

**MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

This Mutual Confidentiality and Nondisclosure Agreement (“Agreement”) is made and entered into as of the \_\_\_day of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_, (the “Effective Date”), by and between **Penn United Technologies, Inc**., a corporation of the Commonwealth of Pennsylvania, having a place of business at 799 North Pike Road, Cabot, Pennsylvania, 16023 (“Penn United”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, organized and existing under the law of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ each a “Party” and collectively, the “Parties” to this Agreement. A Party disclosing information pursuant to the terms hereof is referred to as the “Disclosing Party,” and the Party receiving information pursuant to the terms hereof is referred to as the “Receiving Party.”

 **RECITALS**

WHEREAS, Penn United is engaged in the business of designing, manufacturing, marketing and distributing industrial and consumer tools and products, together with all components, spare parts and accessories, and marketing and selling such products and services, which it has developed through its many years of professional experience;

WHEREAS, the Parties are entering into discussions for the purpose of evaluating a potential business relationship concerning the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Potential Business”).

WHEREAS, as part of that evaluation process, the Parties may be disclosing information that the Parties consider to be confidential and proprietary.

WHEREAS, the Parties are willing to disclose such information to each other on the condition that the Receiving Party does not disclose such information to third parties.

 **AGREEMENT**

NOW, THEREFORE, in order to protect certain confidential information which may be disclosed between them, in consideration of the mutual covenants and agreements set forth herein and intending to be legally bound, the Parties mutually agree as follows:

1. “Confidential Information” means nonpublic information that the Disclosing Party designates as being confidential. Confidential Information includes, without limitation, all scientific, engineering, statistical, commercial, technical, or process data, including, without limitation, any such information disclosed by either Party concerning the Potential Business; all information regarding products, samples, manufacturing capabilities, techniques and processes, marketing strategies and possibilities, existing and potential customers, all relating to the Disclosing Party's products or services, information relating to released or unreleased products of a Disclosing Party, the marketing or promotion of a Disclosing Party's products, a Disclosing Party's business policies or practices, and information received from others that the Disclosing Party is obligated to treat as confidential. All information marked as “Confidential,” “Proprietary,” or with a similar legend, will be deemed Confidential Information. If any disclosure of Confidential Information is oral or visual, the subject and substance thereof shall be confirmed in writing with thirty (30) days. Any such memorandum or written disclosure shall be marked “Confidential.” Equipment and process information viewed during a plant tour at Penn United will be considered confidential and proprietary without written notice or confirmation.

2. All Confidential Information hereafter disclosed by a Disclosing Party to a Receiving Party shall be treated by the Receiving Party as confidential and secret and shall not be revealed or disclosed by the Receiving Party to any third party whatsoever, nor to any foreign national where such disclosure may constitute an export under the laws or regulations of the United States. The Receiving Party shall take all means that are consistent with its current practices for safeguarding Confidential Information to prevent the Confidential Information from being disclosed to any third party or person not entitled thereto.

3. *Exclusions from Definition of Confidential Information*. Confidential Information does not include, however, information concerning either Party which (a) is or becomes generally available to the public or within the industry to which such information relates other than as a result of a breach of this Agreement, or (b) at the time of disclosure to it by the other was already known by it as evidenced by its written records, or (c) becomes available to the other party on a non-confidential basis from a source that is entitled to disclose it on a non-confidential basis, or (d) was or is independently developed by or for the other party without reference to the Confidential Information, as evidenced by such party's written records, or (e) is required to be disclosed pursuant to a court order, requirement of law, regulation or legal process. In the event that the Receiving Party is required by applicable law or regulation or by legal process to disclose any Confidential Information, the Receiving Party agrees that it will provide the Disclosing Party with prompt notice of such requirement to enable the Disclosing Party to seek an appropriate protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. Any combination of features shall not be deemed to be within the foregoing exceptions merely because individual features are in the public domain or in the Receiving Party's possession, but only if the combination itself and its principal of operation are in public domain or in the Receiving Party's possession.

4. *Restricted Use*. The sole and limited purpose for which the disclosures hereunder are being made is to allow the Parties to evaluate the Potential Business, and, if the Parties enter into any further contractual relationship, to further the purposes of that relationship.

