



## Confidentiality and Proprietary Rights Agreement (California)

This Employee and Employee Applicant Confidentiality and Proprietary Rights Agreement ("**Agreement**") is entered into by and between SFC Communications, Inc. dba Eukon Group, a California Corporation, (the "**Employer**") on behalf of itself, its subsidiaries and other corporate affiliates (collectively referred to herein as the "**Eukon Group**"), and \_\_\_\_\_ (the "**Employee and Employee Applicant**") (the Employer and the Employee and Employee Applicant are collectively referred to herein as the "**Parties**") as of \_\_\_\_\_ (the "**Effective Date**").

In consideration of the Employee and Employee Applicant's employment by the Employer, which the Employee and Employee Applicant acknowledges to be good and valuable consideration for his/her] obligations hereunder, the Employer and the Employee and Employee Applicant hereby agree as follows:

1. Confidentiality and Security.

(a) Confidential Information.

The Employee and Employee Applicant understands and acknowledges that during the course of employment by the Employer, he/she] will have access to and learn about confidential, secret and proprietary documents, materials and other information, in tangible and intangible form, of and relating to the Employer and its businesses and existing and prospective customers, suppliers, investors and other associated third parties] ("**Confidential Information**"). The Employee and Employee Applicant further understands and acknowledges that this Confidential Information and the Employer's ability to reserve it for the exclusive knowledge and use of the Employer is of great competitive importance and commercial value to the Employer, and that improper use or disclosure of the Confidential Information by the Employee and Employee Applicant might cause the Employer to incur financial costs, loss of business advantage, liability under confidentiality agreements with third parties, civil damages and criminal penalties.

For purposes of this Agreement, Confidential Information includes, but is not limited to, all information not generally known to the public, in spoken, printed, electronic or any other form or medium, relating directly or indirectly to:] business processes,] practices,] methods,] policies,] plans,] publications,] documents,] research,] operations,] services,] strategies,] techniques,] agreements,] contracts,] terms of



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agreements,] transactions,] potential transactions,] negotiations,] pending negotiations,] know-how,] trade secrets,] computer programs,] computer software,] applications,] operating systems,] software design,] web design,] work-in-process,] databases,] manuals,] records,] articles,] systems,] material,] sources of material,] supplier information,] vendor information,] financial information,] results,] [accounting information,] accounting records,] legal information,] marketing information,] advertising information,] pricing information,] [credit information,] [design information,] [payroll information,] [staffing information,] [personnel information,] [Employee and Employee Applicant lists,] [supplier lists,] [vendor lists,] [developments,] [reports,] [internal controls,] [security procedures,] [graphics,] [drawings,] [sketches,] [market studies,] [sales information,] [revenue,] [costs,] [formulae,] [notes,] [communications,] [algorithms,] [product plans,] [designs,] [styles,] [models,] [ideas,] [audiovisual programs,] [inventions,] [unpublished patent applications,] [original works of authorship,] [discoveries,] [experimental processes,] [experimental results,] [specifications,] [customer information,] [customer lists,] [client information,] [client lists,] [manufacturing information,] [factory lists,] [distributor lists,] [buyer lists] of the Employer or its businesses [or any existing or prospective customer, supplier, investor or other associated third party], or of any other person or entity that has entrusted information to the Employer in confidence.

The Employee and Employee Applicant understands that the above list is not exhaustive, and that Confidential Information also includes other information that is marked or otherwise identified as confidential or proprietary, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used.

The Employee and Employee Applicant understands and agrees that Confidential Information developed by [him/her] in the course of [his/her] employment by the Employer shall be subject to the terms and conditions of this Agreement as if the Employer furnished the same Confidential Information to the Employee and Employee Applicant in the first instance. Confidential Information shall not include information that is generally available to and known by the public at the time of disclosure to the Employee and Employee Applicant, provided that such disclosure is through no direct or indirect fault of the Employee and Employee Applicant or person(s) acting on the Employee and Employee Applicant's behalf.

(b) Disclosure and Use Restrictions.

