

PRODUCT DESIGN AND DEVELOPMENT AND SECRECY AGREEMENT

This Agreement is entered into as of _____, 20__ (the "Effective Date") between **Clivia Systems, Inc.**, a California corporation ("**CLIVIA**"), and the undersigned **EMPLOYEE** of the Company ("**EMPLOYEE**") in consideration of **EMPLOYEE's** engagement for employment and/or continued employment with **CLIVIA** and the compensation paid to **EMPLOYEE** (including any increase in compensation, if applicable) by **CLIVIA** and the mutual covenants contained in this Agreement. Accordingly, **CLIVIA** and **EMPLOYEE** agree as follows:

1. Definitions. For purposes of this Agreement:

1.1. "Product Design and Development" shall mean any and all new or improved programs, computer software, methods, ideas, concepts, themes, inventions, discoveries, processes, compositions, designs, or configurations of any kind, conceived, developed, made, or produced by **EMPLOYEE**, alone or with others.

1.2. "Trade Secrets" shall include without limitation all information, programs, computer software and code, designs, proposals, marketing, sales and other plans, financial information, methods of doing business, costs, pricing information, customer contacts, the names, addresses and requirements of customers and all concepts or ideas in or reasonably related to the business of **CLIVIA** that have not previously been publicly released by duly authorized representatives of **CLIVIA**.

1.3. "Business Information" shall mean any and all information heretofore and hereafter owned, developed or acquired by **CLIVIA**, including without limitation information of any kind, nature or description concerning any matter affecting or relating to the business or business methods, techniques or manner of operation of **CLIVIA** or any of its customers (including without limitation computer software and code and marketing methods and data of **CLIVIA** or any of its customers or vendors, the names of and information about any of **CLIVIA's** customers, **EMPLOYEEs**, agents, vendors, or suppliers, the prices at which **CLIVIA** sells or licenses (or has sold or licensed) its products or services, and lists or other written records used or kept in its business).

1.4. "Company Materials" shall mean any and all diskettes, computer tapes, and other media, notes, notebooks, demonstration materials, programs, drawings, designs, plans, proposals, financial statements and supporting information and books and records, documents, memoranda, reports, files, samples, books, contracts, agreements, price and customer lists, correspondence, equipment, address and other lists and other written and graphical records pertaining to or containing any Business Information, Product Design and Development or Trade Secrets or any extract, summary, digest or embodiment thereof.

2. Assignment of Product Design and Development. All Product Design and Development conceived of or made by **EMPLOYEE**, either alone or with others, in any part during the period of **EMPLOYEE's** employment by **CLIVIA**, whether or not conceived of or made during **EMPLOYEE's** regular working hours, is the sole property of **CLIVIA** and shall constitute "works made for hire." **EMPLOYEE** hereby assigns all of **EMPLOYEE's** existing and hereafter acquired right, title and interest, if any, in and to all such Product Design and Development to **CLIVIA**. **EMPLOYEE** further agrees not to disclose any such Product Design and Development to others without the prior express written consent of **CLIVIA**. The foregoing assignment does not apply to any invention which qualifies fully under the provisions of California Labor Code Section 2870, which provides as follows:

Section 2870. Inventions on Own Time – Exemption from Agreement. Any provision in an employment agreement which provides that an **EMPLOYEE** shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the **EMPLOYEE** developed entirely on his or her own time without using the employe's equipment, supplies, facilities or trade secret information except for those inventions that either: (1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or (2) Result from any work performed by the **EMPLOYEE** for the employer.

3. Pre-existing Inventions. **EMPLOYEE** represents that the following is a complete list of all Product Design and Development conceived by **EMPLOYEE** prior to the commencement of **EMPLOYEE's** employment with **CLIVIA**:

(Use a separate continuation sheet, as necessary; if there are no disclosures to make, insert the word "None" or words to similar effect. Inventions conceived on behalf of a prior employer and for which **EMPLOYEE** does not personally claim ownership should not be listed)

4. Prior Knowledge and Prior Relationships. **EMPLOYEE** has no agreements, relationships, or commitments to any person or entity that conflict with or would prevent **EMPLOYEE** from performing any of **EMPLOYEE's** obligations to **CLIVIA** under this Agreement. **EMPLOYEE** will not disclose to **CLIVIA**, use, or induce **CLIVIA** to use any proprietary information or trade secrets of others. **EMPLOYEE** represents and warrants that **EMPLOYEE** has returned all property and confidential information belonging to others.

