

**Michigan CNC Machining Parts, Inc.**

And

\_\_\_\_\_ (The "Full Company Name")

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**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

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**Example Only.**  
**Please contact your Account Manager or write an email**

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**“Discloser”** a party to this agreement when it discloses its Confidential Information, directly or indirectly, to the other party.

**“Group”** in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a member of the Group.

**“Purpose”** Any information and/or materials received from the other party of this agreement would be regarded as confidential and the party receiving it shall keep it confidential and shall not disclose such information and/or materials to any third party without prior written approval of the other party.

**“Recipient”** a party to this agreement when it receives Confidential Information, directly or indirectly, from the other party.

**“Representative(s)”** in relation to each party:

- a. its officers and employees that need to know the Confidential Information for the Purpose;
- b. its professional advisers or consultants who are engaged to advise that party [and/or any member of its Group] in connection with the Purpose;
- c. its contractors and sub-contractors engaged by that party [and/or any member of its Group] in connection with the Purpose; and
- d. any other person to whom the other party agrees in writing that Confidential Information may be disclosed in connection with the Purpose.

**“Services”** including, but not limited to, the commissioning, design and manufacturing process of Party 2.

**1.2** Reference to a Party or Parties shall include its/their respective parent(s), holding company(ies), subsidiary(ies), associated and/or affiliated company(ies) and its/their respective licensee(s), successor(s) and assign(s), and its current, former or future employer, employee or contractor if any.

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- 1.3** The Recitals and Schedules (as may be inserted from time to time) are expressly incorporated into this Agreement. References to this Agreement include any Recitals and Schedules to it (as may be inserted from time to time) and this Agreement as from time to time amended in accordance with Clause 14.2(b) below, and references to Clauses and Schedules are to Clauses of and Schedules to this Agreement.
- 1.4** Unless otherwise stated, words denoting the singular shall include the plural and vice versa and words denoting gender include all genders and words denoting persons shall include individuals, bodies corporate, unincorporated associations, sole proprietorships and partnerships.
- 1.5** The headings are included for convenience only and are not to affect the construction or interpretation of this Agreement.

## **2. Confidential Information**

- 2.1** Confidential Information means all confidential information and conversations regarding the designs as well as all data, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information and other information, orally, in writing, or by any other media, relating to the Purpose which the Discloser or its Representatives directly or indirectly discloses, or makes available, to the Recipient or its Representatives before, on or after the date of this Agreement. This includes:
- (a) the fact that discussions and negotiations are taking place between the Parties concerning the Purpose and the status of those discussions and negotiations and the Parties' participation therein;
  - (b) the existence and particulars of this Agreement;
  - (c) all confidential or proprietary information relating to:
    - (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Discloser or of any of the Discloser's representatives or related persons; and
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(ii) the operations, processes, product information, know-how, technical information, designs, trade secrets or software of the Discloser, or of any of the Discloser's representatives or related persons;

(d) any information, findings, data or analysis derived from Confidential Information; and

(e) any other information that is identified as being of a confidential or proprietary nature;

but excludes any information referred to in Clause 2.2.

**2.2** Information is not Confidential Information if:

(a) it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Recipient or its Representatives or by any of the Recipient's representatives or related persons in breach of this Agreement;

(b) it was available to the Recipient on a non-confidential basis prior to disclosure by the Discloser;

(c) it was, is, or becomes available to the Recipient on a non-confidential basis from a person who, to the Recipient's knowledge, is not under any confidentiality obligation in respect of that information;

(d) it was lawfully in the possession of the Recipient before the information was disclosed by the Discloser;

(e) it is developed by either Party not in breach of this Agreement; or

(f) the Parties agree in writing that the information is not confidential.

**3. Confidentiality Obligations**

**3.1** In return for the Discloser making Confidential Information available to the Recipient, the Recipient undertakes to the Discloser that it shall:

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- (a) keep the Confidential Information secret and confidential;
  - (b) not use or exploit the Confidential Information in any way except for the Purpose;
  - (c) not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except as strictly necessary for the Purpose and expressly permitted by the Discloser, and in accordance with this Agreement;
  - (d) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose. Any of such copies, reductions to writing and records shall be the property of the Discloser; and
  - (e) any Confidential Information is reduced to writing or otherwise stored or recorded in any tangible form shall not be duplicated and/or reproduced by either Party except for the Purpose.

**3.2** Both Parties shall establish and maintain adequate security measures and precautions, including any reasonable and agreed security measures as proposed by the Discloser, to safeguard the Confidential Information from unauthorized access or use.

