

## CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

THIS **CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT** (the "Agreement") is entered into effective \_\_\_\_\_, 20\_\_ (the "Effective Date") by and between **IntelliVen, L.L.C.** ("IntelliVen") and \_\_\_\_\_ ("Contractor"). The parties agree as follows:

**1. INTELLIVEN, L.L.C.:** IntelliVen, L.L.C. ("IntelliVen") is a Virginia Limited Liability Company, located at 795 Folsom Street, 1<sup>st</sup> Floor, San Francisco, CA 94107.

**2. CONTRACTOR:** \_\_\_\_\_ is an adult individual who resides at \_\_\_\_\_ and is a Contractor to IntelliVen.

**3. THE AGREEMENT:** Pursuant to this Agreement, Intelliven agrees to make available to Contractor certain confidential and proprietary information (the "PROPRIETARY INFORMATION") for use for the purposes described in ¶8 of this Agreement. Contractor agrees to use and disclose the PROPRIETARY INFORMATION only for these purposes and in accordance with the provisions of this Agreement.

**4. TERM:** This Agreement shall become effective on the Effective Date, and shall continue until the second anniversary of the Effective Date, unless terminated earlier, as provided herein.

**5. THE PROPRIETARY INFORMATION:** (A) Disclosures by IntelliVen: Intelliven shall disclose to Contractor such PROPRIETARY INFORMATION as it deems necessary for Contractor to have for the purposes described in ¶8 of this Agreement. PROPRIETARY INFORMATION shall consist of the non-public information pertaining to Intelliven, or IntelliVen's customers, joint ventures, teaming partners, or other entities with whom Intelliven works which is provided to Contractor and is not within the exclusions of ¶10 of this Agreement. PROPRIETARY INFORMATION shall include the non-public aspects of Intelliven's business, contracts, customers, Contractors, finances, cost and pricing information, and business practices and procedures.

(B) Disclosures by Contractor: No disclosures of PROPRIETARY INFORMATION by Contractor to Intelliven are contemplated under this Agreement. Contractor is expressly directed not to bring to IntelliVen's place of business any written PROPRIETARY INFORMATION pertaining to prior clients or employers of Contractor. Contractor is instructed not to make any oral or written disclosures to IntelliVen pertaining to the PROPRIETARY INFORMATION of prior clients or employers.



**6. DESIGNATION OF PROPRIETARY INFORMATION:** PROPRIETARY INFORMATION provided by IntelliVen to Contractor may or may not contain legends on the documentary form of disclosure, which identify the confidentiality or proprietary nature of the information. Oral or visual disclosures of PROPRIETARY INFORMATION provided by IntelliVen to Contractor may or may not be followed with a subsequent written disclosure which confirms that the initial oral or visual disclosure consisted of PROPRIETARY INFORMATION. Contractor shall be obliged to treat disclosures which are not obviously public information as PROPRIETARY INFORMATION. Contractor should make inquiries of IntelliVen management to clarify whether or not particular disclosures constitute PROPRIETARY INFORMATION.

**7. EFFECT OF DISCLOSURE:** The disclosure of PROPRIETARY INFORMATION to Contractor grants to Contractor no rights pertaining to the PROPRIETARY INFORMATION, other than the limited right to use it for the purposes described in ¶8 of this Agreement.

**8. PURPOSE OF DISCLOSURE:** The PROPRIETARY INFORMATION disclosed under this Agreement shall be used only for the purposes of discussions with sales prospects or clients of IntelliVen or for the performance of work for clients of Intelliven.

**9. THIRD PARTY DISCLOSURE:** Contractor shall not disclose any PROPRIETARY INFORMATION to any person who is not a Contractor of IntelliVen, without express authorization from IntelliVen's Board of Directors. Disclosure of PROPRIETARY INFORMATION within IntelliVen shall be limited to a need-to-know basis for those persons who are working with Contractor on a project or assignment that relates to the PROPRIETARY INFORMATION.

**10. EXCLUSIONS:** The term "PROPRIETARY INFORMATION", as used in this Agreement, shall not extend to information which is:

- (a) lawfully known to the receiving party prior to disclosure; or
- (b) independently developed by the receiving party (in a lawful manner); or
- (c) disclosed to the receiving party with the prior written approval of the disclosing party; or
- (d) lawfully disclosed to the receiving party by a third party, under conditions permitting such disclosure; or
- (e) disclosed to the U.S. Government with unlimited rights; or



(f) in the public domain.

