

## MUTUAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

**THIS AGREEMENT** is entered into by and between (**PARTY A**), a (state) corporation having its principal place of business at \_\_\_\_\_ (“Company”) and (**PARTY B**), whose address is \_\_\_\_\_ (“Company”). This Mutual Non-Disclosure Agreement (This “**Agreement**”) provides for the protection of information that is non-public, proprietary and/or confidential in nature. The Parties are desiring to enter into a business relationship which may involve manufacturing, sourcing and/or acquiring products and/or design, develop, products, materials and/or providing professional services to (PARTY A) (the “Business Purpose”). In consideration of the promises set forth below, and any other good and valuable consideration, the sufficiency of which is acknowledged, the parties agree as follows:

1. **Non-Disclosure.** In connection with discussions between the parties about a proposed business relationship (the “**Purpose**”), a party (as the “**Disclosing Party**”) may disclose Confidential Information (as defined below) to the other party (as the “**Receiving Party**”). Receiving Party shall use the Confidential Information solely and furtherance of the proposed and shall not disclose such Confidential Information to any person or entity, except to its affiliates and its or its affiliates’ employees, officers, directors, shareholders, agents, attorneys, accountants or advisors (collectively, “**Representatives**”) who: (a) need to know such Confidential Information and relation to the purpose; (b) are informed of the confidential nature of the Confidential Information semicolon and (c) are bound by confidentiality obligations no less productive of the Confidential Information and the terms contained herein. Receiving Party shall safeguard the Confidential Information from authorized use, access or disclosure using at least the same degree of care as receiving party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care.

2. **Definition.** (a) “**Confidential Information**” means all non-public, proprietary, or confidential information of Disclosing Party disclosed before, on or after the Effective Date, in oral, visual, written, electronic or other tangible or intangible form, whether or not marked or designated as “confidential”, to Receiving Party and all notes, analyses, summaries and other materials prepared by Receiving Party or any of its Representatives that contain, are based on or otherwise reflect to any degree, any of the foregoing. Confidential Information includes, but is not limited to, (i) products, prototypes (including prototypes tested by Receiving Party), sketches, designs, drawings, plant/facility layouts, customer and supplier information, blueprints, distribution techniques and systems, materials, model, prototypes, inventions, pricing information, sourcing information, formulations, ingredients, specifications, manufacturing processes and techniques, know-how, testing apparatus, testing procedures, test results, machinery, equipment, advertising and marketing programs and techniques, business plans and strategy, forecast, budgets, algorithms, software programs, software source documents, knowledge of materials unique to (PARTY A); packaging configuration; pricing information; business plan; sales or data formulation related to past , current and future products or components; and non-technical information relating to (PARTY A)’s products, including without limitation pricing, margins, merchandising plans and strategies, finances, financial and accounting data and information, suppliers, customers, customer lists, employee information, purchasing data, sales and marketing plans, future business plans and other commercially sensitive information and intellectual property, whether in oral, written, electronic, digital or any other form, that is either the property of (PARTY A) or is controlled by (PARTY A), and open parentheses (iii) any Design Work or Copyright Work, as defined herein or in the Vendor Submission Agreement or a Purchase, Consulting and Development Agreement, which are incorporated herein by reference (together, “Confidential Information). Confidential Information also includes: open (a) that the parties are in discussion regarding the purpose and that Confidential Information has been disclosed; and (b) any terms, conditions or arrangements that are being discussed or negotiated in relation to the Purpose.

(b) **Use of Confidential Information.** The parties agree that Confidential Information shall remain the sole and exclusive property of each respective party, and that Confidential Information and materials relating thereto will not be share, copied or duplicated for use outside the scope of Suppliers services for (PARTY A) without the other parties’ written consent. The parties acknowledge that its obligations with regard to

Confidential Information shall remain in effect for five (5) years after the last date of business discussion or business relationships between the Parties.

(c) **Trade Secrets.** In addition, in the event that any Confidential Information constitutes a Trade Secret, as defined by the Georgia Trade Secrets Act, the parties agree to keep such Trade Secrets confidential for so long as such Information constitutes a Trade Secret under the Act. Together, Confidential Information and Trade Secrets shall be considered "Proprietary Information" of each respective party. The parties acknowledge and agree that the disclosure of the Proprietary Information to the other party does not confer upon that party any license, interest or rights of any kind in or to the Proprietary Information and that the Proprietary Information is the sole and exclusive property of the respective party.

3. **Exclusions.** Confidential Information shall not include any information, however designated, that: (a) is or subsequently becomes readily ascertainable by the public by proper means without breach of this Agreement by Receiving Party or its Representatives; (b) was known by or in the possession of Receiving Party or its Representatives, as established by written records, before being disclosed by or on behalf of Disclosing Party under this Agreement; (c) is or subsequently becomes available to Receiving Party on a non-confidential basis from a third party lawfully in possession of the information and having no obligation to maintain the confidentiality thereof; or (d) is independently developed by Receiving Party, as established by written records, by persons or entities who had no access to the information. Receiving Party may disclose Confidential Information pursuant to a judicial or other governmental order or as required by law; provided, that Receiving Party provides Disclosing Party as much advance notice as practical under the circumstances in order to allow Disclosing Party a reasonable opportunity to seek, at its sole expense, a protective order or other remedy concerning the disclosure or take other appropriate actions, and to the extent reasonably possible. Receiving party undertakes reasonable efforts to maintain the confidentiality and non-disclosure of the information. If Receiving Party remains subject to an order to disclose any Confidential Information. Receiving Party shall disclose no more than that portion of the Confidential Information which, on the advice of Receiving Party's legal counsel, such judicial or other governmental order specifically requires Receiving Party to disclose.

