

Company Name Here

PROPRIETARY INFORMATION AND INVENTIONS AGREEMENT

This Proprietary Information and Inventions Agreement ("Agreement") is entered into effective on the date of signature by _____ ("Employee" herein), residing at _____, and (Company Name Here), Inc. ("(Company Name Here)" herein).

Background:

- A. (COMPANY NAME HERE) is engaged in the business of _____.
- B. Employee is either a present employee of, or will be employed by, (COMPANY NAME HERE). As a condition of continued or future employment, Employee agrees to enter into this Agreement to preserve the valuable trade secrets of (COMPANY NAME HERE) and to protect (COMPANY NAME HERE)'s investments in its research and development.
- C. The parties acknowledge and agree that this Agreement does not constitute an employment agreement between them. In addition, the parties acknowledge and agree that this Agreement does not supersede all terms of prior confidentiality and inventions agreements ("Prior Agreements" herein) which may have already been entered into between the parties, including without limitation, any noncompetition agreements contained in Prior Agreements.
- D. Employee also acknowledges and agrees that this Agreement shall be fully enforceable independently of any other relationships or terms and conditions of employment between (COMPANY NAME HERE) and Employee.

Now, therefore, in consideration of the terms and conditions stated herein, for continuation of employment or hiring as an employee, and for other good and valuable consideration,

It is Agreed:

1. Definitions. The following definitions shall govern this Agreement:
 - a. "Confidential Information" is to be construed broadly and includes, but is not limited to, all of the following (so long as such has not been publicly released by authorized representatives of (COMPANY NAME HERE)): computerized business methods, programs, data and other recorded information, customer lists and information, designs,

devices, discoveries, drawings, information about (COMPANY NAME HERE), its present or prospective business, ideas and proposals, inventions (whether patentable, copyrightable, or otherwise subject of intellectual property protection, and whether or not reduced to practice), know-how, materials and documents related to (COMPANY NAME HERE)'s present or prospective business, finances, pricing, procedures and products, programs, research, software (including interfaces, object code, source code, firmware and any and all enhancements, related documentation, releases, revisions, and updates thereto), sources of supply, specifications, techniques, texts, trade secrets, specifications, and the like, all whether in preliminary or final form and in and on any media whatsoever, that are created, conceived, reduced to practice, developed, discovered, invented or made, whether before or during the term of this Agreement which are related to the subjects of this Agreement, and all Confidential Information previously disclosed to Employee pursuant to any Prior Agreement.

b. "Employment" and/or "Employee" are likewise to be broadly construed to include any and all forms of work conducted for or on behalf of or for the benefit of (COMPANY NAME HERE).

c. "Invention" as used herein is to be construed broadly and includes, but is not limited to, concepts, discoveries and ideas, whether patentable or not, including but not limited to computerized business methods, software programs, programming languages, tools, applications, goods and services, designs, formulas, machines, methods, processes, product ideas or designs, and techniques, as well as improvements thereof or know-how related thereto, relating to any present or prospective business of (COMPANY NAME HERE).

2. Additional Recitals. Employee has read, understood, and recognizes and acknowledges the following premises of this Agreement:

a. (COMPANY NAME HERE)'s business involves developing and delivering e-learning modules via the Internet and corporate intranet; and

b. (COMPANY NAME HERE) therefore possesses and will continue to possess and to develop Confidential Information related to its business; and

c. (COMPANY NAME HERE) has created, discovered, developed or otherwise become aware of such information (which may include without limitation information created by, discovered or developed by, or made known to, Employee during periods of, or arising out, of Employee's past, present or future employment by (COMPANY NAME HERE)) and that (COMPANY NAME HERE) holds property rights in such information, whether through creating or developing such, or through receiving such by assignment or other conveyance; and

d. Such information has important commercial value to (COMPANY NAME HERE), and that Employee's access to and use of, or continued access to and use of, such is

conditioned on Employee's observing Employee's obligations under Prior Agreements and entry into this Agreement; and

- e. (COMPANY NAME HERE) will not employ or continue to employ, as the case may be, Employee without the benefit of this Agreement to protect the value of the (COMPANY NAME HERE)'s business, Confidential Information, Inventions, trade secrets and goodwill; and
- f. This Agreement by itself neither constitutes an employment agreement nor entitles Employee to specific employment or to employment for any specific period of time with (COMPANY NAME HERE).

