

## CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Confidentiality and Nondisclosure Agreement (this “Agreement”) is entered into by and between James Tolley (the “Owner”) and \_\_\_\_\_ (the “Recipient”) on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

### RECITATIONS

WHEREAS, the Owner agrees to furnish to the Recipient certain confidential information relating to certain ideas, inventions or products; and

WHEREAS, the Recipient agrees to obtain, review, examine, inspect, or use such confidential information only for the purposes of the Recipient’s business with the Owner, and to otherwise maintain the strict confidentiality of such information;

BE IT KNOWN, that the Owner has or shall furnish to the Recipient certain confidential information on the following conditions:

### TERMS

1. Definition. For the purposes of this Agreement, Confidential Information shall include all data, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, written notes, memoranda, photographs, sketches, models, prototypes, and any other information whatsoever disclosed, transmitted or submitted, orally, in writing, or by any other media, to the Recipient by the Owner under the terms of this agreement.

2. Designation of Confidential Information. The Owner shall make reasonable efforts to identify Confidential Information by use of the designation “CONFIDENTIAL”. Notwithstanding the foregoing, the Owner’s failure in one or more instances to employ the said designation shall not result in the waiver of any right under this Agreement.

3. Unauthorized Disclosure, Use, and Copying Prohibited. It is expressly understood that the Recipient shall not disclose, publish or otherwise reveal any Confidential Information whatsoever to any third party, except (i) with the express prior written authorization of the Owner in substantially the form set forth in Schedule A hereto, and (ii) upon the agreement of such third party to be bound by all of the Recipient’s obligations under the terms of this Agreement, such agreement to be evidenced by a writing executed by the third party in substantially the form set forth in Schedule A hereto. Under no circumstance shall the Recipient use, copy or duplicate Confidential Information for any purpose other than the Recipient’s business and cooperation with the Owner.

4. Return of Confidential Information. Upon five (5) business days’ written notice, the Recipient shall return to the Owner all Confidential Information, other than such Confidential Information as may have been orally disclosed, including without limitation all copies, reproductions or other media containing any Confidential Information. At the Recipient’s option, the Recipient may completely destroy any documents or other media developed by the Recipient and containing Confidential Information. In such event, the Recipient shall certify such destruction by notice to the Owner in writing, such notice to be furnished within two (2) business days following the date of such destruction.

5. No Obligation to Disclose. Nothing in this Agreement shall require the Owner to

disclose any Confidential Information.

6. License. Nothing in this Agreement shall be construed as granting or conferring any right by license in any Confidential Information.

7. Neither party solicits any change in the organization, business practice, service or products of the other party. The disclosure or transmittal of Confidential Information shall not be construed as evidencing any intent by either party to purchase any products or services of the other party, or as an encouragement to expend funds in research, development or like efforts.

9. Term. The Recipient's obligations under this Agreement shall be in effect immediately and shall continue for a period of three (3) years following the Owner's last disclosure or transmittal of any Confidential Information to Recipient. The Recipient's obligations under this Agreement shall not be affected by bankruptcy, receivership, assignment, attachment or seizure procedures, whether initiated by or against the Recipient, nor by the rejection of any agreement between the Owner and the Recipient by a trustee of Recipient in bankruptcy, or by the Recipient as a debtor-in-possession, or by the equivalent of any of the foregoing under any local law or regulation.

10. Choice of Law. This Agreement shall be construed in accordance with the laws of the United States and the State of Hawaii.

11. Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered in the State of Hawaii by the American Arbitration Association in accordance with its Intellectual Property Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

12. Notices. Any written notice required or contemplated under the terms of this Agreement shall be furnished by personal delivery, certified mail, or recognized overnight courier service.

If to the Owner:

James Tolley  
PO Box 791387  
Paia, Hawaii 96779

If to Recipient:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. Integration Clause. This Agreement constitutes the entire understanding between the parties and terminates and supersedes any and all prior understandings or agreements regarding the subject matter hereof. This Agreement may be modified only by a further writing signed by both parties.

14. No Assignment. The Recipient may not assign this Agreement, or any right, obligation or interest contemplated under the terms of this Agreement, without the express prior written consent of the Owner.

15. Severability. If any term of this Agreement is held to be invalid or unenforceable, then the balance of this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

16. No Implied Waiver. The failure by either party to insist upon performance by the other party under one or more of the terms of this Agreement shall not be construed as a waiver of any right or obligation contemplated under the terms of this Agreement.

17. Headings. Headings used in this Agreement are provided for convenience only and

shall not be used to construe meaning or intent.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

\_\_\_\_\_  
James Tolley

\_\_\_\_\_  
\_\_\_\_\_