

## Confidential Disclosure Agreement

THIS CONFIDENTIAL DISCLOSURE AGREEMENT dated as of \_\_\_\_\_ **DATE** \_\_\_\_\_ (the "Agreement") is entered into by and between \_\_\_\_\_ **CLIENT NAME** \_\_\_\_\_ (the "Client"), having a place of business at \_\_\_\_\_ **ADDRESS** \_\_\_\_\_ and FicheNet Imaging Solutions, (the "Recipient"), having a place of business at 110 West C Street, Suite 2019, San Diego, California 92101-3998.

### WITNESSETH:

WHEREAS, (client) has made developments and acquired certain rights to such developments relating to documentation regarding (client) business, technical, proprietary and confidential matters and affairs.

WHEREAS, Recipient desires to receive information related to documentation regarding (client) business, technical, proprietary and confidential matters and affairs in order to reduce such documentation by a filming or imaging process to microfilm or to an electronic media format (the "Project");

WHEREAS, Recipient appreciates that (client) has expended money and effort to establish a proprietary position with respect to such developments and that (client) considers these developments and information pertaining thereto to be its confidential property; and

WHEREAS, (client) is willing to demonstrate these developments and to reveal to Recipient certain technical and business information relating to these developments on a confidential basis;

NOW THEREFORE, in consideration of the foregoing, and of the mutual covenants, terms and conditions hereinafter expressed, (client) and Recipient agree as follows:

1. "Confidential information" shall mean technical, business and financial information relating to the above-described developments, including, where appropriate and without limitation, any information, business and financial data, patent disclosures, patent applications, structures, models, techniques, processes, compositions, compounds and apparatus relating to the same disclosed by (client) to Recipient or obtained by Recipient through observation or examination of information or developments, but only to the extent that such information is maintained as confidential by (client).
2. (Client) agrees to disclose certain Confidential Information to Recipient.
3. Recipient agrees that (client) is the owner or licensee of the Confidential Information. Recipient shall not use any of the Confidential Information at any time except for the purposes of developing the Project noted above. Recipient shall not disclose any of the Confidential Information other than on a need-to-know basis, as reasonably necessary for such development of the Project to directors, officers and employee (including but not limited to research assistants) or Recipient who are bound by written agreements, which include same or similar provisions as this confidentiality agreement, with Recipient to maintain the Confidential information in confidence.
4. Notwithstanding anything to the contrary in the Agreement, Recipient shall have no liability to (client) for the use or disclosure of (I) such information as required by applicable law or regulation, provided that Recipient shall file with (client) prompt written notice and sufficient opportunity to object to such use or disclosure, or to request confidential treatment of the Confidential Information; or (II) such information as Recipient can establish by written documentation to:
  - (a) have been publicly known prior to disclosure by (client) of such information to Recipient;
  - (b) have become publicly known, without fault on the part of Recipient, subsequent to disclosure by (client) of such information to Recipient;

- (c) have been received by Recipient at any time from a source, other than (client) lawfully having possession of and the right to disclose such information; or
  - (d) have been otherwise known by Recipient prior to disclosure by (client) to Recipient of such information.
5. After sixty (60) days from the date of the Agreement or the actual disclosure of Confidential Information, whichever is later, upon the request of (client), Recipient shall promptly return all tangible items relating to the Confidential Information, including all written material, photographs, models, compounds, compositions and the like made available or supplied by (client) to Recipient, and all copies thereof; provided however, that Recipient may retain one copy for its legal files. Recipient further agrees, upon the request of (client), to identify those persons to whom the Confidential Information that is the subject of the Agreement was disclosed.
  6. The Agreement shall not be construed to grant any license or other rights except as specified herein.
  7. The obligations of Recipient shall continue for a period of five (5) years from the date of the Agreement and may be extended for a period of two (2) years beyond the five (5) year period by mutual written assent of the parties.
  8. The Agreement may not be assigned by Recipient, whether by operation of law or otherwise, without the prior written consent of (client).
  9. (Client) warrants that, except as may be otherwise disclosed to Recipient, it believes itself to be the owner or licensee of the Confidential Information. (Client) makes no other warranty relating to the Confidential Information and the use to be made thereof by Recipient and disclaim all implied warranties.
  10. The Agreement represents the entire agreement between the parties regarding the subject matter hereof and shall supersede all previous communications, representations, understandings and agreements, whether oral or written, by or between the parties with respect to the Confidential Information, Where Heretofore or hereafter disclosed to Recipient.
  11. No change, modification, extension, termination or waiver of the Agreement, or any of the provisions herein contained, shall be valid unless made in writing and signed by duly authorized representatives of the parties hereto.
  12. Recipient use of the Confidential Information shall be at its own risk. Recipient shall hold harmless and indemnify (client) against any and all claims, judgements, costs, awards, expenses (including reasonable attorney's fees) and liabilities of every kind arising from any use made by Recipient of the Confidential Information.
  13. The Agreement shall be governed by and construed in accordance with the substantive laws of the State of California without regard to California choice of law provisions.

ACCEPTED AND AGREED TO:

(Client)

FicheNet Imaging Solutions

by: \_\_\_\_\_  
(full name)  
(full title)

by: \_\_\_\_\_  
(full name)  
(full title)

date: \_\_\_\_\_

date: \_\_\_\_\_