

# Confidentiality Agreement

THIS CONFIDENTIALITY AGREEMENT (the 'Agreement') dated this 23rd day of March, 2011.

**BETWEEN:**

Chet Lilly  
of 1419 Wynford View

*(the 'Discloser')*

- and -

Wilfredo Charles  
of 4988 Center Lane

and

Alisa Morton  
of 3659 Doherty Road

*(collectively and individually the 'Recipient')*

1. BACKGROUND:

The Discloser proposes to disclose certain confidential and proprietary information (the 'Confidential Information') to the Recipient for the purposes (the 'Permitted Application') of negotiating a possible purchase, transaction, collaboration, or exchange (the 'Transaction') concerning business records.

IN CONSIDERATION OF and as a condition of the Discloser disclosing the Confidential Information to the Recipient, the receipt and sufficiency of which consideration is hereby acknowledged, both parties agree that the terms and conditions of this Agreement shall be as follows:

2. CONFIDENTIAL INFORMATION

The Recipient recognizes that during the course of the Transaction, the Recipient may have access to information that the Discloser wishes to keep confidential. Both parties acknowledge that this information is the exclusive property of the Discloser, and includes, without limitation:

1. 'Confidential Information' refers to all data and information relating to the Discloser's business or enterprises, including proprietary information, trade secret technology, and accounting or other

records which the Recipient has access to. This includes, but is not limited to: Work Product, Computer Software, Business Operations, Marketing and Development Operations, Proprietary Data and Customer Information. Confidential Information also extends to include any information that has been disclosed to the Discloser by a third party and governed by a non-disclosure agreement. Notwithstanding the above, the following will not be regarded as Confidential Information:

- A. Information that is common knowledge in the business or industry of the Discloser.
  - B. Information or knowledge that the Recipient lawfully possessed prior to the disclosure of the information to the Recipient by the Discloser.
  - C. Information that is independently created by the Recipient without the assistance or use, directly or indirectly of the Discloser's Confidential Information.
2. 'Work Product' refers to any products, ideas, or information resulting from or related to present or future work projects or duties performed by the Employee for the Employer or the Employer's clients.
  3. 'Computer Software' refers to computer programs that are developed for, resulting from, or related to, work or projects that have been, or will be performed for the Employer or for the Employer's clients. Such computer programs include programs of any type that are in any stage of actual or anticipated research, development, or production. These may include, but are not limited to: programs, program modules, routines and subroutines, algorithms, design concepts or specifications, source code, object code, program patches and system designs;
  4. 'Proprietary Data' refers to publicly undisclosed information relating to proprietary rights possessed by Discloser such as: technical, manufacturing, engineering or production data, test results and statistics, progress or development reports of various products or services, and information regarding the procurement, protection, control, and licensing of proprietary rights (such as patents, copyrights, and trade secrets).
  5. 'Business Operations' refers to internal financial, employment, and personnel records, client and vendor names, information, agreements, and services, business literature and operating manuals, and methods or means in which the Employer conducts its business.

6. 'Marketing and Development Operations' refers to marketing and development plans, pricing strategies and billing policies, quoting methods, techniques and methods for obtaining business, processes and procedures used to obtain forecasts and forecast assumptions and volumes, and future plans and potential strategies put forth by the Employer which have been or are being speculated or discussed; and
7. 'Customer Information' means any information relating to the identification of customers and their representatives, data provided by customers and relations, contracts and their contents, customer service, quality and specifications of products and services purchased, leased, licensed or received by clients of the Employer.

### 3. CONFIDENTIAL OBLIGATIONS

The Recipient recognizes the need to keep all Confidential Information absolutely confidential, and prevent its release to the public, as a material term of this Agreement. The Recipient agrees not to disclose, report, or use, for any purpose, any of the Confidential Information disclosed to the Recipient by the Discloser as a result of the Recipient's Transaction, or which the Recipient has otherwise obtained or accessed.

The Recipient agrees that the Confidential Information is to be considered proprietary to the Discloser. Further, the Recipient agrees to use the material only for the Permitted Application and not for any other purpose, including any actions that could be detrimental to the Discloser or the subsidiaries, affiliates, or partners thereof.

