

## MUTUAL NON-DISCLOSURE AGREEMENT

This **Mutual Non-Disclosure Agreement** (“*NDA*”), effective on the date last signed below, is made by and between TEAM INDUSTRIES INC., a Minnesota Corporation with its principal corporate offices at 105 Park Avenue NW, Bagley, MN 56621-9558 and its affiliates (“*TEAM*”) and \_\_\_\_\_ and its affiliates (“*Company*”), with its main corporate offices at \_\_\_\_\_.

TEAM and Company are each referred to herein as a “**Party**” or collectively as the “**Parties**”.

### **1. Purpose**

TEAM and Company hereby acknowledge that each Party may provide Confidential Information, as defined in Section 2 below, to the other for the sole purpose of the Parties [evaluating a transaction/contract manufacturing/development of a TEAM-engineered product] related to \_\_\_\_\_. The Parties acknowledge that TEAM and Company are relying on this NDA before granting access to Confidential Information.

### **2. Confidential Information Defined**

As used in this NDA and, subject to the exceptions set forth in Section 3 below, the term “**Confidential Information**” means and includes all information disclosed by one Party (“*Disclosing Party*”) to the other Party or Parties (“*Receiving Party*”) that (a) at the time of initial disclosure to the Receiving Party, is marked, labeled or specifically designated in writing as “Confidential Information” or (b) qualifies as Confidential Information because it is information in any form whatsoever, including without limitation, written, electronic, oral, or visual, relating to any of the following information of the Disclosing Party or its affiliate or subsidiary: (i) financial information, including without limitation, any financial statements or data, business or marketing plans, strategies or programs, financial budgets, projections or results, or information related to accounting systems; (ii) product specifications, designs, models, or builds, blueprints, drawings, manufacturing processes, methods or know-how, production machinery or devices, production schedules, quality assurance methods, new product development technology, prices, tariffs, or trade secrets or secret procedures, technical, engineering, research, development, methodology, or processes; (iii) any sales, marketing, customer, vendor, or employee information, including without limitation, sales or pricing projections or data, business procedures or plans, the identity, lists or contact information of or contracts, records or agreements related to any customers, suppliers, vendors, contractors, employees, or prospects, methods of marketing or promotion, advertising, marketing plans and proposals, operations, work product, and improvements in any of the foregoing; (iv) computer software, including without limitation, source and object codes, flowcharts, algorithms, record layouts, routines, report formats, data compilers, assemblers, design concepts, software development tools and documentation, and related documentation, manuals, and other materials; (v) discoveries, inventions, trade secrets, copyrights, concepts and ideas, formulas, or compounds, whether patentable or not, and including without limitation unpublished patent applications, the nature and result of research, development, manufacturing, marketing, planning, and other business activities; (vi) business methods or operating and production procedures; (vii) all notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, interpretations, or other materials prepared by the Disclosing Party that contain, reflect, or are

derived from, in whole or in part, any of the foregoing; (viii) any information that a Receiving Party derives from the Disclosing Party's Confidential Information; (ix) the fact that the Parties are discussing and potentially entering into the transaction described in Section 1; or (x) the existence and terms of this NDA.

With respect to Confidential Information qualifying as such under Section 2(b), failure to mark, label or specifically designate any such information as "Confidential Information" at the time of initial disclosure to the Receiving Party shall not affect its status as Confidential Information.

### **3. Exceptions to Confidential Information**

The definition of Confidential Information set forth in Section 2 above does not include any information, which (i) was publicly available at the time of disclosure; (ii) became publicly available through no act or failure to act on the part of the Receiving Party; (iii) was already in the Receiving Party's rightful possession or was available to the Receiving Party on a non-confidential basis prior to disclosure, as evidenced by the Receiving Party's written record; or (iv) was disclosed to the Receiving Party by a third party having no duty of confidentiality to the Disclosing Party or any other third party.

### **4. Ownership of Data and Information**

Unless otherwise agreed to in writing, the Receiving Party agrees that the Disclosing Party shall retain all ownership rights, title and interest in any specifications, blueprints, designs, documentary technical know-how, instructions, customer data, and all market data and analysis and other Confidential Information provided by the Disclosing Party to the Receiving Party.

### **5. Receiving Party Obligations**

The Receiving Party hereby agrees that at all times, it shall (i) maintain the confidential nature of any and all Confidential Information disclosed to it pursuant this NDA including the existence of this NDA; (ii) use such Confidential Information solely to accomplish the purpose set forth in Section 1 hereto; (iii) use reasonable efforts and diligence to safeguard such Confidential Information and to protect it against disclosure, misuse, espionage, loss, and theft; (iv) use at least the same degree of care, but no less than a reasonable degree of care, to safeguard and protect from disclosure such Confidential Information as it uses with its own Confidential Information that it does not wish to disclose; (v) not disclose to others, or permit any person or entity under its control to use or disclose to others, such Confidential Information, except as expressly permitted by this NDA, or as may otherwise be expressly authorized by the Disclosing Party in writing; (vi) provide immediate written notice to the Disclosing Party in the event it discovers a loss or unauthorized disclosure of such Confidential Information; (v) not copy or otherwise reproduce, or permit the foregoing, in whole or in part, of any of the Disclosing Party's Confidential Information; (vi) not attempt to or allow another to reverse-engineer any portion of the Disclosing Party's Confidential Information; and (vii) not use the Confidential Information or information obtained therefrom in any manner to the Disclosing Party's detriment.