The Employee and Employee Applicant agrees and covenants: (i) to treat all Confidential Information as strictly confidential; (ii) not to directly or indirectly disclose, publish, communicate or make available Confidential Information, or allow it to be disclosed, published, communicated or made available, in whole or part, to any entity or person whatsoever (including other Employee and Employee Applicants of the Employer)/third party] not having a need to know and authority to know and use the

Confidential Information in connection with the business of the Employer [and, in any event, not to anyone outside of the direct employ of the Employer except as required in the performance of the Employee and Employee Applicant's authorized employment duties to the Employer [and only after execution of a confidentiality agreement by the third party with whom Confidential Information will be shared] [or with the prior consent of an authorized officer acting on behalf of the Employer in each instance] (and then, such disclosure shall be made only within the limits and to the extent of such duties or consent)]; and (iii) not to access or use any Confidential Information, and not to copy any documents, records, files, media or other resources containing any Confidential Information, or remove any such documents, records, files, media or other resources from the premises or control of the Employer, except as required in the performance of the Employee and Employee Applicant's authorized employment duties to the Employer or with the prior consent of an authorized officer acting on behalf of the Employer in each instance (and then, such disclosure shall be made only within the limits and to the extent of such duties or consent). Nothing herein shall be construed to prevent disclosure of Confidential Information as may be required [or permitted] by applicable law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an authorized government agency, provided that the disclosure does not exceed the extent of disclosure required by such law, regulation or order. The Employee and Employee Applicant shall promptly provide written notice of any such order to an authorized officer of the Employer within 24 hours of receiving such order, but in any event sufficiently in advance of making any disclosure to permit the Employer to contest the order or seek confidentiality protections, as determined in the Employer's sole discretion. In addition, this Section does not, in any way, restrict or impede the Employee and Employee Applicant from [discussing the terms and conditions of [his/her] employment with co-workers or union representatives/exercising [his/her] rights under Section 7 of the National Labor Relations Act/exercising protected rights to the extent that such rights cannot be waived by agreement][, or otherwise] disclosing information as permitted by law.

(c) Duration of Confidentiality Obligations.

The Employee and Employee Applicant understands and acknowledges that [his/her] obligations under this Agreement with regard to any particular Confidential Information shall commence immediately upon the Employee and Employee Applicant first having access to such Confidential Information (whether before or after [he/she] begins employment by the Employer) and shall continue during and after [his/her] employment by the Employer until such time as such Confidential Information has become public knowledge other than as a result of the Employee and Employee Applicant's breach of this Agreement or breach by those acting in concert with the Employee and Employee Applicant or on the Employee and Employee Applicant's behalf.

2. Inventions.

(a) Disclosure of Inventions.

The Employee and Employee Applicant acknowledges and agrees that, among [his/her] other duties for the Employer, the Employee and Employee Applicant will be employed by the Employer in a position which could provide the opportunity for conceiving and/or reducing to practice inventions, improvements, developments, ideas or discoveries whether patentable or unpatentable (collectively hereinafter referred to as "**Inventions**", which is further defined below). Accordingly, the Employee and Employee Applicant agrees to promptly disclose to the Employer in confidence and in writing all Inventions conceived or reduced to practice by the Employee and Employee Applicant while in the Employer's employ, either solely or jointly with others, and whether or not during regular working hours. The Employee and Employee Applicant further agrees to maintain adequate and current written records of such Inventions.

For purposes of this Agreement, Inventions include, but are not limited to, Employer information, including [plans,] [publications,] [research,] [strategies,] [techniques,] [agreements,] [documents,] [contracts,] [terms of agreements,] [negotiations,] [know-how,] [computer programs,] [computer applications,] [software design,] [web design,] [work in process,] [databases,] [manuals,] [results,] [developments,] [reports,] [graphics,] [drawings,] [sketches,] [market studies,] [formulae,] [notes,] [communications,] [algorithms,] [product plans,] [product designs,] [styles,] [models,] [audiovisual programs,] [inventions,] [unpublished patent applications,] [original works of authorship,] [discoveries,] [experimental processes,] [experimental results,] [specifications,] [customer information,] [client information,] [customer lists,] [client lists,] [manufacturing information,] [marketing information,] [advertising information,] [and] [sales information].

(b) Employer Inventions.

The assignment provisions in **Section 2(c)** shall apply only to "**Employer Inventions**" as defined herein. Employer Inventions shall mean any Invention that meets any one of the following criteria:

(i) Relates, at the time of conception or reduction to practice of the Invention to: (A) the Employer's business, project or products, or to the manufacture or utilization thereof; or (B) the actual or demonstrably anticipated research or development of the Employer.

(ii) Results from any work performed directly or indirectly by the Employee and Employee Applicant for the Employer.

(iii) Results, at least in part, from the Employee and Employee Applicant's use of the Employer's time, equipment, supplies, facilities or trade secret information.

