

Massage Therapy Nondisclosure & Noncompete Agreement

This Nondisclosure and Noncompete Agreement (the "Agreement") is made this ____ day of _____, 20____ between _____(EMPLOYEE) and _____(COMPANY) who hereby agrees as follows:

1. Duty of Loyalty and Avoidance of Conflict of Interest

EMPLOYEE shall devote his/her full working time, attention, knowledge and skills solely and exclusively to the business and interests of the COMPANY. In addition, EMPLOYEE expressly agrees that, during his/her employment: (i) he will not be employed or otherwise interested, directly or indirectly, in any manner, as an employee, officer, director, owner or stockholder, partner, adviser, consultant or in any other capacity, in any business, firm or entity, which is competitive with the COMPANY'S business or which otherwise creates an actual or apparent conflict of interest.

The compensation agreed upon between _____ (EMPLOYEE) and the COMPANY is the sole payment for all services provided by the EMPLOYEE. EMPLOYEE is not entitled to the payment of royalties or other forms of compensation for the works made for hire and developed in the course of employment following termination of employment with the COMPANY.

2. Company Property

Models, drawings, research data, engineering or technical data, software, price sheets, marketing plans, client lists, bids, financial information, brochures, handbooks, policies, and all other items, materials, documents and data furnished to EMPLOYEE by the COMPANY or acquired by EMPLOYEE during the term of employment are and shall remain the sole and exclusive property of the COMPANY, and all copies of such documents shall be returned to the COMPANY immediately upon request by the COMPANY or upon separation of EMPLOYEE's employment, regardless of the reason for termination.

3. Inventions and Creations Belong to Employer

Creation. Any and all inventions, discoveries, improvements, innovations, copyrightable works or intellectual property (collectively "Creations") which EMPLOYEE may conceive or make (i) within the scope of his/ her employment, (ii) in connection with the COMPANY'S business, (iii) using COMPANY resources, or (iv) on COMPANY time, shall be "works made for hire" and the sole and exclusive property of the COMPANY. To the extent such works are not deemed by the COMPANY to be "works made for hire," EMPLOYEE agrees to assign, and hereby assigns, all his/her entire right, title and interest in and to these works, including without limitation, patent, copyright, trademark and other intellectual property rights, to the COMPANY without further compensation.

Disclosure of Pre-existing Creations. EMPLOYEE acknowledges that, as of the time of execution of this Agreement, he has disclosed to the COMPANY, in writing, all pre-existing Creations in which EMPLOYEE holds a proprietary interest. Such pre-existing Creations, if any, shall be described in Appendix "A", and attached hereto *Disclosure of Future Creations.* EMPLOYEE further agrees to: (i) disclose promptly to

COMPANY all Creations which EMPLOYEE has made or may make solely, jointly or commonly with others within the scope of his/her employment with the COMPANY or in connection with

the COMPANY business; (ii) assign all such Creations to the COMPANY; and (iii) execute and sign any and all applications, assignments, or other instruments which the COMPANY may deem necessary or desirable in order to enable the COMPANY to apply for, prosecute, and obtain copyrights, patents or other proprietary rights in the United States and foreign countries or in order to transfer to the COMPANY all rights, title, and interest in said Creations.

4. Confidential Information and Trade Secrets

General. EMPLOYEE acknowledges that in his/her employment hereunder, EMPLOYEE may be making use of, acquiring and adding to the COMPANY'S trade secrets and its confidential and proprietary information, defined below. EMPLOYEE acknowledges that such confidential information has been and will continue to be of central importance to the business of the COMPANY and that disclosure of it to or its use by others could cause substantial loss to the COMPANY. EMPLOYEE agrees that at no time either during or after his/her employment with the COMPANY shall he/she for any purpose whatsoever, directly or indirectly, divulge or disclose to any third party or entity any such confidential information and/or trade secrets obtained by EMPLOYEE as a result of employment with the COMPANY., other than as necessary in the course of the COMPANY'S business and in the scope of EMPLOYEE's employment with the COMPANY or upon prior written consent signed by the COMPANY'S President or a senior executive other than EMPLOYEE. This provision regarding confidential information and trade secrets also applies to confidential information or trade secrets of another person/entity which the COMPANY is obligated to maintain in confidence. EMPLOYEE shall hold all of the same confidential and inviolate.

Definition. For purposes of this Agreement, nonpublic "confidential information or trade secrets" includes, without limitation, the following: (i) models, drawings, engineering or technical data, research data; (ii) software (source and object code), algorithms, computer processing systems, techniques, methodologies, formulae or specifications; (iii) the identity, address, telephone number, and fax number of each of the COMPANY'S past, present and prospective clients, and all lists or other documents relating thereto; (iv) the identity of each EMPLOYEE or agent of the COMPANY'S clients who have the authority to contract with the COMPANY; (v) the COMPANY'S methods and practices of doing business, including but not limited to all written procedures and protocols; (vi) the COMPANY'S brochures, manuals and handbooks; (vii) COMPANY'S bids and proposals; (viii) COMPANY'S pricing policies, structures and practices; (ix) COMPANY'S gross and net profit margins, overhead, general and administrative rates, and equipment and maintenance costs; (x) the specific prices charged by the COMPANY for its services; (xi) all financial, budgetary, advertising, marketing and sales/services ideas, plans, forecasts, strategies, strategic plans, reports and data; and (xii) any other information, materials, documents, or data that the COMPANY identifies as confidential and/or proprietary information and/or trade secrets. Notwithstanding the foregoing, information described above shall not be deemed "confidential information or trade secrets" to the extent that it has been placed in the public domain by another COMPANY employee with the actual knowledge of the COMPANY'S President or a senior executive other than EMPLOYEE, and the COMPANY has not taken any action to enforce its rights with respect to such information or otherwise protect such information as confidential information and/or trade secrets.

5. Non-Solicitation of Employees

EMPLOYEE agrees that during his/her employment with the COMPANY, and following the termination of his/her employment with the COMPANY, regardless of the reason for termination, he/she shall not, either directly or indirectly, in any way, for his/her own account or for the account of any third party or entity, solicit any employee of the COMPANY or attempt, directly or indirectly, to induce or entice any employee of the COMPANY to leave the employ of the COMPANY.

6. Non-Competition Covenant

General. EMPLOYEE agrees that during his/her employment with the COMPANY, and for a period of two years after the termination of his/her employment with the COMPANY, regardless of the reason for termination, he/she shall not, directly or indirectly: (i) compete for, divert or attempt to divert, or take away or attempt to take away, any COMPANY Contracts including those which he/she was directly assigned/worked on; or (ii) be an owner, director, officer, employee, consultant or agent of any firm or entity with offices within a fifty (50) mile radius that competes for, diverts or attempts to divert, or takes away or attempts to takeaway, any of the COMPANY'S Contracts.

Company Contracts. "COMPANY Contracts" as used herein means: (i) all contracts, subcontracts, task orders, purchase orders, blanket purchase agreements and other agreements (including their options, modifications and extensions) that the COMPANY (or the COMPANY'S joint venture) has in effect on the date of termination of EMPLOYEE's employment; (ii) all follow-on contracts, subcontracts, task orders, purchase orders, blanket purchase agreements and other agreements (i.e. involving the same customer and the same or substantially similar goods or services) to the contracts, subcontracts, task orders purchase orders, blanket purchase agreements and other agreements that the COMPANY (or the COMPANY'S joint venture) has in effect on the date of termination of EMPLOYEE's employment; and (iii) all pending and planned procurements, requirements and acquisitions, for which, as of the date of termination of EMPLOYEE's employment, COMPANY (or COMPANY joint venture) had submitted a bid or proposal, or was in the process of preparing a bid or proposal, whether as prime contractor, subcontractor, supplier or consultant. For purposes of the foregoing, the COMPANY shall be deemed to be the "prime contractor." This section shall apply to commercial as well as government contracts.

7. Relief Upon Breach

Injunctive Relief. EMPLOYEE acknowledges that any breach of this Agreement would cause irreparable harm to COMPANY. Therefore, based on the nature and extent of a breach of this Agreement, the COMPANY shall be entitled to pursue injunctive relief or equitable relief (without the necessity of proving any actual damage or without the necessity of proving that monetary damages would not afford an adequate remedy), as well as its attorneys' fees incurred in enforcing this Agreement. Nothing contained herein shall be construed as prohibiting the COMPANY from pursuing any other remedies available for such breach or threatened breach.

Attorneys' Fees. Upon the breach by either party of this Agreement, the non-breaching party shall be entitled to pursue all available remedies under this Agreement or at law. In the event that final judgment is rendered against a party to this Agreement with respect to a dispute arising hereunder, then the prevailing party shall be entitled to its costs and expenses incurred during the course of such litigation, including reasonable attorneys' fees. A party shall be considered the prevailing party if:

- (1) it initiated the litigation and substantially obtains the relief it sought, either through a judgment or the losing party's voluntary action before arbitration, trial, or judgment;
- (2) the other party withdraws its action without substantially obtaining the relief sought; or
- (3) it did not initiate the litigation and judgment is entered for either party, but without substantially granting the relief sought.

8. Waiver

The failure of the COMPANY to insist upon the strict performance of the covenants and conditions contained herein shall not be deemed a waiver of the right of the COMPANY to insist upon the strict performance of such covenants and conditions at any other time.

9. Severability

In the event that any provision of this Agreement shall be held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall attach only to such provision and shall not affect or render invalid any other provisions of this Agreement. In the event that a provision in this Agreement relating to the time or scope of any restriction shall be declared by a court of competent jurisdiction to exceed the maximum time period or scope permitted by law, then the parties agree that said provision shall be rewritten by the Court to insert the maximum time or scope restriction permitted by law.

10. Governing Law and Jurisdiction

The parties acknowledge and agree that this Agreement shall be governed by and construed in accordance with the laws of the STATE.

11. Binding Nature of Agreement

This Agreement shall be binding upon and insure to the benefit of the COMPANY and its successors and assigns and shall be binding upon EMPLOYEE, his/her agents, heirs and legal representatives. EMPLOYEE may not assign any right, interest or obligation contained in this Agreement without the prior written consent of the COMPANY.

12. Representation and Warranty

EMPLOYEE represents and warrants that he/she is not restricted or prohibited, by agreement or otherwise, from entering into and performing under this Agreement. EMPLOYEE further represents and warrants that he/she is not subject to any other employment agreement or any agreement imposing non-competition restrictions upon him/her that would in any way restrict or limit his/her ability to perform his/her duties and obligations to the COMPANY.

This agreement does not create any right to employment with the COMPANY and may be in addition to other agreements that may have been signed by the EMPLOYEE and the COMPANY. Except as specified herein, this Agreement does not limit any rights of EMPLOYEE and the COMPANY created by any other contracts or laws. Specifically, the EMPLOYEE is an employee at will, and his/her employment may be terminated by either party at any time.

Signatures:

Employee - Print Name

Employee Signature/Date

Company Officer - Print Name

Company Officer Signature/Date

