

## NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (this "Agreement") is made as of September 21, 2011 (the "Effective Date") by and between ("") and ("").

1. **Purpose.** The purpose of this Non-Disclosure Agreement is to define the conditions under which any confidential information will be disclosed between the Parties in connection with (the "Purpose").
2. **Confidential Information.** Confidential Information means any [non-public] information disclosed to the Receiving Party, whether orally, in writing, through any means of communication, by or on behalf of the Disclosing Party.
3. **Non-Confidential Information.** The restrictions of this Agreement on use and disclosure of Confidential Information shall not apply to information, [as proved by written records] covered by the following exceptions:
  - a. **Public Information.** Information that is or becomes publicly known through no wrongful act of the receiving party.
  - b. **Already Known.** Information that is, at the time of disclosure under this Agreement, already known to the receiving party without restriction on disclosure.
  - c. **Third Party Source.** Information that is, or subsequently becomes, into the possession of receiving party without violation of any contractual or legal obligation.
  - d. **Independently Developed.** Information that is independently developed by the receiving party without breach of this Agreement [as evidenced by the receiving party's written records].
  - e. **Released.** Information that is explicitly approved for release by written authorization of [an authorized representative of] the disclosing party.

The receiving party shall have the burden of proof relating to all exceptions to the confidential treatment of Confidential Information hereunder.

4. **Ownership.** All Confidential Information remains the property of the disclosing party.
5. **Non-Disclosure Obligations.**
  - a. **Confidentiality.** Each party agrees to hold the disclosing party's Confidential Information in strict confidence [in accordance with this Agreement];
  - b. **Non-Use.** Each party agrees not to use any Confidential Information for any purpose except for the Disclosing Purpose without the prior written consent of the disclosing party;
  - c. **Non-Disclosure.** Each party agrees not to disclose any Confidential Information to third parties (including, without limitation, any clients, affiliates, independent contractors and consultants) without the prior, written consent of the disclosing party except as expressly permitted in this Agreement;

- d. **Protection.** Each party agrees to exercise at least the same care in protecting the disclosing party's Confidential Information from disclosure as the receiving party uses with regard to its own Confidential Information[, but in no event less than reasonable care].

## 6. Required Disclosure.

- a. **Notice.** In the event that the receiving party becomes compelled by law to disclose any Confidential Information, the receiving party shall provide the disclosing party with prompt written notice so that the disclosing party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement.
- b. **Mandatory Disclosure.** In the event that a protective order or other remedy is not obtained, or the disclosing party waives compliance with the provisions of this Agreement, the receiving party may, without liability hereunder, disclose the Confidential Information which it is legally compelled to disclose.
- c. **Limited Disclosure.** The receiving party further agrees that it will furnish only that portion of Confidential Information that is legally required to disclose and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be afforded to Confidential Information.

- 7. **Return of Property.** At the disclosing party's request, all Confidential Information that is in the possession of the receiving party shall be returned to the disclosing party or destroyed.

- 8. **Remedies.** Each party, as a Receiving Party, agrees that breach of this Agreement may result in irreparable damage to the Disclosing Party for which the Disclosing Party will not have an adequate remedy at law. Accordingly, in addition to any other remedies and damages available, the Receiving Party acknowledges and agrees that the Disclosing Party may immediately seek enforcement of this Agreement by means of specific performance or injunction, without any requirement to post a bond or other security.

## 9. General Provisions

- a. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements, representations and understandings of the parties, written or oral.
- b. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
- c. **Amendment.** This Agreement may be amended only by written agreement of the parties.
- d. **Notices.** All notices permitted or required under this Agreement shall be in writing and shall be delivered in person or mailed by first class, registered or certified mail, postage prepaid, to the address of the party specified in this Agreement or such other address as either party may specify in writing. Such notice shall be deemed to have been given upon receipt.

- e. **Assignment.** This Agreement shall not be assigned by either party without the consent of the other party.
- f. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of , without regard to its conflict of laws rules.
- g. **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the date and year first above written.

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

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

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

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

Date:  
\_\_\_\_\_

Date:  
\_\_\_\_\_