

## NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (this "Agreement"), entered into effective \_\_\_\_\_ July 2009, is by and between \_\_\_\_\_ and \_\_\_\_\_ (each, a "Party" or collectively, the "Parties").

1. *Disclosing and Receiving Party Defined.* From time to time, a Party may disclose to another Party Confidential Information pursuant to this Agreement. In such event, the Party disclosing information is a "Disclosing Party" and the Party receiving the information is a "Receiving Party".

2. *Confidential Information.* In this Agreement, the term "Confidential Information" means all data and information (A) directly or indirectly relating to business contacts of the Disclosing Party or (B) otherwise relating to the business of Disclosing Party, disclosed by the Disclosing Party (or its representatives) to the Receiving Party.

3. *Purpose and Scope.* In connection with working jointly with the Receiving Party on various projects, the Disclosing Party is willing, in accordance with the terms and conditions of this Agreement, to disclose (either through itself or its representatives) to the Receiving Party (or its representatives), on a non-exclusive basis, the Confidential Information.

4. *Covenant to Maintain Confidentiality.* In consideration of the disclosure described in Paragraph 3 hereof, the Receiving Party agrees that (A) the Confidential Information shall be kept strictly confidential and shall not be sold, traded, published or otherwise disclosed to anyone in any manner whatsoever, including by means of photocopy, reproduction or electronic media, without the Disclosing Party's prior written consent, except as provided in this Agreement; and (B) the Receiving Party shall not use the Confidential Information in connection with any other business in which it is involved.

5. *Permitted Disclosures.*

a. The Receiving Party may disclose Confidential Information without the Disclosing Party's prior written consent only to the extent such Confidential Information:

- i. is already known to the Receiving Party as of the date of disclosure hereunder;
- ii. is already in the possession of the public or becomes available to the public other than through the act or omission of the Receiving Party or of any other person to whom Confidential Information is disclosed pursuant to this Agreement;
- iii. is required to be disclosed under applicable law, stock exchange regulations or by a governmental order, decree, regulation or rule (provided that the Receiving Party shall make all reasonable efforts to give prompt written notice to the Disclosing Party prior to such disclosure);
- iv. is acquired independently from a third party that has the right to disseminate such information at the time it is acquired by the Receiving

Party; or

- v. is developed by the Receiving Party independently of the Confidential Information.
- b. The Receiving Party shall be entitled to disclose the Confidential Information without the Disclosing Party's prior written consent to any of the following persons to the extent that such persons have a clear need to review such Confidential Information in order to assist the Receiving Party in the evaluation of the Assets:
  - i. any professional consultant or agent of the Receiving Party retained for the purpose of evaluating the Confidential Information; or
  - ii. any bank or other financial institution or entity funding or proposing to fund the Receiving Party's acquisition of the Assets, including any professional consultant retained by such bank or other financial institution or entity.

However, prior to making any such disclosures to any person under item (i) or (ii) above, the Receiving Party shall obtain a written undertaking of confidentiality, enforceable by both the Disclosing Party and the Receiving Party, in substantially the same form as this Agreement, from such person.

- c. The Receiving Party shall be responsible for ensuring that all persons to whom the Confidential Information is disclosed under this Agreement shall keep such information confidential and shall not disclose or divulge the same to any unauthorized person.

6. *Limited Use of Confidential Information.* The Receiving Party and any other person to whom the Confidential Information is disclosed shall only use or permit the use of the Confidential Information to work jointly with the Disclosing Party on projects; and shall not use the Confidential Information for any other purpose whatsoever. For the avoidance of doubt, the Receiving Party may not use or disclose the Confidential Information for any purpose or project that does not involve the Disclosing Party on terms to be agreed upon in writing by the parties.

7. *Circumvention.* In the event of circumvention by either Party, directly or indirectly, the circumvented Party shall be entitled to a legal monetary penalty equal to three (3) times the value of the benefits the circumventing Party received or would have received from the project, without any protest or litigation plus any and all expenses, including but not limited to all legal costs and expenses incurred to recover the lost revenue.

8. *No Rights in Confidential Information.* The Receiving Party shall acquire no proprietary interest in or right to any of the Confidential Information, and the Disclosing Party may demand the return of any or all of the Confidential Information at any time upon giving written notice to the Receiving Party. Within two (2) business days of receipt of such notice, the Receiving Party shall return all of the original Confidential Information and shall destroy or cause to be destroyed all copies and reproductions of the Confidential Information (in whatever form, including electronic media) in its possession and in the possession of persons to whom it was disclosed, and will confirm in writing that it has done so. Otherwise,

the Receiving Party will return all information upon finishing its business with the disclosing party.

9. *Term.* If the Receiving Party enters into a binding agreement with the Disclosing Party concerning the use of the Confidential Information in a project, then this Agreement shall terminate automatically on the date upon which the Receiving Party enters into a further agreement which contains provisions which supersede this Agreement and cover the confidentiality and use of the Confidential Information. Unless earlier terminated under the preceding sentence, the confidentiality obligations and limitations on use set forth in this Agreement shall terminate five (5) years after the date of this Agreement.

