



American Panel Corporation

NON-DISCLOSURE AGREEMENT

AGREEMENT made this ____ day of _____ 2____, between
_____ having an office at

_____ and American Panel Corporation (APC) with an office at 6675 Shiloh Road East Alpharetta, Georgia 30005.

WITNESSETH:

WHEREAS, in connection with technical discussions between the parties hereto (“the parties”), either may disclose to the other information which is confidential and proprietary to the disclosing party.

WHEREAS, the Parties, for their mutual benefit, are desirous of interchanging samples and/or information, including confidential information, which is related to their representative business; and

WHEREAS, the Parties understand that under both the common law and state and federal statutes appropriation of another's confidential information may result in both civil liability and criminal punishment.

NOW, THEREFORE, in consideration of the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The parties shall not disclose to others, or use for their own benefit or otherwise appropriate, copy or otherwise reproduce, or make notes of, any trade secrets, confidential information or other information (other than that which is public knowledge) disclosed by the other party in connection with the Parties' business relationship. Said trade secrets and confidential information includes, but is not limited to, drawings, samples, materials, computer programs and software, techniques, magnetic media, electronic conveyance of information, formulas, customers, customer information, information regarding the Parties' business relationship, and other information of any nature, and in any form which, at the time of disclosure, is not generally known in the industry (all of the above sometimes being referred to herein as "Confidential Information"). When possible, confidential information shall be noted by an appropriate stamp or legend by the disclosing Parties at the time of disclosure. With regard to samples, each of such samples shall be considered Confidential Information. Samples shall not be analyzed to determine their chemical, physical or other make-up, or method or process of manufacture. The Parties shall not make any modifications to the samples or information.



2. Confidential information which is disclosed pursuant to Paragraph 1, shall not be disclosed to others (except to employees, consultants or subcontractors of the receiving party having a need to know, providing such consultant or subcontractors of the receiving party, executes a similar non-disclosure agreement, an executed copy of which is to be forwarded to the disclosing party at the above address), or used for other than the purposes noted above, unless authorized in writing by the disclosing party.
3. Both Parties represent and warrant that they protect their own Confidential Information from unauthorized use or disclosure, and further that they have agreements with their employees to so protect their own Confidential Information and that of others that they become obligated to protect when in a confidential relationship. The receiving party shall protect such information with the same degree of care that it regularly employs to safeguard its own Confidential Information from unauthorized use or disclosure, but in no case with any less degree than reasonable care.
4. The rights and obligations of both Parties with respect to all Confidential Information disclosed under this Agreement shall not affect any rights of either Party with respect to patents, trademarks or copyrights.
5. It is acknowledged by the Parties that any portion of information which:
 - (a) is or becomes available to recipient from a third party without restriction and without breach of any Agreement with the transmitting party;
 - (b) is independently developed by employees of the receiving party who have not had access to such proprietary information;
 - (c) is or becomes part of the public domain without breach of this Agreement by the receiving party;
 - (d) is already known to the receiving party at the time of its disclosure by the disclosing party, and is capable of proof of same by written record;
 - (e) is disclosed by the transmitting party to a third party without restriction;is not entitled to the protection afforded information provided herein.
6. No license to either party under any intellectual property, including any patents, trademarks, or copyrights is granted or implied by the disclosures of such Confidential Information.
7. Except as provided in Paragraph 8 below, all Confidential Information and copies thereof, including any samples submitted (except samples destroyed during evaluation), shall remain the property of the disclosing or transmitting Party. All



such Confidential Information shall be returned to the disclosing party (alternatively such Confidential Information, and all copies thereof, may be destroyed by the receiving party, the proof of which shall be provided by an affidavit to that effect, submitted to the disclosing party within thirty (30) days of such destruction):

- (a) within thirty (30) days after the termination of this Agreement;
 - (b) upon completion of the purpose(s) for which it was submitted;
 - (c) upon the determination by the receiving party that it no longer desires to possess such Confidential Information; or
 - (d) upon the request of the transmitting party, whichever occurs first.
8. In the event that one party breaches this Agreement, the failure of the other party to enforce any right hereunder shall not be deemed a waiver of any right. The rights and remedies of the Parties as set forth herein are not exclusive and are in addition to any rights and remedies provided by law; additionally, the invalidity in whole or in part of any other provision of this Agreement shall not affect the validity of any other provision hereof.
 9. This Agreement is deemed to be made under and shall be construed in accordance with the laws of the State of Georgia, U.S.A., and constitutes the entire understanding between the Parties hereto with respect to the subject matter of this Agreement.
 10. This Agreement supersedes all previous understandings between the parties with respect to the subject matter hereof.
 11. No amendment or modification of this Agreement shall be valid or binding on the Parties unless made in writing and signed on behalf of each of the Parties by their respective duly authorized officers or representatives.
 12. This Agreement shall remain in effect until such time that either Party provides written notice thirty (30) days in advance of the date of its intent to terminate this Agreement. The obligations herein shall survive the termination under this paragraph for all confidential information disclosed prior to termination.
 13. This Agreement shall not constitute, create, give effect to or otherwise imply a joint venture, pooling arrangement, partnership or business organization of any kind, nor shall it constitute, create, give effect to or otherwise imply an obligation or commitment on the part of either Party to submit a proposal to or perform a contract with the other Party. Nothing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both Parties.



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14. The parties understand that the disclosure of Confidential Information to third parties may result in irreparable harm to the owner of the Confidential Information, which would not be adequately compensable in money damages and therefore the parties agree that in addition to any legal claims which may be available, the aggrieved party shall have the right to obtain an injunction to restrain any unauthorized use or disclosure.

Accepted this _____ day of _____.

AMERICAN PANEL CORPORATION

Name: Marsha Rivard
Title: Director of Contracts

Date

COMPANY:

Name:
Title

Date