4. **Notification; Relief.** Receiving Party will notify Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by Receiving Party or its Representatives and will cooperate with Disclosing Party in every reasonable way to help Disclosing Party regain possession of the Confidential Information and prevent its further unauthorized use or disclosure. Receiving Party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure or use of Confidential Information and that Disclosing Party shall be entitled, without waiving any other rights or remedies, to injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

5. **Return of Confidential Information.** At Disclosing Party's request, Receiving Party shall, at its sole cost and expense, promptly return all originals, copies, reproductions and summaries, and remove from its computer system all electronic copies, or Disclosing Party's Confidential Information and all other tangible materials and devices provided to Receiving Party as Confidential Information, or certify in writing to Disclosing party of the destruction of the same in accordance with proper and standard document destruction procedures; provided, however, that Receiving Party may retain copies of Confidential Information that are stored on Receiving Party's information technology backup and disaster recovery systems until the ordinary course deletion thereof and Receiving Party shall continue to be bound by the terms and conditions of this Agreement with respect to such retained Confidential Information.

6. **Term and Termination.** The term of this Agreement shall commence on the Effective Date and shall expire five (5) years from the Effective Date, provided that either party may terminate this Agreement at any time by providing written notice to the other party. Notwithstanding anything to the contrary herein, each party's rights and obligations under this Agreement shall survive any expiration or termination of this Agreement for a period of three (3) years from the date of such expiration or termination, even after the return or destruction of Confidential Information by the Receiving Party.

7. **Ownership.** All Confidential Information is and shall remain at all times the exclusive property of Disclosing Party and Receiving Party shall not take any actions inconsistent therewith.

8. **Solicitation.** The parties agree not to solicit away, directly or indirectly any officer, director or senior employee of the other for 12 months following the date hereof; provided, however, neither party will be precluded from hiring anyone who responds to a general solicitation not specifically directed at an employee of the other party.

9. **Future Arrangements.** The parties are independent of each other and nothing in this Agreement shall be deemed to constitute a joint venture, partnership, agency or any other arrangement between the parties. The parties have no obligation to enter into any business or contractual relationship, investment, or transaction with each other relative to the Purpose, the Confidential Information or any other matter. The parties acknowledge and agree, unless and until a definitive and legally binding agreement has been executed, there is no liability with respect to the Purpose.

10. **No Representations or Warranties.** Neither Disclosing Party nor any of its Representatives make any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information disclosed to Receiving Party hereunder. Neither Disclosing Party nor any of its Representatives shall be liable to Receiving Party or any of its Representatives relating to or resulting from Receiving Party's use of any of the Confidential Information or any errors therein or omissions therefrom.

11. **Miscellaneous.**

(a) **Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (1) when delivered by hand (with written confirmation of receipt); (2) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (3) on the date sent by email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (4) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by a party from time to time).

(b) **Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the parties with respect to the subject matter and supersedes all prior discussions, commitments, agreements, arrangements and understandings of any nature between the parties with respect to the subject matter, provided, that any validly existing and binding confidentiality agreement executed by the parties prior to the Effective Date of this Agreement will remain in existence and apply in accordance with its terms to applicable disclosures by the parties made prior to the Effective Date of this Agreement and all subsequent disclosures by the parties shall be subject to the terms and conditions of this Agreement absent a separate written agreement executed by the parties after the Effective Date of this Agreement. This Agreement may not be modified except by a written agreement dated subsequent to the Effective Date and signed by both parties.

(c) **No Waiver.** None of the provisions of this Agreement shall be deemed waived by any act or acquiescence by Disclosing Party, but only by a writing signed by authorized representatives of both parties, and no waiver of any provision when given shall constitute a waiver of any other provision or the same provision on another occasion.

(d) **Severability.** In the event any provision of this Agreement is determined to be invalid, the invalidity will not affect the validity of the remaining provisions, and the parties agree to substitute for the invalid provision a provision that most closely approximates the intent and economic effect of the invalid provision.

(e) **Assignment.** The Agreement shall be binding upon and apply to each party's respective successors and lawful assigns; provided, however, that neither party may assign this Agreement (directly or indirectly, whether by operation of law, sale of securities or assets, merger or otherwise), in whole or part, without the prior written approval of the other party.

(f) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the jurisdiction of any party bringing any action to enforce the terms of this Agreement, without regard to the principles of conflicts of law. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in party's venue of choice for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient form, or that the venue of such suit, action or proceeding is improper.

(g) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which when taken together will constitute one and the same Agreement. Facsimiles or other electronic copies of signatures will be deemed to be originals.

**[Signatures follow next page]**

**IN WITNESS WHEREOF**, the undersigned duly authorized representatives or officers of their respective parties have caused this Agreement to be executed as of the Effective Date noted above.

**PARTY A**

**PARTY B**

Company Name: \_\_\_\_\_

By: \_\_\_\_\_

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

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

By: \_\_\_\_\_

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

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