

## NON-COMPETE / NON-DISCLOSURE AGREEMENT

This Agreement is entered into as of \_\_\_\_\_ (“Effective Date”), between Smart Webs USA, a web design and development company having corporate powers under the laws of the State of Washington, having an office at 10020 SE 245<sup>th</sup> Place, Kent, WA 98030 (hereinafter called “Smart Webs USA”), and **COMPANY NAME**, having an office at \_\_\_\_\_, (hereinafter called “**COMPANY NAME**”).

WHEREAS, Smart Webs USA and **COMPANY NAME** hereinafter referred to as the party and/or the parties, wish to have discussions on and explore possibilities for cooperation in the field of research and development of \_\_\_\_\_ and consequently will exchange certain proprietary information relating to their respective know-how, products and businesses for the purpose of evaluating a possible collaboration;

NOW, THEREFORE, in consideration of the promises recited herein, each party hereto agrees to disclose and to receive information as applicable in a manner consistent with the following provisions:

1. "Confidential Subject Matter" shall mean any and all information, know-how and data, technical or non-technical, disclosed or provided by one party to the other, whether disclosed or provided in oral, written, graphic, photographic, electronic or any other form, except for subject matter and information:
  - a. that is or becomes generally known or available to the public without breach of this Agreement;
  - b. that is known to the receiving party at the time of disclosure, or as evidenced by written records of the receiving party;
  - c. that is known or independently developed by the receiving party and can be proven as such through written records of the receiving party;
  - d. that is disclosed to the receiving party in good faith by a third party who has an independent right to such subject matter and information;
  - e. that is required to be disclosed by law.
2. Any information disclosed in oral or other intangible form under this Agreement shall be identified as “Confidential Subject Matter” at the time of disclosure and shall be confirmed in written summary form marked “Confidential Subject Matter ” and transmitted to the receiving party within 30 days after its disclosure to the receiving party. Each party retains the right to refuse receipt of written material which it does not consider to be essential to the completion of the project or which it believes to be improperly designated as Confidential Subject Matter, or for any other reason.
3. The parties agree to hold in confidence and withhold from third parties any and all Confidential Subject Matter disclosed by one party to the other, on or after the Effective Date of this Agreement, and to use Confidential Subject Matter only for the purposes set forth in this Agreement, unless the originating party agrees in writing to a change of purpose.
4. Each receiving party agrees to take reasonable and appropriate measures to safeguard any Confidential Subject Matter received from the disclosing party from unauthorized use, publication or disclosure to others, and to limit access to Confidential Subject Matter to those employees within the

Initials: \_\_\_\_\_

receiving party's organization who reasonably require such access in order to accomplish the purposes stated above. The above obligations relating to use and disclosure shall be satisfied by the receiving party affording the Confidential Subject Matter the degree of care normally used by the receiving party in the protection of its own Confidential Subject Matter of like quality, but in any event, no less than reasonable care.

5. Unless otherwise specified in writing, all Confidential Subject Matter remains the disclosing party's property. Immediately upon request of the disclosing party or within thirty (30) days from the date of termination or expiration of this Agreement, the receiving party agrees to cease using the Confidential Subject Matter and to return or destroy all Confidential Subject Matter received from the disclosing party. Either party shall be permitted to retain one copy of the other party's written Confidential Subject Matter, which the receiving party may keep solely to monitor its obligation under this Agreement.
6. The term of this Agreement shall be for one (1) year from the Effective Date ("Expiration"). The receiving party shall hold all Confidential Subject Matter confidential for two (2) years from the date of Expiration.
7. Nothing contained in this Agreement shall be construed as an obligation to enter into any further agreement concerning the Confidential Subject Matter. No license, right or options under any patent, copyright, trademark, mask works, or equivalent rights are granted by this Agreement.
8. Each party agrees not to file any patent applications claiming any information, developments, discoveries, technologies, inventions and the like arising from the use of Confidential Subject Matter or that could not have been made, developed or discovered but for access to Confidential Subject Matter.
9. Neither party shall make use of this Agreement, or use the other's name or that of any member of the other's staff for publicity or advertising purposes without prior written approval of the other party.
10. Should any court of competent jurisdiction later consider any provisions of this Agreement to be invalid, illegal, or unenforceable, such provisions shall be considered severed from this Agreement. All other provisions, rights, and obligations shall continue without regard to the severed provision, provided that the remaining provisions of this Agreement are in accordance with the intentions of the parties.
11. The validity, interpretation and performance of this Agreement and any dispute connected herewith shall be governed and construed in accordance with the laws of the State of WA, USA.
12. This Agreement contains the entire understanding between the parties with respect to the Confidential Subject Matter described herein and supersedes all prior understandings whether written or oral. Any modification, amendment or waiver of the terms of this Agreement shall require the written approval of authorized representatives of each party.
13. Both parties warrant and represent that they have the right to enter into this Agreement. The parties further warrant and represent that the terms of this Agreement are not inconsistent with other contractual obligations, expressed or implied, which they are bound.

Initials: \_\_\_\_\_

14. Paragraphs 8 and 9, and that portion of paragraph 6 hereof dealing with the duration of the obligation of confidentiality, shall survive the termination or expiration of this Agreement.

The foregoing has been agreed to and accepted by authorized representatives of each party whose signatures appear below.

AGREED:

SMART WEBS USA

**COMPANY NAME**

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Initials: \_\_\_\_\_