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# CONFIDENTIALITY-DISCLOSURE AGREEMENT

This **CONFIDENTIALITY-DISCLOSURE AGREEMENT** is made **by** and **between**

\_\_\_\_\_ (1<sup>st</sup> Party, name of the company)

**And**

KSR International Co.

\_\_\_\_\_ (2<sup>nd</sup> Party)

(each of whom shall be hereinafter related to as “Disclosing Party” or “Receiving Party”. As appropriate) as of

Date:

(MM-DD-YYYY) \_\_\_\_\_

## INFORMATION CONFIDENTIALITY AGREEMENT (INCLUDING NONDISCLOSURE)

This Information Confidentiality Agreement (“Agreement”) is executed as of \_\_\_\_\_, 20\_\_\_\_ by the undersigned (“Recipient”) in favor of KSR International Co. and its parent, subsidiaries and affiliated entities (“Protected Parties”).

### Recitals

A. Recipient has requested that one or more of the Protected Parties provide “Confidential Information” to Recipient as a condition for the development and/or the continuing of a business relationship between or among one or more of the Protected Parties and Recipient (which terms include the party executing this Agreement and its parent, subsidiaries and affiliated entities).

B. Recipient wishes to protect the Confidential Information from unauthorized use and/or disclosure.

NOW, THEREFORE, as consideration of the disclosure of Confidential Information to Recipient and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and the Protected Parties’ reliance on this Agreement, Recipient and the Protected Parties agree as follows:

### 1. CONFIDENTIAL INFORMATION.

“**Confidential Information**” means:

(a) any Company intellectual property and other proprietary information, or trade secrets (whether or not specifically labeled or identified as confidential), whether provided orally, in writing, or by any other media, that was or will be disclosed to, developed, or learned by the Receiving Party, and that relates to the business, products, services, research, or development of or by the Company or its suppliers, distributors, investors, partners, and other business associates, and that has not become publicly known. Confidential Information includes:

- (i) all financial statements, financial information, business plans, and other confidential information of a Protected Party, regardless of the form of disclosure or the source of disclosure, whether or not disclosed in a writing marked “Confidential” or in some similar manner or identified as confidential.
- (ii) internal business information (including information relating to strategy, staffing, business, financial data, training, marketing, promotional and sales plans and practices, costs, bidding activities and strategies, rate and pricing structures, and accounting and business methods);

- (iii) identities of, negotiations with, individual requirements of, specific contractual arrangements with, and information about the Company's suppliers, distributors, customers, investors, partners, and other business associates, their contact information, and their confidential information;
  - (iv) manufacturing parameters, material specifications, design specifications, design processes, technical drawings, prototypes, testing procedures and technical data, specific program information, trade or industrial practices, engineering practices and methods, techniques, computer programs, formulae, systems, research, records, reports, manuals, documentation, customer and supply lists, data and databases relating to those, and technology and methodology regarding specific projects; and
- (b) all notes, analyses, compilations, studies, summaries, and other material, whether provided orally, in writing, or by any other media, that contain or are based on all or part of the information described in subsection (a) (the "**Derivative Materials**").

## 2. OBLIGATION TO MAINTAIN CONFIDENTIALITY.

Except as specifically allowed in this Agreement, Recipient shall not directly or indirectly disclose, reproduce, divulge, disseminate, publish, reveal or otherwise make known to any party.

## 3. USE.

Recipient shall at all times:

- (a) Use the Confidential Information for the sole purpose of establishing or maintaining a business relationship with the Protected Parties ("Purpose");
- (b) Not disclose or distribute Confidential Information except to individuals employed by Recipient to further the Purpose of this Agreement; except as provided in Subsection 3(C);
- (c) Immediately provide notice to the Protected Parties of any existing or request for subpoena or other court order requiring the production of Confidential Information, cooperate with the Protected Parties in any effort by the Protected Parties to oppose such subpoena or order, and comply with such subpoena or order only as required by law.

## 4. RETURN.

Recipient shall return to the disclosing Protected Party or destroy (which destruction shall be confirmed in writing) all Confidential Information and any summaries and derivatives thereof upon the completion of the Purpose or written request of the disclosing Protected Party, subject to Recipient's retention of a copy as reasonably required to enforce its rights.