10. The nondisclosure provisions of this Agreement shall survive the termination of this Agreement, and Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as a trade secret or until Disclosing Party sends Receiving Party written notice releasing Receiving Party from this Agreement, whichever occurs first.

11. *Representations and Warranties.* THE DISCLOSING PARTY (AND ANY THIRD PARTY ASSISTING THE DISCLOSING PARTY IN DEVELOPMENT, PREPARATION AND/OR PROVISION OF CONFIDENTIAL INFORMATION) MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AS TO THE QUALITY, ACCURACY AND COMPLETENESS OF THE CONFIDENTIAL INFORMATION NOW, HERETOFORE OR HEREINAFTER DISCLOSED TO THE RECEIVING PARTY. THE DISCLOSING PARTY (AND ANY THIRD PARTY ASSISTING THE DISCLOSING PARTY IN DEVELOPMENT, PREPARATION AND/OR PROVISION OF CONFIDENTIAL INFORMATION), ITS AND THEIR AFFILIATES, AND ITS AND THEIR OFFICERS, DIRECTORS AND EMPLOYEES SHALL HAVE NO LIABILITY WHATSOEVER WITH RESPECT TO THE USE OF OR RELIANCE UPON THE CONFIDENTIAL INFORMATION BY THE RECEIVING PARTY (OR ITS REPRESENTATIVES).

12. *Compliance with Laws.* The Receiving Party will not make, with respect to its use of the Confidential Information, any offer, payment, promise to pay or authorization of the payment of any money, or any offer, gift, promise to give or authorization of the giving of anything of value, directly or indirectly, to or for the use or benefit of any official or employee of any governmental authority, state-owned enterprise or public international organization or to or for the use or benefit of any political party, official, or candidate unless such offer, payment, gift, promise or authorization is authorized or not prohibited by applicable written laws.

13. *Choice of Law; Jurisdiction.* This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to applicable principles of conflict of laws. The parties consent to exclusive venue of and personal and subject matter jurisdiction in the district courts of Harris County, Texas, United States of America, in connection with any dispute relating to or arising out of this Agreement. The Parties agree not to require formal service under any applicable state, United States or international law for any such dispute and agree to accept service by certified or overnight mail to the address listed below. The Parties agree to promptly inform each other in writing of any change of address.

14. *Equitable Relief.* The Receiving Party acknowledges and agrees that its

breach of this Agreement will result in irreparable and immediate harm to the Disclosing Party for which there is no adequate remedy at law; and that the Disclosing Party, without prejudice to any other remedies to which it may be entitled at law or in equity, is entitled to an injunction or injunctions (without the posting of any bond and without proof of actual damages) in order to prevent a breach or threatened breach of this Agreement, and/or to compel specific performance of this Agreement. The Parties agree that jurisdiction and venue for such suit is proper in Harris County, Texas. The Receiving Party consents to personal and subject matter jurisdiction in Harris County, Texas.

15. *Amendments.* No amendments, changes or modifications to this Agreement shall be valid except if the same are in writing and signed by a duly authorized representative of each of the Parties.

16. *Entire Agreement.* This Agreement comprises the full and complete agreement of the Parties with respect to the disclosure of the Confidential Information and supersedes and cancels all prior communications, understandings and agreements between the Parties relating to the Confidential Information, whether written or oral, expressed or implied.

17. *Assignment.* No Party shall assign or otherwise transfer all or any part of this Agreement, nor shall any Party delegate any of its rights or duties hereunder, without the prior written consent of the other Party and any transfer or delegation made without such consent shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

18. *Severability.* If and for so long as any provision of this Agreement shall be invalid or unenforceable in any jurisdiction for any reason whatsoever, such invalidity or unenforceability shall not affect the validity or enforceability of such provision in any other jurisdictions, or of any other provision of this Agreement, except only so far as shall be necessary to give effect to the construction of such invalidity, and any such invalid provision shall be deemed severed from this Agreement without affecting the validity of the balance of this Agreement. In the event that any provision in this Agreement is determined to be invalid or unenforceable, the Parties shall negotiate in good faith to agree upon a valid and enforceable replacement provision that will effectuate the intent of the Parties as set forth herein.

19. *Notices.* All notices that are required or may be given pursuant to this Agreement shall be sufficient in all respects if given in writing and delivered personally, by fax, or by overnight delivery, to the address listed in the signature blocks. Any Party may change its address for notice by notice to the other in the manner set forth above. All notices shall be deemed to have been duly given at the time of receipt by the Party to which such notice is addressed.

20. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original instrument, but all such counterparts together shall constitute but one agreement.

**[THE SIGNATURE PAGE IMMEDIATELY FOLLOWS THIS PAGE]**

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

\_\_\_\_\_ [company name]

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_ [company name]

By: \_\_\_\_\_  
Name:  
Title: