or contracted for or by the Company.

[COMMENT: The following provisions in Section 2.2 indicate that the Company will own all Developments.]

2.2 Ownership and Assignment of Developments.

2.2.1 - Each such Development and the benefits thereof shall immediately become the sole and absolute property of the Company and its assigns. Without limiting the generality of the foregoing, each copyrightable Development authored or created by Employee under this Agreement shall be deemed a "work made for hire" as defined in the U.S. Copyright Act, as amended, and all right, title, and interest therein shall vest with the Company.

2.2.2 - Without limiting the foregoing in any way, to the extent Developments may not be considered "works for hire," or are otherwise not deemed to be owned by the Company, Employee hereby irrevocably transfers and assigns, without any further compensation whatsoever, and by virtue of the execution of this Agreement, any and all of Employee's right, title, and interest in and to such Developments, including, but not limited to, all copyrights, patent rights, trade secrets, and trademarks to the

Company, completely and exclusively.

2.2.3 - Employee further acknowledges and agrees that, as a result of the foregoing provisions of this Section 2.2, all Developments hereby become the exclusive rights of the Company, and the Company will have the sole right to determine the treatment of any Developments, including the right to keep Developments as trade secrets, to file and execute patent applications on Developments, to use and disclose Developments without prior patent application, to file registrations for copyright, trademarks, or any other intellectual and proprietary rights, and to transfer the intellectual and proprietary rights to any party it so chooses, or to follow any other procedure that the Company deems appropriate.

[COMMENT: Moral Rights are particularly important when dealing with overseas employees. You may want to seek assistance of outside counsel since certain nations do not allow waiver of a person's Moral Rights in a copyrightable work.]

2.2.4 - For purposes of this Agreement, "Moral Rights" means any right to claim authorship of any aspect of Developments, any right to object to any distortion or other modification of a Development, and any similar rights, existing under the law of any country in the world, or under any treaty. Employee hereby irrevocably transfers and assigns to the Company any and all Moral Rights that Employee may have in Developments to the extent allowable under applicable laws. Employee hereby forever waives and agrees never to assert against the Company, its successors, licensees or assigns, any and all Moral Rights that Employee may have in any Developments, even after expiration, cancellation, or termination of this Agreement in the U.S. and to the extent allowable under the applicable laws of any foreign country.

[COMMENT: Section 2.2.6 requires Employee to disclose to Company all Developments.]

2.2.5 - Employee will promptly disclose to the Company (or any persons designated by it) each Development. Employee will also communicate to the Company, without cost or delay, and without publishing the same, all available information relating to the Developments (with all necessary plans, models and embodiments).

[COMMENT: Section 2.2.6 is needed so that the Employee will cooperate with Company in securing Company's ownership in all Developments.]

2.2.6 - Employee shall, during Employee's term of employment and at any time thereafter, at the request of

the Company, sign, execute, make, and do all such deeds, documents, acts, and things as the Company and its duly authorized agents may reasonably require: (i) to apply for, obtain, and vest in the name of the Company alone (unless the Company otherwise directs) patents, copyrights, trademarks, or other analogous protection in any country throughout the world and, when so obtained or vested, to renew and restore the same; and (ii) to defend any opposition proceedings in respect of such applications and any opposition proceedings, petitions, applications for revocation of such patents, copyrights, trademarks, or other analogous protection. In the event the Company is unable, after reasonable effort, to secure Employee's signature on any patents, copyrights, trademarks, or other analogous protection relating to a Development, whether because of Employee's physical or mental incapacity or for any other reason whatsoever, Employee hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Employee's agent and attorney-in-fact, to act for and on Employee's behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyrights, or other analogous protection thereon with the same legal force and effect as if executed by Employee.

2.2.7 - Employee shall otherwise treat all Developments as "Proprietary Information," as such term is defined below.

2.2.8 - All of Employee's obligations under this Section 2 to disclose, assist, execute and keep confidential shall survive any expiration, cancellation or termination of this Agreement.

[COMMENT: Exhibit A should be carefully reviewed by Company to determine what pre-existing inventions Employee claims to own.]

2.2.9 - Employee has attached hereto a list in "Exhibit A" (and by this reference incorporated herein) describing any and all Developments belonging to Employee and that were made by Employee before commencing employment with the Company. If no such list is attached, Employee hereby represents that there are no such Developments. If in the course of Employee's employment at the Company, Employee incorporates into a Company product, process, device, or machine, or otherwise uses in a Company product, an invention allegedly owned by Employee or in which Employee has an alleged interest, Employee hereby automatically grants to the Company an exclusive, royalty-free, irrevocable, perpetual license to make, have made, use, license, and sell that invention without restriction as to the extent of Employee's ownership or interest.

[COMMENT: Section 3 basically requires Employee to keep secret all Developments and all other confidential information of Company.]

