

## **CONFIDENTIALITY AGREEMENT**

THIS CONFIDENTIALITY AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012 (the "Effective Date") by and between \_\_\_\_\_ from \_\_\_\_\_ ("Receiving Party") and \_\_\_\_\_ from \_\_\_\_\_ ("Disclosing Party")

WHEREAS, the parties contemplate entering into a possible business relationship and, in this regard, will have discussions and exchange documents and other materials;

WHEREAS, in order to facilitate such discussions and exchange, each of the parties may disclose to the other party, or such other party may learn, certain information which the disclosing party considers to be confidential, proprietary and a valuable commercial asset;

WHEREAS, each of the parties desires to maintain the confidential nature of any such information.

NOW THEREFORE, in consideration of the premises and the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

**1. Definitions.** The following terms when used herein with initial capital letters shall have the meaning set forth in this Article 1.

**1.1 Confidential Information.** The term "Confidential Information" shall mean information which is not generally known to the public relating to the disclosing party's business, research or development including, but not limited to, the proposed and any resulting business relationship between the parties, products, services, cost and pricing structures, accounting and business methods, analyses, drawings, reports, computer software (including operating systems, applications and program listings), data bases, data, documentation, configurations, algorithms, flow charts, manuals, trade secrets, technology, knowhow, formulae, inventions, designs, developments, devices, methods and processes (whether or not patentable or copyrightable and whether or not reduced to practice or fixed in a tangible medium), identities and information regarding a party's suppliers, clients and customers and their confidential information, suppliers and supplier lists, together with information obtained, learned or disclosed by inspection or observation of samples, equipment or facilities and all similar and related information in whatever form or medium; provided, however, that any of the foregoing shall not be considered Confidential Information if the receiving party demonstrates that it:

- (a) has become publicly known through no wrongful act or breach of obligation of confidentiality;
- (b) was in the lawful knowledge of the receiving party prior to the time of disclosure hereunder;
- (c) was rightfully received from a third party without a breach of any obligation of confidentiality by such third party; or
- (d) was independently obtained or developed by the receiving party free from any obligation of confidentiality under this Agreement.

The nature, scope, type and quantity of the Confidential Information to be disclosed or provided shall be in the sole discretion of the disclosing party.

**2. Confidentiality.** Each party shall keep the Confidential Information of the other party in strictest confidence and shall use its reasonable best efforts to safeguard the other party's Confidential Information and to protect it against disclosure, misuse, espionage, loss and theft. The rights and obligations of the parties shall not be transferred or otherwise assigned by either party without the prior written consent of the other party.

**3. Nondisclosure.** Neither party shall reveal or make available to any third party the other party's Confidential Information without the prior written consent of the other party, except to employees who need to know such Confidential Information in order to perform necessary functions relating to the purposes hereof. In addition, prior to any disclosure of such Confidential Information to any such employee, such employee shall execute, or shall already be bound by, a nondisclosure agreement containing terms and conditions consistent with the terms and conditions of this Agreement. Each party shall use its best efforts to ensure that its employees do not use, disclose, communicate or make available to any other third party any Confidential Information of the other party in a manner inconsistent herewith.

**4. Nonuse.** Neither party shall use the other party's Confidential Information for any purpose other than as expressly contemplated hereunder without the prior written consent of the other party.

5. **No Analysis** The receiving party agrees not to analyze chemically or otherwise any samples deemed confidential as per this agreement. However, it is understood that the receiving party may have to conduct certain physical testing in order to determine the suitability of the samples for processing on its equipment and/or for having the desired properties in its finished product. Supplying party permits receiving party to conduct such testing provided that such testing be limited to what is reasonably necessary for the stated purpose and that the results of such testing will be held in confidence.

6. **Order to Disclose.** In the event that a party is required by law or court order to reveal any Confidential Information of the other party, such party shall give prompt notice thereof to the other party and shall use its best efforts to disclose (a) only such Confidential Information pursuant to a protective order which provides measures to maintain the confidential nature of the Confidential Information; (b) only that portion of the Confidential Information as is necessary to meet the requirements of such law or court order; and (c) such Confidential Information to only those persons as required by such law or court order.

7. **Term.** This Agreement shall become effective on the date first above written and shall continue in full force and effect for a period of five (5) years thereafter unless terminated earlier in writing by either party. Notwithstanding termination or expiration of this Agreement, all Confidential Information disclosed hereunder shall be protected in accordance with this Agreement for a period of five (5) years after termination or expiration of this Agreement.

8. **No Grant of Rights.** This Agreement contains no grants to either party's Confidential Information or any of either party's patents, copyrights, trade secrets or other proprietary rights. This Agreement shall not be construed as a binding obligation on either party to enter into any further agreements.

9. **Return of Materials.** Upon request by either party, the other party shall return promptly to the requesting party all Confidential Information then in its possession or control, and all copies and tangible embodiments thereof, in whatever form or medium and shall certify such return in writing.

10. **Injunctive Relief.** Each of the parties acknowledges that use by it or communication of the disclosing party's Confidential Information to any third party except as permitted by this Agreement would cause immediate and irreparable harm to the disclosing party for which money damages would be inadequate. Therefore, the disclosing party will be entitled to injunctive relief for the receiving party's breach of any of its obligations hereunder without proof of actual damages and without the posting of bond or other security. Such remedy shall not be deemed to be the exclusive remedy for such breach, but shall be in addition to all other remedies available at law or in equity.

11. **Entire Agreement.** This Agreement constitutes the entire understanding of the parties on the subject hereof and supersedes all prior understandings and instruments on such subject. This agreement may not be modified other than by a written instrument executed by duly authorized representatives of the parties.

12. **Notices.** Any notices, consents or approvals required or permitted to be given hereunder shall be deemed to be given and sufficient when delivered in writing to the address hereinafter set forth, first class United States certified or registered letter, return receipt requested, or overnight delivery or courier service or by telex, telecopy or telegram with written confirmation as provided above to the other party.

13. **Severability.** Should any provision of this Agreement be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision may be modified by such court in compliance with the law giving effect to the intent of the parties, and enforced as modified. All other terms and conditions of this Agreement shall remain in full force and effect and shall be construed in accordance with the modified provision, as if such illegal, invalid or unenforceable provision had not been contained herein.

14. **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of North Carolina, without giving effect to any choice of law or conflict of law provision that would cause the application of the laws of any jurisdiction other than the State of North Carolina.

15. **Counterparts.** This Agreement may be executed in counterparts, any one of which need not contain the signatures of more than one party, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement by their authorized representatives as of the date first written above.

**Disclosing Company Name:** \_\_\_\_\_

**By:** (Please Print Name) \_\_\_\_\_

TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

PHONE: \_\_\_\_\_

DATE: \_\_\_\_\_

**Receiving Company Name:** \_\_\_\_\_

**By:** (Please Print Name) \_\_\_\_\_

TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

PHONE: \_\_\_\_\_

DATE: \_\_\_\_\_