

## MUTUAL CONFIDENTIALITY AGREEMENT

**THIS MUTUAL CONFIDENTIALITY AGREEMENT** (this “**Agreement**”) is by and between **Duncan-Parnell, Inc.**, having an address of 900 S. McDowell Street, Charlotte, NC 28204, and its affiliates (hereinafter defined and referred to as “**Duncan-Parnell**”) and \_\_\_\_\_, having an address of \_\_\_\_\_ (hereinafter defined and referred to as the “**Company**”) are interested in a possible business relationship whereby such parties may exchange confidential information with each other (the “**Transaction**”). **Duncan-Parnell** and the **Company** are collectively referred to as the “**Parties**” and each individually as a “**Party**”. The activity and exchange of information between the Parties as a consequence of discussions between them or visits by one Party to the other Party’s facilities wherever located may involve the disclosure of information which is confidential and proprietary to either Party.

THEREFORE, in consideration of the mutual covenants and agreements contained herein and any Transaction that might take place, the Parties hereby agree to the following:

1. **Disclosing / Receiving Party.** As used in this Agreement, “Disclosing Party” refers to either Duncan-Parnell or the Company as the case may be when either Party is disclosing information to the other. “Receiving Party” refers to either Duncan-Parnell or the Company as the case may be when either Party is receiving information from the other.
2. **Confidential Information.** All information of any character declared by the Disclosing Party as Confidential Information, whether written, verbal or otherwise furnished by the Disclosing Party, or produced or developed by or for Receiving Party pursuant to any agreement (including this Agreement) or understanding with Disclosing Party (referred to herein as “Confidential Information”) shall remain the property of Disclosing Party.
3. **Confidentiality Obligations.** Receiving Party agrees to maintain the confidentiality of the Confidential Information and will use it for the sole purpose of preparing an offer, product or service to be provided to Disclosing Party or as otherwise requested by Disclosing Party and for no other reason.
4. **Warranties.** **Disclosing Party warrants that it has the right to make the disclosures under this Agreement.** Receiving Party understands that Disclosing Party makes no representation or warranty as to the accuracy or completeness of the Confidential Information and agrees that Disclosing Party shall not have any liability resulting from the use of the Confidential Information by Receiving Party. **No other warranties are made by either Party under this agreement. Any Confidential Information exchanged under this agreement is provided “As-is”.**
5. **Exceptions to Confidentiality Obligations.** The obligation of confidentiality shall not apply to Confidential Information which: (a) is, or becomes public knowledge other than through the unauthorized disclosure by Receiving Party; (b) was known to Receiving Party as evidenced by written records before receipt thereof from Disclosing Party; (c) is independently developed by Receiving Party without violating any of its obligations under this Agreement, (d) is received legally without restriction on disclosure by a third party who has the right to make such disclosure; (e) is approved for release by written authorization of an Officer of Disclosing Party; or (f) is required to be disclosed by law or other regulatory authority.
6. **Required Disclosure.** In the event any Confidential Information is sought from Receiving Party or its Representatives by means of a deposition, subpoena or judicially enforceable notice to produce, Receiving Party shall immediately notify Disclosing Party in writing and, to the extent permitted under applicable law, shall cooperate with Disclosing Party in any efforts of Disclosing Party to prevent disclosure of the Confidential Information.
7. **Confidential Information Disposal.** At any time during the term of this Agreement, upon the written request of Disclosing Party, the Receiving Party will either (a) promptly destroy all copies of the written Confidential Information in the possession of Receiving Party and confirm such destruction to Disclosing Party in writing, or (b) promptly deliver to Disclosing Party (at Disclosing Party’s expense), all copies of the written Confidential Information in Receiving Party’s possession. Any oral Confidential Information will continue to be subject to the terms of this Agreement. Nothing shall require the erasure, deletion, alteration or destruction of back-up tapes and other back-up media made in accordance with the Receiving Party’s document retention policies and procedures.

8. **Headings.** The Section headings in this Agreement are inserted solely for convenience and ease of reference and shall be disregarded in construing and interpreting this Agreement.
9. **Term of Agreement and Term of Obligation.** This Agreement shall be effective on the date set forth below and shall continue to be effective for a term of three (3) years unless terminated earlier by either Party with thirty (30) days prior written notice to the other Party. The obligation of confidentiality for each instance of the sharing of Confidential Information shall continue for a period of five (5) years after the date of initial disclosure of the Confidential Information and shall survive the conclusion of any relationship between the Parties or the premature termination of this Agreement. Parties understand that this Agreement is for the benefit of both Parties and their respective successors and assigns and shall be governed by, and construed in accordance with, the laws of the State of North Carolina.
10. **Intellectual Property.** Neither Party acquires any intellectual property rights under this Agreement.
11. **Export Control.** Both Parties shall adhere to all applicable laws, regulations and rules relating to the export of technical data, and shall not export or re-export any technical data, any products received from the Disclosing Party or the direct product of such technical data to any proscribed country listed in such applicable laws and regulations.
12. **Relationship.** This Agreement is not intended to, and shall not constitute, create, give effect to or otherwise recognize a joint venture, partnership, or formal business entity of any kind. Nothing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both Parties. Each Party shall act as an independent contractor and not as an agent of the other for any purpose whatsoever and neither Party shall have any authority to bind the other Party except as specifically set forth herein.
13. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. This Agreement may be amended only by an instrument in writing executed by both Parties. This Agreement may not be assigned by either Party without the prior written consent of the other Party hereto.
14. **Notice.** Any notices given under this Agreement, effective upon receipt, shall be in writing and delivered by overnight courier service to the parties as follows, unless changed by written notice:
  - a) **For Duncan-Parnell:** Duncan-Parnell, 900 S McDowell St, Charlotte NC 28204 - Attn: Director, AMS
  - b) **For Company:** To the undersigned at the Company's address as set forth above.
15. **Rights and Remedies.** Any breach by the Receiving Party of its obligations under this Agreement may result in irreparable injury to the Disclosing Party for which damages or other legal remedies may be inadequate. In seeking enforcement, the Disclosing Party may be entitled to seek preliminary and/or permanent injunctive relief and/or other equitable relief as determined by a court of competent jurisdiction located in Mecklenburg County, North Carolina.
16. **Execution of Agreement.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. Executed signature pages to this Agreement may be delivered by facsimile (including copy sent by e-mail) and such facsimiles shall be deemed as if actual signature pages had been delivered.

\_\_\_\_\_  
**Company**

**Duncan-Parnell, Inc.**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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