

# Employee Proprietary Information and Inventions Assignment Agreement

This Employee Proprietary Information and Inventions Assignment Agreement (this “Agreement”), is made by and between Sparksuite, Inc. (the “Company”), and the undersigned individual (“Employee”). In consideration of Employee’s employment with the Company, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Employee hereby agrees to the following restrictions placed on Employee’s use and development of proprietary information, technology, ideas and inventions:

## Proprietary Information.

1. **Definition.** The term “Proprietary Information” shall specifically include, but not be limited to:
  - a. technical data, research, product or service ideas or plans, software codes and designs, algorithms, developments, inventions, patent applications, office notebooks, processes, formulas, techniques, designs and drawings, hardware configuration information, schematics, development tools, computer printouts, computer programs, design drawings and manuals, electronic codes, formulas and improvements, ideas, methods, and know-how;
  - b. business plans and methods, research and development information, marketing strategies and techniques, agreements with third parties, lists of, or information relating to, suppliers and customers (including, but not limited to, customers of the Company on whom the Employee called or with whom Employee became acquainted during the term of employment), price lists, pricing methodologies, cost data, market share data, marketing plans, licenses, contract information, business plans, financial forecasts, historical financial data, budgets or other business information disclosed to me by the Company either directly or indirectly, whether in writing, electronically, orally, or by observation;
  - c. information about costs, profits, markets, sales, and bids;
  - d. lists of existing or potential customers and strategic partners;
  - e. information concerning the Company’s patents, patent applications, copyrights, trademarks, trade names, trade secrets, and know-how;
  - f. employee personnel files and information about employee compensation and benefits, lists of, or information relating to, employees and consultants of the Company (including, but not limited to, the names, contact information, jobs, compensation, and expertise of such employees and consultants); and

- g. all information and documents (electronic or otherwise) relating to, making known, or making knowable (alone or in combination with any other source of information) any of the foregoing.
- 2. **Restrictions on Proprietary Information.** Employee agrees that, during the term of employment with the Company and at all times thereafter, Employee will hold the Proprietary Information of the Company in strict confidence and will neither use the information nor disclose it to anyone, except to the extent necessary to carry out Employee's responsibilities for the Company or as specifically authorized in writing by a duly authorized representative of the Company. Employee understands that "Proprietary Information" means all information pertaining in any manner to the business of the Company or its affiliates, consultants, or business associates, unless:
  - a. the information is or becomes through lawful means publicly known and generally known among businesses similar to the Company;
  - b. the information was part of Employee's general knowledge prior to being employed by the Company as demonstrable by documentary evidence; or
  - c. the information is disclosed to Employee without restriction by a third party who rightfully possesses the information and did not learn of it from the Company.
- 3. **Prior Actions and Knowledge.** Except as disclosed on **Schedule A** attached hereto, Employee does not know (or, in the event this Agreement is being executed subsequent to the commencement of Employee's employment by the Company, did not know) anything about the Company's Proprietary Information, other than information Employee has learned from the Company in the course of being hired by the Company.
- 4. **Third Party Information.** Employee recognizes that the Company has received and will in the future receive confidential or proprietary information from third parties, including, without limitation, customers and strategic partners of the Company. Employee will hold all such information in the strictest confidence and will not use the information or disclose it to anyone (except as necessary in carrying out Employee's work for the Company consistent with the Company's agreement with such third party).

## Inventions.

- 1. **Assignment of Inventions.** All Inventions created or prepared by Employee either
  - a. in the course and scope of Employee's employment with the Company,
  - b. during the Company's normal business hours during the term of Employee's employment by the Company, or
  - c. while utilizing any of the Company's Proprietary Information or resources (collectively, "Assigned Inventions"),shall be considered specially commissioned works and works made for hire, and regardless of whether works made for hire, the Company shall exclusively own all Assigned Inventions and all rights, title, interests and privileges therein, including, but not limited to, all patent rights in all countries and jurisdictions. Employee agrees to assign, and upon creation of any Assigned Invention does hereby assign, to the Company, without further consideration, the

entire right, title, interest, and privilege (throughout the United States of America and in all other countries and jurisdictions), free and clear of all liens and encumbrances, in and to all Assigned Inventions. Employee further agrees to execute any documents that may be necessary or desirable to effect, enable, confirm, or evidence such assignment.

Notwithstanding the foregoing, the Company may, in its discretion, agree to provide consideration for certain Inventions through a written agreement between the Company and Employee which specifically provides for such consideration; in all other cases, no consideration shall be paid. The Assigned Inventions shall be the sole property of the Company, whether or not patentable. In addition, Employee agrees to maintain adequate and current written records on the development of all Assigned Inventions, which shall also remain the sole property of the Company. Employee understands that "Inventions" means all ideas, processes, inventions, works of authorship, technology, designs, formulas, discoveries, devices, symbols, marks, methods (of doing business or otherwise), and all subject matter that may be protectable by patent, copyright, trade secret, trademarks, or by any other proprietary rights, along with all applications, registrations, government grants, and rights to the same, and all improvements, continuations (of any form), rights, and claims related to any of the foregoing, that are created, authored, made, invented, discovered, conceived, developed, or reduced to practice by Employee alone or with others, except such specific items as are excluded with particularity in **Schedule A** attached hereto. The Company's right, title, interest, and privilege in and to Assigned Inventions shall not be affected in any way by the termination of Employee's employment with the Company (for any reason whatsoever or for no reason).

