

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this "**Agreement**") made effective as of the \_\_\_\_ day of \_\_\_\_\_, 2011.

Between:

Banyan Capital Partners GP II Ltd., in its capacity as general partner of Banyan Capital Partners Fund II Limited Partnership,

Hereinafter called the "**Disclosing Party**",

And:

\_\_\_\_\_  
Hereinafter called the "**Receiving Party**",

WHEREAS the Receiving Party has requested, and the Disclosing Party wishes to provide, certain confidential non-public information relating to Banyan Capital Partners Fund II Limited Partnership (the "**Partnership**"), Banyan Capital Partners GP II Ltd. (the "**General Partner**"), their respective affiliates and associates, the portfolio company or companies in which the Partnership may invest or has invested (the "**Portfolio Companies**") and the Partnership's investment in the Portfolio Companies, in order to assist the Receiving Party's consideration of a potential investment in the Partnership (the "**Transaction**");

AND WHEREAS the Receiving Party agrees that all Confidential Information received by it or its representatives shall remain confidential and the disclosure of the same to third parties shall be prohibited, except as specifically permitted herein;

The Receiving Party hereby covenants and agrees as follows:

1. In this Agreement, the term "**Confidential Information**" means and includes any and all information and trade secrets concerning the business and affairs of the Partnership, the General Partner, their respective affiliates and associates, and the Portfolio Companies, including without limitation, product specifications, data, know-how, formulas, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, apparatus, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, specifications, materials, source of supply, customer identities or lists, current and anticipated customer requirements, contracts, price lists, market studies, business plans, marketing plans, expansion plans, potential sites, building models (including drawings and specifications thereof), registered and unregistered trade names, policies, and intentions, demographic studies, potential site locations, historical financial statements, financial projections and budgets, historical and projected sales, capital spending budgets and plans, personnel, their duties and capabilities, the names and backgrounds of key personnel, personnel training techniques and materials that has been or may hereafter be provided or shown to the Receiving Party or is otherwise obtained in connection with the Transaction or the discussions with the Disclosing Party by the Receiving Party, irrespective of the form or medium, and includes all documents, records, notes, analyses, compilations, studies, summaries or other material containing or based, in whole or in part, on any information included in the foregoing, other than information which the Receiving Party establishes by clear and convincing evidence:
  - a. was in the public domain at the time the Receiving Party received such information; or
  - b. becomes part of the public domain after receipt by the Receiving Party, through no act or omission on the part of the Receiving Party; or
  - c. which is required to be disclosed under applicable law.

Should any copies be made of the Confidential Information or such Confidential Information be included in any summaries or documents created by or on behalf of the Receiving Party, such copies, summaries and documents shall also be considered Confidential Information and shall be subject to the terms of this Agreement. Confidential Information which is specific is not deemed to be in the public domain merely because it is embraced by general knowledge in the public domain. Further, Confidential Information is not deemed to be within the public domain merely because its individual features are within the public domain, unless the combination of features or their nexus are in the public domain.

2. The Receiving Party acknowledges and agrees that the Confidential Information is and shall be the exclusive, valuable property of the Disclosing Party and the applicable Portfolio Company.
3. The Receiving Party agrees to keep secret and confidential any and all Confidential Information received and/or developed by it and not to divulge any such Confidential Information, in whole or in part, directly or indirectly, to any third party. The Receiving Party shall not contact any of the Portfolio Companies' employees, customers or suppliers with respect to the Confidential Information or Transaction without the prior written consent of the Disclosing Party and the Portfolio Companies.
4. The Receiving Party agrees to refrain from using or drawing upon the Confidential Information, directly or indirectly, for any other purpose other than for the purposes of the exploring the possibility of entering into the Transaction (the "**Permitted Purpose**"), and the Receiving Party shall not make any commercial or other use, directly or indirectly, of the Confidential Information. The Receiving Party will not, directly or indirectly, disclose or use, at any time, either during or subsequent to its investigation of the affairs of the Portfolio Companies, any Confidential Information where it might prove prejudicial or harmful to the Disclosing Party or any of the Portfolio Companies.
5. The Receiving Party acknowledges that it shall, upon receipt of the Confidential Information, become privy to confidential matters pertaining to the business and affairs of the Portfolio Companies and the Disclosing Party which, if disclosed, could cause irreparable harm to the Portfolio Companies and/or the Disclosing Party. The Receiving Party represents and warrants that it, either directly or indirectly (through its affiliates or another portfolio investment), has not had and does not have any interest in any business that is in the same or similar to the business of the Portfolio Companies and/or that directly or indirectly competes with the Portfolio Companies.

