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## **CONFIDENTIALITY AGREEMENT**

This Confidentiality Agreement (the "Agreement") is made and entered into as of \_\_\_\_ ("Date") \_\_\_\_\_, by and between New Phoenix Aerospace, having a principal place of business at 175 Southport Drive, Suite 200, Morrisville, NC 27560 USA, ("NPA"), and

\_\_\_\_\_ ("Recipient") \_\_\_\_\_ and together with New Phoenix Aerospace, (the "Parties" and each, a "Party").

### **RECITALS**

WHEREAS, the parties wish to engage in direct or indirect discussions in order to explore or pursue a potential business relationship.

WHEREAS, each of the parties possesses, or may possess, certain Proprietary Information related to the subject matter of their discussions (the "Subject") that the other party may find useful in connection with such potential relationship.

WHEREAS, the parties recognize that the Proprietary Information is a valuable asset of the disclosing party, and that misuse or unauthorized disclosure will substantially impair the value of the Proprietary Information.

WHEREAS, each party acknowledges that the other party may now sell, or have under development, products which are competitive with those of the other party. Disclosures of Proprietary Information under this Agreement shall not impair the right of the receiving party to independently develop, manufacture, use and sell products and services competitive with those offered by the disclosing party.

NOW THEREFORE, in consideration of the foregoing premises, the covenants, terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, NPA and Recipient agree as follows:



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## AGREEMENT

### 1. DEFINITIONS

- (a) “Confidential Material” means any information, technical data or know-how in whatever form relating to a Party, including, but not limited to, financial, operations and cost information, pricing information, sales and performance information, customers, strategies, personnel, product and manufacturing information, designs, drawings, ideas, and inventions, documented information, machine readable or interpreted information, information contained in physical components, maskworks and artwork, which are physically marked with the legend “Confidential Material”. Information
- (b) transmitted orally or visually shall be considered to be Confidential Material provided such Confidential Material is identified as such by the disclosing party prior to disclosure, reduced to written summary form, and are physically marked with the legend

“Confidential Material” by the transmitting party, and transmitted to the recipient within thirty (30) days after such oral or visual transmission. During this thirty (30) day period, such oral or visual information so disclosed shall be provided the same protection as provided Confidential Material as set forth below. No information shall be subject to restriction unless physically marked as provided for herein.

(b) “Person” shall be broadly interpreted to include, without limitation, any natural person, corporation, company, partnership, trust, or other entity, the media, and any governmental representative or authority.

(c) “Representatives” mean those directors, officers, employees, agents, affiliates, associates or representatives, including without limitation accountants, attorneys and financial advisers of a Party who, have a need to know the Confidential Material.



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## **2. INFORMATION NOT CONSIDERED CONFIDENTIAL**

Confidential Material does not include information which is: (a) developed by the receiving party independently of the disclosing party as supported by the receiving party's written records; (b) rightfully obtained without restriction by the receiving party from a third party; (c) publicly available other than through the fault or negligence of the receiving party; (d) released without restriction by the disclosing party to anyone including the U.S. Government as supported by the receiving party's written records; or (e) known to the receiving party at the time of its disclosure.

## **3. MARKING OF CONFIDENTIAL MATERIAL**

Any Confidential Material exchanged by the parties and entitled to protection hereunder shall be identified as such by an appropriate stamp or marking on each document exchanged designating that the material is "Confidential Material".

## **4. PROTECTION**

The receiving party shall hold each item of Confidential Material so received in confidence until five (5) years after the expiration of this Agreement (the "Proprietary Period").

## **5. ALLOWABLE USES**

During the Proprietary Period the receiving party shall use the Confidential Material for the purposes set forth above. Both parties understand and acknowledge that neither party makes any representation or warranty, express or implied, as to the accuracy or completeness, or the freedom from defect of any kind of the Confidential Material and neither party shall have any liability to the other party resulting from their use of the Confidential Material.



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## **6. IMPERMISSIBLE USES, NO RIGHTS GRANTED**

A. Neither party hereto shall, without the prior written consent of the other, (i) disclose such Confidential Material during the Proprietary Period in whole or in part; or (ii) use in whole or in part, Confidential Material disclosed by the other to manufacture or enable manufacture by itself or third parties of the disclosing party's products, products similar thereto, or products derived there from.

B. The receiving party may not use the Confidential Material to reproduce, redesign, reverse engineer or manufacture any products or equipment of the disclosing party. The receiving party may not use the Confidential Material to perform any services relating to the products or equipment of the disclosing party.

C. Confidential Material shall remain the property of the disclosing party. Nothing in this Agreement shall be construed as granting or conferring any rights on the part of any party by license or otherwise, expressly or implied, to any invention or discovery, or to any patent covering such invention or discovery.

