



## NON-DISCLOSURE NON-CIRCUMVENT AGREEMENT

**THIS NON-DISCLOSURE NON-CIRCUMVENT AGREEMENT** ("Agreement") is made as of the effective date set forth below between Plethora Businesses ("Plethora" or "Discloser"), and the person(s) named below in this agreement "Recipient", collectively referred to as "Parties" and individually as "Party". Recipient desires to receive certain Confidential Company Information ("CCI") of a Plethora client "Represented Party" (also a "Discloser") in connection with the Purpose set forth below. This Agreement sets forth the terms under which CCI disclosed by "Discloser" to the other Party "Recipient" is to be treated. In consideration of the promises and covenants contained in this Agreement, the Parties hereby agree to the following:

1. **Purpose:** Recipient may use such CCI only to explore and analyze the potential of participating in one or more business opportunities "Purpose", with each business opportunity in which Recipient elects to participate being designated as a "Transaction". Recipient shall not distribute, copy, or otherwise communicate any of the CCI to any other person or entity except as permitted under this Agreement. Recipient further acknowledges that the restrictions contained in this Agreement are necessary and reasonable for the protection of the business and goodwill of Discloser and Represented Party.
2. **Restrictions and Exceptions:** The Parties agree to maintain the confidentiality of the CCI and to prevent its unauthorized dissemination. This Agreement shall automatically terminate upon the expiration of the term set forth below, provided, however, that prior to such termination, Discloser may terminate this Agreement at any time by written notice to Recipient. Notwithstanding such expiration or termination, all of Recipient's non-disclosure and non-circumvent obligations pursuant to this Agreement shall survive for a period of two (2) years from the date of last disclosure by Disclosing Party and in the case of trade secrets, five (5) years from the date of last disclosure.
3. **Confidential Company Information:** "CCI" shall mean all information including but not limited to knowledge that the Represented Party(ies) is/are available for a Transaction and any ensuing discussions, negotiations, or any of the terms or conditions of a deal structure that may arise. CCI also means Represented Party(ies) financial data, marketing and pricing information, business methods and manuals, manufacturing procedures, correspondence, processes, contracts, customer, employee and vendor lists and any and all other CCI whether written, oral, or otherwise made known to Buyer: (a) from any inspection, examination or review of the books, records or other documentation of Represented Party; (b) from communication with Represented Party or their broker or advisor, directors, officers, employees, agents, suppliers, customers or representatives; (c) during visits to Represented Party's premises; or (d) through disclosure or discovery in any other manner. CCI also includes confidential information that may have been disclosed by Discloser to Recipient prior to the date hereof and also includes working papers developed by Recipient or Other Recipient(s) for pursuing the Purpose and/or Transaction. CCI may be disclosed in written or other tangible form or by any electronic, oral, visual or other means. CCI related to Represented Party(ies) may also be provided under an alias company name, the contents of which are also protected by the terms of this agreement.
4. **Exceptions:** The restrictions of this Agreement on use and disclosure of CCI shall not apply to information that Recipient can prove: (a) was publicly known at the time of disclosure; (b) becomes publicly known through no fault of Recipient; (c) was in Recipient's possession free of any obligation of confidence at the time of Discloser's communication thereof to Recipient; (d) is developed by Recipient independently of Discloser's CCI or other information that Discloser disclosed in confidence to any third Party; or (e) is rightfully obtained by Recipient from third Parties authorized to make such disclosure without restriction.
5. **Duty and Care:** Recipient shall use the utmost care to avoid disclosure of the CCI using at least the same degree of care used to protect its own CCI. Recipient may disclose Represented Party's CCI only to its employees, officers, directors, partners, principals, independent contractors, agents, affiliates, professional advisors, consultants and financing sources ("Other Recipients"), who have a need to know such CCI to fulfill the Purpose or pursue a Transaction, and are bound to protect the CCI under the terms of a written Agreement containing covenants at least as restrictive as those set forth herein. Upon request of the Discloser, Recipient will provide a list containing the name and address of any person having access to or copies of the CCI.
6. **Unauthorized Use:** Recipient shall notify Discloser immediately upon discovery of any unauthorized use or disclosure of CCI, or any breach of this Agreement by Recipient or Other Recipients, and will cooperate with Discloser in every reasonable way to assist Discloser in regaining possession of the CCI and preventing its further unauthorized use.
7. **Compelled Disclosure:** In the event Recipient is required by law, regulation or court order to disclose any of Represented Party's CCI, Recipient will promptly notify Discloser in writing prior to making any such disclosure in order to allow Discloser or Represented Party the opportunity to seek a protective order or other appropriate remedy from the proper authority. Recipient agrees to cooperate, to the extent commercially reasonable, in seeking such order or other remedy. Recipient further agrees that if Discloser or Represented Party is not successful in precluding the requesting legal body from requiring the disclosure of the CCI, it will furnish only that portion of the CCI



## NON-DISCLOSURE NON-CIRCUMVENT AGREEMENT

which is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be applied to the required disclosure of CCI.