- 6. The Receiving Party shall keep all Confidential Information strictly confidential and shall limit the availability of the Confidential Information and not disclose it to any person except for those employees and representatives of the Receiving Party who are directly engaged in the evaluation of the Transaction (including attorneys, accountants and consultants) who have an absolute need to see and use it solely for the Permitted Purpose.
- 7. The Receiving Party agrees to advise each person to whom any Confidential Information is transmitted (in accordance with the terms of this Agreement) in any form that the information is confidential and that its use and disclosure are subject to the terms and conditions of this Agreement and Receiving Party will ensure that each such person is bound by the provisions hereof.
- 8. The Receiving Party acknowledges that any and all information being provided to the Receiving Party by the above-referenced Portfolio Companies is provided in strict reliance upon the terms and conditions of this Agreement, and that the breach of the same may result in irreparable harm to the Portfolio Companies, both financial and otherwise.
- 9. In the event the Receiving Party elects not to proceed with the Transaction or upon request of the Disclosing Party, the Receiving Party agrees to forthwith return to the Disclosing Party all copies of documents or other media containing Confidential Information and other information, without retaining any copies thereof and to destroy all documents generated by the Receiving Party containing, based upon or arising out of the Confidential Information. The Receiving Party shall certify to the Disclosing Party in writing as to its compliance with this paragraph.
- 10. The Receiving Party acknowledges its fiduciary obligations to the Portfolio Companies with respect to the information that has been or will be provided, and agrees that except for the Permitted Purpose it shall not use for its own benefit at any time, nor for the detriment or intended detriment of the Portfolio Companies, any such information provided.
- 11. The Receiving Party hereby agrees to indemnify and hold the Disclosing Party and the Portfolio Companies harmless from any damages, loss, cost or liability (including legal fees and the cost of enforcing this indemnity) arising out of or resulting from any unauthorized use or disclosure by Receiving Party of the Confidential Information or other violation of this Agreement. Because an award of money damages would be inadequate for any breach of this Agreement by the Receiving Party and any such breach would cause the Disclosing Party and the Portfolio Companies irreparable harm, the Receiving Party also agrees that in the event of any breach or threatened breach of this Agreement, the Disclosing Party and the Portfolio Companies shall also be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance. Such remedies shall not be the exclusive remedies for any breach of this Agreement, but shall be in addition to all other remedies available at law or equity.
- 12. To the fullest extent permitted by law and except as may be otherwise provided herein, all of the covenants and agreements contained in this Agreement will survive the termination of any discussions between the parties or the termination or expiration of any business relationship which may hereafter be established between the parties and will also survive any definitive agreement entered into by the parties hereto, unless and only to the extent that such definitive agreements expressly supersede the covenants and agreements contained herein. During the term of this Agreement and after its termination, the Receiving Party will not directly (except in the case of solicitations made to the general public) solicit or discuss with any employee of the Portfolio Companies with whom you have come into contact as a result of the Permitted Purpose or Transaction, the employment by any commercial enterprise nor recruit, attempt to recruit, hire or attempt to hire any such employee of the Portfolio Companies or directly or indirectly induce or attempt to induce or otherwise encourage any customer of or supplier to the Portfolio Companies to cease doing business, in whole or in part, with the Portfolio Companies.
- 13. The term "person" includes any corporation, company, partnership, limited liability company, individual or other entity.
- 14. This Agreement supersedes all previous agreements written or oral, relating to the above subject matter and may be modified only by a written instrument duly executed by the parties hereto. No failure or delay by the Disclosing Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.
- 15. All provisions and covenants contained in this Agreement are severable and in the event any of them is held to be invalid by any Court, this agreement will be interpreted as if such invalid clauses and covenants were not contained herein.
- 16. This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario and the laws of Canada applicable in such Province, and each party hereby irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of such province and all courts competent to hear appeals therefrom.

Please indicate your acceptance of this Agreement in the space provided below, whereupon this Agreement and your acceptance shall constitute a binding agreement between us. This Agreement shall apply to all Confidential Information disclosed within a period of 24 months from the date executed.

Banyan Capital Partners Fund II Limited Partnership,  
by its general partner, Banyan Capital Partners GP II Ltd.

Accepted by the Receiving Party.

Investor:

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

Jeff Wigle  
Director

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

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_