



**MICHAEL H. CLEMENT CORPORATION**

3500 Wilbur Avenue, Antioch, California 94509  
Tel 1-800-966-3994 or 1-925-778-3994  
Fax 1-925-778-6771  
Email info@clementcorp.com  
Web www.clementcorp.com  
General Engineering Contractor **CCL #427772 Class A, B**

**Confidentiality and Nondisclosure Agreement** (Version 11/17/2009)

This Nondisclosure and Confidentiality Agreement (this “Agreement”) is made between \_\_\_\_\_, a \_\_\_\_\_ (entity type, e.g., Corporation, Individual, etc.), hereinafter referred to as “Discloser” and \_\_\_\_\_, a \_\_\_\_\_ (entity type, e.g., Corporation, Individual, etc.), hereafter referred to as “Recipient”, as of \_\_\_\_\_, 20\_\_\_\_\_.

**Recitals**

- A.** Discloser owns certain information with commercial value, which is considered proprietary and confidential. This information includes, but is not limited to, pending patents or patents in process, trade secrets, formulas, patterns, devices, secret inventions, processes, compilations of information, records and specifications, practices, designs, concepts, know how, improvements, proposals, inventions whether patentable or not, current and proposed products and services, techniques, marketing plans, forecasts, and financial and cost information, business relationship and contractual information related to the business Discloser. All such information is hereinafter referred to as “Proprietary Information”; and
- B.** Both parties, for their mutual benefit and consideration are desirous that Discloser shall disclose to the Recipient certain Proprietary Information, the unauthorized disclosure of which could cause serious harm to Discloser. Subject to the agreement of the Recipient, all Proprietary Information will be kept confidential pursuant to the terms and conditions of the Agreement; and
- C.** Discloser and the Recipient have entered into a professional relationship of confidence and trust with respect to the Proprietary Information.

NOW THEREFORE, in consideration of the foregoing and for other valuable consideration the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Proprietary Information. All Proprietary Information shall be the sole property of Discloser, and Discloser shall be the sole owner of all rights in connection therewith. The Recipient shall at all times keep in confidence any and all Proprietary Information, and will not use or disclose any Proprietary Information or anything relating to the same without the prior written consent of Discloser.

2. Disclosure of Information to Agents, Employees, or Representatives. The Recipient agrees to instruct its employees, agents and/or representatives with knowledge of or to whom it discloses the Proprietary Information that (a) such Proprietary Information is to be kept strictly confidential, (b) no copies are to be made thereof, and (c) such Proprietary Information is not to be communicated in any manner to any person or entity without the prior written approval of the Recipient. The Recipient further agrees to use its best efforts to prevent the disclosure or use of the Proprietary Information, or any portion thereof, by any of its employees, agents, and/or representatives in a manner inconsistent with the purpose of the Agreement.
3. Return of Proprietary Information. The Recipient shall not retain, and, immediately upon demand of Discloser, shall deliver to Discloser all documents, products, materials, and data of any nature pertaining to the Proprietary Information, which the Recipient has in its custody, possession, or control.
4. Unfair Competition. The Recipient acknowledges and agrees that the sale or unauthorized use or disclosure of any of the Proprietary Information obtained during its association with Discloser constitutes unfair competition. The Recipient agrees not to engage in any unfair competition with Discloser.
5. Exclusion. This Agreement shall not apply to any Proprietary Information which has been or may hereafter be published or otherwise made generally available to the public or was previously in the possession of the Recipient prior to receipt from Discloser or is hereafter obtained from a third party which has no confidentiality obligation to Discloser. The exclusions in this paragraph do not include Proprietary Information, which is only in general terms disclosed to the public domain or known to the Recipient. Further, combinations of Proprietary Information shall not be within the exclusions stated in this paragraph if only individual features are in the public domain or known to the Recipient.
6. Successor and Assigns. This Agreement shall be binding upon the Recipient and its assigns and successors and shall inure to the benefit of the Recipient and Discloser and both of their successors and assigns.

## 7. MISCELLANEOUS

- 7.1. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to the transactions contemplated hereby, and supercedes all prior agreements, arrangements, and understandings related to the transactions contemplated hereby, and supercedes all prior agreements, arrangements, and understandings related to the subject matter hereof.
- 7.2. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California.
- 7.3. Attorney's Fees. In the event that any party shall bring an action in connection with the performance, breach, or interpretation of this Agreement, or in any

action related to the transactions contemplated hereby, the prevailing party in such action, as may be determined by the court having jurisdiction, shall recover all reasonable costs and expenses of such litigation, including attorney's fees, court costs, costs of investigation, accounting, and other costs reasonably incurred or related to such litigation, in such amount as may be determined in the discretion of the court having jurisdiction of such action.

7.4. Notice. Any notice or other communication to be given under this Agreement shall be deemed to be validly given if effected by personal delivery in writing or by registered or certified mail, addressed to the parties at the following respective addresses and shall be deemed to be received immediately if by personal delivery and 48 hours after deposit in U.S. mail if by registered or certified mail:

Recipient: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Discloser: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7.5. Specific Enforcement. The parties agree that damages are an inadequate remedy for, and Discloser would be irreparably damaged by, any breach of this Agreement. Therefore, the parties further agree that Discloser shall be entitled to equitable relief in the form of a preliminary or permanent injunction upon any breach of the provision of this Agreement in addition to all other remedies available under law or in equity.

7.6. Invalidity. In the event that any provision hereof shall be determined by any court of competent jurisdiction to be unenforceable or otherwise invalid as written, the remaining provisions hereof shall be enforced to the extent permitted by law. The provisions hereof are severable and the unenforceability or invalidity of any provision hereof shall not affect the remainder of the provisions hereof.

7.7. Headings. Headings in this agreement are for convenience only and are not to be used for interpretation of this agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written in Antioch, California.

“Discloser”: \_\_\_\_\_  
(Entity Name)

a \_\_\_\_\_  
(Entity Type, e.g., corporation, individual, etc.)

By \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_  
(Entity, e.g., corporation, individual, etc.)

“Recipient”: \_\_\_\_\_  
(Entity Name)

a \_\_\_\_\_  
(Entity Type, e.g., corporation, individual, etc.)

By \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print Name)

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