

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (the "Agreement")  
dated this \_\_\_\_\_ day of \_\_\_\_\_,

BETWEEN:

Nuform Industrial Design Inc. of 289.5 Front St. Belleville, Ontario, Canada  
(the "Provider")

OF THE FIRST PART

**-AND -**

\_\_\_\_\_ of \_\_\_\_\_  
(the "Recipient")

OF THE SECOND PART

**BACKGROUND:**

1. The Provider and the Recipient desire to enter into a confidentiality agreement with regards to: The recipient may use the Confidential information for the purpose of completing a project or venture between The Provider and the Recipient. (the "Permitted Purpose").
2. In connection with the Permitted Purpose, the Recipient will receive certain confidential information(the 'Confidential Information').

**IN CONSIDERATION OF** and as a condition of the Provider providing Confidential Information to the Recipient in addition to the other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, the parties to this Agreement agree as follows:

**Confidential Information**

1. All written and oral information and materials disclosed by the Provider to the Recipient under this Agreement is Confidential Information regardless of whether it was provided before or after the date of this Agreement or how it was provided to the Recipient.
2. 'Confidential Information' means all data and information relating to the business and management of the Provider, including proprietary and trade secret technology and accounting records to which access is obtained by the Recipient, including Work Product, Production Process, Other Proprietary Data, Business Operations, Marketing and Development Operations, and Customers.

- a. Confidential Information will also include any information that has been disclosed by a third party to the Provider and governed by a non-disclosure agreement entered into between the third party and the Provider. Confidential Information will not include information that:
  - i. is generally known in the industry of the Provider;
  - ii. is now or subsequently becomes generally available to the public through no wrongful act of the Recipient;
  - iii. the Recipient rightfully had in its possession prior to receiving the Confidential Information from the Provider;
  - iv. is independently created by the Recipient with direct or indirect use of the Confidential Information;
  - v. the Recipient rightfully obtains from a third party who has the right to transfer or disclose it.
- b. 'Work Product' means work product resulting from or related to work or projects performed or to be performed for the Provider or for clients of the Provider, of any type or form in any stage of actual or anticipated research and development;
- c. 'Production Processes' means processes used in the creation, production and manufacturing of the Work Product, including but not limited to formulas, patterns, molds, models, method, techniques, specifications, processes, procedures, equipment, devices, programs, and designs;
- d. 'Other Proprietary Data' means information relating to the Provider's proprietary rights prior to any public disclosure of such information, including but not limited to the nature of the proprietary rights, production data, technical and engineering data, technical concepts, test data and test results, simulation results, the status and details of research and development of products and services, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights and trade secrets);
- e. 'Business Operations' means internal personnel and financial information, vendor names and other vendor information (including vendor characteristics, services and agreements), purchasing and internal cost information, internal services and operation manuals, and the manner and methods of conducting the Provider's business;
- f. 'Marketing and Development Operations' means marketing and development plans, price and cost data, price and fee amounts, pricing and billing policies, quoting procedures, marketing techniques and methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of the Provider which have been or are being discussed; and

- g. 'Customers' means names of customers and their representatives, contracts and their contents and parties, customer services, data provided by customers and the type, quantity and specifications of products and services purchased, leased, licensed or received by clients of the Provider.

### **Confidential Obligations**

3. Except as otherwise provided in this Agreement, the Recipient must keep the Confidential Information confidential.
4. Except as otherwise provided in this Agreement, the Confidential Information will remain the exclusive property of the Provider and will only be used by the Recipient for the Permitted Purpose. The Recipient will not use the Confidential Information for any purpose that might be directly or indirectly detrimental to the Provider or any of its affiliates or subsidiaries.
5. The obligation to ensure and protect the confidentiality of the Confidential Information imposed on the Recipient in the Agreement and any obligation to provide notice under this Agreement will survive the expiration or termination, as the case may be, of this Agreement and will continue for a period of four (4) years from the date of such expiration or termination.
6. The Recipient may disclose any of the Confidential Information:
  - a. to such of its employees, agents, representatives and advisor that have a need to know for the Permitted Purpose provided that:
    - i. the Recipient has informed such personnel of the confidential nature of the Confidential Information;
    - ii. such personnel agree to be legally bound to the same burdens of confidentiality and non-use as the Recipient;
    - iii. the Recipient agrees to take all necessary steps to ensure that the terms of this Agreement are not violated by such personnel; and
    - iv. the Recipient agrees to be responsible for and indemnify the Provider for any breach of this Agreement by its personnel.
  - b. to a third party where the Provider has consented in writing to such disclosure; and
  - c. to the extent required by law or by the request or requirement of any judicial, legislative, administrative or other government body.
7. The Recipient agrees to retain all Confidential Information at its usual place of business and to store all Confidential Information separate from other information and documents held in the same location. Further, the Confidential Information is not to be used reproduced, transformed, or stored on a computer or device that is accessible to persons to whom disclosure may not be made, as set out in this Agreement.

### **Non-Solicitation**

8. The Recipient, its affiliates, subsidiaries and representatives will not, for a period of two (2) years, directly or indirectly solicit for employment or employ any person who is now employed

or retained by the Provider or any affiliate of the Provider without the prior written consent of the Provider.