#### **4. Permitted Disclosure**

##### **4.1 Disclosure to Representatives**

- (a) The Recipient may disclose the Confidential Information to its Representatives on the basis that it:
    - (i) informs those Representatives of the confidential nature of the Confidential Information before it is disclosed; and
    - (ii) procures that those Representatives comply with the confidentiality obligations in Clause 3.1 as if they were the Recipient.
  - (b) The Recipient shall be liable for the actions or omissions of the Representatives in relation to the Confidential Information as if they were the
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actions or omissions of the Recipient.

- 4.2** Subject to this Clause 4, the Parties shall not disclose, publish or otherwise reveal or make available any Confidential Information to any third party unless specifically and expressly authorised and consented by the other Party.

## **5. Mandatory Disclosure**

- 5.1** Subject to the provisions of this Clause 5, a party may disclose Confidential Information to the minimum extent required by:

- (a) an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction;
- (b) the laws or regulations of any country to which its affairs [or those of any of its Group Companies] are subject.

- 5.2** Before a Party discloses any Confidential Information pursuant to Clause 5.1 it shall, to the extent permitted by law, use all reasonable endeavours to give the other Party as much notice of this disclosure as possible.

- 5.3** If a Party is unable to inform the other Party before Confidential Information is disclosed pursuant to Clause 5.1 it shall, to the extent permitted by law, inform the other Party of the full circumstances of the disclosure and the information that has been disclosed as soon as reasonably practicable after such disclosure has been made.

## **6. Return or Destruction of Confidential Information**

- 6.1** If so requested by the Discloser at any time by notice in writing to the Recipient, the Recipient shall within ten (10) calendar days:

- (a) destroy or return to the Discloser all documents and materials and any copies containing, reflecting, incorporating or based on the Discloser's Confidential Information;
  - (b) erase all the Discloser's Confidential Information from its computer and
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communications systems and devices used by it, or which is stored in electronic form;

(c) to the extent technically and legally practicable, erase all the Discloser's Confidential Information which is stored in electronic form on systems and data storage services provided by third parties; and

(d) provide written confirmation to the Discloser that it has complied with the requirements of this Clause 6.1.

**6.2** Nothing in Clause 6.1 shall require the Recipient to return or destroy any documents and materials containing or based on the Discloser's Confidential Information that the Recipient is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction, to which it is subject. The provisions of this Agreement shall continue to apply to any documents and materials retained by the Recipient pursuant to this Clause 6.2.

## **7. Reservation of Rights and Acknowledgement**

**7.1** Each Party reserves all rights (including but not limited to the ownership and the intellectual property rights) in its Confidential Information. The disclosure of Confidential Information by one Party does not give the other Party or any other person any license or other right in respect of any Confidential Information beyond the rights expressly set out in this Agreement.

**7.2** Except as expressly stated in this Agreement, neither Party makes any express or implied warranty or representation concerning its Confidential Information, including but not limited to the accuracy or completeness of the Confidential Information.

**7.3** The disclosure of Confidential Information by the Parties shall not form any offer by, or representation or warranty on the part of, that Party to enter into any further agreement with the other party in relation to the Purpose.

**7.4** The disclosure of Confidential Information by the Parties shall not constitute evidence of any intent of the Parties to purchase any products or services of the other Party, neither encouragement to expend funds in the Parties' development, planning or research efforts.

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**7.5** Each Party shall not solicit any change in the organization, business practice, services or products of the other Party.

## **8. Inadequacy of Damages**

**8.1** Without prejudice to any other rights or remedies that each Party may have, each Party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Agreement by the other Party. Accordingly, each Party shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this Agreement.

**8.2** The remedy of injunction sought by the Parties may include, but not limited to, non-disclosure orders that prohibits publication of the Confidential Information by any means or on any media, made in accordance with Clause 5.

**8.3** Any other equitable relief may include, but not limited to, an order for damages or an account of profits.

## **9. No Obligation to Continue Discussions**

**9.1** Nothing in this Agreement shall impose an obligation on either Party to continue discussions or negotiations in connection with the Purpose, or an obligation on each Party to disclose any information (whether Confidential Information or otherwise) to the other Party.

## **10. Ending Discussions and Duration of Confidentiality Obligations**

**10.1** The Parties shall use all reasonable endeavours to engage in long term business cooperation with each other. Notwithstanding this Agreement being subject to the Purpose and the duration as specified in Clause 10.2, both Parties agree on setting up a long-term business relationship. However, if either Party decides not to continue to be involved in the Purpose with the other party, it shall notify that other party in writing immediately.

