

## Mutual Non-disclosure Agreement (Reciprocal)

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This agreement dated \_\_\_\_\_, \_\_\_\_\_ (the “Agreement”), between Acoustech Systems LLC, a Kentucky limited liability company (“Acoustech”) and \_\_\_\_\_ (“\_\_\_\_\_”), a \_\_\_\_\_ based company, each of Acoustech and (“\_\_\_\_\_”), a “Party” or together, the “Parties”.

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### Background

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The Parties intend to engage in discussion and negotiations concerning Acoustech’s business and technology interests (the “**Proposed Relationship**”). In the course of such discussions and negotiations, it is anticipated that a Party may disclose or deliver to the other Party certain trade secrets or confidential or proprietary information for the purpose of enabling the Parties to evaluate the feasibility of such Proposed Relationship. The Parties have entered into this Agreement in order to assure the confidentiality of such trade secrets and confidential or proprietary information in accordance with the terms of this Agreement. As used in this Agreement, the Party disclosing Proprietary Information (as defined below) is referred to as the “**Disclosing Party**”; the Party receiving such Proprietary Information is referred to as the “**Receiving Party**”.

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### Proprietary Information

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As used in this Agreement, the term “**Proprietary Information**” shall mean all information about a Party and its affiliated companies, including, but not limited to, information regarding services, assets, business plans, information systems, technology, data, computer programs, processes, methods, operational procedures, customer information, product information, pricing information, sales information, vendor information, financial information, patent, copyright, trade secret, plans or results that a reasonable person would conclude possesses tangible commercial and economic value to persons other than the Disclosing Party, which is furnished by a Party or its representatives, whether furnished before or after the date hereof, whether oral, written or in any other medium, including without limitation by electronic mail, text message, instant messenger or posted on the Internet.

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### Disclosure of Proprietary Information

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The Receiving Party shall have the right to refuse to accept any information under this Agreement and nothing herein shall obligate Disclosing Party to disclose to the Receiving Party any particular information. The Receiving Party shall hold in confidence, and shall not disclose (or permit or suffer its personnel to disclose) to any person outside its organization, any Proprietary Information. The Receiving Party and its personnel shall use such Proprietary Information only for the purpose for which it was disclosed and shall not use or exploit such Proprietary Information for its own benefit or the benefit of another without the prior written consent of the Disclosing Party. Without limitation of the foregoing, the Receiving Party shall not cause or permit reverse engineering of any Proprietary Information or recompilation or disassembly of any software programs which are part of the Proprietary Information received by it under this Agreement and shall disclose Proprietary Information only to persons within its organization who have a need to know such Proprietary Information in the course of the performance of their duties and who are bound by a written agreement, enforceable by the Disclosing Party, to protect the confidentiality of such Proprietary Information. The Receiving Party shall adopt and maintain programs and procedures, which are reasonably calculated to protect the confidentiality of Proprietary Information and shall be responsible to the Disclosing Party for any disclosure or misuse of Proprietary Information that results from a failure to comply with this provision. The Receiving Party shall be fully responsible for any breach of this Agreement by its agents, representatives and employees. The Receiving Party will promptly report to the Disclosing Party any actual or suspected violation of the terms of this Agreement and will take all reasonable further steps requested by the Disclosing Party to prevent, control or remedy any such violation.

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## Limitation on Obligations

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The obligations of the Receiving Party specified in Section 3 above shall not apply, and the Receiving Party shall have no further obligations, with respect to any Proprietary Information to the extent Receiving Party can demonstrate, by clear and convincing evidence, that such Proprietary Information:

- a. is generally known to the public at the time of disclosure or becomes generally known through no wrongful act on the part of the Receiving Party;
- b. is in the Receiving Party's possession at the time of disclosure otherwise than as a result of Receiving Party's breach of any legal obligation;
- c. becomes known to the Receiving Party through disclosure by sources other than the Disclosing Party having the legal right to disclose such Proprietary Information; or
- d. is independently developed by the Receiving Party without reference to or reliance upon the Proprietary Information.

In the event of a disputed disclosure, the Receiving Party shall bear the burden of proof of demonstrating that the information falls under one of the above exceptions.

The Receiving Party may disclose Proprietary Information if and to the extent required by applicable laws, governmental or regulatory regulations, or proper legal or governmental authority; provided that the Receiving Party provide prior written notice of such disclosure to the Disclosing Party and Receiving Party takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure. In the event that the Receiving Party is requested pursuant to, or required by, applicable law or regulation or by legal process to disclose any Proprietary Information or any other information concerning the Proposed Relationship, the Receiving Party agrees that it will provide the Disclosing Party with prompt notice of such request or requirement in order to enable the Disclosing Party to seek an appropriate protective order or other remedy, to consult with the Receiving Party with respect to the Disclosing Party's taking steps to resist or narrow the scope of such request or legal process, or to waive compliance, in whole or in part, with the terms of this Agreement. In any such event, the Receiving Party will use reasonable efforts to ensure that all Proprietary Information that is so disclosed will be accorded confidential treatment.

