



BUYNAK LAW FIRM

EMPLOYEE CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

(Employment Advisory 2006-02)

The following is a general Employee Confidentiality and Nondisclosure Agreement that establishes safeguards to protect the employer and the business entity from exposure and/or production of all Confidential Information pertaining to the business entity by the employee.

The attached sample of an Employee Confidentiality and Nondisclosure Agreement considers the following:

1. Protection of Confidential Information.
2. Noncompetition during Employment.
3. Former Employer Information.
4. Third Party Information.
5. Employee Innovations and Works of Authorship.
6. Other Agreements.
7. Use of Proprietary Material.
8. Moral rights.
9. Use of Likeness.
10. Nondisclosure after Employment.
11. General Provisions.

A wide range of factors may play an important role in the determination of the final version of the Employee Confidentiality and Nondisclosure Agreement. This Memorandum is neither exhaustive nor tailored to your specific situation. You should discuss your personal situation with us or with your own attorney. Our representation is only undertaken through a written engagement letter and not by the mere distribution of this Advisory.

Michael S. Fauver, Principal
Business and Tax Attorney

Attachment: Employee Confidentiality Nondisclosure Agreement

This Advisory is one of a series of business and tax advisories prepared by the attorneys at the Buynak Law firm. Should you have further questions regarding the information provided in this Advisory, please contact the author at the number listed above.

The Buynak Law Firm provides business legal services to individuals, business entities and nonprofit organizations from entity formation and start up, through day-to-day operations and exit strategies.

EMPLOYEE CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Employee Confidentiality and Nondisclosure Agreement is made and entered into this _____ day of _____, 200__ by and between _____ (Employer) and _____ (Employee) at Santa Barbara, California with reference to the following facts and intentions:

A. Employer is involved in various business enterprises in which businesses Employee is or will be employed.

B. In the course of said employment, Employee will be exposed to Confidential Information, as hereinafter defined, concerning the business of the Employer.

C. The parties have executed this Agreement to protect the confidentiality of the Confidential Information during and after employment by Employer in consideration of Employee's employment and compensation by Employer.

NOW, THEREFORE, IN CONSIDERATION OF THE COMPENSATION NOW AND HEREAFTER PAID TO EMPLOYEE, IT IS AGREED as follows:

1. Protection of Confidential Information. The Employee will not disclose or use, both during and after employment for any reason whatsoever, except to Company employees and agents on a reasonable and legitimate need-to-know basis for purposes in furtherance of Company's objectives, any of the current or future trade secrets, confidential knowledge, data, or other proprietary information of Employer, including matters of a business nature, such as business plans and proposals, market analyses, research results, lists of customers, employees and vendors, terms and conditions of Company's contracts, information about costs, profits, markets, sales, administrative procedures and manuals, operating projections and results, as well as ideas, trade secrets, know-how, formulae, databases, computer software, developments, discoveries, designs, improvements, works of authorship, processes or machines, inventions, and, information of a similar nature, to the extent not available to the public (Confidential Information). Employee agrees to consult with his/her supervisor or his/her successor at Company concerning any questions that Employee may have as to what comprises such confidential or proprietary information

Without regard to whether any of the foregoing matters would otherwise be deemed confidential or important, the Employee hereby stipulates that, with respect to the Employee's employment, said matters shall be deemed confidential, material and important and gravely affect the effective and successful conduct of Employer's business.

2. Noncompetition During Employment. Except with the express written consent of the Employer, the Employee agrees that he or she will not, during the period of his or her employment with Employer:

a. Engage or invest (except investments of less than 5% of outstanding securities traded on a national stock exchange or the NASDAQ) in any employment or activity, other than with the Employer, in any business in which the Employer is engaged or contemplates engagement;

b. Induce any other employee of, or consultant to, the Employer to engage in any employment or activity prohibited by this Agreement;

c. Solicit any customers or potential customers of the Employer for sales or services similar to those performed by the Employer, whether or not competitive with the Employer's current business operations; and

d. Engage in any other employment, occupation, consulting or other business activity directly related to the business in which the Employer is now involved or becomes involved, or engage in any other activities which conflict with any obligations of Employee to the Employer.