3. Proprietary Information Obligations.

3.1 Definition. As used in this Agreement, the term "Proprietary Information" means: (1) any and all nonpublic or proprietary business, commercial and technical information of Company, whether in written or verbal form, relating to its business, products, customers, operations, financial status, technology and/or intellectual property; (2) all information designated (whether marked or unmarked) by Company as confidential or proprietary; (3) all information, whether or not in written form and whether or not designated as confidential, which Employee has reason, under the circumstances, to know that the Company intends to treat as confidential; (4) all other information provided to the Company by third parties which the Company is obligated to keep confidential; and (5) all Developments, as such term is defined in Section 2.1 above. Proprietary Information also includes, but is not limited to, all of the Company's forms, memos, research, databases, ideas, designs/design rights drawings, specifications, techniques, data, programs, documentation, processes, know-how, trademarks, copyright-protected works, inventions, specimens, prototypes, other technical information, business plans, business projections, marketing plans, marketing projections, financial records/information and customer lists.

3.2 Exclusions from Proprietary Information.

Proprietary Information does not include information that Employee can document to the Company's sole satisfaction: (i) was generally known to the public at the time disclosed to Employee by the Company; (ii) became generally known to the public other than through a breach of this Agreement by Employee after the time of disclosure to Employee by the Company; (iii) was in Employee's possession, free of any obligation of confidentiality at the time of disclosure to Employee; (iv) was rightfully received by Employee from a third party, free of any obligation of confidentiality after disclosure by the Company to Employee; or (v) has been independently developed by Employee (as conclusively shown by Employee's written records), before the Effective Date of this Agreement, without violation of any rights that the Company may have in such information. In any dispute between the parties with respect to the exclusions in this Section, the burden of proof shall be on Employee, and such proof shall be by clear and convincing evidence to the sole satisfaction of the Company.

3.3 Restrictions on Use of Proprietary Information.

3.3.1 - Employee acknowledges that the Company's Proprietary Information involves valuable, confidential, and proprietary information of various kinds to the Company. Employee will exercise the highest degree of care in safeguarding the Proprietary Information against loss, theft, misuse, and improper or inadvertent disclosure, and Employee will follow the Company's instructions for protection of this Proprietary Information. During Employee's employment and after termination of such employment for any reason, employee will not disclose to anyone outside the Company, nor use for any purpose other than Employee's work and duties for the Company, any Proprietary Information. If Employee is required by law to disclose Proprietary Information, before doing so, Employee will immediately notify the Chief Executive Officer or President of the Company, provide the Company a copy of the subpoena, summons, or other legal document, and disclose Proprietary Information so as to maximize the protection of the information from further disclosure.

3.3.2 - Other than for the benefit of the Company, Employee agrees that during Employee's employment, Employee will not make, use, or permit to be used any Proprietary Information, including, but not limited to, any Developments or other notes, memoranda, reports, lists, records, drawings, sketches, specifications, software programs, data, documentation, or other materials of any nature relating to any matter within the scope of the business of the Company concerning any of its dealings or affairs.

3.3.3 - Employee will not, after the termination of employment for any reason, use or permit to be used for any reason whatsoever any Proprietary Information, including, but not limited to, any Developments or other notes, memoranda, reports, lists, records, drawings, sketches, specifications, software programs, data, documentation, or other materials of any nature relating to any matter within the scope of the business of the Company or concerning any of its dealings or affairs, it being agreed that all of the foregoing shall be and remain the sole and exclusive property of the Company. Employee further agrees that immediately upon the termination of Employee's employment for any reason, Employee will deliver all of the foregoing, and all copies thereof, to the Company, at its main office. If requested, Employee will execute a written certification satisfactory to the Company to the effect that all such documents and materials have been returned.

3.3.4 - Employee agrees that upon termination of employment for any reason (or earlier if requested by the Company for any reason or no reason at all), Employee

will (i) return to the Company all originals and copies of documents and other materials relating to the Company or containing or derived from Proprietary Information that are in Employee's possession or control; and (ii) return to the Company all files, correspondence, memoranda, computer software and print-outs, work papers, files, client lists, and other property or things which the Company gave to Employee, which Employee created in whole or in part within the scope of employment, or to which Employee had access, even if they do not contain Proprietary Information. The return of all of the above shall be accompanied, if requested by the Company, with a written certification signed by Employee and satisfactory to the Company to the effect that all such documents and materials have been returned.

[COMMENT: Exhibit B (described in Section 4 below) should be carefully reviewed by Company to determine if Employee has any conflicts due any prior agreements or relationships (particularly with former employers), and whether Employee wants to use technology or other intellectual property of other parties (particularly from his/her former employers).]

