



CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT ("Agreement"), is effective this _____ day of _____, 20____, by and between _____, a _____ with offices at _____ ("Disclosing Party"), and _____ with offices at ("Receiving Party").

WHEREAS, Disclosing Party intends to disclose to Receiving Party, information regarding a potential business opportunity ("Opportunity"), and in that regard Disclosing Party intends to disclose to Receiving Party, both orally and in writing, certain confidential and proprietary information and documentation pertaining to Disclosing Party's businesses, operation, and assets in furtherance of evaluating the possibility of entering the Opportunity with each other.

WHEREAS, the disclosing party ("Disclosing Party") wishes to protect, and have the receiving party ("Receiving Party") maintain the confidentiality of such information and documentation as hereinafter described.

NOW, THEREFORE, in consideration for the foregoing Receiving Party and Disclosing Party hereby covenant and agree as follows:

1. The Disclosing Party may from time to time furnish to the Receiving Party, and/or Receiving Party may have access to, certain financial, technical, legal, marketing, or other proprietary or confidential reports, analysis, records, data, computer programs or output, information, or other material, both oral and written, which Disclosing Party deems and identifies, and Receiving Party should consider, proprietary and confidential (and of independent economic value) to Disclosing Party (collectively, "Confidential Information"). The determining factor as to whether Confidential Information has been properly identified as Confidential Information shall use "the reasonable man" standard; i.e., would a reasonable man consider the identification as sufficient to warrant the protection provided by Confidentiality?
2. Receiving Party agrees that all Confidential Information provided by Disclosing Party shall be treated as proprietary and confidential to Disclosing Party, and Receiving Party shall not, without the prior written consent of Disclosing Party, disclose or permit disclosure of such Confidential Information to any third party. Without limitation to Receiving Party's obligations, Receiving Party agrees to safeguard all Confidential Information with at least the same degree of care to avoid disclosure as Receiving Party uses to protect its own proprietary and confidential information, and Receiving Party agrees to treat Disclosing Party's Confidential Information in accordance with the provisions of this Agreement. Receiving Party further agrees that, subject to Section 3 hereof, Receiving Party shall not misappropriate or use Disclosing Party's Confidential Information for its own benefit or for the benefit of others, except in accordance with this Agreement to evaluate internally whether to enter into the currently anticipated Opportunity with Disclosing Party. All use of Confidential Information or other information, and any derivations thereof or inventions arising therefrom, shall be and inure solely to Disclosing Party's right, title, interest and benefit (including all intellectual property rights or interests relating thereto or arising therefrom, worldwide and in perpetuity, now known or hereafter developed), and in no event will Receiving Party knowingly or willfully permit Confidential Information to be used by any person in competition with or to the detriment of Disclosing Party, or for any purpose not in furtherance of this Agreement or the above-referenced business relationship between them.



3. Notwithstanding the foregoing, the parties agree that information or documentation shall not be deemed Confidential Information of Disclosing Party, and Receiving Party will have no obligation with respect to any such information or documentation, where such information or documentation:

- (a) is known to Receiving Party without restriction prior to the date of this Agreement;
- (b) is or becomes publicly known through no wrongful act of Receiving Party;
- (c) is approved for release by written authorization of Disclosing Party;
- (d) is disclosed as per the lawful requirement or order of a court or governmental agency, provided that, upon the Receiving Party's receipt of such a request for disclosure, the Receiving Party shall promptly give notice to the Disclosing Party (unless such notice is not possible under the circumstances) so the Disclosing Party may have the time to intervene and contest the disclosure and pursue a protective order or other appropriate remedy.

4. Nothing contained in this Agreement will be construed as an assignment of, granting or conferring any trademark, patent, copyright, or any other proprietary rights by license or otherwise, expressly, implied, or otherwise, for any invention, discovery or improvement made, conceived or acquired.

5. All Confidential Information transmitted or disclosed hereunder will be and remain the property of Disclosing Party. Promptly upon request from the Disclosing Party, the Receiving Party shall, at Disclosing Party's option, redeliver to the Disclosing Party or destroy all Confidential Information and any other materials containing, prepared on the basis of, or reflecting any information in, the Confidential Information (whether prepared by the parties, their advisors or otherwise), including all reports, analyses, compilations, studies and other materials containing or based on the Confidential Information, and Receiving Party will not retain any copies or other reproductions of such Confidential Information and/or materials. Upon the request of the Disclosing Party, any such destruction shall be certified in writing by the Receiving Party.

6. The terms of confidentiality under this Agreement shall not be construed to limit either party's right (without use of or access to the other party's Confidential Information) to independently develop or acquire products or services which may be similar to those discussed hereunder. The Disclosing Party acknowledges that the Receiving Party may currently or in the future be developing information internally, or receiving information from other parties, that is similar to the Confidential Information. Accordingly, nothing in this Agreement shall prohibit the Receiving Party from developing or having developed for it products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information provided that the Receiving Party does not violate any of its obligations under this Agreement in connection with such development.

7. In acknowledging the unique and proprietary nature of the Confidential Information, the parties acknowledge and agree that money damages may not be a sufficient remedy for any breach of this Agreement by Receiving Party and that Disclosing Party may suffer great and irreparable injury as a consequence of such breach. Consequently, Disclosing Party shall be entitled to seek equitable relief, including injunction, court order, and/or specific performance, as a remedy for such breach and/or to protect the confidentiality of its Confidential Information and to halt any unauthorized disclosure thereof. Such



remedies shall not be deemed to be exclusive remedies for a breach by the Receiving Party but shall be in addition to any and all other remedies provided hereunder or available at law or equity to the Disclosing Party.

8. With respect to any dispute, claim, or legal action between the parties regarding or relating to this Agreement, the prevailing party shall be entitled to recover all reasonable out of pocket costs and expenses (including, but not limited to, reasonable attorneys' fees) incurred as a result thereof.

9. Receiving Party agrees to indemnify, defend and hold the Disclosing Party harmless from and against any and all suits, liabilities, causes of action, claims, losses, damages, costs (including reasonable attorneys' fees and expenses), or expenses of any kind (collectively, "Losses") incurred or suffered by the Disclosing Party arising from or in connection with Receiving Party's unauthorized use or disclosure of Disclosing Party's Confidential Information in violation of this Agreement.

10. NEITHER PARTY TO THIS AGREEMENT SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOST SAVINGS) ARISING FROM, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS OF LIABILITY SET FORTH ABOVE IN THIS SECTION 14 SHALL NOT APPLY TO LOSSES AGAINST WHICH THE PARTIES HAVE AGREED TO INDEMNIFY EACH OTHER PURSUANT TO SECTION 13 HEREOF.

11. Each party represents and warrants that it has authority to enter into this Agreement and lawfully make the disclosures contemplated hereunder.

12. This Agreement constitutes the entire agreement and understandings of the parties on the subject matter hereof and supersedes all prior communications, agreements, and understandings, whether written or oral, relating thereto. This Agreement may be modified only by further written agreement signed by each of the parties hereto. This Agreement will be governed by and construed and interpreted in accordance with the laws of the Province of _____. Each party hereby submits itself for the sole purpose of this Agreement and any controversy arising hereunder to the exclusive jurisdiction of the federal or state courts located in the Province of _____, and any courts of appeal therefrom, and waives any objection (on the grounds of lack of jurisdiction, or otherwise) to the exercise of such jurisdiction over it by any such courts.

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

DISCLOSING PARTY:

RECEIVING PARTY

By: _____

By: _____

Signature: _____

Signature:

Title: _____

Title: _____

Date: _____

Date: _____