



## MUTUAL NONDISCLOSURE AGREEMENT

THIS MUTUAL NONDISCLOSURE AGREEMENT becomes effective \_\_\_\_\_, 20\_\_  
(the “**Effective Date**”) by and between ACS Global, Inc, a Vermont Corporation “ACS”, and  
\_\_\_\_\_  
(Consultant/Name) of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
(physical address) (city) (state) (zip) “Consultant” and

Affiliates of both parties.

WHEREAS, ACS and Consultant each possess certain confidential data or information that is commercially valuable and not generally known in its industry of principal use and which each party considers as being confidential and proprietary to itself; and

WHEREAS, the two parties would like to meet to initiate discussions on potential business relationships between ACS and Consultant; and

WHEREAS, ACS and Consultant desire to provide a procedure for the exchange and protection of such confidential and proprietary information;

WHEREAS: “Affiliate” means any business entity which controls, is controlled by, or is under the common control of another business entity. For the purposes of this definition, a person or business entity shall be deemed to control another business entity if it owns, directly or indirectly, in excess of 50% of the voting interest in such business entity and/or it has the power to direct the management of such business entity.

NOW, THEREFORE, ACS and Consultant hereby agree as follows:

1. **Confidential Information.** This Agreement concerns disclosure by one party (herein “**Disclosing Party**”) to the other party (herein “**Receiving Party**”) of certain tangible or intangible information of a confidential or proprietary nature, including, without limitation, technical, financial, manufacturing, product development, commercial and proprietary information, know-how, patents and trade secrets, timelines, of any description, whether created or produced by ACS, Consultant or any person on behalf of ACS or Copmany, (herein collectively “Confidential Information”), in connection with discussions between the parties for the purpose of evaluating the suitability and feasibility of entering into a business or collaborative relationship.

2. **Use.** The parties will use the Confidential Information received hereunder solely for the purposes of facilitating discussion between the parties regarding a potential business or collaborative arrangement between them.

3. **Confidentiality.** The Receiving Party shall confine its dissemination of Confidential Information to only those individuals within its organization or its consultants, agents, or representatives who have a specific need to know in order to evaluate the information for purposes described in paragraph 2 and who are bound by obligations of confidentiality and restricted use that are at least as strict as those contained herein. The Receiving Party will not, and will not permit Receiving Party’s employees, agents or representatives, to:

- (a) copy, recreate or otherwise reproduce any Confidential Information in whole or in part, except as necessary to use such Confidential Information as expressly permitted by this Agreement; or
- (b) use any Confidential Information for any purposes not expressly permitted by this Agreement.

Notwithstanding the foregoing, disclosure of Confidential Information will not be prohibited to the extent such disclosure is required by law, provided that (i) the Receiving Party has given the Disclosing Party prior written notice of such disclosure prior thereto and takes all reasonable steps to

maintain the confidentiality of the information disclosed, and (ii) the Disclosing Party is afforded a reasonable opportunity to contest the necessity and scope of such disclosure.

4. **Exceptions.** Confidential Information shall not include information that is:
- (a) in the public domain at the time of disclosure or thereafter becomes part of the public domain through no act or omission of the Receiving Party, or its employees, agents or representatives, excluding information contained in patents pending or issued; or
  - (b) in the lawful possession of the Receiving Party at the time of disclosure, as evidenced by written records in existence prior to such disclosure; or
  - (c) lawfully disclosed to the Receiving Party by a person under no obligation of confidentiality to the Disclosing Party with respect to such information; or
  - (d) independently developed, as shown by written or other documentary records maintained contemporaneously with such development, by an agent or employee of the Receiving Party who has not had access to the Confidential Information.

Any Confidential Information disclosed under the terms of this Agreement is not generally available to the public or in the public domain or the Receiving Party's possession, and it is not made so merely because it is embraced by more general information generally available to the public or in the public domain or in the Receiving Party's possession; or merely because individual items of the Confidential Information are generally available to the public or in the public domain or in Receiving Party's possession.