Provided, however, that an Employer Invention shall not include any Invention which qualifies fully under the provisions of California Labor Code Section 2870 (a copy of which is attached as Exhibit [LETTER/NUMBER]), including any idea or invention which is developed entirely on the Employee and Employee Applicant's own time without using the Employer's equipment, supplies, facilities or trade secret information, and which is not related to the Employer's business (either actual or demonstrably anticipated), and which does not result from work performed for the Employer.

(c) Assignment of Employer Inventions.

The Employee and Employee Applicant hereby assigns, and agrees to assign, to the Employer, all [his/her] rights, title and interest in and to all Employer Inventions. Also, the Employee and Employee Applicant hereby assigns, and agrees to assign, to the Employer all Inventions conceived or reduced to practice by the Employee and Employee Applicant within one year following [his/her] termination of employment with the Employer (whether voluntary or otherwise), if the Invention is a result of Employer information obtained by the Employee and Employee Applicant during [his/her] employment with the Employer.

(d) Execution of Necessary Documents.

The Employee and Employee Applicant agrees that, upon request and without compensation therefor, but at no expense to the Employee and Employee Applicant, whether during the term of [his/her] employment and thereafter, the Employee and Employee Applicant will all do lawful acts, including the execution of papers and lawful oaths and the giving of testimony, that in the opinion of the Employer, its successors and assigns, may be necessary or desirable in obtaining, sustaining, reissuing, extending or enforcing United States and foreign Letters Patent, including Design Patents, on all of such Employer Inventions, and for perfecting, affirming, maintaining or recording the Employer's complete ownership and title thereto, and to otherwise cooperate in all proceedings and matters relating thereto.

The Employee and Employee Applicant hereby irrevocably grants the Employer power of attorney to execute and deliver any such documents on the Employee and Employee Applicant's behalf in [his/her] name and to do all other lawfully permitted acts to transfer the Inventions to the Employer and further the transfer, issuance, prosecution and maintenance of all rights therein, to the full extent permitted by law, if the Employee and Employee Applicant does not promptly cooperate with the Employer's request (without limiting the rights the Employer shall have in such circumstances by

operation of law). The power of attorney is coupled with an interest and shall not be effected by the Employee and Employee Applicant's subsequent incapacity.

(e) Exceptions.

The Employee and Employee Applicant has listed on the attached Exhibit [LETTER/NUMBER] all unpatented, but potentially patentable, ideas and inventions conceived before this employment (and which have not been assigned to a former employer) and which are, therefore, excluded from the scope of this Agreement.

(f) Work Made for Hire.

The Employee and Employee Applicant acknowledges that, by reason of being employed by the Employer at the relevant times, to the extent permitted by law, all writings, works of authorship, technology, inventions, discoveries, ideas and other work product of any nature whatsoever (collectively referred to as Work Product) consisting of copyrightable subject matter is "work made for hire" as defined in the Copyright Act of 1976 (17 U.S.C. § 101), and such copyrights are therefore owned by the Employer. Nothing contained in this Agreement shall be construed to reduce or limit the Employer's rights, title or interest in any Work Product or Inventions so as to be less in any respect than that the Employer would have had in the absence of this Agreement.

(g) Moral Rights.

To the extent any copyrights are assigned under this Agreement, the Employee and Employee Applicant hereby irrevocably waives, to the extent permitted by applicable law, any and all claims the Employee and Employee Applicant may now or hereafter have in any jurisdiction to all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as "moral rights" with respect to all Inventions and Work Product therein.

(h) No License.

The Employee and Employee Applicant understands that this Agreement does not, and shall not be construed to, grant the Employee and Employee Applicant any license or right of any nature with respect to any Inventions, Work Product, or any Confidential Information, materials, software or other tools made available to [him/her] by the Employer.

3. Security.

(a) Security and Access.

The Employee and Employee Applicant agrees and covenants (i) to comply with all Employer security policies and procedures as in force from time to time [including without limitation those regarding] [computer equipment,] [telephone

systems,] [voicemail systems,] [facilities access,] [monitoring,] [key cards,] [access codes,] [Employer [Group] intranet,] [internet,] [social media and instant messaging systems,] [computer systems,] [e-mail systems,] [computer networks,] [document storage systems,] [software,] [data security,] [encryption,] [firewalls,] [passwords] [and any and all other Employer [Group]] [facilities,] [IT resources] [and] [communication technologies] ("**Facilities Information Technology and Access Resources**"); (ii) not to access or use any Facilities and Information Technology Resources except as authorized by Employer; and (iii) not to access or use any Facilities and Information Technology Resources in any manner after the termination of the Employee and Employee Applicant's employment by the Employer, whether termination is voluntary or involuntary. The Employee and Employee Applicant agrees to notify the Employer promptly in the event [he/she] learns of any violation of the foregoing by others, or of any other misappropriation or unauthorized access, use, reproduction or reverse engineering of, or tampering with any Facilities and Information Technology Access Resources or other Employer [Group] property or materials by others.