## **7. PERMITTED DISCLOSURES**

A. The receiving party shall make the Confidential Material available only to its employees, contract employees, and other parties working on the Program within the receiving party's facility and having a "need to know" with respect to said purpose. In connection therewith the parties shall advise each such employee, contract employee, or other party of its obligations under this Agreement.

B. If authorized in writing by the disclosing party, the receiving party may disclose Confidential Material of the disclosing party to a third party; provided that the receiving party require the third party to enter into a Confidential Material exchange agreement with similar terms and conditions to this Agreement and such agreement is provided to the disclosing party within fifteen (15) days after the date on which it was entered into

## **8. RETURN OR DESTRUCTION OF CONFIDENTIAL MATERIAL**

Upon written request of the disclosing party, the disclosed Confidential Material and all copies thereof shall, upon the expiration or termination of this Agreement, be returned to the disclosing party, or be destroyed and a written certificate of destruction shall be provided to the disclosing party.



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## **9. LEGAL ACTIONS AND GOVERNMENT REGULATIONS**

Should the receiving party be faced with legal action or a requirement under U.S. or foreign government regulations to disclose Confidential Material received hereunder, the receiving party shall forthwith notify the disclosing party, and upon the request of the latter, the receiving party shall cooperate in contesting such disclosure. Except in connection with a failure to discharge the responsibilities set forth in the preceding sentence, neither party shall be liable in any way for any disclosures made pursuant to judicial action or U.S. or foreign government regulations.

In addition, neither party shall be liable in any way for any for inadvertent disclosure or use where the customary degree of care has been exercised by the receiving party as it normally uses to protect its own Confidential Material; provided that upon discovery of such inadvertent disclosure or use, the receiving party shall notify the original disclosing party immediately, and shall endeavor to prevent any further inadvertent disclosure or use.

## **10. RELATIONSHIP BETWEEN THE PARTIES**

A. This Agreement does not create a teaming agreement, joint venture, partnership or other such arrangement; rather, the parties expressly agree that this Agreement is solely for the purpose of disclosing and protecting Confidential Material.

B. Neither party promises to provide the other party with Confidential Material. The decision to provide any Confidential Material is within the sole discretion of the party originally possessing the Confidential Material.

C. Except as provided in Section 13 herein, each party shall bear its own costs and expenses incurred under or in connection with this Agreement.

## **11. EXCLUSIVE CONTACTS**

The following persons will, on behalf of the respective parties, be the sole individuals authorized to receive and or transmit written Confidential Material:

:

New Phoenix Aerospace: ALI Ezami

Either party may change the exclusive contact by written notice.



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## **12. TERM OF AGREEMENT**

This Agreement shall expire five (5) year(s) after the date first written above (the "Disclosure Period") except that it may be terminated earlier by thirty (30) days prior written notification by either party to the other or extended by mutual written agreement. The provisions of Sections 4, 5, 6, 7, 8 and 13 shall survive such expiration or termination.

## **13. DISPUTE RESOLUTION**

A. Before the parties resort to litigation to solve any dispute, the parties agree to schedule a mandatory meeting at a mutually agreeable location, which meeting will be attended by at least one senior manager from each party. At that meeting, each side will present its dispute and the senior managers will enter into good faith negotiations in an attempt to resolve the dispute.

B. In the event the dispute is not resolved, the parties retain all applicable remedies available in law or equity.

C. This Agreement shall be governed by and interpreted in accordance with the laws of New York, with the exception of its conflict of laws provision.

D. Notwithstanding any other rights of either party, either party may seek injunctive relief in any court of competent jurisdiction against improper use or disclosure of Confidential Material.

## **14. EXPORT OF CONFIDENTIAL MATERIAL**

The receiving party represents and warrants that no technical data furnished by the disclosing party shall be exported from the United States without first complying with all requirements of the International Traffic in Arms regulations and the Export Administration Act and regulations issued there under, including the requirement for obtaining any export license, if applicable. The receiving party shall first obtain the written consent of the disclosing party prior to submitting any request for authority to export any such technical data. The receiving party shall indemnify and hold the disclosing party harmless from all claims, demands, damages, costs, fines, penalties, attorneys' fees and all other expenses arising from the failure of the receiving party to comply with this clause or the International Traffic in Arms regulations and the Export administration Act and applicable regulations.



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**15. MISCELLANEOUS**

A. Except as to a sale or transfer of the business to which this Agreement relates, the rights of the parties under this Agreement may not be assigned or transferred to any person, firm or corporation without the express prior written consent of the other party, which consent will not be unreasonably withheld.

B. This Agreement may be signed in one or more counterparts (including faxed copies), each of which shall be deemed one and the same original.

C. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. The terms of this Agreement may not be superseded by any specific legends or statements associated with any Confidential Material, and may not be amended except by written document signed by duly authorized representatives of each of the parties.

**IN WITNESS WHEREOF**, the parties have entered into this Agreement as of the date first written above.

New Phoenix Aerospace

By: Ali Ezami

Title: General Manager

Date: February 23, 2010

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

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

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