



## **NON-DISCLOSURE AGREEMENT**

THIS AGREEMENT is hereby entered into by and between The Power Poole (collectively the "Disclosing Party"), and \_\_\_\_\_ ("Receiving Party").

### **RECITALS**

A. Disclosing Party has developed or acquired confidential information related to its business operations, including certain concepts, data and practices (collectively, "Confidential Information") (the term "Confidential Information" is more fully defined in Section 1 below).

B. Receiving Party desires to receive the Confidential Information in order to provide business advice to Disclosing Party and/or to determine whether Receiving Party should pursue and enter into potential business transactions with Disclosing Party (the "Purpose").

C. Disclosing Party is willing to provide the Receiving Party with certain Confidential Information, which Disclosing Party considers useful for the Purpose, upon the terms and conditions set forth in this Agreement.

D. Disclosing Party has spent substantial resources developing or acquiring such Confidential Information, and such Confidential Information has tremendous economic value to Disclosing Party.

E. Disclosing Party would suffer great loss and irreparable damage if Receiving Party should disclose any such Confidential Information to a Third Party (as defined herein), use such Confidential Information other than solely in direct furtherance of the Purpose, or otherwise breach any term or condition in this Agreement.

### **AGREEMENTS**

NOW, THEREFORE, in consideration of the foregoing recitals, the terms and conditions set forth in this Agreement, and other due and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. **Definitions.** In this Agreement, unless the context requires otherwise, the following terms will have the meanings set forth below:

(a) "Confidential Information" includes, without limitation, any and all business, technical, and other information, in whatever format or media, whether or not copyrightable or patentable, and whether disclosed orally or in writing or by any other media, which is of a confidential, trade secret, or proprietary character, including, without limitation, any of Disclosing Party's data and/or information concerning, comprising, or relating to: research and development; products and services; distribution, marketing, and sales operations, plans, and strategies; clients, customers, suppliers, and vendors; protection and exploitation of intellectual property and technologies; computer software (including object and source code); blueprints, data (including raw data), designs, descriptions, lists, models, prototypes, and programs; and compilations, developments, formulas, algorithms, pricing, schematics, financial records, concepts, know-how, ideas, innovations, inventions, methods, patterns, processes, programs, and techniques; provided, however, that the term "Confidential Information" does not include Excluded Information (as this term is defined below in Section 1(b)).

(b) The term "Excluded Information" will mean information: (i) that is in the public domain prior to disclosure by Disclosing Party, (ii) that enters the public domain through no act or omission of Receiving Party, (iii) that has been developed independently by Receiving Party, (iv) that has been rightfully in Receiving Party's possession prior to disclosure by Disclosing Party, (v) that has been disclosed, without restriction, to Receiving Party by a Third Party who had the right to make the



disclosure, or (vi) that is required to be disclosed by Receiving Party in order to comply with a Federal, state, local, or foreign law, but only to the extent reasonably necessary to so comply and only upon, to the extent permitted, providing Disclosing Party with prior notice and an opportunity to restrict or prevent the disclosure.

(c) The term "Third Party" will mean any individual, business, or entity other than Disclosing Party or Receiving Party.

2. Authorization Term. Disclosing Party authorizes Receiving Party, at its sole expense, to review and use, until Disclosing Party notifies Receiving Party to the contrary, Confidential Information disclosed or otherwise made available, directly or indirectly, by Disclosing Party solely in direct furtherance of the Purpose. Receiving Party acknowledges and agrees that it has received Confidential Information from Disclosing Party prior to the date hereof, and that this Agreement applies to such Confidential Information as well as to Confidential Information disclosed on or after the date hereof.

3. Non-Disclosure. At all times after receiving the Confidential Information, Receiving Party will use its best efforts and diligence to keep and maintain in strictest confidence all Confidential Information disclosed or otherwise made available, directly or indirectly, by Disclosing Party. Similarly, Receiving Party will not disclose or otherwise make available, directly or indirectly, for any reason whatsoever, to any Third Party, any such Confidential Information, and will not use, or attempt to use, directly or indirectly, for its benefit, for the benefit of a Third Party, or to the detriment of Disclosing Party, any such Confidential Information. Receiving Party will not copy or duplicate any such Confidential Information.