(b) Exit Obligations.

Upon (i) voluntary or involuntary termination of the Employee and Employee Applicant's employment or (ii) the Employer's request at any time during the Employee and Employee Applicant's employment, the Employee and Employee Applicant shall (A) provide or return to the Employer any and all Employer [Group] property[, including] [keys,] [key cards,] [access cards,] [identification cards,] [security devices,] [employer credit cards,] [network access devices,] [computers,] [cell phones,] [smartphones,] [PDAs,] [pagers,] [fax machines,] [equipment,] [speakers,] [webcams,] [manuals,] [reports,] [files,] [books,] [compilations,] [work product,] [e-mail messages,] [recordings,] [tapes,] [disks,] [thumb drives] [or] [other removable information storage devices,] [hard drives,] [negatives] [and] [data] and all Employer [Group] documents and materials belonging to the Employer and stored in any fashion, including but not limited to those that constitute or contain any Confidential Information or Work Product, that are in the possession or control of the Employee and Employee Applicant, whether they were provided to the Employee and Employee Applicant by the Employer [Group] or any of its business associates or created by the Employee and Employee Applicant in connection with [his/her] employment by the Employer; and (B) delete or destroy all copies of any such documents and materials not returned to the Employer that remain in the Employee and Employee Applicant's possession or control, including those stored on any non-Employer [Group] devices, networks, storage locations and media in the Employee and Employee Applicant's possession or control.

4. Publicity. The Employee and Employee Applicant hereby consents to any and all uses and displays, by the Employer and its agents, of the Employee and Employee Applicant's name, voice, likeness, image, appearance and biographical information in, on or in connection with any pictures, photographs, audio and video recordings, digital

images, websites, television programs and advertising, other advertising, sales and marketing brochures, books, magazines, other publications, CDs, DVDs, tapes and all other printed and electronic forms and media throughout the world, at any time during or after the period of [his/her] employment by the Employer, for all legitimate business purposes of the Employer ("**Permitted Uses**"). Employee and Employee Applicant hereby forever releases the Employer and its directors, officers, Employee and Employee Applicants and agents from any and all claims, actions, damages, losses, costs, expenses and liability of any kind, arising under any legal or equitable theory whatsoever at any time during or after the period of [his/her] employment by the Employer, in connection with any Permitted Use.]

5. Non-Disparagement. The Employee and Employee Applicant agrees and covenants that [he/she] will not at any time make, publish or communicate to any person or entity or in any public forum any defamatory or disparaging remarks, comments or statements concerning the Employer [Group]'s products or services [, and existing and prospective customers, suppliers, investors and other associated third parties], or make any maliciously false statements about the Employer [Group]'s Employee and Employee Applicants and officers.]

6. Acknowledgement. The Employee and Employee Applicant acknowledges and agrees that the services to be rendered by [him/her] to the Employer are of a special and unique character; that the Employee and Employee Applicant will obtain knowledge and skill relevant to the Employer's industry, methods of doing business and marketing strategies by virtue of the Employee and Employee Applicant's employment; and that the terms and conditions of this Agreement are reasonable under these circumstances. The Employee and Employee Applicant further acknowledges that the amount of [his/her] compensation reflects, in part, [his/her] obligations and the Employer's rights under this Agreement; that [he/she] has no expectation of any additional compensation, royalties or other payment of any kind not otherwise referenced herein in connection herewith; that [he/she] will not be subject to undue hardship by reason of [his/her] full compliance with the terms and conditions of this Agreement or the Employer's enforcement thereof; and that this Agreement is not a contract of employment and shall not be construed as a commitment by either of the Parties to continue an employment relationship for any certain period of time. **[Nothing in this Agreement shall be construed to in any way terminate, supersede, undermine or otherwise modify the "at-will" status of the employment relationship between the Employer and the Employee and Employee Applicant, pursuant to which either the Employer or the Employee and Employee Applicant may terminate the employment relationship at any time, with or without cause, with or without notice.]**

