

# MUTUAL NON-DISCLOSURE AGREEMENT

---

This Mutual Non-Disclosure Agreement (the "Agreement") is made and effective [DATE],

**BETWEEN:**           **ANACONDA CAPITAL GROUP** (the "Disclosing Party"), a LIMITED LIABILITY LIMITED PARTNERSHIP, organized and existing under the laws of the Delaware, with its head office located at:

455 S. 48<sup>th</sup> Street #101  
Tempe, AZ 85281

**AND:**               **RECEIVING PARTY NAME:**  
(the "Receiving Party"), an individual with his main address located at

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**OR** a corporation organized and existing under the laws of the [State/Province] of: \_\_\_\_\_  
with its head office located at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WHEREAS, in order to pursue the mutual business purpose of a possible transaction between Disclosing Party and Receiving Party and/or their affiliates (the "Transaction"), both Disclosing Party and Receiving Party recognize that there is a need to disclose to one another certain information in respect of itself and/or its affiliates.

WHEREAS, all such information, delivered by or on behalf of one party and/or its affiliates (the "Disclosing Party") to the other party (the "Receiving Party") and/or its Representatives (as defined below), whether furnished before or after the date of this Agreement and regardless of the manner in which it is furnished, together with all analyses, compilations, studies or other documents or records prepared by the Receiving Party and/or its Representatives to the extent such analyses, compilations, studies, documents or records contain, otherwise reflect, or are generated from such information, is referred to herein as "Evaluation Material".

NOW, THEREFORE, in consideration of the opportunity to consider such Evaluation Material, both parties hereby agree as follows:

## **1. CONFIDENTIAL INFORMATION**

Owner proposes to disclose certain of its confidential and proprietary information (the Confidential Information") to Recipient. Confidential Information shall include all data, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, and other information disclosed or submitted, orally, in writing, or by any other media, to Recipient by Owner. Confidential Information disclosed orally shall be identified as such within five (5) days of disclosure. Nothing herein shall require Owner to disclose any of its information.

For purposes of this Agreement, the term "Recipient" shall include Recipient, the company he or she represents, and all affiliates, subsidiaries, and related companies of Recipient. For purposes of this Agreement, the term "Representative" shall include Recipient's directors, officers, employees, agents, and financial, legal, and other advisors.

## **2. NON-DISCLOSURE OF EVALUATION MATERIAL**

The Evaluation Material will be used by the Receiving Party solely for the purpose of evaluating the Transaction. Such Evaluation Material will be kept strictly confidential by the Receiving Party, except that the Evaluation Material or any portion thereof may be disclosed to affiliates, directors, officers, employees, advisors, attorneys, agents, controlling persons, potential bidding partners and financing sources or other representatives (each, a "Representative", and collectively, the "Representatives") of the Receiving Party who need to know such information for the purpose of evaluating the Transaction and who agree to treat the Evaluation Material in accordance with the terms of this Agreement.

The term "Evaluation Material" does not include information which:

- a. Is or becomes generally available to the public other than as a result of the breach of the terms of this Agreement by the Receiving Party and/or any of its Representatives;
- b. Is or has been independently acquired or developed by the Receiving Party and/or any of its Representatives without violating any of the terms of this Agreement;
- c. Was within the Receiving Party and/or any of its Representatives' possession prior to it being furnished to the Receiving Party and/or any of its Representatives by or on behalf of the Disclosing Party pursuant to the terms hereof; or
- d. Is received from a source other than the Disclosing Party and/or any of its Representatives; provided that, in the case of (c) and (d) above, the source of such information was not known by the Receiving Party to be bound by a confidentiality obligation to the Disclosing Party or any other party with respect to such information.

### **3. RECIPIENT'S OBLIGATIONS**

- a. Recipient agrees that the Confidential Information is to be considered confidential and proprietary to Owner and Recipient shall hold the same in confidence, shall not use the Confidential Information other than for the purposes of its business with Owner, and shall disclose it only to its officers, directors, or employees with a specific need to know. Recipient will not disclose, publish or otherwise reveal any of the Confidential Information received from Owner to any other party whatsoever except with the specific prior written authorization of Owner.
- b. Confidential Information furnished in tangible form shall not be duplicated by Recipient except for purposes of this Agreement. Upon the request of Owner, Recipient shall return all Confidential Information received in written or tangible form, including copies, or reproductions or other media containing such Confidential Information, within [NUMBER] days of such request. At Recipient's option, any documents or other media developed by the Recipient containing Confidential Information may be destroyed by Recipient. Recipient shall provide a written certificate to Owner regarding destruction within [NUMBER] days thereafter.

### **4. DISCLOSURE UNDER COURT ORDER OR SUBPOENA**

In the event that the Receiving Party or any of its Representatives receives a request to disclose all or any part of the Evaluation Material under the terms of a subpoena or order issued by a court of competent jurisdiction or under a civil investigative demand or similar process, (i) the Receiving Party agrees to promptly notify the Disclosing Party of the existence, terms and circumstances surrounding such a request and (ii) if the Receiving Party or its applicable Representative is in the opinion of its counsel compelled to disclose all or a portion of the Evaluation Material, the Receiving Party or its applicable Representative may disclose that Evaluation Material that its counsel advises that it is compelled to disclose and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to that Evaluation Material that is being so disclosed.

### **5. CONFIDENTIALITY OF THE TERMS OF THIS AGREEMENT**

Unless otherwise required by law, or unless otherwise provided in a final definitive agreement regarding the Transaction when, as and if executed, both parties and their respective Representatives will not, without the prior written consent of the other party, disclose to any person (other than Representatives of the parties hereto who need to know such information for the purpose of evaluating the Transaction and who agree to treat such information in accordance with the terms of this Agreement) any of the terms or conditions of the Transaction.

