



13905 Magnolia Ave. Chino, CA 91710 | Phone: (909) 590 0152 | Fax: (909) 590 0162

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## **Non-Disclosure and Confidentiality Agreement**

### **Recitals**

Whereas, each party desires to provide, and each party desires to receive, information related to products, proposed products, manufacturing processes, marketing plans, services, and/or proposed services of the other for the purposes of possibly doing business with each other; and

Whereas, each party may disclose to the other certain information which the disclosing party deems proprietary in order for the receiving party to evaluate such products, processes, plans and/or services; and

Whereas, prior to providing such information, each party requires a Confidentiality Agreement from the other party;

Now, Therefore, in order to induce the undersigned to disclose such proprietary information to each other, and for other consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

### **Confidential Information and Confidential Materials**

“Confidential Information” means nonpublic information that Disclosing Party designates as being confidential or which, under the circumstances surrounding disclosure ought to be treated as confidential. “Confidential Information” includes, without limitation, information relating to released or unreleased Disclosing Party products, the marketing or promotion of any Disclosing Party product, Disclosing Party's business policies or practices, and information received from others that Disclosing Party is obligated to treat as confidential. Confidential Information disclosed to Receiving Party by any Disclosing Party Subsidiary and/or agents is covered by this Agreement.

“Confidential Information” shall mean all tangible materials containing Confidential Information, including without limitation written or printed documents and computer disks or tapes, whether machine or user readable, and know-how acquired as a result of contractual relationships.

“Confidential Information” includes commercial secrets, personal secrets, artistic secrets and state secrets. The terms confidential information and trade secrets are often used interchangeably but strictly speaking, trade secrets are a subset of confidential information in the context of business, commerce or trade. Examples of trade secrets can include manufacturing processes, recipes, engineering and technical designs and drawings, product specifications, customer lists, business strategies and sales and marketing information.

“Confidential Information” includes technical information; methods; processes; formulae; compositions; inventions; machines; computer programs; research projects and business information as well such as customer lists; pricing data; sources of supply; and marketing, production, or merchandising systems or plans.

### **Exclusions from Confidential Information**

“Confidential Information” shall not include any information that:

- (a) is or subsequently becomes publicly available without Receiving Party’s breach of any obligation owed Disclosing Party,
- (b) became known to Receiving Party prior to disclosing Party’s disclosure of such information to Receiving Party,
- (c) became known to Receiving Party from a source other than Disclosing Party other than by the breach of an obligation of confidentiality owed to Disclosing Party, or
- (d) is independently developed by Receiving Party.

### **Disclosure**

Disclosing Party agrees to disclose, and Receiving Party agrees to receive the Confidential Information.

### **Non-Disclosure and Nonuse**

Receiving Party shall not disclose, make use of or disseminate any Confidential Information to third parties for two (2) years following the date of its disclosure by Disclosing Party to Receiving Party, except to Receiving Party’s consultants as provided below. However, Receiving Party may disclose Confidential Information in accordance with judicial or other governmental order, provided Receiving Party shall give Disclosing Party reasonable notice prior to such disclosure and shall comply with any applicable protective order or equivalent.

Receiving Party shall take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, to keep confidential the Confidential Information. Receiving Party may disclose Confidential Information or Confidential Material only to Receiving Party's employees or consultants on a need-to-know basis during execution of the project(s). Receiving Party will have executed or shall execute appropriate written agreements with its employees and consultants sufficient to enable it to comply with all the provisions of this Agreement.

Confidential Information and Confidential Materials may be disclosed, reproduced, summarized or distributed only in pursuance of Receiving Party's business relationship with Disclosing Party, and only as otherwise provided hereunder. Receiving Party agrees to segregate all such Confidential Materials from the confidential materials of others in order to prevent commingling.

### **Exclusions from Non-Disclosure and Nonuse obligations**

Each party's obligations under Clause 4 ("Nondisclosure and Nonuse") with respect to any portion of the other party's Confidential Information shall terminate when the party seeking to avoid its obligation under such Paragraph can document that a disclosure of Confidential Information:

- (a) occurred in response to a valid order by a court or other governmental body,
- (b) was/is otherwise required by law, or
- (c) was/is necessary to establish the rights of either party under this Agreement

Such a disclosure as described in this clause 5 shall not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that Receiving Party shall provide prompt written notice thereof to enable Disclosing Party to seek a protective order or otherwise prevent such disclosure.

### **Ownership of Confidential Information**

All Confidential Information and Confidential Materials are and shall remain the property of Disclosing Party. By disclosing information to Receiving Party, Disclosing Party does not grant any express or implied right to Receiving Party to or under Disclosing Party patents, copyrights, trademarks, or trade secret information.

### **No Warranty**

If either party provides pre-release software as Confidential Information or Confidential Materials under this Agreement, such pre-release software is provided "as is" without warranty of any kind.

Receiving Party agrees that neither Disclosing Party nor its suppliers shall be liable for any damages whatsoever relating to Receiving Party's use of such pre-release software.

### **Miscellaneous**

The terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop or acquire products without use of the other party's Confidential Information. Further, either party shall be free to use for any purpose the residuals resulting from access to or work with such Confidential Information, provided that such party shall maintain the confidentiality of the Confidential Information as provided herein. The term "residuals" means information in non-tangible form, which may be retained by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. Neither party shall have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, the foregoing shall not be deemed to grant to either party a license under the other party's copyrights or patents. Receiving party cannot benefit from use of Confidential Information directly or indirectly in any form, without explicit written permission of Disclosing Party.

### **Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed by both parties. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of Disclosing Party, its agents, or employees, but only by an instrument in writing signed by an authorized officer of Disclosing Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

### **Attorney Fees**

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.

### **Choice of Law**

This Agreement shall be construed and controlled by the laws of State of California (USA). Process may be served on either party by mail, postage prepaid, certified or registered, return receipt requested, or by such other traceable method as authorized by law.

Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of and be binding upon the parties, their successors and assigns.

### **Liability**

No liability is assumed by either party for any claim, including patent or copyright infringement, based upon or arising out of the other party's use of the Confidential Information. No warranties, express or implied, including warranties of merchantability and fitness for purpose, are provided by either party in disclosing any Confidential Information under this agreement, and all such warranties are expressly disclaimed by both parties. It is understood that neither party makes any representation as to the current condition or completeness of the Confidential Information or as to the future availability of any product which incorporates the Confidential Information; that the Confidential Information is furnished by the parties on an as-is basis; and that each party disclaims any responsibility for supplying support, updates, changes or corrections relative to the Confidential Information.

### **Severability and Survival of Rights & Obligations**

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.

All obligations created by this Agreement shall survive change or termination of the parties' business relationship.

### **Rights and Remedies**

Receiving Party shall notify Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information and/or Confidential Materials, or any other breach of this Agreement by Receiving Party, and will cooperate with Disclosing Party in every reasonable way to help Disclosing Party regain possession of the Confidential Information and/or Confidential Materials and prevent its further unauthorized use.

Disclosing Party may visit Receiving Party's premises, with reasonable prior notice and during normal business hours, to review Receiving Party's compliance with the terms of this Agreement.

This agreement shall be binding for signing parties and successors in interest, and shall inure to the benefit of the Disclosing Party, its successors and assigns.

The unenforceability of any provision to this agreement shall not impair or affect any other provision.

In the event of any breach of this agreement, the Disclosing Party shall have full rights to injunctive relief, in addition to any other existing rights, without requirement of posting bond.

In Witness Whereof, the parties hereto have executed this Agreement.

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

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

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

Matt Naramor

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

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

Company: \_\_\_\_\_

Epsilon Industries, Inc.

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