

**CONFIDENTIALITY, NON-DISCLOSURE AND NON-CIRCUMVENTION AGREEMENT**

**THIS CONFIDENTIALITY, NON-DISCLOSURE AND NON-CIRCUMVENTION AGREEMENT** (the “**Agreement**”) dated as of the \_\_\_\_\_, 2009.

BETWEEN:

\_\_\_\_\_, a company incorporated under the federal laws of \_\_\_\_\_, and having an address for notice and delivery at \_\_\_\_\_

\_\_\_\_\_

OF THE FIRST PART

AND:

**MAGNACOASTER MOTOR COMPANY INC.**, a company incorporated under the laws of Ontario, Canada and having an address for notice and delivery at 500 Fairway Rd. S., Unit 23-333, Kitchener, Ontario, Canada, N2C-1X3

(“**MAGNACOASTER MOTOR COMPANY INC.**”)

OF THE SECOND PART

**WHEREAS:**

- A. \_\_\_\_\_ and the Magnacoaster Motor Company Inc. wish to discuss certain matters of mutual interest (the “**Opportunities**”).
- B. In the course of their discussions, the both Parties will obtain extensive knowledge and confidential information from each other.
- C. \_\_\_\_\_ and the Magnacoaster Motor Company Inc., recognize that the confidentiality of the information being shared is necessary to protect both Parties and their business interests and that the disclosure or misuse of such confidential information could result in irreparable harm to one of or both Parties.
- D. \_\_\_\_\_ and the Magnacoaster Motor Company Inc. therefore, wish to enter into this Agreement to recognize the confidentiality of the information.

**NOW THIS AGREEMENT WITNESSES THAT IN CONSIDERATION** of the mutual promises, covenants and agreements herein contained, the Parties hereto covenant and agree with each other as follows

1. Purpose. This Agreement is intended to prevent the either Party from disclosing the Confidential Information as herein provided, or from using the Confidential Information for any purpose other than the purpose of negotiating and/or re-negotiating certain agreements (the “**Permitted Purpose**”).

2. Definitions.

- (a) “**Confidential Information**” means any information, including without limitation, technical reports, internal data, communications, or know-how, ideas, concepts, trade secrets, technical know-how, technical specifications, plans, processes, procedures, techniques, methods, designs, customer and vendor lists, prospect lists, finances and financial data of both Parties and any other information that both Parties considers and treats as confidential, which is obtained directly or indirectly from either in any form, including without limitation, documentary, tangible, oral, visual or electronic. Confidential Information does not include information, technical data or know-how which: (i) at the time of disclosure, is available to the general public; (ii) at a later date, becomes available to the general public through no fault of the either Party and then only after such later date; or (iii) is approved for disclosure by prior written permission of a corporate officer of; either Party.
- (b) “**Parties**” or “**Party**” means \_\_\_\_\_, the Magnacoaster Motor Company Inc. or both, as the context requires; and
- (c) “**Person**” means an individual, a firm, a corporation, a syndicate, a partnership, a trust, an association, an unincorporated organization, a joint venture, an investment club, a government or an agency or political subdivision thereof and every other form of legal or business entity of whatsoever nature or kind.

3. Non-Disclosure and Non-Use of Confidential Information

- (a) All Parties agree not to disclose the Confidential Information to any Person, including without limitation, any third parties or any of either Party’s affiliates or employees, except where such employees are required to have the Confidential Information in order to further the Permitted Purpose and have been apprised of the confidential nature of the Confidential Information.
- (b) All Parties agree not to use the Confidential Information, and not to permit the use of the Confidential Information by any Person, except for the Permitted Purpose.

- (c) All Parties agree that they will follow the same internal security procedures and exercise the same degree of care regarding the secrecy and confidentiality of the Confidential Information as similar information of all Parties is treated, and that all Parties will take all reasonable steps to protect the secrecy of and avoid disclosure or use of the Confidential Information in order to prevent it from falling into the public domain or the possession of unauthorized persons.
- (d) All Parties agree to notify in writing of any misuse or misappropriation of the Confidential Information which may come to its attention. If any Party involved is required by a government body or court of competent jurisdiction to disclose any Confidential Information, then the acting Party agrees that it will give the other Party reasonable advance notice of same so that the other Party may contest the disclosure or seek a protective order against such disclosure.
- (e) Each Party acknowledges and agrees that the Confidential Information disclosed to the other Party will remain the property of the disclosing Party at all times, and the disclosure of such Confidential Information to either Party does not create any right, claim or title by the other Party to the Confidential Information.
- (f) The Magnacoaster Motor Company Inc. and \_\_\_\_\_ agree that the amount and type of Confidential Information to be disclosed is completely within the sole discretion of the disclosing Party, and further agrees not to use the Confidential Information provided to it by the disclosing Party for any purposes other than the Permitted Purpose.
- (g) The Magnacoaster Motor Company Inc. and \_\_\_\_\_ acknowledges that neither the disclosing Party nor any of its directors, officers, agents or employees will be liable for errors, omissions or inaccuracies of any kind in the Confidential Information and each Party will be responsible for verifying the accuracy and correctness of the Confidential Information.
- (h) All Parties acknowledge that no warranty of any kind is given regarding the Confidential Information, the same being “as is, where is” and with all faults, and any applicable warranties of merchantability and fitness for a specific purpose are excluded. The foregoing in no way nullifies the retention by the disclosing Party of all right, title and interest in the Confidential Information.
- (i) Each Party agrees to indemnify the other, its present or future employees, agents or advisors for damages arising from any breach of the terms of this Agreement by it, including, without limitation, unauthorized use of the Confidential Information or disclosure of the Confidential Information by Magnacoaster Motor Company Inc. or \_\_\_\_\_, its present or future employees, agents or advisors.