## 5. INJUNCTIVE RELIEF.

The Confidential Information is the exclusive property of the Protected Parties, is proprietary to the Protected Parties, and contains valuable trade secrets, proprietary interests, or other information which is valuable to the Protected Parties. Any improper disclosure or unauthorized use of Confidential Information or other breach of this Agreement by Recipient will cause irreparable harm and loss to the Protected Parties. In the event of a breach, or threatened breach, of this Agreement, Recipient consents, and acknowledges the Protected Parties' entitlement, to immediate injunctive relief restraining Recipient from disclosing or using, in whole or in part, any Confidential Information contrary to this Agreement without posting a bond, in addition to monetary damages and other relief for such use, disclosure, or other breach. Recipient acknowledges the reasonableness of the enforcement of this Agreement by injunction.

## 6. CHOICE OF LAW AND JURISDICTION

This Agreement shall be construed under the laws of the Province of Ontario, notwithstanding principles of Ontario or any other jurisdiction, provided the Protected Parties may in any enforcement action elect to have the law of the forum jurisdiction to apply. The parties irrevocably consent to the exclusive jurisdiction of the courts of Ontario to resolve all issues related to or arising from this Agreement and any business relationship arising from or related to this Agreement. If the law applicable to any enforcement proceeding limits the class of information and materials protectable by contract to trade secrets or other class of information, the term "Confidential Information" shall be limited to those classes of information and materials. If the law applicable to any enforcement proceeding requires a temporal limitation, the period after termination for which Recipient is restricted in use or disclosure of Confidential Information which is not a trade secret shall be limited to five years from the date of termination. Recipient agrees that there is no need for a geographic or scope limitation because of the types of Confidential Information to be disclosed and the global market in which the Protected Parties operate.

## 7. GENERAL.

This Agreement:

- (a) shall survive the execution, expiration, termination or cancellation of any other agreement or business relationship between the Protected Parties and Recipient; and
- (b) shall be binding upon and inure to the benefit of the parties respective successors and assigns. All unaudited Confidential Information is subject to audit. Any delay in enforcement or course of performance shall not be considered a waiver.

Any waiver shall apply only to the specific incident and not a waiver of the provision as to other incidents.

## 8. RETURN OF PROPERTY.

[Select an option], the 1<sup>st</sup> party shall promptly (and no later than **Number of Days** days after the request):

- (a) return all Confidential Information to the Company; and
- (b) destroy all Derivative Material and within **Number of Days** days of this destruction, provide a written certificate to the Company confirming this destruction.

If [his] [her] service is terminated or the Company so requests, the receiver shall sign and deliver to the Company the certification attached as **Exhibit B**.

## 9. OWNERSHIP RIGHTS.

The Receiving Party acknowledges that the Confidential Information is and will be the Company's sole property, even if suggestions made by the Receiving Party are incorporated into the Confidential Information. The Receiving Party obtains no rights by license or otherwise in the Confidential Information under this agreement. The Receiving Party may not use the Confidential Information as a basis on which to develop or have a third party develop a competing or similar undertaking.

## 10. AMENDMENTS.

No amendment to this agreement will be effective unless it is in writing and signed by a party or its authorized representative.

## 11. ASSIGNMENT AND DELEGATION.

- (a) **No Assignment.** The Receiving Party may not assign any of [his] [her] rights under this agreement, except with the prior written consent of the Company, **which consent may not be unreasonably withheld**. All voluntary assignments of rights are limited by this subsection.
- (b) **No Delegation.** The Receiving Party may not delegate any performance under this agreement, except with the prior written consent of the Company, **which consent may not be unreasonably withheld**.
- (c) **Enforceability of an Assignment or Delegation.** If a purported assignment or purported delegation is made in violation of this section 12, it is void.

## 12. COUNTERPARTS; ELECTRONIC SIGNATURES.

- (a) **Counterparts.** The parties may execute this agreement in any number of counterparts, each of which is an original but all of which constitute one and the same instrument.

**(b) Electronic Signatures.** This agreement, agreements ancillary to this agreement, and related documents entered into in connection with this agreement are signed when a party's signature is delivered by facsimile, email, or other electronic medium. These signatures must be treated in all respects as having the same force and effect as original signatures.

