

Vendor: _____

NONDISCLOSURE AGREEMENT

THIS NONDISCLOSURE AGREEMENT (**AGREEMENT**) is effective for all purposes and in all respects as of the ____ day of _____, 20____, by and between Western Carolina University (**WCU** or **UNIVERSITY**), and _____ (**VENDOR**).

In consideration of the foregoing, of the mutual covenants, promises, and agreements herein contained, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending legally to be bound, hereby covenant, promise, and agree as follows:

1. Disclosure of Information. Vendor acknowledges that, in and as a result of his/her relationship with University, Vendor will be making use of, acquiring or adding to confidential information of a special and unique nature and value, including, without limitation, University's trade secrets, products, systems, programs (including, without limitation, University's computer software programs), procedures, manuals, guides, confidential reports and communications (including, without limitation, customer site information, technical information on the performance and reliability of University's product or programs and the development or acquisition of future products or product enhancements by University) and lists of customers, as well as the nature and type of the services rendered by University and the fees paid by University's customers. Vendor further acknowledges that any information and materials received by University from third parties in confidence (or subject to nondisclosure covenants) shall be deemed to be and shall be confidential information within the meaning of this Section 1. As a material inducement to University to employ Vendor and to pay to Vendor compensation for such services to be rendered to University by Vendor (it being understood and agreed by the parties hereto that such compensation shall also be paid and received in consideration hereof), Vendor covenants and agrees that he/she shall not, except with the prior written consent of University, or except if Vendor is acting as a Vendor of University solely for the benefit of University in connection with University's business and in accordance with University's business practices and Vendor policies, at any time during or following the term of his/her employment with University, directly or indirectly, use, divulge, reveal, report, publish, transfer or disclose, for any purposes whatsoever, any of such confidential information which has been obtained by or disclosed to him/her as a result of his/her employment with University, including, without limitation, any proprietary information as defined by the University.

2. Definition of Proprietary Information. For purposes of this Agreement, the term "Proprietary Information" shall mean all of the following materials and information (whether or not reduced to writing and whether or not patentable or protectible by copyright) which Vendor receives, receives access to, conceives or develops, in whole or in part, as a direct or indirect result of his/her employment with University, in the course of his/her employment with University (in any capacity, whether executive, managerial, planning, technical, sales, research, development, manufacturing, engineering or otherwise) or through the use of any of University's facilities or resources:

A. Application, operating system, communication and other computer software, whether now or hereafter existing, including, without limitation, all versions and all options available with respect to, and all future products developed or derived.

B. With respect to the software and related items described in Section 2(A) above, all source and object codes, flow-charts, algorithms, coding sheets, compilers, assemblers, "macros," owner's manuals, reference manuals, design concepts, routine and sub-routines;

C. Service utilities which are basic "building blocks" of University's products (also known as service utility functions or service routines), the guides and any documentation or manuals relating to the software and related items described in or referred to in Section 2(A) above;

D. Production processes, marketing techniques, mailing lists, purchasing information, price lists, pricing policies, quoting procedures, financial information, customer and prospect names and requirements, customer data, customer site information and other materials and information relating to the manner in which University does business;

E. Discoveries, concepts and ideas, whether or not patentable or protectible by copyright, including, without limitation, the nature and results of research and development activities, technical information or product or program performance and reliability, processes, formulas, techniques, "know-how," source codes, object codes, designs, drawings and specifications;

F. Any other materials or information related to the business or activities of University which are not generally known to others engaged in similar businesses or activities; and all ideas which are derived from or relate to Vendor's access to or knowledge of any of

the above enumerated materials and information. Failure to mark any of the Proprietary Information as confidential shall not affect its status as part of the Proprietary Information under the terms of this Agreement.

3. Injunctive Relief. Vendor understands and agrees that University will suffer irreparable harm in the event that Vendor breaches any of his/her obligations under this Agreement and that monetary damages will be inadequate to compensate University for such breach. Accordingly, Vendor agrees that, in the event of a breach or threatened breach by Vendor of any of the provisions of this Agreement, University, in addition to and not in limitation of any other rights, remedies or damages available to University at law or in equity, shall be entitled to a permanent injunction in order to prevent or to restrain any such breach by Vendor, or by Vendor's partners, agents, representatives, servants, employers, employees or any and all persons directly or indirectly acting for or with him/her.

4. Records. All notes, data, tapes, reference materials, sketches, drawings, memoranda and records in any way relating to any of the information referred to in this Agreement (including, without limitation, any Proprietary Information) or to University's business shall belong exclusively to University and Vendor agrees to turn over to University all copies of such materials in his/her possession or then under his/her control at the request of University or, in the absence of such a request, upon the termination of Vendor's employment with University.

5. Reasonableness of Restrictions. Vendor has carefully read and considered the provisions of Sections 1 through 6 hereof and, having done so, agrees that the restrictions set forth therein are fair and reasonable and are reasonably required for the protection of the interests of University, its officers, directors, and employees. In the event that, notwithstanding the foregoing, any part of the covenants, promises and agreements shall be held to be invalid and unenforceable, the remaining parts thereof shall nevertheless continue to be valid and enforceable as though the invalid and unenforceable parts had not been included herein.

6. Burden and Benefit. This Agreement shall be binding upon, and shall inure to the benefit of, University and Vendor, and their respective heirs, personal and legal representatives, and successors and assigns.

7. Governing Law. In view of the fact that the principal office of University is located in the State of North Carolina, it is understood and agreed that the construction and interpretation of this Agreement shall at all times and in all respects be governed by the laws of the State of North Carolina.

8. Severability. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any one or more of the provisions hereof shall not affect the validity or enforceability of the other provisions hereof.

9. Entire Agreement. This Agreement contains the full, entire, and integrated agreement and understandings by and between University and Vendor with respect to the covenants herein described, and no representations, promises, agreements or understandings, written or oral, not herein contained shall be of any force or effect. Nothing contained in this Agreement shall be deemed or construed to constitute an agreement by University to contract with Vendor. No change or modification hereof shall be valid or binding unless the same is in writing and signed by the parties hereto. No waiver of any provision of this Agreement shall be valid unless the same is in writing and signed by the party against whom such waiver is sought to be enforced; moreover, no valid waiver of any provision of this Agreement at any time shall be deemed a waiver of any other provision of this Agreement at such time nor will it be deemed a valid waiver of such provision at any other time.

10. Headings. The headings and other captions in this Agreement are for convenience and reference only and shall not be used in interpreting, construing or enforcing any of the provisions of this Agreement.

IN WITNESS WHEREOF, University and Vendor have duly executed this Agreement as of the day and year first above written.

WESTERN CAROLINA UNIVERSITY

VENDOR

SIGNATURE

SIGNATURE

PRINT NAME

PRINT NAME

DATE

DATE