**10.2** Notwithstanding the end of discussions between the Parties in relation to the Purpose pursuant to Clause 10.1, each Party's obligations under

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this Agreement shall continue in full force and effect for a period of one (1) year from the date of last disclosure of any Confidential Information by either Party.

- 10.3** The end of discussions relating to the Purpose shall not affect any accrued rights or remedies to which either Party is entitled.

## **11. No Partnership, Agency or License**

**11.1** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of another Party, authorize any Party to make or enter into any commitments for or on behalf of any other Party, or grant or confer any rights by license by one Party to another Party in relation to the Purpose or any Confidential Information.

**11.2** Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

## **12. No Circumvention**

**12.1** Each of the Parties shall not, without prior written consent and permission of the other Party, circumvent or attempt to circumvent the other Party for preparing any customer proposals or bid for any Services or any engage in any matter in relation to the Purpose within one hundred and twenty (120) days of this Agreement.

## **13. Non-competition**

**13.1** The Parties shall not use any Confidential Information for the purpose of developing by itself or by any third party any products or business proposals which are in competition with or similar to those in relation to the Purpose.

## **14. General**

### **14.1 Assignment and other dealings**

Neither Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the other Party's expressed prior written consent.

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## **14.2 Entire Agreement**

- (a) This Agreement constitutes the entire understanding between the Parties relating to the subject matter of this Agreement at the date hereof to the exclusion of any terms implied by law which may be excluded by contract, and terminates and supersedes all previous agreements, written or oral, course of dealings and arrangements between the Parties.
- (b) No statements or agreements, oral or written, made prior to or at the signing hereof shall vary or modify the written terms hereof; and neither Party shall at any time claim any amendment, modification or release from any provision hereof by mutual agreement, acknowledgement, or otherwise, unless such amendment is in writing signed by both Parties and makes specific reference to this Agreement.

## **14.3 Variation**

No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorized representatives).

## **14.4 No Waiver**

- (a) No failure of any Party to exercise, and no delay by it in exercising, any right, power or remedy in connection with this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise preclude any other or further exercise thereof.
- (b) No instances of bankruptcy, receivership, assignment, attachment or seizure procedures, whether initiated by or against either Party, nor by the rejection of any agreement between the Parties, by a trustee of either Party in case of bankruptcy, or by either Party as a debtor-in-possession of either Party shall operate as a waiver of the rights and obligations contained herein.
- (c) Any express waiver of any breach of this Agreement shall not be deemed to be a waiver of any subsequent breach, whether such breach or default is the same as, similar to, or different from the breach waived.

## **14.5 Severability**

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(a) If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

(b) If any provision of part-provision of this Agreement is deemed deleted under Clause 14.5(a) above, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### **14.6 Notices**

(a) Any notice required by this Agreement or given in connection with it, shall be in writing and given to the other Party by hand or by registered mail, or by prepaid postage, or by a courier for next Business Day delivery agreed by both Parties.

(b) Any notice required by or given in connection with this Clause 4 or Clause 5 shall be given in writing at least thirty (30) days before such disclosure, and all asserted grounds for disclosure shall be stated clearly therein.

(c) This Clause 14.6 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

#### **14.7 Third Party Rights**

The Contracts (Right of Third Parties) Ordinance (Chapter 623 of the laws of Hong Kong) shall not apply to this Agreement and unless specifically provided herein, no person other than the Parties hereto shall have any rights under it nor shall it be enforceable by any person other than the Parties hereto.

#### **14.8 Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

### **15. Governing Law and Jurisdiction**

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**15.1** The validity, construction and performance of this Agreement shall be governed and interpreted in accordance with the laws of Hong Kong.

**15.2** Each party hereby irrevocably submits to the non-exclusive jurisdiction of the courts of Hong Kong for the resolution of any claim, dispute or matter howsoever arising under or in connection with this Agreement.

*[Signature Page to Follow]*

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**IN WITNESS** whereof the Parties execute this Agreement the day and year of the signing, below.

SIGNED BY **Gordon Styles** )  
The director(s) / authorised signature(s) (duly )  
authorised by resolution of the board of )  
directors) on behalf of **Star Rapid Limited.** )  
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SIGNED )  
\_\_\_\_\_ )  
(The "Representative Of Party 2") )  
The director(s) / authorised signature(s) (duly )  
authorised by resolution of the board of )  
directors) on behalf of )  
\_\_\_\_\_ )  
(The "Name Of Party 2") ) \_\_\_\_\_

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