3. Employee Covenants and Agreements.

- a. Employee agrees and acknowledges that any employment relationship with (COMPANY NAME HERE) creates a relationship of confidence and trust between Employee and (COMPANY NAME HERE) with respect to any information:
 - (1) which is Confidential Information;
 - (2) which relates to (COMPANY NAME HERE)'s present or prospective business;
 - (3) which relates to or is acquired in the course of the business of any client or customer of (COMPANY NAME HERE), which may be made known to Employee by (COMPANY NAME HERE) or by any client or customer of (COMPANY NAME HERE), or learned by Employee during employment at or with (COMPANY NAME HERE).
- b. Employee further agrees and acknowledges as follows:
 - (1) Confidential Information, and any and all patents, copyrights and other rights related thereto, are the sole property of (COMPANY NAME HERE) and/or its assigns.
 - (2) Employee's use of the Confidential Information shall be only for (COMPANY NAME HERE)'s benefit, both during and after employment by (COMPANY NAME HERE).
 - (3) Employee agrees to assign to (COMPANY NAME HERE) any rights Employee may have previously under Prior Agreements acquired in Confidential Information or hereafter acquire in Confidential Information; and Employee therefore agrees to execute such further documents, and take such other steps, as may be necessary to evidence such assignment(s).

- (4) At all times, both during employment by (COMPANY NAME HERE) and after any termination of such employment, Employee agrees to keep in confidence and trust all Confidential Information, and not to use nor to disclose any Confidential Information or anything relating to it without (COMPANY NAME HERE)'s prior written consent.
 - (5) All "Physical Property" (apparatus, documents, equipment, records, and any and all other physical property, whether or not pertaining to Confidential Information) furnished to Employee by (COMPANY NAME HERE) or produced by Employee or others in connection with (COMPANY NAME HERE)'s present or prospective business, shall be and remain (COMPANY NAME HERE)'s sole property.
 - (6) Employee agrees to return all Confidential Information and Physical Property to (COMPANY NAME HERE) immediately upon the earlier of (a) any request by (COMPANY NAME HERE), and/or (b) termination of Employee's employment with (COMPANY NAME HERE).
 - (7) Employee agrees not to take or keep any Confidential Information or Physical Property, or any copies or reproduction thereof (whether print, electronic, digital, electro-magnetic, or in any other format or medium), upon any request by (COMPANY NAME HERE) and/or any termination of employment.
- c. Employee agrees promptly to disclose to (COMPANY NAME HERE), and/or to any persons designated by (COMPANY NAME HERE), all Inventions which relates to (COMPANY NAME HERE)'s past, present and future business, including without limitation apparatus, firmware, computerized business methods, software programs, programming languages, tools, applications, products or services, whether or not patentable, made or conceived or reduced to practice or learned by Employee, either alone or jointly with others, during Employee's term of employment.
- d. Employee agrees that all Inventions relating to (COMPANY NAME HERE)'s past, present and future business, including without limitation apparatus, firmware, computerized business methods, software programs, programming languages, tools, applications, products or services, developed by Employee, in whole or in part, either alone or jointly with others, and any and all patents, copyrights and other rights related thereto, shall be and become the sole property of (COMPANY NAME HERE) and/or its assigns, so long as:
- (1) (COMPANY NAME HERE)'s equipment, supplies, facilities and/or Confidential Information is used in connection therewith; or
 - (2) the hours for which Employee is compensated by (COMPANY NAME HERE) are used for such Inventions; or
 - (3) Such Inventions relate to (COMPANY NAME HERE)'s business or to

(COMPANY NAME HERE)'s actual or demonstrably anticipated research and development; or