### **6. OWNERSHIP OF RIGHTS TO EVALUATION MATERIAL**

Nothing in this Agreement shall divest the Disclosing Party of any of its right, title or interest in and to any Evaluation Material. Within 3 days after being so requested by the Disclosing Party, the Receiving Party and its Representatives shall destroy or return all Evaluation Material

furnished to the Receiving Party and/or any of its Representatives by the Disclosing Party. Except to the extent a party is advised by counsel that such destruction is prohibited by law, the Receiving Party and its Representatives will also destroy all written material, memoranda, notes, copies, excerpts and other writings or recordings whatsoever prepared by the Receiving Party and/or its Representatives based upon, containing or otherwise reflecting any Evaluation Material. At the request of the Disclosing Party made at the time of its request for the destruction of Evaluation Material, any destruction of materials shall be certified to the Disclosing Party in writing by an authorized officer of the Receiving Party supervising such destruction.

## **7. DISCLAIMER**

The Receiving Party acknowledges and agrees that neither the Disclosing Party nor any of its Representatives are making any representation or warranty as to the accuracy or completeness of any of the information furnished hereunder to the Receiving Party or any of its Representatives and each of the Receiving Party and the Disclosing Party further acknowledges and agrees that no party has any obligation to the other party or any of its Representatives to authorize or pursue with the other party the Transaction. Each of the Receiving Party and the Disclosing Party may at any time terminate any discussions or negotiations regarding the Transaction that may be taking place, and only those terms and conditions of the Transaction, if any, which are made in a final definitive agreement, when, as and if executed, will have any legal effect.

## **8. INJUNCTIVE RELIEF**

Both parties agree that money damages may not be a sufficient remedy for any breach of the terms of this Agreement by the Receiving Party or any of its Representatives, and that, in addition to all other remedies at law or in equity to which the Disclosing Party may be entitled, the Disclosing Party may be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach.

## **9. NON-PARTICIPATION IN SECURITIES OF INVOLVED COMPANIES**

Both parties acknowledge that they are aware, and will advise each of their respective Representatives who is informed as to the matters which are the subject of this Agreement, that the United States securities laws prohibit persons who are in possession of material, non-public information concerning a company, which may include the matters which are the subject of this Agreement, from purchasing or selling securities of such company and from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase and sell such securities, and each party agrees to comply fully with such laws.

## **10. PROTECTION WITHIN ATTORNEY-CLIENT PRIVILEGE**

To the extent that any Evaluation Material may include materials subject to the attorney-client privilege, work product doctrine or any other applicable privilege concerning pending or threatened legal proceedings or governmental investigations, each party hereto understands and agrees that both parties hereto and their respective Representatives have a commonality of

interest with respect to such matters and it is the desire, intention and mutual understanding of both parties hereto that the sharing of such Evaluation Material is not intended to, and shall not, waive or diminish in any way the confidentiality of such Evaluation Material or its continued protection under the attorney-client privilege, work product doctrine or other applicable privilege. All Evaluation Material provided by either party hereto that is entitled to protection under the attorney-client privilege, work product doctrine or other applicable privilege shall remain entitled to such protection under those privileges, this Agreement, and under the joint defense doctrine.

#### **11. NO LICENSE GRANTED**

Both parties recognize and agree that, on and after the date hereof, neither party will have the right to use the other party's service marks, trademarks, trade names, licenses, procedures, processes, labels, trade secrets or customer lists without explicit written consent.

#### **12. NON-ASSIGNMENT OF RIGHTS**

Neither party hereto shall assign in whole or in part its rights or obligations under this Agreement without the express written consent of the other party. This Agreement shall be binding upon and shall inure to the benefit of each of the party's successors and permitted assigns.

#### **13. SEVERABILITY**

If it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) that any term or provision hereof is invalid or unenforceable, (i) the remaining terms and provisions hereof shall be unimpaired and shall remain in full force and effect and (ii) the invalid or unenforceable provision or term shall be replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term or provision.

#### **14. PRIOR UNDERSTANDINGS**

This Agreement embodies the entire agreement and understanding of the parties hereto and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein. No alteration, waiver, amendment, change or supplement hereto shall be binding or effective unless the same is set forth in writing signed by a duly authorized representative of each party.

#### **15. COPIES**

For the convenience of the parties, any number of counterparts of this Agreement may be executed by the parties hereto. Each such counterpart shall be, and shall be deemed to be, an original instrument, and all such counterparts taken together shall constitute one and the same agreement.

## **16. TERM**

The term of this Agreement shall be 1 years from the date hereof.

## **17. FINAL AGREEMENT**

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

## **18. SURVIVAL**

This Agreement shall continue in full force and effect at all times.

## **19. SUCCESSORS AND ASSIGNS**

This Agreement and each party's obligations hereunder shall be binding on the representatives, assigns, and successors of such party and shall inure to the benefit of the assigns and successors of such party; provided, however, that the rights and obligations of Recipient hereunder are not assignable.

## **20. SEVERABILITY**

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

## **21. NO IMPLIED WAIVER**

Either party's failure to insist in any one or more instances upon strict performance by the other party of any of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.

## **22. GOVERNING LAW**

The validity and interpretation of this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Arizona, applicable to agreements made and to be fully performed therein (excluding the conflicts of laws rules).

## **23. ATTORNEY'S FEES**

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be awarded its attorneys' fees and costs incurred.

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

**ANACONDA CAPITAL GROUP, LLLP**

**[RECEIVING PARTY NAME]**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
PRINT NAME AND TITLE

\_\_\_\_\_  
PRINT NAME AND TITLE