2. **License for Other Inventions.** If, in the course of Employee's employment with the Company, Employee incorporates into Company property an Invention owned by Employee or in which Employee has an interest, the Company is hereby granted a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license to the fullest extent of Employee's interest and rights in the Invention to make, modify, use, sublicense and sell the Invention as part of and in connection with the Company property or modifications thereof.
3. **Assist With Registration.** In the event any Assigned Invention shall be deemed by the Company, in its sole discretion, to be patentable or otherwise registrable, Employee will assist the Company (at the Company's expense) in obtaining and maintaining letters patent or other applicable registrations and in vesting the Company with full title. Without limiting the generality of the foregoing, Employee will execute all documents that may be necessary or desirable to apply for, prosecute, obtain, or enforce any patent or other right or protection relating to any Assigned Invention. Should the Company be unable to secure Employee's signature on any document necessary or desirable to apply for, prosecute, obtain, or enforce any patent or other right or protection relating to any Assigned Invention, due to Employee's incapacity or any other cause, Employee hereby irrevocably designates and appoints the Company and each of its duly authorized officers and agents as Employee's agent and attorney-in-fact to do all lawfully permitted acts to further the prosecution,

issuance, and enforcement of patents or other rights or protection with the same force and effect as if executed and delivered by Employee.

4. **Disclosure.** Employee agrees to disclose promptly to the Company all Assigned Inventions and relevant records.
5. **Former Agreements.** Employee represents and warrants that Employee's performance of the terms of this Agreement will not breach any agreement to keep in confidence proprietary information acquired by Employee prior to Employee's employment by the Company. Employee has listed in **Schedule A** attached hereto all other agreements concerning proprietary information or inventions to which Employee is a party. To the best of Employee's knowledge, there is no other contract between Employee and any other person or entity that is in conflict with this Agreement or concerns proprietary information, Inventions, assignment of ideas, or any intellectual property.
6. **Obligations During Employment.** During Employee's employment with the Company, Employee will not disclose to the Company, or use, or induce the Company to use, any proprietary information or trade secrets of others.

## Termination.

1. **Return of the Company's Property.** Employee agrees to return promptly to the Company upon termination of Employee's employment with the Company (for any reason whatsoever or for no reason) all Proprietary Information, all tangible things from which Proprietary Information may become known or knowable, and all personal property furnished to or prepared by Employee in the course of, as a result of, or incident to Employee's employment with the Company. Following Employee's termination, Employee will not retain any written or other tangible material containing any Proprietary Information or information pertaining to any Assigned Invention.
2. **Termination Certificate.** In the event of the termination of Employee's employment with the Company, Employee agrees, if requested by the Company, to sign and deliver the Termination Certificate attached hereto as **Schedule B**.
3. **Subsequent Employers.** Employee agrees that after the termination of Employee's employment with the Company, Employee will not enter into any agreement that conflicts with Employee's obligations under this Agreement and will inform any and all subsequent employers of Employee's obligations under this Agreement.
4. **Solicitation of Employees, Consultants and Other Parties.** Employee acknowledges and agrees that the Company's Proprietary Information includes information relating to the Company's employees, consultants, customers and others, and that Employee will not use or disclose such Proprietary Information except as authorized by the Company.
5. **Employees and Consultants.** Employee agrees that during the term of the employment, and for a period of twelve (12) months immediately following the termination of employment for any reason, whether with or without cause, Employee shall not, directly or indirectly, solicit, induce, recruit or encourage any of the Company's employees or

consultants to terminate their relationship with the Company, or attempt to solicit, induce, recruit, encourage or take away employees or consultants of the Company, either for myself or for any other person or entity.

6. **Other Parties.** Employee agrees that during the term of the employment, Employee will not negatively influence any of the Company's clients, licensors, licensees or customers from purchasing Company products or services or solicit or influence or attempt to influence any client, licensor, licensee, customer or other person either directly or indirectly, to direct any purchase of products and/or services to any person, firm, corporation, institution or other entity in competition with the business of the Company.
7. **At-Will Employment.** Employee recognizes that nothing in this Agreement shall be construed to imply that Employee's employment is guaranteed for any period of time. Unless stated in a written agreement signed by a duly authorized representative of the Company, Employee's employment is at-will, and either the Company or Employee can terminate the employment relationship at any time, for any reason or for no reason, with or without cause or advance notice.
8. **Remedies.** Employee recognizes that nothing in this Agreement is intended to limit any remedy of the Company under any federal or state law concerning trade secrets. Employee further recognizes that Employee's violation of this Agreement will cause the Company irreparable harm and that monetary damages will be inadequate to compensate fully for such breach. Accordingly, it is understood and agreed that the Company shall be entitled, in the event of a breach or a threatened breach by Employee of any of the provisions of this Agreement, to a temporary restraining order, preliminary injunction and permanent injunction in order to prevent or restrain any such breach by Employee. These remedies are in addition to any remedies available at equity or at law. Employee agrees to reimburse the Company for any and all costs and expenses, including reasonable attorneys' fees, incurred by the Company in enforcing Employee's obligations hereunder.