The Recipient agrees not to remove the Confidential Information from its place of business, and to conceal the Confidential Information in a location separate from other records and documents. In addition, the Recipient agrees not to reproduce the information or store it on a computer or device that is accessible to persons to whom disclosure may not be made, as described in this Agreement.

The Recipient will be permitted to disclose any of the Confidential Information only in the following circumstances:

1. If it is required for the performance of the Permitted Application, the Recipient may disclose the information to its affiliates, employees, advisors, or representatives, provided that:
  - A. These personnel are informed of the confidential nature of the Confidential Information;
  - B. These personnel agree to be legally bound to the same burdens of confidentiality and non-use as the Recipient;

- C. The personnel are prevented by the Recipient from violating this agreement, to as great an extent as the Recipient can reasonably enforce; and
  - D. The Recipient agrees to be responsible for and indemnify the Discloser for any breach of this Agreement by the personnel.
- 2. If the Discloser has given written consent to the Recipient for the disclosure of information to a third party; or
  - 3. If the Discloser is required to disclose such information by law or at the request of any governmental, administrative, legislative, or judicial body, provided that the Recipient will first give prompt notice to the Discloser of any possible or prospective orders of disclosure and Discloser has been afforded a reasonable opportunity to prevent or limit such disclosure.

All obligations regarding the protection of the confidentiality of the Confidential Information, and any obligations to provide notice under this Agreement shall be effective for an indefinite period from the date of its expiration or termination, as the case may be.

#### 4. NON-COMPETITION

Notwithstanding any successfully completed negotiations or transactions, or employment with an independent third party, the Recipient understands and agrees not to participate, directly or indirectly, in any activities that are in direct competition with the activities of Discloser without the express written consent of Discloser. This condition shall hold at all times during the continuance of this Agreement and within 2002 of its termination or expiration, as the case may be. The Discloser further affirms that such consent will not be unreasonably withheld from the Recipient.

The Recipient understands and agrees that for a period of 2002 year(s) from the date of expiration or termination of this Agreement, the Recipient will not divert or attempt to divert from the Discloser any business that the Discloser has enjoyed or solicited from its customers prior to expiration or termination of this Agreement.

#### 5. OWNERSHIP AND TITLE

The Recipient shall NOT, under any circumstances, be granted any title, interest, right, or license in or to the Confidential Information or other intellectual property of the Discloser.

#### 6. PUBLICITY

Notwithstanding any provisions in this Agreement to the contrary, the Recipient agrees not to publicize its participation in this Agreement.

## 7. ASSIGNMENT

Notwithstanding name changes as a result of corporate mergers or takeovers, the Recipient may not assign this Agreement or any interest herein without the prior written consent of Discloser.

## 8. REMEDIES

The Recipient understands the confidential and proprietary nature of any Confidential Information, and accepts that any failure to maintain the confidentiality of the Confidential Information to a third party would constitute a material breach of this Agreement. The Recipient further recognizes that any such disclosure would severely and irreversibly affect the Discloser's business and goodwill, to an extent beyond repair by any degree of monetary compensation.

In accordance with this understanding, the Discloser shall be entitled to, in addition to all other legal options or other remedies, the right to file an injunction restraining the Recipient from directly or indirectly violating the terms governing the use of the Confidential Information, as set forth in this Agreement.

Should the Recipient violate the terms governing the use of the Confidential Information as set forth herein, all costs incurred by Discloser in attempting to enforce this Agreement, including, but not limited to, any and all legal costs, will be payable by the Recipient.

## 9. RETURN OF CONFIDENTIAL INFORMATION

The Recipient will take note of the nature of all Confidential Information provided by the Discloser, and its location, and will be prepared to return the Confidential Information to the Discloser upon request. The Recipient must also return the Confidential Information in the event that the Recipient no longer requires its use, or in the event that this agreement terminates or expires, as the case may be. Such return of information will be complete when all of the following have been done:

1. Destroy all notes, drawings, calculations, and other written works based on the Confidential Information;
2. Return all copies of the Confidential Information; and
3. Provide the Discloser with a certificate that such materials have been destroyed or returned, as the case may be.