**11. PERIOD OF DUTIES AND RESTRICTION:** (A) General Duties: During the term of this Agreement, and for a period of two (2) years after its termination, Contractor shall take all reasonable steps to preserve in confidence and prevent any unauthorized use of PROPRIETARY INFORMATION.

(B) Standard of Care: Contractor shall be deemed to have discharged the obligation under this Agreement pertaining to the safeguarding of the PROPRIETARY INFORMATION of IntelliVen and other parties if he/she complies with the policies and practices directed by IntelliVen.

(C) Duty Upon Discovery: Upon discovery by the Contractor of any unauthorized use or disclosure of PROPRIETARY INFORMATION, the Contractor shall promptly notify IntelliVen management, and shall cooperate with the directives of IntelliVen management to prevent further unauthorized use or disclosure.

**12. INTELLECTUAL PROPERTY RIGHTS:** The provisions in this Agreement are in addition to, and not in lieu of, the intellectual property statutes (for patents, copyrights, trademarks, and trade secrets). No such statutory rights are waived.

**13. TERMINATION:** Either party may terminate this Agreement, with or without cause, upon thirty (30) days' written notice to the other. Within five (5) business days of the date of the termination of the Agreement, Contractor shall return all PROPRIETARY INFORMATION to IntelliVen, keeping no copies thereof in hard copy or electronic format, and shall purge all personal computers, which contain PROPRIETARY INFORMATION. Contractor shall comply with IntelliVen's termination procedure pertaining to the return of IntelliVen property, including accounting for and documenting the return of, PROPRIETARY INFORMATION. Termination of this Agreement shall not affect the Contractor's continuing obligations with respect to PROPRIETARY INFORMATION received while a Contractor of IntelliVen.

**14. OBLIGATION TO DISCLOSE:** Entering into this Agreement does not obligate IntelliVen to disclose to the Contractor any particular PROPRIETARY INFORMATION; disclosure shall be discretionary with IntelliVen.

**15. DISCLOSURES SUBJECT TO GOVERNMENT SECURITY CLEARANCES:** Information under the control of the Federal Government for which access is limited to persons with an appropriate security clearance shall be controlled by the applicable Federal statutes and regulations.



**16. NOTICE:** Any notice which is given under this Agreement shall be sent to Contractor at the last address provided by Contractor to IntelliVen. The notice shall be sent by (i) hand delivery, or (ii) certified mail, return receipt requested, or (iii) Express Mail, or (iv) facsimile (with a transaction confirmation report), or (v) an overnight delivery service (such as Fed Ex).

**17. CONTROLLING LAW AND FORUM:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Virginia. Any dispute arising under, or relating to, this Agreement shall only be brought in the Federal or local courts in the State of Virginia. Contractor irrevocably submits to the jurisdiction of those Courts.

**18. ATTORNEYS' FEES:** In the event of any dispute which arises under, or relates to, this Agreement, that results in litigation, the party which substantially prevails in that litigation shall be entitled to the recovery of reasonable attorneys' fees and litigation expenses, in an amount approved by the court.

**19. INJUNCTIVE RELIEF:** The parties mutually agree that the improper use and/or disclosure of PROPRIETARY INFORMATION will constitute irreparable harm to IntelliVen or the party which is the owner of the PROPRIETARY INFORMATION, for which money damages alone will not provide adequate recompense. Therefore, in the event of the use or disclosure of PROPRIETARY INFORMATION by Contractor in violation of this Agreement, the disclosing party shall be entitled to obtain injunctive relief upon a showing of a violation of this Agreement, but without the necessity of establishing irreparable harm, and without the requirement of providing surety on any injunction bond.

**20. RESTRICTIVE COVENANTS:** The parties mutually agree that the scope of the restrictive covenants pertaining to the confidentiality and nondisclosure of the PROPRIETARY INFORMATION are reasonable and fully enforceable in all parameters, including, but not limited to, scope, duration, and territorial. In the event that a court of competent jurisdiction determines that any restriction in this Agreement is overbroad, unreasonable, or otherwise should not be enforced, the parties mutually direct the court to modify that restriction, so that it will be enforced, in modified form, to carry out the intent and purpose of this Agreement.

**21. INTEGRATION CLAUSE:** This Agreement contains the entire understanding between the parties relative to the protection of PROPRIETARY INFORMATION and supersedes all prior written or oral understandings between the parties.

**22. MODIFICATIONS:** No modification to this Agreement shall be binding unless in writing and signed by authorized representatives of both parties.



**IntelliVen**

**CONTRACTOR**

*Peter F. DiGiammarino*

By: Peter F. DiGiammarino

Title: Managing Partner

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_