4. Ownership, Return. Receiving Party acknowledges and agrees that any and all Confidential Information, and all physical embodiments thereof, are confidential to and will be and will remain the sole and exclusive property of Disclosing Party. Nothing in this Agreement will be construed as granting or conferring upon Receiving Party any right of ownership, license, or otherwise in any Confidential Information of Disclosing Party. At any time upon request of Disclosing Party, Receiving Party promptly will deliver to Disclosing Party, or will destroy, at Disclosing Party's sole discretion, all Confidential Information of Disclosing Party, including all documents containing Confidential Information, then in Receiving Party's custody, control, or possession. Receiving Party will provide to Disclosing Party written certification of the return or destruction of all such Confidential Information.

5. Notice of Unauthorized Use. Receiving Party promptly will inform Disclosing Party, and will provide all reasonable assistance, if Receiving Party becomes aware of the use or possession of Confidential Information of Disclosing Party by any Third Party not authorized to use or possess such Confidential Information.

6. No Obligation; Termination. Nothing in this Agreement will obligate the Disclosing Party or Receiving Party to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement at any time upon written notice to the other party. The obligations of Receiving Party in Sections 3, 4, 5, 6, 7 and 10 will survive for a period of five (5) years following the later of (i) the termination of such discussions or (ii) the termination of this Agreement, provided, however, that, with respect to any trade secrets of Disclosing Party, such obligations shall remain in full force and effect in perpetuity. Receiving Party acknowledges and agrees that great loss and irreparable damage would be suffered by Disclosing Party if Receiving Party should breach any term or condition herein. Each party further acknowledges and agrees that each such term or condition is reasonably necessary to protect and preserve the interest of Disclosing Party in the Confidential Information.

7. Injunctive Relief. In addition to all other remedies provided at law or in equity, Disclosing Party will be entitled to a temporary restraining order, a permanent injunction, or other equitable relief to prevent a breach or contemplated breach hereof.



8. Entire Agreement; Headings. This Agreement supersedes all prior understandings and communications between the parties on the subject matter of this Agreement and may not be changed or modified in any manner except by instruments signed by duly-authorized officers or representatives of each party. This Agreement will bind and inure to the benefit of the parties hereto and their successors and assigns. The headings preceding the sections are provided for convenience and will not be taken into account in the interpretation hereof.

9. Governing Law, Venue. This Agreement has been entered into according to the laws of the State of Alabama and will be governed by and interpreted under the laws of that jurisdiction without giving effect to its conflict of laws principles. Further, the parties agree that any dispute relating to this Agreement will be resolved by a court of competent jurisdiction in the State of Alabama if the parties are unable within a reasonable time to first resolve it by mutual agreement.

10. Severability. The provisions of this Agreement, to the fullest extent permissible under the law and public policy, will be enforced by the courts of each state and jurisdiction in which enforcement is sought, and the unenforceability (or the modification necessary to conform the covenants contained herein with such law and public policy) of any part of this Agreement will not be deemed to render unenforceable any other clause or provision of this Agreement. Accordingly, if any clause or provision of this Agreement is declared to be invalid or unenforceable, whether in its entirety or as modified as to duration, territory, or otherwise, then such part will be deemed deleted or amended, as the case may be such that the unenforceability of any particular provision of this Agreement will not affect the validity or enforceability of any other provision.

11. Nonwaiver. Any one or more failures to enforce any provision of this Agreement will not constitute a waiver of that provision or of any other provision. This Agreement may not be amended, nor any obligation waived, except by a written document signed by both parties.

12. Counterparts. This Agreement may be executed in one or more counterparts, and by different parties hereto on separate counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, sealed, and delivered as of this 8<sup>th</sup> date of February 2008

**By typing your name below, you agree that this is valid as your signature and you have read and agree to terms of this agreement. Electronically affixing a signature to this agreement carries the same level of authenticity and responsibility as an original ink signature on a paper copy.**

DISCLOSING PARTY  
The Power Poole

RECEIVING PARTY

By: \_\_\_\_\_  
Name: Ryan E. Poole  
Title: President & CEO  
Authorized Signatory

By: \_\_\_\_\_  
Name:  
Title:  
Authorized Signatory