3. Former Employer Information. Employee agrees that he or she will not, during their employment with Employer, use or disclose any confidential or proprietary information or trade secrets which are considered Confidential Information of a former employer.

4. Third Party Information. During the term of employment and thereafter, Employee shall hold confidential and proprietary information of third parties gained in the course of Employer's business in the strictest confidence and shall not disclose it to any person, firm or corporation (except as to carry out the Employer's business as consistent with Employer's agreement with such third party) or use it for the benefit of anyone other than Employer without the express authorization of the president of Employer. Employee shall not bring to the premises of Company any unpublished documents or any property belonging to such third parties, unless consented to in writing by such third party. Employee's duties to Company do not and will not breach any agreement or duty, which Employee has concerning confidential information belonging to others. If Employee is asked to work on any project for Company, which raises a concern regarding third party confidential information, Employee will, as soon as this is apparent to Employee, discuss the situation with his or her supervisor without disclosing any confidences.

5. Employee Innovations and Works of Authorship.

a. **Disclosure of Innovations.** Employee will promptly disclose in writing to Employer all discoveries, designs, ideas, innovations, improvements, inventions, compositions of matter, business methods, databases, computer software programs, formulas, processes, techniques, know-how and data, whether patentable or registrable, made, conceived, developed reduced to practice or learned by Employee, including any contribution or improvement thereto, (either alone or jointly with others) during the period of his or her employment that are related or useful to the business of Employer or which result from tasks assigned to Employee by Employer or from the use of premises or property owned, leased or otherwise acquired by Employer (Innovations).

b. Disclosure of Works of Authorship. Employee will promptly disclose to Employer all works of authorship (including, but not limited to contributions to, improvements to and entire works of text, artwork, music, electronic circuit layout, mask work, software code, photographs and graphics), databases, designs, or other copyrightable material, authored by Employee (either alone or jointly with others) during the period of his or her employment that are related or useful to the business of Employer or which result from tasks assigned to Employee by Employer or from the use of premises or property owned, leased or otherwise acquired by Employer (Works of Authorship).

c. Assignment of Innovations and Works of Authorship. Employee acknowledges and agrees that all Innovations and Works of Authorship belong to and shall be the sole property of Employer and shall be Innovations and Works of Authorship of Employer subject to the provisions of this Agreement. Employee hereby assigns to Employer all right, title and interest Employee may have or may acquire in and to all Innovations and Works of Authorship to the extent that it is not a work made for hire under the Copyright laws. Employee agrees to sign and deliver to Employer (either during or subsequent to his or her employment) such other documents as Employer deems desirable to evidence (1) an assignment of all rights of Employee, if any, in any Innovations and Works of Authorship to Employer and/or (2) Employer's ownership of such Innovations and Works of Authorship. Any provision of this Agreement requiring Employee to assign rights to an Innovation does not apply to any Innovation that qualifies under California Labor Code section 2870, which relates to an Innovation for which no equipment, supplies, facility or trade secret information of Employer was used, which was developed entirely on Employee's own time, which does not relate to the business of Employer or to Employer's actual or demonstrable anticipated research or development, or which does not result from any work performed by the Employee for Employer. Notwithstanding the foregoing, Employee also agrees to assign to or as directed by Company all his or her right, title and interest in and to any and all Inventions, full title to which is required by the United States to be in a contract between Company and the United States or any of its agencies.

d. Power of Attorney. In the event Employer is unable to secure Employee's signature on any document necessary to apply for, prosecute, obtain or enforce any patent, copyright or other right or protection relating to any Innovation, Work of Authorship, or Proprietary Material, whether due to mental or physical incapacity or any other cause, Employee hereby irrevocably designates and appoints Employer and each of his duly authorized officers and agents as his or her agent and attorney-in-fact to act for and in his or her behalf and stand to execute and file any such document and do all other lawfully permitted acts to further the prosecution, issuance and enforcement of patents, copyrights or other rights or protections with the same force and effect as if executed and delivered by the Employee. Employee agrees to testify at Company's request and expense, except that Employee will bear his or her own attorney's fees, in any interference, litigation, or other legal proceeding that may arise during or after employment.