7. Remedies. The Employee and Employee Applicant acknowledges that the Employer's Confidential Information and the Employer's ability to reserve it for the exclusive knowledge and use of the Employer is of great competitive importance and



commercial value to the Employer, and that improper use or disclosure of the Confidential Information by the Employee and Employee Applicant will cause irreparable harm to the Employer, for which remedies at law will not be adequate. In the event of a breach or threatened breach by the Employee and Employee Applicant of any of the provisions of this Agreement, the Employee and Employee Applicant hereby consents and agrees that the Employer shall be entitled to seek, in addition to other available remedies, a temporary or permanent injunction or other equitable relief against such breach or threatened breach from any court of competent jurisdiction, without the necessity of showing any actual damages or that monetary damages would not afford an adequate remedy, and without the necessity of posting any bond or other security. The aforementioned equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages or other available forms of relief. [The Employee and Employee Applicant further acknowledges that each member of the Employer Group is an intended third-party beneficiary of this Agreement.]

8. Successors and Assigns.

(a) Assignment by the Employer.

The Employer may assign this Agreement to any subsidiary or corporate affiliate [in the Employer Group or otherwise], or to any successor or assign (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Employer. This Agreement shall inure to the benefit of the Employer [Group] and permitted successors and assigns.

(b) No Assignment by the Employee and Employee Applicant.

The Employee and Employee Applicant may not assign this Agreement or any part hereof. Any purported assignment by the Employee and Employee Applicant shall be null and void from the initial date of purported assignment.

9. Arbitration. The Parties agree that any dispute, controversy or claim arising out of or related to this Agreement or any breach of this agreement shall be submitted to and decided by binding arbitration in Irvine/Orange County/California. Discovery in any arbitration proceeding shall be conducted according to the [American Arbitration Association Rules/full extent authorized by the California Code of Civil Procedure]. Any arbitral award determination shall be final and binding upon the Parties.

This agreement to arbitrate is freely negotiated between Employee and Employee Applicant and Employer and is mutually entered into between the parties. Each party fully understands and agrees that they are giving up certain rights otherwise afforded to them by civil court actions, including but not limited to the right to a jury trial.

\_\_\_\_\_ **By initialing here, Employee and Employee Applicant acknowledges [he/she] has read this paragraph and agrees with the arbitration provision herein.**

10. Governing Law; Jurisdiction and Venue. This Agreement, for all purposes, shall be construed in accordance with the laws of California without regard to conflicts-of-law principles. Any action or proceeding by either Party to enforce this Agreement shall be brought only in any state or federal court located in the state of California[, county of [COUNTY]]. The Parties hereby irrevocably submit to the [non-]exclusive jurisdiction of such courts and waive the defense of inconvenient forum to the maintenance of any such action or proceeding in such venue.

11. Entire Agreement. Unless specifically provided herein, this Agreement contains all the understandings and representations between the Employee and Employee Applicant and the Employer pertaining to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter[; provided, however, that [AGREEMENTS] shall remain in full force and effect].

12. Modification and Waiver. No provision of this Agreement may be amended or modified unless such amendment or modification is agreed to in writing and signed by the Employee and Employee Applicant and by a [DULY AUTHORIZED OFFICER] of the Employer (other than the Employee and Employee Applicant). No waiver by either of the Parties of any breach by the other party hereto of any condition or provision of this Agreement to be performed by the other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure of or delay by either of the Parties in exercising any right, power or privilege hereunder operate as a waiver thereof to preclude any other or further exercise thereof or the exercise of any other such right, power or privilege.

13. Severability. Should any provision of this Agreement be held by a court of competent jurisdiction to be enforceable only if modified, or if any portion of this Agreement shall be held as unenforceable and thus stricken, such holding shall not affect the validity of the remainder of this Agreement, the balance of which shall continue to be binding upon the Parties with any such modification to become a part hereof and treated as though originally set forth in this Agreement. The Parties further agree that any such court is expressly authorized to modify any such unenforceable provision of this Agreement in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement or by making such other modifications as it deems warranted to carry out the intent and agreement of the Parties as embodied herein to the maximum extent permitted by law. The Parties expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable

against each of them. In any event, should one or more of the provisions of this Agreement be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been set forth herein.

14. Captions. Captions and headings of the sections and paragraphs of this Agreement are intended solely for convenience and no provision of this Agreement is to be construed by reference to the caption or heading of any section or paragraph.

15. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date above.

Employee and Employee Applicant  
Name

SFC Communications, Inc. dba  
Eukon Group

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

By \_\_\_\_\_

Print Name:  
\_\_\_\_\_

Name: Sandra F. Jacobs

Title: President

