

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT ("Agreement") is made and entered into as of this _____ day of _____, 20____ by and between _____ ("Undersigned") and the Pennsylvania Gaming Control Board ("PGCB") with reference to the following Terms and Conditions.

WITNESSETH:

WHEREAS, Undersigned is involved with information and materials that are of a highly sensitive nature, which must be carefully protected in order to aid in the PGCB's success;

WHEREAS, notwithstanding any provision of any applicable law, rule, or regulation to the contrary, each employee/consultant of the PGCB is obligated to treat such information and materials as confidential;

WHEREAS, the PGCB believes that it is appropriate for Undersigned to clearly understand and agree in writing as to the extent of his/her obligations to the PGCB with respect to highly sensitive information and materials; and

WHEREAS, the execution of this Agreement is a required condition of employment or consulting relationship with the PGCB.

NOW THEREFORE, intending to be legally bound hereby, Undersigned and the PGCB agree as follows:

1. Confidential Information

1.1 Protection of Confidential Information. Undersigned hereby acknowledges, understands, and agrees that whether developed by Undersigned or others employed by or associated with the PGCB, all Confidential Information (as defined in Paragraph 1.2) is the exclusive and confidential property of the PGCB and shall be at all times regarded, treated, and protected as such in accordance with this Agreement, notwithstanding any provision of any applicable law, rule, or regulation to the contrary. Failure to mark any writing as "confidential" shall not affect the confidential nature of such writing or the information contained therein.

1.2 Definition of Confidential Information. Confidential Information shall mean information (whether or not originated by Undersigned) that is used in the PGCB's business and is (1) proprietary to, about, or created by the PGCB; (2) designated as Confidential Information by the PGCB; or (3) not generally known by non-PGCB personnel. Such Confidential Information includes, but is not limited to, the following types of information and other information of a similar nature:

- (a) Any and all “Confidential Information” as it is defined in the Pennsylvania Race Horse Development and Gaming Act, as most recently amended, and the applicable Rules and Regulations, as most recently amended (see, for example, 4 Pa.C.S. §1206(f) and 58 Pa. Code §§401a.3, 407a.3);
- (b) Work product resulting from or related to work or projects performed or to be performed for the PGCB or it’s consultants, including but not limited to all lines of inquiry, hypotheses, research, and conclusions related thereto and the methods, processes, procedures, analyses, techniques, and audits used in connection therewith;
- (c) Computer software of any type or form and in any stage of actual or anticipated research and development, including but not limited to programs and program modules, routines and subroutines, processes, algorithms, design concepts, design specifications (design notes, annotations, documentation, flowcharts, coding sheets, and the like), source code, object code and load modules, programming, program patched, and system designs;
- (d) Information relating to Proprietary Items (as defined in Paragraph 2.2) prior to any public disclosure thereof, including but not limited to the nature of the Proprietary Items, production data, technical and engineering data, test data and test results, the status and details regarding the research and development of any Proprietary Items, and information regarding acquiring, protecting, enforcing, and licensing proprietary rights (including but limited to patents, copyrights, and trade secrets);
- (e) Internal PGCB personnel and financial information, names and other information of those doing business with the PGCB, purchasing and internal cost information, internal service and operational manuals, and the manner and methods of conducting the PGCB’s business; and
- (f) Marketing and development plans, price and cost data, price and fee amounts, pricing and billing policies, quoting procedures, marketing techniques and methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of the PGCB that have been or are being discussed.

1.3 Exclusions from Confidential Information. Confidential Information shall not include information that is Publicly Known or generally known by persons of Undersigned’s current capacity or the general skills and experience gained during Undersigned’s tenure with the PGCB that Undersigned could reasonably have been expected to acquire in a similar capacity with another organization. The phrase “Publicly Known” shall mean readily accessible to the public in a written publication, and shall not include information that is only available by a substantial searching of the published literature, and information of substance that

must be pieced together from a number of different publications and sources. The burden of proving that information or skills and experience are not Confidential Information shall be on the party asserting such exclusion.