The Receiving Party shall have the obligation to demonstrate that information which would otherwise constitute Confidential Information is within the scope of exceptions described in this paragraph 4.

5. **Injunctive Relief.** The parties acknowledge that Confidential Information constitutes confidential and proprietary information of a special and unique nature and value. The Receiving Party also acknowledges that the Disclosing Party may suffer irreparable harm in the event that the Receiving Party breaches any of its obligations hereunder and that monetary damages may be inadequate compensation to the Disclosing Party for such a breach. The parties accordingly agree that, in the event of a breach or threatened breach of any of the Receiving Party's obligations under this Agreement, the Disclosing Party will be entitled to seek injunctive relief to prevent such breach by the Receiving Party and by all persons acting for, on behalf of or with the Receiving Party. Such injunctive relief will be in addition to any other rights and remedies to which the Disclosing Party is or may be entitled to at law or in equity or otherwise under this Agreement.

6. **No License.** Neither the execution of this Agreement nor the disclosure of any Confidential Information shall be construed to constitute the grant of any right or license to the Receiving Party, or any other right of ownership, with respect to any invention, patent, patent application, copyright, trademark, trade secret or other intellectual property owned or controlled by the Disclosing Party. The parties agree that no patent application or any other intellectual property or other legal protection (other than the confidentiality protection set forth in this Agreement) shall be applied for by either party for any inventions which may arise from the transmission of the Confidential Information hereunder. Notwithstanding the foregoing, if the parties explicitly agree in advance and in writing, such patent applications or any other intellectual property or other legal protection may be applied for by either one or both of the parties for any inventions which may arise from the transmission of Confidential Information hereunder.

7. **No Relationship.** No employment, agency, partnership or joint venture relationship is created between the parties as a result of this Agreement. Nothing in this Agreement shall be construed to obligate either party to negotiate or enter into any business or collaborative arrangement with the other party or to obligate any party to disclose or otherwise make available any information to the other party.

8. **Return of Materials.** The Receiving Party shall return to the Disclosing Party all written Confidential Information received from the Disclosing Party, including all copies thereof, within thirty (30) days from the written request of the Disclosing Party, except that one copy of Confidential Information may be retained in the corporate confidential files of each party for purposes of verifying compliance with this Agreement and to be used only if there is a dispute regarding compliance with this Agreement.

9. **Term.** The Receiving Party's obligation of confidentiality with respect to any Confidential Information received from Disclosing Party shall remain in effect for a period of two (2) years from the Effective Date of this Agreement.

The Disclosing Party and its representatives may have disclosed certain Confidential Information to the Receiving Party and its representatives prior to the date of this Agreement, and the Disclosing Party and its representatives may continue to disclose Confidential Information to the Receiving Party and its representatives. Each and every such disclosure, whether past, present or future, is subject to the terms and conditions of this Agreement.

10. **Entire Agreement.** This Agreement is the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior negotiations or agreements. This Agreement shall not be amended, modified or waived except by a written instrument signed by an authorized representative of each party.

11. **Severability.** The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any one or more of the provisions hereof shall not affect the validity and enforceability of the remaining provisions.

12. **Binding Effect, Benefits.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

13. **Property of Disclosing Party.** The Receiving Party agrees that the Disclosing Party's Confidential Information shall at all times remain the property of the Disclosing Party. The Disclosing Party represents and warrants that the disclosure of the Confidential Information to the Receiving Party does not violate the rights of any third party.

14. **Governing Law.** This Agreement and any and all amendments hereto shall be governed by, and construed in accordance with, the laws of the State of Vermont, without regard to principles of conflicts of laws thereunder, and venue for any disputes arising hereunder shall lie solely with the state or federal courts in and for Lamoille Country, Vermont.

[Signature to follow on next page]

IN WITNESS WHEREOF, ACS and Consultant have caused this Agreement to be executed by their authorized representatives.

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

**ACS Global Inc**

Name: Dwight Fortenberry  
Title: Managing Partner  
Signature: \_\_\_\_\_