



## **MUTUAL CONFIDENTIALITY AGREEMENT**

This Mutual Confidentiality Agreement ("Agreement"), dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is by and between Terra Supreme Battery LLC ("TSB"), an Indiana Limited Liability Company with offices in Albion, Indiana, and the undersigned \_\_\_\_\_ (the "Company"). TSB and Company shall each be referred to herein as a "Party" or, in the aggregate, as the "Parties"

**WHEREAS**, each Party hereto has acquired and/or developed confidential, proprietary information relating to its business, existing or proposed products, production techniques, marketing plans and strategies, know-how, test data, services, financial data, plans and strategies, prospects, plans, analyses, and other such information and material (all such information referred to as the "Confidential Information"); and

**WHEREAS**, each Party has expressed an interest in entering into discussions regarding a possible business transaction (the "Transaction") between the Parties; and

**WHEREAS**, in order to undertake these discussions and considerations regarding a possible Transaction, each Party desires to provide the other Party, and each Party desires to receive the other Party's Confidential Information; and

**WHEREAS**, in order to protect the Confidential Information and prior to providing such Confidential Information to the other Party, each Party requires a Confidentiality Agreement from the other Party;

**NOW, THEREFORE**, in order to induce TSB and the Company to disclose such Confidential Information to each other, and for other consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

### **1. Confidentiality of Information**

The Parties agree to disclose the Confidential Information to each other under the following conditions:

- a) The Parties agree to restrict access to and disclosure of the other Party's Confidential Information to their directors, officers, employees, affiliates, bankers, financial partners, syndication participants, attorneys, accountants, agents and advisors ("Representatives") who have a need to know the Confidential Information in order to conduct discussions and evaluations regarding a possible Transaction and who have agreed to maintain the non-disclosure and confidentiality requirements of this Agreement.
- b) Neither Party shall disclose the Confidential Information of the other Party, directly or indirectly, to any other person, firm, corporation, or other entity (other than to Representatives with a need to know and who receive such Confidential Information of the other Party subject to the same restrictions as are contained in this Agreement). Neither Party shall use the Confidential Information of the other Party for any purpose other than the evaluation of a Transaction as set forth herein and shall not use such Confidential Information to knowingly compete with the disclosing Party or to reproduce, redesign, reverse engineer, or manufacture products or equipment of the disclosing Party, to perform services relating to the products or equipment of the disclosing Party, or for its own benefit, except as expressly provided in this Agreement.
- c) All information received hereunder from one Party to the other shall be considered Confidential Information, unless it falls within the exceptions set forth herein below, and shall not be required to be marked as Confidential or Proprietary in order to receive the protections of confidentiality and non-use set forth herein.
- d) The Parties agree to keep confidential the existence of this Agreement, the possible Transaction between the Parties and the disclosure of Confidential Information between the Parties until or unless the Parties mutually agree to any such disclosure.
- e) The Parties agree not to remove, hide or obscure any proprietary markings of the disclosing Party.

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## **2. Permitted Uses**

The recipient Party agrees that it will only use the disclosing Party's Confidential Information for the purpose of determining the Parties' interest in pursuing a Transaction. No other rights or licenses are granted to the recipient Party in the Confidential Information.

## **3. Standards of Care**

Each Party shall use at least the same degree of care, but no less than a reasonable degree of care, to avoid inadvertent disclosure or unpermitted use of the other Party's Confidential Information which it employs with respect to its own proprietary or confidential information and that it does not wish to have disseminated, published or disclosed.

## **4. Inapplicability of Restrictions**

There shall be no restrictions under this Agreement with respect to any portion of the Confidential Information, which the recipient Party can establish through documentary evidence:

- a) was known to or in the possession of the recipient Party at the time of its disclosure to the recipient Party;
- b) was or becomes publicly available or known through no fault, wrongful act or omission of the recipient Party or of any affiliated company of the recipient Party;
- c) was received by recipient Party from a third Party, without solicitation, such third Party having a bona fide right to do so, and not having any confidential relationship or obligation to the disclosing Party, and without breach of the restrictions contained in this Agreement;
- d) was independently developed by the recipient Party, or any affiliated company of the recipient Party, without the use or benefit of the disclosing Party's Confidential Information or through a breach of this Agreement
- e) was approved for release in writing by the disclosing Party; or
- f) was required by law, court order or governmental agency to be disclosed.