(4) Such Inventions result, in whole or in part, from work performed by Employee for the (COMPANY NAME HERE).

e. Employee hereby agrees to assist (COMPANY NAME HERE) in every proper way in achieving and protecting the (COMPANY NAME HERE)'s rights in Inventions and related rights subject of this Agreement, including without limitation:

(1) At all times whether during or after the term of this Agreement, as well as during and/or after the term of any employment relationship with (COMPANY NAME HERE), Employee shall execute such additional documents (such as for example only and without limitation, executing instruments to file with the Patent and Trademark Office or with foreign patent offices), and taking such other steps, as may be necessary to evidence Employee's assignment of rights to (COMPANY NAME HERE) under this Agreement;

(2) Employee hereby assigns and shall assign to (COMPANY NAME HERE) any and all rights Employee may now have or may hereafter acquire in the Inventions and related rights; and

(3) Employee shall assist (COMPANY NAME HERE), upon (COMPANY NAME HERE)'s reasonable request, whether during or after Employee's employment with the (COMPANY NAME HERE), in all reasonable ways to obtain and to enforce any and all patents, copyrights and/or other rights related to the Inventions and improvements in any and all countries, including without limitation by executing such documents as are necessary for use in applying for and obtaining such patents and copyrights thereon and enforcing same, together with any assignments thereof to (COMPANY NAME HERE) or persons designated by it.

(4) In the event that (COMPANY NAME HERE) may be unable for any reason whatsoever to secure Employee's signature to any lawful and necessary document required to apply for or execute any patent, copyright or other application with respect to the Inventions and improvements thereon (including renewals, extensions, continuances, divisions or continuations in part thereof), or to do any lawful act constituting Employee's obligations of assistance hereunder, Employee hereby irrevocably designates and appoints (COMPANY NAME HERE) and its duly authorized officers and agents to be Employee's agents in fact to execute and to file applications and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyrights or other rights thereon with the same legal force and effect as if executed by Employee.

4. (COMPANY NAME HERE)'s Obligations. (COMPANY NAME HERE) hereby agrees to the following:

- a. (COMPANY NAME HERE) shall be responsible for reasonable expenses and costs incurred by Employee to accomplish Employee's obligations under the preceding Section 3.e; and
- b. (COMPANY NAME HERE) will also treat as confidential any accurate disclosures by Employee in Exhibit A hereto of inventions conceived by Employees which do not belong to (COMPANY NAME HERE) under this Agreement; provided that if (COMPANY NAME HERE) disagrees with Employee's designation in Exhibit A, (COMPANY NAME HERE) may use such information in any forum chosen for resolving the dispute.

5. Employee's Representations and Warranties. Employee represents and warrants as follows:

- a. Employee represents and warrants that Employee's performance of this Agreement according to its terms will not breach any agreement or understanding made or entered into by Employee to keep in confidence and/or not to use any information of any third party.
- b. Employee represents and warrants that Employee's duties under this Agreement or as an employee of (COMPANY NAME HERE), will not violate any obligations Employee may have to Employee's former employers.
- c. Employee further represents and warrants that Employee has not entered into, and agrees not to enter into, any written or oral agreement in conflict with this Agreement.

6. Disclosure of inventions. Employee agrees to disclose Employee's inventions as required in this Agreement to enable (COMPANY NAME HERE) to engage in a review process to determine such issues as may arise.

Note: Neither this provision nor this Agreement requires assignment of an invention which an Employee cannot be obligated to assign under any applicable statute.

7. Miscellaneous.

- a. Governing law. (Name of State of Incorporation or Residence Here) law governs.
- b. Prior Agreements. This Agreement shall be considered an independent and thus additional agreement to Prior Agreements (if any) between Employee and (COMPANY NAME HERE). Employee agrees that in the construction and interpretation of this Agreement and Prior Agreements, the provision which is most protective of (COMPANY NAME HERE)'s Confidential Information and Inventions shall apply to Employee.
- c. Binding Effect, Governing Law. This Agreement shall be binding upon Employee,

Employee's heirs, executors, assigns and administrators, and shall inure to the benefit of (COMPANY NAME HERE) and its successors, assigns and principals.