8. Ownership of Confidential Company Information: All CCI, including information stored in electronic form, is and shall remain the sole and exclusive property of Discloser. All such information including work papers developed by Recipient or Other Recipient(s) shall be returned to Discloser or destroyed promptly upon written request or the termination or expiration of this Agreement, and shall not be retained in any form by Recipient or "Other Recipients", unless as required by state or federal regulatory agencies to maintain an archival copy for record keeping purposes. No licenses or rights under any patent, copyright, trademark, trade secret or other intellectual property right are granted or are to be implied by this Agreement.
9. Exporting: Recipient agrees that it shall adhere to all U.S. Export Administration laws and regulations and shall not export any CCI to any proscribed country listed in the U.S. Export Administration Regulations unless properly authorized by both the Discloser and the U.S. Government.
10. Non-Circumvention: Recipient agrees it will direct all communication whether oral, written or otherwise through Plethora unless approved in writing by Plethora. Recipient also agrees that it will not, unless in the ordinary course of business, contact directly or indirectly any disclosed companies, entities and persons including their affiliates, parent, subsidiary and related companies nor assist, encourage, participate in or facilitate such communication without explicit written authorization of Plethora. Any violation of these covenants may be deemed an attempt to circumvent and impede Plethora's ability to collect on any earned fees, which may cause irreparable damage for which Recipient shall be liable for such damages incurred, the remedy of such damages which may be in the form of injunctive relief and/or other relief available at law or in equity.
11. Solicitation: Recipient will not directly solicit for employment any current or active employees or consultants of Discloser except in the case of employees or consultants of Represented Party that respond to general public employment advertisements.
12. Disclaimer: Plethora acknowledges the CCI that it has received, and subsequently disclosed on behalf of a Represented Party, was received from sources it deems reliable. However, Plethora makes no express or implied representation or warranty as to the accuracy or completeness of such information. Therefore, Plethora shall not have any liability or responsibility for errors or omissions therein, or any decisions made by Recipient in reliance thereon. The CCI that will be disclosed should not be construed as to contemplate any specific transactional structure. Each Party interested in entering into discussions may develop and propose the terms and structure of a potential Transaction consistent with that Party's own business needs and interests.
13. Damages and Remedy: The Parties acknowledge that the CCI is unique and valuable, that disclosure in breach of this Agreement may result in irreparable injury to Discloser, and that Discloser is entitled to seek all remedies available in law and equity. Therefore, the Parties agree that in the event of a breach or threatened breach of confidentiality, the Discloser shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach or anticipated breach without the necessity of posting a bond. Any such relief shall be in addition to, and not in lieu of, any relief in the way of monetary damages, with monetary damages including recovery of any sums or other value received by the Recipient or Other Recipients arising from a breach of this Agreement.

If any Party to this Agreement brings any action, suit, counterclaim, appeal, or mediation under this Agreement, to enforce the terms hereof or to declare its rights hereunder (collectively, an "Action"), the losing Party shall reimburse the prevailing Party for reasonable attorney's fees and costs incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling, or award (collectively, a "Decision") granted therein, all of which shall be deemed to have accrued on the commencement of such Action and shall be paid.

Recipient shall defend, indemnify and hold harmless Discloser, its past, present and future directors, officers, shareholders, employees, agents and representatives from all damages, expenses and costs whatsoever resulting from the breach of this Agreement by Recipient.

14. Non-Waiver: No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise preclude any other or further exercise thereof. If a provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable portion shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the Parties as expressed herein.



## NON-DISCLOSURE NON-CIRCUMVENT AGREEMENT

15. Recipient in Distress The obligation not to disclose CCI shall not be affected by bankruptcy, receivership, assignment, attachment or seizure procedures, whether initiated by or against recipient nor by any rejection of any agreement between the disclosing party and Recipient, by a trustee of Recipient in bankruptcy, or by the Recipient as debtor-in-possession or the equivalent of any foregoing under local law.
16. Binding Agreement: This Agreement is binding upon the Recipient, Other Recipients and to the extent that CCI is provided to any other party including but not limited to shareholders, representatives, subsidiaries, portfolio companies, investors, and any persons or entities owned or controlled, directly or indirectly thereby and their respective successors and assigns also referred to as Other Recipients.
17. Successors & Assigns: This Agreement is intended to confer all rights, privileges, and remedies on the Represented Party and Discloser and its respective successors and permitted assigns. Any Representative Party may commence litigation directly against Recipient or any transferee of Recipient to enforce its rights to confidentiality under this Agreement with or without any assignment of rights or the joinder by or consent of Plethora or any other Party. Represented Party shall have full standing to prosecute such action as if the Represented Party were a named Party to this Agreement. Nothing in this Agreement is intended to relieve or to discharge the obligation or liability of any third person to any Party to this Agreement.
18. General: Signatures on this Agreement received by way of facsimile, mail and/or e-mail shall be deemed to be an executed agreement enforceable and admissible for all purposes as may be necessary under the terms of the Agreement. This Agreement: (a) is the complete Agreement of the Parties concerning the subject matter hereof and supersedes any prior such Agreements with such subject matter; (b) may not be amended or in any manner modified except by a written instrument signed by authorized representatives of both Parties; and (c) shall be governed and construed in accordance with the laws of the State of California without regard to its choice of law provisions. It is agreed that exclusive jurisdiction and venue shall vest Superior Court of Orange County, California, USA.

All signatories hereto acknowledge they have read the foregoing Agreement and by their signatures that they have had the opportunity to be represented by legal counsel of their choice, and have full authority to legally execute this document for and in the name of the party for which they have given their signatures.

**IN WITNESS WHEREOF**, each of the Parties hereto has caused this Agreement to be executed by its duly authorized representative.

**[INSERT COMPANY NAME]**

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

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

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