In the event of a required disclosure under 4(f), the receiving Party shall, to the extent permitted by law, promptly notify the disclosing Party that production or disclosure has been ordered, to the extent permitted by law, and shall take all commercially reasonable steps and cooperate with the disclosing Party to limit disclosure of the Confidential Information. Notwithstanding anything contained in this Agreement to the contrary, neither receiving Party nor its Representatives shall be required to inform or notify the disclosing Party or any other person of any disclosure made to or requested by a bank examiner, regulatory examiner or self-regulatory examiner in the course of such examiner's examination, inspection or audit, and any such disclosure shall not be deemed a breach of this Agreement.

Confidential Information shall not be deemed to be in the public domain merely because any part of said Confidential Information is embodied in general disclosures or because individual features, components or combinations thereof are now or become known to the public.

## **5. Ownership**

All Confidential Information delivered by either Party to the other Party pursuant to this Agreement shall be and remain the property of the disclosing Party.

## **6. Term and Termination**

The term of this Agreement shall be three (3) years from the date of this Agreement unless earlier terminated by either Party upon written notice to the other. Notwithstanding the above, a Party's obligations of confidentiality as they pertain to Confidential Information which is also a Trade Secret, as that term is defined in the Uniform Trade Secrets Act shall remain in effect so long as the disclosing Party treats such information as a Trade Secret.

All such Confidential Information, and any copies thereof, shall be promptly returned to the disclosing Party upon receipt of a written request from disclosing Party. Any reports, analyses, notes, memos, summaries, or other documents prepared by the receiving Party that contain or reflect the disclosing Party's Confidential Information shall be destroyed, and such destruction shall be certified in writing by the receiving Party to the disclosing party. Receiving Party and its Representatives may retain copies of electronically exchanged

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Confidential Information made as a matter of routine information technology backup and to Confidential Information or copies thereof which must be stored by the receiving Party or its Representatives according to ordinary and customary record retention policy requirements of financial institutions, its audit and examination requirements, or as required by applicable law, provided that such Confidential Information or copies thereof shall be subject to an indefinite confidentiality obligations set forth herein until returned and/or destroyed, as the case may be.

## **7. Non-Solicitation**

Each Party hereto agrees not to directly or indirectly hire or engage, or attempt to hire or engage, or in any way facilitate or assist a competitor to hire or engage, each other's employees involved in the discussions or presentations carried out under this Agreement for a period of one (1) year following such discussions or presentations. Nothing in this paragraph shall preclude a Party in good faith from considering and accepting an application from or hiring any individual who contacts the Party on his or her own initiative or in response to a published recruitment advertisement or a general mandate given to any recruitment consultant.

## **8. Injunctive Relief**

The Parties recognize that the unauthorized disclosure of Confidential Information by a receiving Party hereunder may give rise to irreparable injury to the disclosing Party, inadequately compensable in damages, and that, accordingly, the disclosing Party may seek and obtain injunctive relief against breach of disclosure or use of Confidential Information by the receiving Party, in addition to any other legal remedies which may be available.

## **9. Miscellaneous**

- a) This Agreement shall be governed by, interpreted, and enforced in accordance with, the laws of the State of Indiana, irrespective of any conflicts of law rules or provisions.
- b) This Agreement shall be binding upon the Parties, their successors, and assigns. Neither Party shall assign this Agreement, or any Confidential Information received from the other Party pursuant to this Agreement, without the other Party's prior written consent.
- c) This Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement. Any amendment, modification or waiver of this Agreement shall be in writing and executed by duly authorized representative of the Parties.
- d) The Parties agree that in the event of litigation concerning this Agreement, the prevailing Party shall be entitled to recover attorney fees and costs from the other Party, as well as any other relief that may be granted.
- e) The disclosing Parties make no representation or warranty of any kind regarding the Confidential Information disclosed hereunder.
- f) The disclosing Party acknowledges that the recipient Party may develop information internally or receive information from other Parties that may be similar to the disclosing Party's Confidential Information.
- g) If applicable, the recipient Party shall adhere to U.S. Export Administration Laws and Regulations and shall not export or re-export any technical data or products received from the disclosing Party to any proscribed country listed in the U.S. Export Administration Regulations, unless properly authorized in writing by the U.S. Government.

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IN WITNESS WHEREOF, the Parties have executed this Agreement on the date herein by its duly authorized representative as follows:

**Terra Supreme Battery, LLC** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

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Title

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