## Miscellaneous Provisions.

1. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to any choice of law rules that may direct the application of the laws of another jurisdiction.
2. **Severability.** In the event that any provision or portion of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, for any reason, under present or future law, Employee agrees that such provision or portion shall be severable and the remainder of this Agreement shall not be invalidated or rendered unenforceable or otherwise adversely affected. Without limiting the generality of the foregoing, if a court should deem any provision of this Agreement to create a restriction that is unreasonable as to scope, duration or geographical area, Employee agrees that the provisions of this Agreement shall be enforceable in such scope, for such duration and in such geographic area as any court having jurisdiction may determine to be reasonable.

3. **Entire Agreement.** The terms of this Agreement are the final expression of Employee's agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous agreement. This Agreement shall constitute the complete and exclusive statement of its terms. Employee acknowledges that the Company has not made any other representations concerning the subject matter of this Agreement.
4. **Amendment; Waivers.** This Agreement can be amended or terminated only by a written agreement signed by both parties. No failure to exercise or delay in exercising any right under this Agreement shall operate as a waiver thereof.
5. **Successors and Assigns.** This Agreement shall be binding upon Employee and Employee's heirs, executors, administrators, and successors, and shall inure to the benefit of the successors and assigns of the Company, including, without limitation, any purchaser of all or substantially all of the Company's assets or a majority or more of the Company's outstanding common stock.
6. **Effective Date.** In the event that Employee is executing this Agreement subsequent to the commencement of Employee's employment with the Company, Employee hereby agrees that this Agreement shall be effective as of the date on which Employee commenced Employee's employment with the Company. Without limiting the foregoing, Employee agrees that the terms of this Agreement shall apply to all Proprietary Information received by Employee, and all Inventions created or prepared by Employee, at any time during the course of Employee's employment with the Company.

EMPLOYEE HAS READ THIS AGREEMENT CAREFULLY AND UNDERSTANDS ITS TERMS. EMPLOYEE HAS COMPLETELY NOTED ON **SCHEDULE A** TO THIS AGREEMENT ANY PROPRIETARY INFORMATION, IDEAS, PROCESSES, INVENTIONS, TECHNOLOGY, WRITINGS, PROGRAMS, DESIGNS, FORMULAS, DISCOVERIES, PATENTS, COPYRIGHTS, OR TRADEMARKS, OR IMPROVEMENTS, RIGHTS, OR CLAIMS RELATING TO THE FOREGOING, THAT EMPLOYEE DESIRES TO EXCLUDE FROM THIS AGREEMENT.

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

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

# SCHEDULE A - EMPLOYEE'S DISCLOSURE

## Proprietary Information.

Except as set forth below, Employee acknowledges that at this time (or, in the event this schedule is being executed subsequent to the commencement of Employee's employment by the Company, at the time of commencement of Employee's employment by the Company) Employee knows nothing about the business or Proprietary Information of Sparksuite, Inc. (the "Company"), other than information Employee has learned from the Company in the course of being hired:

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## Prior Inventions.

Except as set forth below, there are no ideas, processes, inventions, technology, writings, programs, designs, formulas, discoveries, patents, copyrights, or trademarks, or any claims, rights, or improvements to the foregoing, that Employee wishes to exclude from the operation of this Agreement:

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## Prior Agreements.

Except as set forth below, Employee is aware of no prior agreements between Employee and any other person or entity concerning proprietary information or inventions:

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

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_



# SCHEDULE B - TERMINATION CERTIFICATE CONCERNING COMPANY PROPRIETARY INFORMATION

This is to certify that I, the undersigned, have returned all personal property of Sparksuite, Inc. (the "Company"), including, without limitation, all source code listings, books, manuals, records, models, drawings, reports, notes, contracts, lists, blueprints, and other documents and materials, Proprietary Information, and equipment furnished to or prepared by me in the course of or incident to my employment with the Company, and that I did not make or distribute any copies of the foregoing.

I further certify that I have reviewed the Employee Proprietary Information and Inventions Agreement (the "Agreement") signed by me and that I have complied with and will continue to comply with all of its terms, including, without limitation, (i) the reporting of any idea, process, invention, technology, writing, program, design, formula, discovery, patent, copyright, or trademark, or any improvement, rights, or claims related to the foregoing, conceived or developed by me and covered by the Agreement and (ii) the preservation as confidential of all Proprietary Information pertaining to the Company. This certificate in no way limits my responsibilities or the Company's rights under the Agreement.

On termination of my employment with the Company, I will be employed by \_\_\_\_\_  
and I will be working in connection with the following projects:

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

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_