5. *Limited Internal Disclosure*. Confidential Information shall only be disclosed to such limited number of officers and employees of the Receiving Party as may be necessary to implement the purposes described herein, but all such officers and employees shall be directed and required to maintain the Confidential Information in confidence.

6. *Intellectual Property Rights*. The Receiving Party will not attempt to secure patent, copyright or any other form of rights or protections for the Disclosing Party’s Confidential Information anywhere in the world, and if any such rights or protections are secured by or on behalf of the Receiving Party, the Receiving Party shall be deemed to hold such rights or protections in trust as an agent for the Disclosing Party and shall assign and transfer such rights and protections to the Disclosing Party on demand without payment or other consideration. The Receiving Party will not copy, modify, reverse engineer nor authorize anyone to copy, modify or reverse engineer, any Confidential Information, except as expressly permitted herein or with Disclosing Party’s express written prior approval.

7. *No Grant*. Nothing herein shall be construed as granting to either Party any interest or license under any trade secret, patent, patent application, know-how or any copyright heretofore or hereafter granted or filed in which the other Party now has or subsequently obtains any right, title or interest.

8. *Term*. The obligation of confidentiality assumed by a Receiving Party pursuant to this Agreement shall apply for five (5) years from the date first set forth above or for five (5) years from the date any contractual agreement between the Parties terminates, whichever date is further in the future, such five (5) year period being considered the "Term" of this Agreement.

9. *Return or Destruction of Confidential Information*. All Information disclosed by the Disclosing Party to the Receiving Party shall be and shall remain the property of the Disclosing Party. If either Party terminates discussions concerning the Potential Business, each Party may request that the other party promptly return or destroy all tangible items in its possession containing Confidential Information and may request of the other party to delete all electronic media containing the Confidential Information. Notwithstanding anything in this Agreement to the contrary, either Party may request the return of Confidential Information at any time. Upon request by either Party, the Receiving Party shall certify to Disclosing Party, in writing that it has complied with the obligations of this Section. For the sole purpose of evidencing compliance with this Agreement, the Receiving Party may maintain a secure file containing a single copy of all items returned to Disclosing Party.

10. *No Obligation*. Nothing herein contained shall obligate a Party to engage in the Potential Business or enter into any agreement with the other Party or into any other commercial agreement, venture or otherwise. Any such agreements may be entered into upon such terms and conditions as the Parties may hereafter agree.

11. *Equitable Relief*.The Parties hereby acknowledge that a breach by a Party of this Agreement may not be adequately compensated by monetary damages. Accordingly, in the event of such a breach, either Party recognizes that the other Party shall have the immediate right to secure an order from any competent court enjoining such breach. This undertaking shall be enforceable without prejudice to any other rights the Parties have in law or under this Agreement.

12. *Governing Law*. This Agreement shall be interpreted and governed according to the laws of the Commonwealth of Pennsylvania without regard to the choice of law principles.

13. *Successors; Assigns*. This Agreement shall be binding upon, and inure to the benefit of, and be enforceable by and against the successors and permitted assigns of each Party to this Agreement. Neither Party may assign this Agreement to any third party without the prior written consent of the other Party.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

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| **Penn United Technologies, Inc.** |  |       |
|  |  | (Full Corporate/Individual name) |  |
|       |  |  |  |
| (Signature) |  |       |
|  |  | (Signature) |  |
| **Print Name:** |       |  |  |  |
|  |  |  |  |
| **TITLE:** |       |  | **Print Name:** |       |
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|  |  | **TITLE:** |       |

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| **Address & Contact for Notice:** | **Address & Contact for Notice:** |
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| ATTN: |      | Name: |       |
| Title: |       |  |  |
| Penn United Technologies, Inc. | Title: |      |
| 799 North Pike Road |  |  |
| Cabot, PA 16023 | Address: |      |
| (724) 352-1507  |  |
|  |  |       |
| **(**for internal Use only**)** |  |  |
| **Penn United Contact:**  | Phone: |       |
|  |       |  |  |  |
|  | Email: |       |