- 1.4 Covenants of Undersigned. As a consequence of Undersigned's acquisition of Confidential Information, Undersigned will occupy a position of trust and confidence with respect to the PGCB's affairs and business.

In view of the foregoing and of the consideration to be provided to Undersigned, Undersigned agrees that it is reasonable and necessary that Undersigned make the following covenants regarding conduct of Undersigned during and subsequent to his/her employment or business relationship with the PGCB. Notwithstanding any provision of any applicable law, rule, or regulation to the contrary, Undersigned hereby agrees that:

- (a) During and after his/her tenure with the PGCB, Undersigned will not discuss the Confidential Information with any person or entity other than as necessary to carry out his/her duties on behalf of the PGCB, without first obtaining the PGCB's consent, and will take all reasonable precautions to prevent inadvertent disclosure of such Confidential Information. This prohibition against Undersigned's disclosure of Confidential Information includes, but is not limited to disclosing the fact that any similarity exists between the Confidential Information and information independently developed by another person or entity, and Undersigned understands that such similarity does not excuse Undersigned from abiding by his/her covenants and other obligations under this Agreement.
- (b) During and after his/her tenure with the PGCB, Undersigned will not use, copy, or transfer the Confidential Information other than as necessary in carrying out his/her duties on behalf of the PGCB, without first obtaining the PGCB's consent, and will take all reasonable precautions to prevent inadvertent use, copying, or transfer of such Confidential Information. This prohibition against Undersigned's use, copying, or transfer of Confidential Information includes, but is not limited to, selling, licensing, or otherwise exploiting, directly or indirectly, any products or services (including software in any form) that embody or are derived from Confidential Information or existing judgment or performing analysis based upon knowledge of Confidential Information.

2. Proprietary Items

- 2.1 PGCB Ownership of Proprietary Items. Undersigned hereby acknowledges, understands, and agrees that all Proprietary Items, as set forth in Paragraph 2.2 are and shall be the exclusive property of the PGCB or its nominee.

- 2.2 Definition of Proprietary Items. Proprietary Items shall mean all legally recognized rights that are the result of or derived from work product of employees or consultants of the PGCB made for the PGCB or with knowledge, use, or incorporation of PGCB Confidential Information. Proprietary items include, but are not limited to developments, inventions, designs, discoveries, works of authorship, improvements and ideas, whether or not patentable or copyrightable, conceived or made by Undersigned (solely or in cooperation with others) during his/her tenure with PGCB or which result from or are derived from PGCB resources or which are reasonably related to the business operations or the actual demonstrably anticipated research and development of the PGCB.
- 2.3. Exclusions from Proprietary Items. Proprietary Items shall not include inventions for which no equipment, supplies, facility, or trade secret information of the PGCB is used and which are developed entirely on Undersigned's own time, and (1) which do not relate (a) to the business of the PGCB or (b) to the PGCB's actual or demonstrably (or reasonably) anticipated research or development or (2) which do not result from any work performed by Undersigned for the PGCB.
- 2.4 Undersigned Covenants. Unless otherwise modified by a written, executed agreement between the parties hereto, Undersigned agrees to grant to the PGCB without further compensation all of Undersigned's right(s), title(s), and interest(s) in and to all Proprietary Items. Undersigned further agrees that Undersigned's authorship of any such Proprietary Items that are copyrightable shall be deemed a "work made for hire," and to the extent any authorship is not deemed a "work made for hire," it is hereby assigned to the PGCB without further compensation. Undersigned agrees to assign at the PGCB's direction without further compensation, Undersigned's rights in and to any other inventions, designs, discoveries, work of authorship, improvements, or ideas when the PGCB is required to grant those rights to the U.S. Government or any agency thereof, or any other third party. In order to permit the PGCB to claim, perfect, and enforce its rights in and to Proprietary Items, Undersigned agrees:
- (a) To disclose promptly to the PGCB in confidence and in writing all Proprietary Items conceived or made by Undersigned, solely or jointly with others, during the term of his/her tenure with PGCB;
 - (b) To disclose promptly to the PGCB in confidence and in writing all items that relate to or are derived (in whole or in part) from Proprietary Items conceived or made by the Undersigned, solely or jointly with others, for one year after the term of his/her tenure with PGCB;
 - (c) To comply with all of the PGCB's reasonable instructions and to execute and procure all documents respecting Proprietary Items reasonably requested by the PGCB for the purpose of vesting, confirming, securing, or assigning the PGCB's or its nominee's right(s), title(s), and interest(s)