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## Ownership of Proprietary Information

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The Receiving Party agrees that the Disclosing Party is and shall remain the exclusive owner of the Proprietary Information and all patent, copyright, trade secret, trademark and other intellectual property rights therein. No license or conveyance of any such rights to the Receiving Parties is granted or implied under this Agreement. Receiving Party agrees that it will not, either during the term or after the termination of this Agreement, contest or challenge the ownership of the intellectual property rights in the Disclosing Party Intellectual Property.

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## Return of Documents

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The Receiving Party shall, upon the termination of this Agreement or the request of the Disclosing Party, return to the Disclosing Party all drawings, documents, and other tangible manifestations of Proprietary Information received by the Receiving Parties pursuant to this Agreement (and all copies and reproductions thereof).

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## Term and Termination

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- a. Each Party has a right to terminate the Agreement upon written notice to the other Parties. Upon termination of the Agreement by either of the Parties, no Party has any further obligation or liability to the other Parties other than the continuing obligation of confidentiality hereunder.

- b. The provisions of this Agreement shall continue with respect to the confidentiality of the respective item of the Proprietary Information until the earlier of: (i) five years from the date of disclosure of the respective item of Proprietary Information; (ii) the occurrence of any of the events set forth in (a) through (d) of paragraph four. For any Proprietary Information which constitutes a trade secret, the Parties shall maintain the confidentiality of the respective item of Proprietary Information for as long as it constitutes a trade secret under the applicable Uniform Trade Secrets Act.

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## Miscellaneous

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- a. This Agreement supersedes all prior agreements, written or oral, between the Parties relating to the subject matter of this Agreement. This Agreement may not be modified, amended or discharged, in whole or in part, except by an agreement in writing signed by the Parties.
- b. This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors and assigns.
- c. This Agreement shall be construed and interpreted in accordance with the laws of Kentucky.
- d. Each Party acknowledges that it, and none of its respective officers, directors, employees, agents or controlling persons or representatives make any express or implied representation or warranty as to the accuracy or completeness of any Proprietary Information, and agree that none of such persons shall have any liability relating to or arising from the use of any Proprietary Information or for any errors therein or omissions therefrom. Each Party also agrees that it is not entitled to rely on the accuracy or completeness of any Proprietary Information and that it shall be entitled to rely solely on such representations and warranties regarding Proprietary Information as may be made to it in any final agreement relating to the Proposed Relationship, subject to the terms and conditions of such agreement. The Parties further acknowledge and agree that each Party reserves the right, in its sole and absolute discretion, to reject any or all proposals and to terminate discussions and negotiations at any time.
- e. The provisions of this Agreement are necessary for the protection of the business and goodwill of the Disclosing Party and are considered by the Receiving Party to be reasonable for such purpose. The Receiving Party agrees that any breach of this Agreement will cause the Disclosing Party substantial and irreparable damages and, therefore, in the event of any such breach, in addition to other remedies, which may be available, the Disclosing Party shall have the right to seek specific performance and other injunctive and equitable relief.
- f. Modifications. Receiving Parties shall not modify, disassemble or reverse engineer the Disclosing Party's Intellectual Property in any manner. Receiving Party shall not use Disclosing Party's Intellectual Property or any materials incidental thereto to develop any products or systems that would be competitive with or similar to the Disclosing Party's systems, equipment, products or technology. Any such equipment, product, system or technology shall immediately become the sole and exclusive property of Disclosing Party and Disclosing Party shall own all rights, title and interests to such product or system, any and all copyrights, patents and trade secrets related thereto.
- g. No Publicity. Receiving Party shall not publicly disclose (in any press release, prospectus, offering memorandum or otherwise) that it is engaging in discussions with the Disclosing Party regarding the Proposed Relationship or any information, materials, reports, or other work product that Receiving Party creates or develops as part of such discussions.
- h. Severability. All of the provisions of this Agreement shall be considered as separate terms and conditions and in the event any provision shall be held void, voidable, or legally invalid or otherwise unenforceable by any court of competent jurisdiction of law or in equity, all the other terms, conditions, and provisions contained herein shall remain in full force and effect.

**EXECUTED as of the day and year first set forth above**

Company: \_\_\_\_\_

Acoustech Systems, LLC

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

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

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

Print Name: Nick Noble

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

Title: Director of Business Development

Address: \_\_\_\_\_

949 Pedigo Way  
Address: Bowling Green, KY 42103 U.S.A.