## **6. Permitted Disclosure**

The Receiving Party may disclose the Confidential Information (i) to only those of its employees, agents or representatives who require access to such Confidential Information to accomplish the purpose contemplated herein, but only if such employees, agents or representatives agree to treat the Confidential Information in accordance with this NDA; and (ii) if disclosure is required by the Receiving Party pursuant to a law, judicial order or governmental directive, in which event the Receiving Party shall provide the Disclosing Party with prompt written notice of any such required disclosure prior to disclosing the Confidential Information, and the Receiving Party shall take reasonable steps to maintain the confidentiality of the Confidential Information.

## **7. Return of Confidential Information**

The Receiving Party agrees that at the completion of the purpose contemplated herein, or within five (5) days of a request by the Disclosing Party, the Receiving Party shall (i) at the Disclosing Party's direction, promptly return to the Disclosing Party, or destroy as specified by the Disclosing Party, all documents, disks or other material embodying the Confidential Information then in its possession or under its control; (ii) certify its return or destruction of the Confidential Information in writing, as the case may be, upon demand by the Disclosing Party; and (iii) not retain any copies or records of the Confidential Information except for a file to be retained by the Receiving Party's legal counsel. The return or authorized destruction of the Confidential Information pursuant to this Section 7, or as a result of any termination of this NDA, shall have no effect on the obligations imposed on the Parties with respect to the protection and non-disclosure of the Confidential Information for the full period of time required under Section 8 hereof.

## **8. Survival**

All of the provisions set forth in this NDA are continuing terms and shall survive the return or authorized destruction of the Confidential Information pursuant to Section 7 hereof, any other termination of this NDA, and the termination date of any subsequent agreement relating to the Confidential Information that the Parties may choose to enter into. The obligation to treat Confidential Information in accordance with this NDA is indefinite and will not expire at the termination of the business relationship of the Parties or the accomplishment of the purpose defined in Section 1.

## **9. Rights and Relationships**

The Parties agree that nothing in this NDA shall be construed as (i) creating a right or obligation for or on either Party to purchase or sell specific goods or services or the transfer or license of technology to or from the other Party; (ii) creating any form of joint venture, partnership, agency, licensor-licensee relationship, or any other type of business association between the Parties; or (iii) granting or conferring any rights or license of any kind whatsoever in or to the Confidential Information disclosed under this NDA.

## **10. No Conflict**

Each Party represents and warrants that it is under no obligation or restriction, nor will it assume any such obligation or restriction that does or would in any way interfere or conflict with, or that does or would present a conflict of interest concerning the confidentiality obligations imposed under this NDA with respect to the Confidential Information of the Disclosing Party. It is understood that TEAM may enter into similar relationships with other companies as those under discussion with Company and that this NDA does not in any way preclude TEAM from entering into such relationships.

## **11. Irreparable Injury**

The Parties acknowledge and agree that if the Receiving Party breaches this NDA, then the Disclosing Party will suffer irreparable injury. The Parties agree that such irreparable injury suffered by the Disclosing Party as a result of the Receiving Party's breach cannot be compensated by money alone, and agree that a court order enjoining the Receiving Party from continuing to breach this Agreement is proper and warranted.

## **12. No Assignment**

Neither Party may, without the prior written consent of the other Party, assign or transfer this NDA or any obligation incurred hereunder, except by merger, reorganization, consolidation, or sale of all or substantially all of such Party's assets. Any attempt to do so in contravention of this Section 13 shall be void and of no force and effect.

## **13. Authority to Sign**

Each Party represents, warrants and covenants that it has full and complete authority and authorization to execute and effect this NDA and to take or cause to be taken all acts contemplated by this NDA and that the person signing this NDA on behalf of such Party has the full power and authority to bind such Party to the terms of this NDA.

## **14. Construction**

This NDA has been carefully read, the contents hereof are known and understood and it is freely signed by the Parties hereto. This NDA shall not be construed against the Party responsible for drafting any section alleged to be ambiguous or uncertain.

## **15. Entire Agreement**

This NDA constitutes the entire agreement between the Parties with respect to its subject matter. It supersedes any prior agreement or understanding between the Parties with respect to the subject matter. This NDA and the confidentiality obligations imposed hereunder may not be modified or amended except by a writing executed by the duly authorized representatives of the Parties.

## **16. Governing Law**

This NDA and the rights of the Parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Minnesota, without giving effect to the principles of conflicts of laws. The Parties submit and consent to the exclusive jurisdiction of the federal or state courts of Minnesota for any claim or action arising from or relating to this NDA.

**ACCEPTED AND AGREED TO:**

**TEAM Industries Inc.**

**Company**

By: \_\_\_\_\_ (print) By: \_\_\_\_\_ (print)

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

Title: \_\_\_\_\_ Title: \_\_\_\_\_

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