### **Non-Competition**

9. Other than with the express written consent of the Provider, which consent may not be unreasonably withheld, the Recipient will not, for a period of four (4) years, be directly or indirectly involved with a business which is in direct competition with the business lines of the Provider that are the subject of this Agreement.
10. For a period of four (4) years, the Recipient will not divert or attempt to divert the Provider any business the Provider had enjoyed, solicited, or attempted to solicit, from its customer, at the time the parties entered into this Agreement.

### **Ownership and Title**

11. Nothing contained in this Agreement will grant to or create in the Recipient, either expressly or impliedly, any right, title, interest or license in or to the intellectual property of the Provider.

### **Remedies**

12. The Recipient agrees and acknowledges that the Confidential Information is of a proprietary and confidential nature and that any failure to maintain the confidentiality of the Confidential Information in breach of this Agreement cannot be reasonable or adequately compensated for in money damages and would cause irreparable injury to the Provider. Accordingly, the Recipient agrees that the Provider is entitled to, in addition to all other rights and remedies available to it at law or in equity, and injunction restraining the Recipient, any of its personnel, and any agents of the Recipient, from directly or indirectly committing or engaging in any act restricted by this Agreement in relation to the Confidential Information.

### **Return of Confidential Information**

13. The Recipient will keep track of all Confidential Information provided to it and the location of such information. The provider may at any time request the return of all Confidential Information from the Recipient. Upon the request of the Provider, or in the event that the Recipient ceases to require use of the Confidential Information, or upon the expiration or termination of this Agreement, the Recipient will:
  - a. return all Confidential Information to the Provider and will not retain any copies of this information;
  - b. destroy or have destroyed all memoranda, notes, reports and other works based on or derived from the Recipient's review of the confidential information; and
  - c. provide a certificate to the Provider that such materials have been destroyed or returned, as the case may be.

### **Notices**

14. In the event that Recipient is required in a civil, criminal or regulatory proceeding to disclose any part of the Confidential Information, the Recipient will give to the Provider prompt written notice of such request so the Provider may seek and appropriate remedy or alternatively to waive the Recipient's compliance with the provision of this Agreement in regards to the request.

15. If the Recipient loses or fails to maintain the confidentiality of any of the Confidential information in breach of this Agreement, the Recipient will immediately notify the Provider and take all reasonable steps necessary to retrieve the lost or improperly disclosed Confidential Information.

16. Any notices or delivery required in this Agreement will be deemed completed when hand-delivered, delivered by agent, or seven (7) days after being placed the post, postage prepaid, to the parties at the addresses contained in this Agreement or as the parties may later designate in writing.

17. The address for any notice to be delivered to any of the parties to this Agreement is as follows:

a. Nuform Industrial Design Inc.:  
289.5 Front St. Belleville, Ontario, Canada

### **Representatives**

18. In providing the Confidential Information, the Provider makes no representation, either expressly or impliedly as to its adequacy, sufficiency, completeness, correctness or its lack of defect of any kind, including any patent or trade-mark infringement that may result from the use of such information.

### **Termination**

19. Either party may terminate this Agreement by providing written notice to the other party. Except as otherwise provided in this Agreement, all rights and obligations under this Agreement will terminate at that time.

### **Assignment**

20. Except where a party has changes its corporate name or merged with another corporation, this Agreement may not be assigned or otherwise transferred by either party in whole or part without the prior written consent of the other party to this Agreement.

### **Amendments**

21. This Agreement may only be amended or modified by a written instrument executed by both the Provider and the Recipient.

### **Governing Law**

22. This Agreement will be construed in accordance with and governed by the laws of the Province of Ontario.

### **General Provisions**

23. Time is of the essence in this Agreement.

24. This Agreement may be executed in counterparts.

25. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

26. The clauses, paragraphs, and subparagraphs contained in this Agreement are intended to be read and construed independently of each other. If any part of this Agreement is held to be invalid, this invalidity will not affect the operation of any other par of this Agreement.

27. The Recipient is liable for all costs, expenses and expenditures including, and without limitation, the complete legal costs incurred by the Provider in enforcing this Agreement as a result of any default of this Agreement by the Recipient.

28. Th Provider and the Recipient acknowledge that this Agreement is reasonable, valid and enforceable. However, if a court of competent jurisdiction finds any of the provisions of this Agreement to be too broad to be enforceable, it is the intention of the Provider and the Recipient that such provision be reduced in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable, bearing in mind that it is the intention of the Recipient to give the Provider the broadest possible protection to maintain the confidentiality of the Confidential Information.

29. No failure or delay by the Provider in exercising any power, right or privilege provided in this Agreement will operate as a waiver, nor will any single or partial exercise of such rights, powers or privileges preclude any further exercise of them or the exercise of any other right, power or privilege provided in this Agreement.

30. This Agreement will inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns, as the case may be, of the Provider and the Recipient.

31. This Agreement constitutes the entire agreement between the parties and there are no further items or provisions, either oral or otherwise.

**IN WITNESS WHEREOF** Nuform Industrial Design Inc. and \_\_\_\_\_ have duly affixed their signature under hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Nuform Industrial Design Inc. (Provider)

Per: Name: \_\_\_\_\_ (Signature): \_\_\_\_\_

Company: \_\_\_\_\_ (Recipient)

Per: Name: \_\_\_\_\_ (Signature): \_\_\_\_\_