## 10. NOTICES

If any Confidential Information must be disclosed to a third party for the purposes of a civil, criminal, or regulatory proceeding, the Recipient agrees to immediately notify the Discloser so that the Discloser can waive the relevant provisions of this Agreement to accommodate the request, or seek a remedy to the situation.

If any Confidential Information is lost or disclosed to an unauthorized party, the Recipient agrees to immediately notify the Discloser and take all steps reasonably necessary to mitigate damages arising from the situation.

## 11. NATURE OF COMMUNICATIONS

The parties agree that any communications required or permitted by this Agreement be given in writing. Such communications shall be given by mail, electronic mail, facsimile or personal delivery to any of the parties to this agreement. In the event of a change in correspondence address, change in telephone number or other contact information, the parties agree to notify the other of such change in a timely manner. For the purposes of this clause, delivery of the notice shall be deemed to have occurred when the recipient or personal representative receives such notice, and mailing shall be deemed to have occurred at the time when such notice enters into the mail system.

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

1. Chet Lilly: 1419 Wynford View
2. Wilfredo Charles: 4988 Center Lane
3. Alisa Morton: 3659 Doherty Road

## 12. GUARANTEES

Provision of the Confidential Information to the Recipient by the Discloser does not ensure, either expressly or implicitly, its originality, correctness, completeness, relevance, or otherwise guarantee it is suitable for the Permitted Application.

## 13. AMENDMENTS

This Agreement may only be amended or modified by a written instrument executed by both parties.

#### 14. FURTHER AGREEMENTS

In the event that the Recipient is interested in pursuing, developing, marketing, or patenting the Discloser's Development, further Agreements may be negotiated between the parties.

#### 15. TERMINATION

Notwithstanding certain duties or obligations that survive this Agreement, as described herein, either the Discloser or the Recipient may terminate this Agreement at any time by providing written notice to the other party.

#### 16. GOVERNING LAW

This Agreement is being delivered in, and shall be governed, construed, enforced, and interpreted by, through, and under, the laws of the State of Colorado, United States, excluding conflict of law principles that would cause the application of laws of another jurisdiction.

#### 17. HEADINGS

Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement.

#### 18. SEVERABILITY

If a court of competent jurisdiction finds any provisions of this Agreement to be unenforceable, it is the desire of both parties that any modifications made to these provisions by a court of competent jurisdiction be made only to the extent necessary to ensure that the provisions are enforceable, as determined by the reasonable judgement of the court. The Recipient and the Discloser recognize that the present Agreement is designed to provide Discloser with the broadest possible protection against unauthorized disclosure of Confidential Information and against solicitation of the Discloser's contractors and employees.

Should any provisions in this Agreement be invalid or unenforceable, those provisions shall have no bearing on the remaining provisions of the agreement. All other provisions will be valid, and fully enforceable; further, any partially unenforceable provisions will be enforced to as great an extent as possible.

#### 19. NO IMPLIED WAIVER

Either party's failure to insist, on one or more occasions, upon strict performance by the other party of any of the duties, terms, or obligations set forth in this Agreement shall not be construed as a waiver of any of the rights or powers of that party, or preclude that party from exercising such rights or powers at a future date.

## 20. BINDING EFFECT

The covenants and obligations set forth in this Agreement shall be binding on and inure to the benefit of the heirs, executors, successors, legal representatives, administrators, and assigns of the Recipient and the Discloser.

## 21. COUNTERPARTS

This Agreement may be executed in counterparts.

## 22. FINAL AGREEMENT

This Agreement comprises the entirety of the terms and conditions of use of the Confidential Information, as understood and agreed upon by the Discloser and the Recipient. The Discloser and the Recipient state that they have not made any representations regarding the subject matter of this Agreement except the representations specifically set forth in this Agreement; there are no further items or provisions, either written or oral. Both the Discloser and the Recipient acknowledge that they have relied upon their own, independent legal council and judgement in entering into this Agreement.

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IN WITNESS WHEREOF the parties have duly affixed their signatures on this 23rd day of March, 2011.

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Witness:

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Chet Lilly

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Witness:

\_\_\_\_\_  
Wilfredo Charles

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Witness:

\_\_\_\_\_  
Alisa Morton