4. No Conflicting Obligations. Employee represents and warrants that Employee is not subject to any confidentiality, noncompetition agreement, invention, assignment, proprietary information or similar agreement with any former employer or any other party except as has been fully disclosed in writing to the Company in Exhibit "B" (attached hereto and by this reference incorporated herein). Employee further represents and warrants that Employee will not bring to the Company, or use or disclose to the Company in the course of its employment with the Company, any nonpublic information or other property of any former employer or any other party that is not generally available to the public or has not been legally transferred to the Company except as has been fully disclosed in writing to the Company in Exhibit "B".

5. Additional Provisions.

5.1 Notices. Except as otherwise expressly provided in this Agreement, any communications between the parties, or notices to be given hereunder, will be given in writing by personal delivery, express courier, facsimile, or United States Postal Service, postage prepaid, to either Employee or the Company at the address or number set forth in the signature block to this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section. Unless otherwise provided in this Agreement, any communication or notice so addressed and mailed will be deemed to be given five (5)

days after mailing. Unless otherwise provided in this Agreement, any communication or notice delivered by facsimile will be deemed to be given when the transmitting machine generates a receipt of a successful transmission of the notice. Unless otherwise provided in this Agreement, any communication or notice given by personal delivery will be deemed to be given immediately upon such delivery, provided such delivery is made to the person indicated below.

5.2 Reservation of Rights. As between the Company and Employee, all Proprietary Information is and shall remain the property of the Company. By disclosing Proprietary Information to Employee, the Company does not grant any express or implied right to Employee to or under any patents, copyrights, trademarks, or trade secret information except as otherwise specifically provided herein. The Company reserves without prejudice the ability to protect its rights and those of third parties under this Agreement and under any such patents, copyrights, trademarks, or trade secrets. Neither this Agreement nor any disclosure hereunder shall be construed as granting by implication, estoppel or otherwise, any right in or license under any patent or copyright or other proprietary right now or hereafter owned or controlled by the Company.

5.3 Remedies. Employee acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of Proprietary Information and therefore agrees that the Company shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court or arbitration panel of competent jurisdiction without necessity of posting a bond and without having to plead and prove lack of an adequate remedy at law.

5.4 Attorney Fees. If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of such suit or action as fixed by the trial court and, if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by the appellate court.

5.5 Governing Law. THIS AGREEMENT SHALL BE CONSTRUED AND GOVERNED BY THE LAWS OF THE STATE OF OREGON WITHOUT REGARD TO OR APPLICATION OF CHOICE OF LAW RULES OR PRINCIPLES.

5.6 Assignment. This Agreement shall be binding upon and inure to the benefit of each party's respective successors and lawful assigns; provided, however, that

Employee may not assign this Agreement, in whole or in part. Any purported assignment by Employee in violation of this Section shall be void.

5.7 Enforceability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

5.8 Headings. The headings of this Agreement are for purposes of convenience only and shall not limit or otherwise affect any of the terms or provisions hereof.

5.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument and be binding upon the parties.

5.10 Entire Agreement; Modification; Waiver. This Agreement, including its exhibits, if any, constitutes the entire agreement between the parties with respect to the subject matter hereof. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed by both parties. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of the Company, its agents, or employees, but only by an instrument in writing signed by an authorized employee of the same. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

5.11 No Duty to Employ. Employee acknowledges and agrees that that this Agreement does not create an obligation on the Company, or any other person or entity to employ Employee or to continue Employee's employment; and unless otherwise agreed by the Company in a separate writing, Employee's employment by the Company is strictly "at will" and may be terminated at any time for any reason with or without cause or notice.

5.12 Survival of Certain Terms and Conditions. The terms and conditions of Sections 2.2, 3, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, and 5.15 of this Agreement, and such other provisions the survival of which is implicit, shall survive the cancellation, termination and expiration of this Agreement and the termination of Employee's employment with the Company for any reason.

5.13 Employee Has Own Counsel. Employee acknowledges he/she has had ample opportunity before signing this Agreement to review it with an attorney of Employee's own choosing. If Employee did not do so, it was because Employee understood this Agreement and did not feel Employee needed legal advice. Employee acknowledges that the restrictions in this Agreement are fair and reasonable.

5.14 Exhibits. The following exhibits are included as a part of this Agreement:

Exhibit "A" – Pre-Existing Inventions of Employee.
Exhibit "B" – Employee Potential Conflicts

[COMMENT: These exhibits, which are standard, are not listed here.]

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

NOTICE TO EMPLOYEE: THIS AGREEMENT REQUIRES TRANSFER TO THE COMPANY OF CERTAIN INVENTIONS AND WORKS OF AUTHORSHIP, AND IMPOSES CERTAIN OBLIGATIONS ON YOU. PLEASE ASK ANY QUESTIONS OR SEEK ADVICE AS NECESSARY BEFORE YOU SIGN BELOW.

INSERT NAME OF EMPLOYEE]

Signature

Printed Name of Employee

[INSERT NAME OF COMPANY]

By: _____

Its: _____

Print Name