

NOTICE: This document is for reference only and should not be considered as legal advice. Please consult your legal professional about what is best for your specific circumstances.

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Agreement is made and entered into by and between _____ (“Company”), and _____ (“ABC”).

WITNESSETH:

WHEREAS, the parties have pursued and expect to continue to pursue discussions (the “Discussions”) relative to a potential business relationship (the “Objective”); and

WHEREAS, in the course of continuing the Discussions the parties may disclose to one another, or the principals, partners, shareholders, directors, officers, employees, representatives, professional advisors or agents (collectively the “Representatives”) of each other, certain information of a proprietary and confidential nature; and

WHEREAS, each party desires to protect the Confidential Information (as hereinafter defined) of the other party, both during and subsequent to the Discussions, as a material inducement for ABC and Company to engage in the Discussions.

NOW THEREFORE, in consideration of the premises and the mutual promises hereinafter set forth and other good and valuable consideration, the parties hereto agree as follows:

1. For the purposes of this Agreement, “Confidential Information” shall include without limitation:
 - 1.1. product and equipment designs, product concepts, production processes, specifications, formulae or enhancements and other technological developments and production techniques, whether or not the subject of statutory trade secret protection, letters patent or pending patent applications;
 - 1.2. the occurrence of the Discussions and the exchange of Confidential Information relative to the Discussions and the Objective;
 - 1.3. customer lists and information;
 - 1.4. business and marketing plans;
 - 1.5. financial statements, projections, analyses and information related to costs and revenues; and
 - 1.6. all other information provided by ABC or Company of a proprietary and confidential nature (whether communicated by means of oral or written disclosures) which is marked “confidential” or is identified in writing by the disclosing party as confidential within thirty (30) days after disclosure.
2. Each party shall maintain the Confidential Information of the other party in confidence using such measures as it accords its own information of a similar nature and, in any event, shall exercise such care in protecting the Confidential Information of the other party as a reasonably prudent person would exercise. Each party further agrees that the Confidential Information of the other party shall be used solely for the purposes of engaging in the Discussions and evaluating the Objective (the “Permitted Purposes”) and, except for such limited purposes, such information shall not be used for its own benefit or be disclosed to any

third party. Each party may disclose the Confidential Information of the other only to its Representatives solely for the Permitted Purposes, provided that each Representative must agree to comply with and be bound by the terms of this Agreement and that each party shall be liable for the acts of its Representatives and any and all other persons to whom it discloses the Confidential Information of the other party.

3. “Confidential Information” shall not include any information which the receiving party can demonstrate:
 - 3.1 was in the possession of the receiving party at the time it was first disclosed by the disclosing party;
 - 3.2 was in the public domain at the time it was disclosed to the receiving party;
 - 3.3 enters the public domain through sources independent of the receiving party and through no fault of the receiving party;
 - 3.4 is made available by the disclosing party to a third party on an unrestricted, non-confidential basis;
 - 3.5 was lawfully obtained by the receiving party from a third party not known by the receiving party to be under an obligation of confidentiality to the disclosing party; or
 - 3.6 was at any time developed by the receiving party independently of any disclosure by the disclosing party.
4. In the event that Company believes that any information received from ABC is excluded from the definition of Confidential Information based upon an exclusion described in Section 3, then Company shall notify ABC of the foundation for any such exclusion upon receipt of such information or no later than 10 business days following the receipt of such information and at least thirty (30) days prior to any disclosure of such Confidential Information to any third party or any use of such information beyond the purposes of this Agreement.
5. Each party acknowledges that the other party may be presently engaged in the development or implementation of business operations and technology of the same kind and nature as may be the subject of disclosure of information pursuant to this Agreement. Except for the confidentiality and non-use provisions of this Agreement, no disclosure pursuant to this Agreement shall in any way obligate either party to discontinue its involvement in such business(es).
6. Each party agrees that it owns all right, title and interest in and to the information contemplated to be disclosed by it hereunder, or that such party has the right to make the disclosures of information contemplated to be disclosed hereunder, and that no disclosure of information by a disclosing party hereunder will violate the rights of any third party.
7. In the event that either party or its Representative is legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information of the other party, the party under such compulsion shall promptly give notice to the disclosing party so that the disclosing party may seek to quash such compulsion or to obtain an appropriate protective

- order. In the event the disclosing parties does not quash such compulsion, and whether or not a protective order is obtained, the party under compulsion shall disclose only such limited portion of the Confidential Information of the other party as, in the written opinion of counsel for the party under compulsion, is required to avoid sanction by the court having jurisdiction of such matter.
8. All obligations of the parties hereunder shall survive any termination of the Discussions.
 9. In the event the Discussions are terminated, whether or not the Objective, or any portion thereof, has been accomplished, each party shall, upon request by the other, promptly return or destroy all documentation and other materials containing any Confidential Information of the other party without retaining any copies thereof (except a single copy retained by counsel solely for documentary purposes). Each party shall thereafter, upon request by the other, provide a certification signed by an officer that all such materials have been returned to the originating party or have been destroyed.
 10. Each party agrees that the unauthorized disclosure or use of Confidential Information disclosed to it by the other party or any other breach by it or its Representatives of the obligations hereunder may result in irreparable injury to the party which furnished the Confidential Information. Therefore, each party agrees that the injured party may be entitled to receive injunctive relief in any legal proceeding instituted by such injured party.
 11. This Agreement sets forth the entire agreement and understanding among the parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understandings of every and any nature among them. This Agreement shall be effective only when signed by all of the parties on the signature pages (or counterpart signature pages hereto). No party shall be bound by any condition, definition, warranty, or representations, other than as expressly set forth or provided for in this Agreement, or as may be, on or subsequent to the date hereof set forth in writing and signed by the party to be bound thereby. This Agreement may not be amended, supplemented, changed, or modified, except by agreement in writing signed by the parties to be bound thereby.
 14. The validity, construction and performance of this Agreement shall be governed by and construed in accordance with the law of the state of Minnesota, USA applicable to contracts executed in and performed entirely within such state, without reference to any choice of law principals thereof. With respect to any litigation arising out of this Agreement, the parties expressly waive any right they may have to a jury trial and agree that any such litigation shall be tried by a judge without a jury. Each party agrees to non-exclusive personal jurisdiction and venue in the United States District Court for the District of Minnesota.
 15. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party hereto shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the other party, which consent may be granted or withheld in the sole discretion of such other party. Notwithstanding the foregoing, ABC may, at any time, in its discretion, assign this Agreement to an affiliate of ABC.

16. The waiver by any party of any other party's non-compliance with any obligation or responsibility herein shall be ineffective unless given in writing and shall not be deemed a waiver of other instances of non-compliance or of any party's remedies for such non-compliance.
17. If any litigation shall be commenced to enforce, or relating to, any provision of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney fees (including fees related to the services of in-house counsel) and reimbursement of such other costs as it incurs in prosecuting or defending such litigation. For purposes of this section, "prevailing party" shall include a party awarded injunctive relief and a party prevailing upon appeal.
18. Nothing herein shall obligate either party to continue the Discussions or to enter into, or consummate, any transaction related to the Objective.

IN WITNESS WHEREOF, the parties have executed this Agreement as indicated below.

COMPANY

ABC

By: _____

By: _____

Title: _____

Title: _____

Dated: _____

Dated: _____