therein and thereto, including patents and copyrights relating thereto in the United States and foreign territories; and

- (d) To keep complete, accurate, and authentic accounts, notes, reference materials, data, and records of all Proprietary Items in the manner and form requested by the PGCB (which materials and all copies thereof are hereby agreed to be property of the PGCB), to mark all items “confidential,” and to surrender all such items to the PGCB upon request of the PGCB, or if not requested during his/her tenure with PGCB, to surrender and deliver all such items to the PGCB upon termination of his/her tenure with PGCB.

3. General Covenants

- 3.1 Obligations. Undersigned acknowledges, understands, and agrees that his/her services will be performed with the highest level of professional ethics and standards. Without limiting the foregoing, Undersigned agrees to respect the confidentiality of any information with at least the same level of care and discretion as Undersigned is required to treat the Confidential Information hereunder.
- 3.2 Surrender of Documents. Unless otherwise modified by a written, executed agreement between the parties hereto, upon termination of his/her tenure with PGCB, Undersigned agrees to deliver to the PGCB all materials relating in any way to Proprietary Items or Confidential Information, relating to his/her representations of the PGCB, to the business of the PGCB, and relating to consultants of the PGCB. Such materials include, but are not limited to, computer software and related documentation, computer software input sheets and descriptions, practice aids and practice aid materials (work sheets, schedules, tables, brochures, manuals, and so on), work product, reports, proposals, documentation, records, notes, data, sketches, drawings, memoranda, models, accounts, reference materials, video discs, videotapes, cassette tapes, slides, film, audio-visual aids, samples, and equipment.
- 3.3 Survival. The restrictions and obligations hereunder shall survive the relationship between the Undersigned and the PGCB, as well as any attempted termination or cancellation of this Agreement and shall continue to bind PGCB, its successors, heirs, and assigns with respect to the Undersigned.
- 3.4 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.
- 3.5 Waiver. No provision of this Agreement may be modified, waived or discharged, unless such waiver, modification, or discharge is agreed to in writing and signed by Undersigned and an officer specifically designated by the PGCB. No waiver by any party hereto at any time of any breach by the other party hereto of, or in compliance with, any condition or provision of this Agreement to be performed

by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

- 3.6 Assignment. This Agreement shall not be assignable by any party, except by the PGCB to any successor in interest to their respective businesses.
- 3.7 Attorneys' Fees and Costs. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief that may be proper.
- 3.8 Entire Agreement. Except where specifically indicated herein, this Agreement supersedes any and all agreements, either oral or in writing, between the Undersigned by the PGCB with respect to non-disclosure of confidential information, without limitation.
- 3.9 Validity. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.
- 3.10 Headings. The section headings of this Agreement are for convenience only and shall not control or affect the meaning or construction or limit the scope or intent of any of the provisions of this Agreement.
- 3.11 Number. Words used herein in the singular will be construed as being used in the plural, as the context requires, and vice versa.
- 3.12 Whistleblower Law. Notwithstanding any provision of this Agreement, the Undersigned does not hereby forgo any rights established by the Whistleblower Law, 43 P.S. §1421, et. seq.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of the day and year first above written.

Undersigned

By: _____
Signature

Name: _____
Print or Type