### 13. SEVERABILITY.

If any provision in this agreement is, for any reason, held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability will not affect any other provisions of this agreement, but this agreement will be construed as if the invalid, illegal, or unenforceable provisions had never been contained in this agreement, unless the deletion of those provisions would result in such a material change that would cause completion of the transactions contemplated by this agreement to be unreasonable.

### 14. NOTICES.

**(a) Writing; Permitted Delivery Methods.** Each party giving or making any notice, request, demand, or other communication required or permitted by this agreement shall give that notice in writing and use one of the following types of delivery, each of which is a writing for purposes of this agreement: personal delivery, mail (registered or certified mail, postage prepaid, return-receipt requested), nationally recognized overnight courier (fees prepaid), facsimile, or email.

**(b) Addresses.** A party shall address notices under this section 14 to a party at the following addresses:

If to the Company:

Contact Name/Position  
Mailing Address  
City, State Zip Code  
Fax Number  
Email Address

If to the individual:

Contact Name/Position  
Mailing Address  
City, State Zip Code  
Fax Number  
Email Address

**(c) Effectiveness.** A notice is effective only if the party giving notice complies with subsections (a) and (b) and if the recipient receives the notice.

## **15. WAIVER.**

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this agreement will be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, and no waiver will constitute a continuing waiver, unless the writing so specifies.

## **16. ENTIRE AGREEMENT.**

This agreement constitutes the final agreement of the parties. It is the complete and exclusive expression of the parties' agreement with respect to the subject matter of this agreement. All prior and contemporaneous communications, negotiations, and agreements between the parties relating to the subject matter of this agreement are expressly merged into and superseded by this agreement. The provisions of this agreement may not be explained, supplemented, or qualified by evidence of trade usage or a prior course of dealings. Neither party was induced to enter this agreement by, and neither party is relying on, any statement, representation, warranty, or agreement of the other party except those set forth expressly in this agreement. Except as set forth expressly in this agreement, there are no conditions precedent to this agreement's effectiveness.

## **17. HEADINGS.**

The descriptive headings of the sections and subsections of this agreement are for convenience only, and do not affect this agreement's construction or interpretation.

## **18. EFFECTIVENESS.**

This agreement will become effective when all parties have signed it. The date this agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the date of this agreement.

## **19. NECESSARY ACTS; FURTHER ASSURANCES.**

The Receiving Party, the Company, and the Company's officers and directors shall use all reasonable efforts to take, or cause to be taken, all actions necessary or desirable to consummate and make effective the transactions this agreement contemplates or to evidence or carry out the intent and purposes of this agreement.

[SIGNATURE PAGE FOLLOWS]

Each party is signing this agreement on the date stated opposite that party's signature.

DISCLOSING PARTY COMPANY

KSR INTERNATIONAL CO.

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Date: [Click here to enter a date.](#)

By: \_\_\_\_\_

Name: [Name of Person Signing](#)  
Contact person of the company

By: \_\_\_\_\_

Title: [Title of Person Signing](#)  
Contact person of the company

RECEIVING PARTY COMPANY (NAME)

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Date: [Click here to enter a date.](#)

By: \_\_\_\_\_

Name: [Name of Person Signing](#)  
Contact person of the company

By: \_\_\_\_\_

Title: [Title of Person Signing](#)  
Contact person of the company

CERTIFICATION

This is to certify that I do not have in my possession, and I have not failed to return, any devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other documents or property, or reproductions of any of these items, belonging to KSR INTERNATIONAL CO., its subsidiaries, affiliates, successors, or assigns (the “**Company**”).

I further certify that I have complied with the terms of the Receiving Party intellectual property rights and nondisclosure agreement signed by me, including the reporting of any inventions and original works of authorship (as defined in the agreement), conceived or made by me (solely or jointly with others) covered by that agreement.

I further agree that, in compliance with the Receiving Party intellectual property rights and nondisclosure agreement, I will preserve as confidential all trade secrets, confidential knowledge, data, or other proprietary information relating to products, processes, know-how, designs, formulas, developmental or experimental work, computer programs, data bases, other original works of authorship, customer lists, business plans, financial information, or other subject matter pertaining to any business of the Company or any of its Receiving Party’s, clients, consultants, or licensees.

By: \_\_\_\_\_  
Name: (Recipient Print and Signature)

\_\_\_\_\_  
Title: (Recipient)

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