5. Assistance. **EMPLOYEE** shall execute all documents and assist **CLIVIA**, at **CLIVIA's** expense, in the preservation of all of **CLIVIA's** right, title and interest in the Business Information, Product Design and Development and Trade Secrets. **EMPLOYEE** further agrees: (a) to assist **CLIVIA** in obtaining patents on all such Product Design and Development that may be patentable and copyright registration on all such Product Design and Development that may be copyrightable, and **EMPLOYEE** shall execute all documents and do all things requested by **CLIVIA** to obtain such patent or copyright registration, to vest **CLIVIA** with full and exclusive right, title and interest therein, and to protect against infringement by others; (b) to assist **CLIVIA** as requested by **CLIVIA** in prosecuting and defending all legal actions and proceedings relating to **CLIVIA's** right, title or interest in any Business Information, Product Design and Development or Trade Secret and protecting against the infringement or appropriation thereof. Upon **CLIVIA's** request, **EMPLOYEE** shall provide **CLIVIA** written assurance that it has complied with, and will continue to comply with, the terms of this Agreement. If **CLIVIA** requires **EMPLOYEE's** assistance for such matters after **EMPLOYEE's** employment with **CLIVIA** has ended, **EMPLOYEE** shall be compensated for **EMPLOYEE's** time actually spent at the request of **CLIVIA** in providing that assistance at the hourly rate equivalent to **EMPLOYEE's** wages during **EMPLOYEE's** last full calendar year of employment.

6. Secrecy Agreement. **EMPLOYEE** shall treat and preserve as confidential all Business Information, Product Design and Development and Trade Secrets of **CLIVIA** that have been or may be disclosed to or obtained by **EMPLOYEE**. **EMPLOYEE** shall not, without written authority from **CLIVIA** to do so, use for **EMPLOYEE's** own benefit or for any other purpose, nor disclose to others, during **EMPLOYEE's** employment or thereafter, any Business Information, Product Design and Development or Trade Secrets of **CLIVIA**. **EMPLOYEE** shall not take or retain or copy any of **CLIVIA's** Business Information, Product Design and Development or Trade Secrets or any Company Materials.

7. Return of Company Materials. **EMPLOYEE** agrees that all Company Materials are and shall be and remain the sole property of **CLIVIA**. **EMPLOYEE** further agrees that immediately upon termination of **EMPLOYEE's** employment with **CLIVIA**, and regardless of whether such termination is voluntary or involuntary, **EMPLOYEE** shall deliver to **CLIVIA** all Company Materials, and any and all copies, embodiments or reproductions thereof, which are or have been in **EMPLOYEE's** possession or under **EMPLOYEE's** control.

8. Review Process. If **CLIVIA** so requests, **EMPLOYEE** shall submit any dispute regarding **CLIVIA's** right, title or interest in any Business Information, Product Design and Development or Trade Secret to a review process pursuant to **CLIVIA's** rules and policies in effect at the time of **CLIVIA's** request.

9. Disputes. **EMPLOYEE** and **CLIVIA** agree that any action brought under or in connection with this Agreement shall be brought exclusively in the United State District Court, Central District of California, or in any state court situated in such District. **EMPLOYEE** is aware that **CLIVIA** has remedies, at common law, under various statutes and as set forth, for example, in the Uniform Trade Secrets Act, and contained in the California Civil Code, and may proceed upon this Agreement, not only for injunctive relief and damages but also for exemplary and/or punitive damages in an amount exceeding the damages awarded for actual loss and unjust enrichment. **EMPLOYEE** acknowledges that **EMPLOYEE's** obligations under this Agreement are special, unique and extraordinary and in the event of any breach or threatened breach of this Agreement by **EMPLOYEE**, **CLIVIA** will sustain substantial and irreparable injury and damage in an amount and of a character difficult to ascertain. Accordingly, in addition to any other relief to which **CLIVIA** may otherwise legally or equitably be entitled, **CLIVIA** shall also be entitled to immediate temporary, preliminary, and/or permanent injunctive relief to prevent any such breach or threatened breach and/or the continuation thereof, through appropriate legal proceedings without proof of actual damages that have been or may be incurred by **CLIVIA** with respect to such breach or threatened breach.

10. Attorney's Fees. In any legal action or proceeding to enforce, defend or interpret any of the terms or the provisions of this Agreement, the prevailing party shall recover (in addition to such other remedies as shall be awarded to such party in

such legal action or proceeding) from the non-prevailing party its reasonable attorneys' fees and all other costs incurred by the prevailing party in the prosecution or defense of such action or proceeding, whether or not such action or proceeding proceeds to trial or appeal. In addition, the prevailing party shall recover from the non-prevailing party post-judgment attorneys' fees incurred by the prevailing party in enforcing a judgment against the non-prevailing party.

11. Miscellaneous. The provisions of this Agreement shall survive any termination of employment and shall inure to the benefit of and shall be binding upon the heirs, personal representatives, successors, and assigns of **EMPLOYEE** and the representatives, successors, subsidiaries, affiliated corporations, or ventures and assignees of **CLIVIA**. If any provision or portion of this Agreement shall be held invalid, inoperative or unenforceable, then, so far as is reasonable and possible, the remainder of this Agreement shall be considered valid, operative and enforceable, and effect shall be given to the intent manifested by the provision or portion held invalid, inoperative or unenforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of California. This Agreement may be executed in counterparts, each of which shall be deemed an original copy of this Agreement and all of which, taken together, shall constitute one and the same Agreement.

In witness whereof, the parties have executed this Agreement as of the date first written above.

“EMPLOYEE”

“CLIVIA”

Signature

Signature

Printed Name

Printed Name

Title