6. Other Agreements. There is no other agreement to assign proprietary material, including but not limited to information, apparatus, expressions, inventions, processes, methods, ideas, trade secrets, discoveries, improvements, works of authorship (Proprietary Material) that is

now in existence between myself and any other person, corporation or partnership, unless a copy of such an agreement is attached hereto and is so noted with Employee's initials below his/her signature. If no such copies are attached, Employee represents and warrants that there are no such assignments.

7. Use of Proprietary Material. To the extent noted by Employee's initials below Employee's signature to this Agreement, a list that is not confidential, except as to items clearly marked as confidential, is attached hereto describing all Proprietary Material in which Employee has any actual or inchoate rights or interests that do not belong to Company under this Agreement. If no such list is attached, Employee represents and warrants that no such Proprietary Material exists. If, during the Period of Work, Employee incorporates or uses any Proprietary Material into any software, work of authorship, website, business plan, report, product, process, or machine, or otherwise, in which Employee has an interest, Employee shall and hereby grants to Company a pre-paid, royalty-free, perpetual, non-exclusive, irrevocable, worldwide license to make, have made, use, license and sell that Invention, without restriction, to the extent of Employee's ownership and interest.

8. Moral Rights. Employee assigns any and all Moral Rights (as defined below) that Employee may have in or with respect to any Works of Authorship owned by the Company. Employee also hereby forever waives and agrees never to assert any and all Moral Rights he or she may have in or with respect to any such Work of Authorship, even after termination of work on behalf of the Company. "Moral Rights" mean any rights to claim authorship of an Works of Authorship, to object to or prevent the modification of any Works of Authorship, or to withdraw from circulation or control the publication or distribution of any Works of Authorship and any similar right, existing under judicial or statutory law of any country in the world, or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "moral right."

9. Use of Likeness. Employee hereby authorizes the Company to use, reuse, and to grant others the right to use and reuse, his or her name, photograph, likeness (including caricature), voice, and biographical information, and any reproduction or simulation thereof, in any media now known or hereafter developed (including, but not limited to, film, video and digital or other electronic media), both during and after the Termination, for commercially reasonable informational and marketing purposes.

10. Nondisclosure After Employment. In the event of termination (voluntary or otherwise) of Employee's employment with Employer:

a. Employee agrees that he or she will protect the value of the Confidential Information and Innovations of the Employer and will prevent the misappropriation or nondisclosure thereof. Employee will not disclose or use to his or her benefit (or to the benefit of any third party) or to the detriment of the Employer, any Confidential Information or Innovations. Employee further agrees that for a period of three (3) years immediately following termination of Employee's employment with the Employer, Employee will not interfere with the business of Employer by inducing an employee to leave the Employer's employ or by inducing a contractor or consultant to sever the contractor's or consultant's relationship with the Employer.

b. Employee further agrees that for a period of three years from the date of termination with Employer, not to undertake employment with a business or enterprise competitive with Employer if the loyal and complete fulfillment of duties of such competitive employment would inherently demand or require that Employee reveal Confidential Information or Innovations which he or she acquired while in the employ of Employer.

c. Employee will, at the end of the Period of Work, return to Company any and all paper, optical, electronic and other files, source code, object code, business plans, drawings, blueprints, notes, memoranda, specifications, designs, devices, prototypes, lab books, documents, e-mails, passwords, keys, credit cards, security badges, and any other material containing or disclosing any confidential or proprietary information. After termination of employment, Employee will not keep in his or her possession any such materials without Company's written approval.

11. General Provisions.

a. Other Instruments. The parties shall, whenever and as often as reasonably requested by the other party, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all documents and instruments as may be necessary, expedient or proper in the reasonable opinion of the requesting party to carry out the intent and purposes of this Agreement, provided that the requesting party shall bear the cost and expense of such further instruments or documents (except that each party shall bear its own attorneys' fees).

b. Construction. The provisions of this Agreement should be liberally construed to effectuate its purposes. The language of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against either party, as each party has participated in the drafting of this Agreement and had the opportunity to have their counsel review it. Whenever the context and construction so requires, all words used in the singular shall be deemed to be used in the plural, all masculine shall include the feminine and neuter, and vice versa.

c. Severability. If any term, provision, covenant or condition of this Agreement shall be or become illegal, null, void or against public policy, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected, impaired or invalidated thereby. The term, provision, covenant or condition that is so invalidated, voided or held to be unenforceable shall be modified or changed by the parties to the extent possible to carry out the intentions and directives stated in this Agreement.

d. Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors and permitted assigns, except as restricted by this Agreement.

e. Waiver. No waiver of any provision or consent to any action shall constitute a waiver of any other provision or consent to any other action, whether or not similar.