- d. Severability, Savings. If any one or more provisions of this Agreement shall be held by any court to be invalid or unenforceable because excessively broad as to scope, duration, activity or subject, such invalidity or unenforceability shall not adversely affect the validity or enforceability of any other part of this Agreement.
- e. Construction. This Agreement shall not be construed for nor against any party, regardless of its drafter.
- f. Injunctive Relief, Legal Proceedings, Fees and Costs. Employee acknowledges and agrees that any breach of this Agreement will cause irreparable injury to (COMPANY NAME HERE), which injury cannot be adequately compensated by monetary damages and that, therefore, in the event of any such breach, (COMPANY NAME HERE) may obtain without the posting of bond from a court of competent jurisdiction over Employee immediate equitable and injunctive relief, including without limitation restraining orders, preliminary or permanent injunctions, or other such orders, to enforce this Agreement. Employee agrees that any state or federal court situated in _____ County(City), (State Name Here) has both personal and subject matter jurisdiction, and that venue in any such court is proper venue for enforcement of this Agreement. This provision is not intended to limit any other rights or remedies available to any party hereto, whether in law or equity. The prevailing party in any legal action relating to this Agreement shall be entitled to recover all of its reasonable costs, including without limitation attorney's fees and costs.
- g. Employee Signature Necessary; Counterpart Originals. Employee's signature to this Agreement shall make this Agreement effective and enforceable regardless of whether any signature of an authorized agent of (COMPANY NAME HERE) is made to this Agreement. This Agreement may be signed in counterparts, and each counterpart shall be considered to be an original.
8. Employee's Certification Respecting Inventions. As a matter of record, Employee hereby certifies that:

CHECK THE APPROPRIATE BOX:

- The list attached hereto and as part of Exhibit A hereto is a complete list of all inventions or improvements relevant to the subject matter of Employee's past, present or future employment by (COMPANY NAME HERE) but which were made or conceived or first reduced to practice by Employee (alone or jointly with others) prior to any employment with (COMPANY NAME HERE). Employee desires to remove from the operation of this Agreement the inventions or improvements described in the attached list, and Employee represents and warrants that such list is complete as of the Effective Date.

OR

- If no such list is attached to this Agreement, Employee represents and warrants that Employee has no inventions or improvements which are to be excluded from the operation of this Agreement as of the date Employee signed this Agreement

Sample Preview

NOTICE

No provision herein provides that Employee shall assign or offer to assign to (COMPANY NAME HERE) any of Employee's rights in any invention for which no equipment, supplies, facilities or trade secret information of (COMPANY NAME HERE) was used and which was developed entirely on Employee's own time, unless (a) the Invention relates (i) directly to the business of (COMPANY NAME HERE), or (ii) to (COMPANY NAME HERE)'s actual or demonstrably anticipated research and development, or (b) the Invention results from any work performed by Employee for (COMPANY NAME HERE).

CERTIFIED AND AGREED:

(COMPANY NAME HERE), INC.

By: _____

Title: _____

Dated: _____

Employee:

By: _____

Print Name: _____

Signed at: _____

Dated: _____

EXHIBIT A (FORM OF LETTER TO BE COMPLETED BY EMPLOYEE)

(To Company Executive Here, usually CEO)
(Company Name Here), Inc.
Company Address Here

Re: (COMPANY NAME HERE) Proprietary Information and Inventions Agreement

Dear Mr. (Mrs., Etc):

The following is a complete list of all inventions or improvements relevant to the subject matter of my employment by (COMPANY NAME HERE) that have been made or conceived or first reduced to practice by me alone or jointly with others prior to my employment by (COMPANY NAME HERE) that I desire to remove from the operation of the Proprietary Information and Inventions Agreement between (COMPANY NAME HERE) and me.

- No inventions or improvements
- The following inventions or improvements:

- Additional sheets attached

I will not bring to my employment any confidential materials and documents of a former employer.

Dated: _____

Employee: _____