(j) In addition to any and all remedies available to All Parties at law or in equity respecting a breach hereof, All Parties agree to take all reasonable measures, including, but not limited to, court proceedings at its own expense, to restrain current or future employees, agents, affiliates or advisors from unauthorized use or disclosure of the Confidential Information.

4. Non-Circumvention. Either Party will not, directly or indirectly interfere with, circumvent or attempt to circumvent, avoid, by-pass, or obviate either Party's interest in the Opportunities, or the interest or relationship between either Party and any Person in relation to the Opportunities, to change, increase or avoid directly or indirectly payment of established or to be established fees, commissions, or continuance of pre-established relationships, obtain rights or access to technologies directly or intervene in non-contracted relationships. In the event that one or several Persons do not renew any existing rights or similar contracts or ceases its relationship with \_\_\_\_\_ or Magnacoaster Motor Company Inc., without expressed written permission from either Party will not directly contact such Person or Persons for a period of five (5) years from the rights lapsing or the relationship being terminated.

5. Return of Materials. Any materials or documents which have been furnished to either Party will be promptly returned, accompanied by all copies of such documentation within five (5) days after receipt of a written notice from the Party requesting the return of the Confidential Information.

6. Continuing Non-Disclosure and Confidentiality Obligation. Whether or not the Parties decide to engage with or enter into an agreement with one another, the covenants pertaining to confidentiality, non-disclosure and non-use in this Agreement will nevertheless remain in full force and effect, unless and until both Parties specifically agrees in writing to release all or part of the Confidential Information from the confidential restrictions imposed by this Agreement.

7. No Other Obligations. This Agreement imposes no obligation on either Party to disclose Confidential Information or to purchase, sell, licence, transfer or otherwise make use of any service or products or to enter into any other agreements. Magnacoaster Motor Company Inc. reserves the right to acquire exclusively any and all intellectual property rights for any parts, pieces, apparatus, design, system, or process that may come about as per this arrangement.

8. Miscellaneous.

(a) *Governing Law and Jurisdiction*. This Agreement will be governed by and construed under the laws of the Province of Ontario, and the federal laws of Canada applicable therein, without giving effect to any choice of law that would result in the application of the laws of any other jurisdiction

(b) *Remedies*. The Parties agree that its obligations hereunder are necessary and

reasonable in order to protect all Parties. All Parties expressly agree that monetary damages would be inadequate to compensate either Party for any breach of any covenant or agreement set forth herein. Accordingly, the Parties agree and acknowledge that any such violation or threatened violation may cause irreparable injury to both Parties, with cause for termination of this Agreement or the continuation of any such breach, with the necessity of proving actual damages. Prior to seeking damages both Parties are to be notified in writing of such violation and stating remedy of such breach or the offending Party shall compensate the other Party as described in the notification.

- (c) *No Assignment without Consent.* This Agreement is not assignable without the prior written consent of the Parties. Any attempt to assign any of the rights, duties or obligations of this Agreement without written consent is void.
- (d) *Binding Effect.* This Agreement will be binding upon and inure to the benefit of the undersigned Parties, their successors and permitted assigns.
- (e) *Time of Essence.* Time is of the essence of this Agreement.
- (f) *Further Assurances.* The Parties agree that each of them will, upon reasonable request of the other, do or cause to be done all further lawful acts, deeds and assurances whatever for the better performance of the terms and conditions of this Agreement.
- (g) *No Waiver.* Failure to enforce any provision of this Agreement will not constitute a waiver of any term hereof. No waiver of a breach of any provision of this Agreement will constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision hereof, and no waiver will be effective unless granted in writing and signed by an authorized representative of the waiving Party.
- (h) *Partial Invalidity.* If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the other provisions will remain in full force and effect, and the illegal, invalid or unenforceable provision will be deemed replaced by a legal, valid and enforceable provision that most nearly reflects the intent of the Parties in entering into this Agreement.
- (i) *Entire Agreement.* This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous communications, understandings and agreements.
- (j) *Amendment.* This Agreement will not be amended other than in writing signed by the Parties.

- (k) *Counterparts.* This Agreement may be executed in one or more counterparts and by fax, each of which will be an original and all of which together will constitute one agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

\_\_\_\_\_

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

*Authorized Signatory*

\_\_\_\_\_

*Name & Title*

Magnacoaster Motor Company Inc.

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

*Authorized Signatory*

**Richard Willis, CEO**  
*Name & Title*