No waiver or consent shall constitute a continuing waiver or consent or commit a party to provide a waiver in the future except to the extent specifically stated in writing. Any waiver given by a party shall be null and void if the party requesting such waiver has not provided a full and complete disclosure of all material facts relevant to the waiver requested. No waiver shall be binding unless executed in writing by the party making the waiver.

f. Governing Law. The validity and interpretation of this Agreement shall be governed by the laws of the State of California without giving effect to the principles of conflict of laws, with venue for all purposes proper only in the County of Santa Barbara, State of California.

g. Notices. All notices, approvals, acceptances, demands and other communications required or permitted under this Agreement, to be effective shall be in writing and shall be delivered in person or by U.S. mails (postage prepaid, certified, return receipt requested) or by Federal Express or other similar overnight delivery service to the party to whom the notice is directed at the address of such party as follows:

Employer:

Employee:

Any written communication given by mail shall be deemed delivered two (2) business days after such mailing date and any written communication given by overnight delivery service shall be deemed delivered one (1) business day after the dispatch date. Either party may change its address by giving the other party written notice of its new address as herein provided.

h. Attorneys' Fees. If any legal proceeding (lawsuit, arbitration, etc.), including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover actual attorneys' fees and costs, which may be determined by the court in the same action or in a separate action brought for that purpose. The attorneys' fees award shall be made as to fully reimburse for all attorneys' fees, paralegal fees, costs and expenses actually incurred in good faith, regardless of the size of the judgment, it being the intention of the parties to fully compensate for all attorneys' fees, paralegal fees, costs and expenses paid or incurred in good faith.

i. Arbitration. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, except as to the selection of arbitrator. If the parties cannot agree on an arbitrator within 30 days after the Notice to Arbitrate, the parties shall each select one proposed arbitrator and provide the name to the other party within 45 days after the Notice to Arbitrate. The two proposed arbitrators shall select

a third within 60 days after the Notice to Arbitrate, who shall alone arbitrate the matter. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

j. Remedies. Employee understands enough about the business of Company to know that Company's intellectual property rights are critical to its existence, and that any threat to these intellectual property rights would merit immediate judicial intervention. Employee agrees that if he or she breaches this agreement: (a) The benefit of an injunction to Company outweighs the harm to him or her; (b) Intrinsic and substantial damages would be estimable only by conjecture, despite some monetary damages to Company that may be specifically provable; (c) Monetary compensation would not afford adequate relief; (d) Employee received sufficient consideration to enter into this agreement; (e) Without an injunction, Company has and would continue to suffer great and irreparable injury; (f) Employee waives any requirement for a bond or undertaking; (g) Temporary Restraining Orders, Preliminary Injunctions, Injunctions, Specific Performance and Awards of Damages are all appropriate and cumulative remedies. Employee further agrees that these equitable remedies are in addition to any legal remedies, and without limitation do not foreclose Company's rights to pursue monetary damages.

k. Waiver of Jury Trial Rights. The parties irrevocably waive their respective rights to trial by jury of any cause of action, claim, counterclaim, or cross-complaint in any action, proceeding and/or hearing brought to enforce or interpret the provisions of this Agreement or on any matter whatsoever arising out of or in any way connected with this Agreement and its enforcement.

l. Entire Agreement and Amendment. In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature binding except as stated in this Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their right to claim, contest or assert that this Agreement was modified, canceled, superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the ____ day of _____, 200__, at Santa Barbara, California.

(Signature Page Follows)

EMPLOYER

By: _____
President

EMPLOYEE

(Signature)

Employee claims no Proprietary Material under Section 7 above, unless initialed here: _____ (see attachment). Employee claims no other agreement/s to assign inventions under Section 6 above, unless initialed here: _____ (see attachment).