

## MUTUAL NON-DISCLOSURE AGREEMENT

THIS MUTUAL NON-DISCLOSURE AGREEMENT (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between \_\_\_\_\_ (“Discloser”) and \_\_\_\_\_, a resident or business entity of \_\_\_\_\_ (“Disclosee”).

### STATEMENT OF PURPOSE

In connection with the evaluation and analysis of a possible business relationship and contractual agreement (“Transaction”) between Discloser and Disclosee, each party will disclose to the other certain “Evaluation Material” (as hereinafter defined). When either party discloses such Evaluation Material, such party is referred to in this Agreement as a “Disclosing Party,” and when it receives Evaluation Material, such party is referred to as a “Receiving Party.”

NOW, THEREFORE, in consideration of the Evaluation Material furnished by each party and the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. Evaluation Material. As used in this Agreement, the term “Evaluation Material” shall mean all communications, documents and other information, whether in written, oral or other form, which any Disclosing Party furnishes or otherwise discloses to a Receiving Party in connection with the review of a potential Transaction between Discloser and Disclosee, including, but not limited to, the terms of this Agreement, the existence of discussions between Discloser and Disclosee, and all other information disclosed by Discloser or Disclosee pursuant to this Agreement, including but not limited to the following:

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2. Treatment of Evaluation Material.

(a) The parties acknowledge that each party considers the Evaluation Material it discloses to be proprietary and confidential. Each party agrees to keep secret and confidential the Evaluation Material of the other party, and further agrees to use such information solely for the purpose of evaluating a possible Transaction between Discloser and Disclosee. The Receiving Party shall not use any Evaluation Material for its own or any third party’s benefit, without the prior written approval of an authorized representative of the Disclosing Party.

(b) Each party further agrees that the Evaluation Material shall not be disclosed to any third party, except that a Receiving Party may disclose the Evaluation Material or portions thereof to those of its employees, directors, officers, representatives and agents (collectively, the “Representatives”) who need to know such information for the purpose of evaluating a possible Transaction between Discloser and Disclosee. Prior to

disclosing any Evaluation Material to any Representative, the Receiving Party will inform such Representative of the confidential nature of the Evaluation Material and will require such Representative to agree to be bound by this Agreement and not to use or disclose the Evaluation Material to any other person or entity. The Receiving Party agrees to be responsible for any breach of this Agreement by its Representatives. Notwithstanding any provision in this Agreement to the contrary, a Receiving Party may disclose Evaluation Material or portions thereof to the extent required to comply with an order issued by a court or governmental agency of competent jurisdiction; provided, however, that prior to disclosing any Evaluation Material to such court or governmental agency, the Receiving Party shall give the Disclosing Party reasonable prior written notice to permit the Disclosing Party to challenge such order, and the Receiving Party shall comply with any applicable protective order or equivalent.

(c) Discloser and Disclosee agree and acknowledge that the provisions of Subparagraphs 2(a) and 2(b) above shall not apply to any Evaluation Material which (i) at the time of disclosure or thereafter is in the public domain or becomes generally known to the public through no fault of the Receiving Party; (ii) was available to the Receiving Party on a nonconfidential basis from a source other than the Disclosing Party, provided that such source was not known by the Receiving Party to be bound by a confidentiality agreement with the Disclosing Party; or (iii) is known to the Receiving Party (as evidenced by its written records) prior to receipt thereof from the Disclosing Party.

(d) Discloser and Disclosee shall not reverse engineer, decompile or disassemble any software, programs, code, hardware or firmware of the other party disclosed to Discloser or Disclosee hereunder or in connection with the evaluation of a Transaction.

3. Ownership of Evaluation Material and Developments. Discloser and Disclosee each agree and acknowledge that all Evaluation Material disclosed by a Disclosing Party hereunder shall remain the sole property of the Disclosing Party. Further, all discoveries, developments, designs, improvements, inventions, formulae, processes, know-how, techniques, or other information of possible technical or commercial importance relating to the Evaluation Material (“Developments”) made or developed by a Receiving Party as a result of the Receiving Party’s access to the Evaluation Material shall be the sole property of the Disclosing Party. During the term of the Receiving Party’s access to the Evaluation Material, the Receiving Party shall report to the Disclosing Party all Developments developed by the Receiving Party or its Representatives, for the purpose of permitting the Disclosing Party to ascertain and perfect its rights in such Developments. The Receiving Party agrees to assign and does hereby assign to the Disclosing Party all Developments that are made or conceived by the Receiving Party as a result of the Receiving Party’s access to the Evaluation Material. Receiving Party agrees to assist the Disclosing Party in every way necessary to obtain and enforce any patents, copyrights or proprietary rights relating to the Developments and to execute all documents and applications necessary to vest in the Disclosing Party full legal title in such Developments, and the Receiving Party agrees to continue this assistance after the termination of its access to the Evaluation Material.

4. Return of Evaluation Material. If a Transaction between Discloser and Disclosee is not consummated on or before December 31, 2008, or if a Disclosing Party so requests in writing, the Receiving Party will promptly return to the Disclosing Party all of the Disclosing Party's Evaluation Material together with all copies thereof and all notes, drawings, abstracts and other information relating to the Evaluation Material prepared by the Receiving Party or any of its Representatives, regardless of the medium in which such information is stored, whether or not then in the possession of the Receiving Party or in the possession of any of the Representatives. Further, upon request of a Disclosing Party, the Receiving Party will provide the Disclosing Party with a statement, signed by a duly authorized representative of the Receiving Party, verifying that the Receiving Party has complied with the terms of this Agreement.

5. Miscellaneous.

(a) Discloser and Disclosee agree that money damages will not be an adequate remedy for any breach of this Agreement and that a Disclosing Party shall be entitled to equitable relief, including an injunction and specific performance, in the event of any breach or threatened breach of this Agreement, in addition to any other remedies available to the Disclosing Party at law or in equity. Discloser and Disclosee each waive the defense that an adequate remedy at law exists for any breach or threatened breach of this Agreement.

(b) Failure to insist upon strict compliance with any provision of this Agreement shall not be deemed waiver of such provision or any other provision hereof.

(c) This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns; provided, however, that this Agreement may not be assigned by either party without the prior written consent of the other party.

(d) This Agreement constitutes the entire Agreement between the parties and supersedes all previous agreements, negotiations and commitments between the parties, and shall not be changed or modified in any manner, except by mutual written consent signed by duly authorized representatives of each of the parties.

(e) If either party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees.

(f) This Agreement will be governed by, construed and enforced in accordance with the laws of the State of North Carolina, without regard to its conflicts of law rules.

(g) If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

DISCLOSER:

\_\_\_\_\_  
Company name

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

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

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

DISCLOSEE:

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

Printed name: \_\_\_\_\_

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

Printed name: \_\_\_\_\_

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

Printed name: \_\_\_\_\_

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

Printed name: \_\_\_\_\_