



## **CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

This CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (the "Agreement"), dated and effective as of the \_\_\_\_\_ ("Effective Date"), is by and between PUMA North America, Inc., located at 455 Grand Union Boulevard, Somerville, MA 01245 on behalf of itself, its subsidiaries and affiliated companies (hereinafter "Company") and \_\_\_\_\_, located at \_\_\_\_\_ (hereinafter "You" and/or "Second Party"). Company and Second Party (each as a "Disclosing Party") has provided or may provide, to the other party (each as a "Receiving Party") access to certain Confidential Information (as defined below).

**WHEREAS**, a Disclosing Party may disclose to a Receiving Party certain Confidential Information (as hereinafter defined); and

**NOW THEREFORE**, in consideration thereof and as a condition to each Disclosing Party furnishing access to such Confidential Information, whether before or any time after the date hereof, the parties to this Agreement agree as follows:

### **1. CONFIDENTIALITY AND PROPRIETARY NATURE OF THE INFORMATION**

The Receiving Party acknowledges the confidential and proprietary nature of the Confidential Information (as defined below), agrees to hold and keep the same as provided in this Agreement, and otherwise agrees to each and every restriction and obligation in this Agreement.

### **2. CONFIDENTIAL INFORMATION**

As used in this Agreement, the term "Confidential Information" means information and ideas that are non-public, confidential or proprietary in nature, however documented, whether oral or in some tangible form, whether belonging to and/or generated by the Disclosing Party or any Disclosing Party representative, disclosed revealed or shared (by Disclosing Party or learned by Receiving Party, including as a result of inspection of or presence on Disclosing Party property), and includes, without limitation, any and all:

- (a) trade secrets concerning the business and affairs of the Disclosing Party, data, know-how, processes, designs, sketches, photographs, graphs, financial information, production information, product specifications, drawings, samples, inventions and ideas, past, current, and planned research and development, current and planned distribution methods and processes, customer lists, employee lists, prospective candidate lists, current and anticipated customer requirements, price

lists, market studies, marketing plans, business plans, computer software and programs (including object code and source code), computer software and database technologies, systems, structures, communications, networks, security, infrastructure methods and architectures (and related processes, techniques, operations, improvements, devices, designs, know-how, inventions, discoveries, concepts, ideas, designs, methods and information), leases, and any other information, however documented, that is a trade secret; and

(b) information concerning the business and affairs of the Disclosing Party, however documented, that has been or may hereafter be provided or shown to the Receiving Party by the Disclosing Party or by its representatives or is otherwise obtained for review of Disclosing Party's documents or property or discussions with Disclosing Party representatives by the Receiving Party irrespective of the form of the communication, and also includes all notes, analyses, compilations, studies, summaries and other material prepared by Receiving Party containing or based, in whole or in part, on any information included in the foregoing. Any trade secrets of the Disclosing Party will also be entitled to all of the protections and benefits under any applicable law.

Notwithstanding the foregoing, the term "Confidential Information" shall include any information that identifies or directly relates to any natural person ("Personal Data"). Each party will exercise commercially reasonable efforts not to disclose any Personal Data to the other party and to restrict the other party's access to its Personal Data, but if a party is given access to the other party's Personal Data, the Receiving party shall: (a) act only in accordance with instructions from the Disclosing Party; (b) store the Confidential Information which includes Personal Data properly and securely in accordance with applicable law; and (c) ensure that appropriate technical and organizational measures are in place to protect the Personal Data against unauthorized or unlawful processing and against accidental loss, destruction or damage. The Receiving Party shall not transfer any Personal Data to a country or territory other than such territory in which the Personal Data was originally reviewed by the Receiving Party without the Disclosing Party's prior written consent.

"Representatives" as used in this Agreement shall mean any directors, officers, employees, contractors, subcontractors, consultants, advisors, attorneys, agents and affiliates.

"Affiliate" or "an affiliated company" as used in this Agreement shall mean, as to any entity, any other entity which directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with such entity.

### **3. RESTRICTED USE OF CONFIDENTIAL INFORMATION**

The Receiving Party agrees that (a) the Confidential Information will be kept confidential by the Receiving Party, (b) the Receiving Party will use its best efforts to protect the Confidential Information in accordance with the same degree of care with which it protects its own Confidential Information of like importance (but in no event less than a reasonable standard of care) and (c) without limiting the foregoing, the Confidential Information will not be disclosed by the Receiving Party to any person except with the specific prior written consent of the Disclosing Party or except as expressly otherwise permitted by this Agreement. Except with the specific prior written consent of the Disclosing Party or except as expressly otherwise permitted by this Agreement, the Receiving Party will not disclose that any Confidential Information has been made available to the Receiving Party. The Receiving Party further agrees that the Receiving Party will not permit, participate in, or condone any acts of reverse engineering, software disassembly analysis, or reproduction or distribution of any equipment or software and each will not, except where reasonably necessary for performing the purpose of this Agreement, copy or otherwise duplicate Confidential Information.

### **4. EXCEPTIONS**

Confidential Information will not include information which (a) was or becomes generally available to the public other than as a result of a disclosure by the Receiving Party, (b) was available, or becomes available, to the Receiving Party on a non-confidential basis prior to its disclosure to the Receiving Party by the Disclosing Party or a Disclosing Party's representative, (c) acquired by the Receiving Party from a third party which was not, to the Receiving Party's knowledge, under an obligation to the Disclosing Party not to disclose such information, (d) independently developed by the Receiving Party without use of the Confidential Information or (e) is required by law to be disclosed by the Receiving Party, in which case the Receiving Party shall first inform the Disclosing Party of all relevant facts relating to such a disclosure in accordance with Section 5 below.

### **5. LEGAL PROCEEDINGS**

If the Receiving Party is requested or becomes legally compelled (by oral questions, interrogatories, requests of information or documents, subpoena, civil or criminal investigative demand, or similar process) or is required by a regulatory body to make any disclosure that is prohibited or otherwise constrained by this Agreement, the Receiving Party or such representative, as the case may be, will provide the Disclosing Party with prompt notice of such request so that the Disclosing Party may seek an appropriate protective order or other appropriate remedy. Subject to the foregoing, the Receiving Party or such representative shall take reasonable steps to furnish that portion (and only that portion) of the Confidential Information that the Receiving Party or such representative is legally compelled or is otherwise required to disclose; provided, however, that the Receiving Party must use reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so disclosed.

## 6. TERM

The obligations imposed by this Agreement shall survive until five (5) years from the Effective Date hereof; provided, however, that with respect to any item of Confidential Information which is a trade secret under applicable law, the obligations of confidentiality hereunder shall survive the expiration of such five (5) year period and remain in full force and effect until such time as such trade secret becomes publicly known and made generally available through no action or inaction of a Receiving Party.

## 7. RETURN OF CONFIDENTIAL INFORMATION

The Receiving Party, upon the written request of the Disclosing Party at any time, shall immediately cease using the Confidential Information, and shall, at the option of the Disclosing Party, promptly return or destroy all Confidential Information and all documents or other materials furnished by the Disclosing Party or any representative thereof to the Receiving Party or any representative thereof that include or refer to any part of the Confidential Information, together with all copies made thereof (i.e. without retaining a copy of any such material).

## 8. REMEDIES

The Receiving Party acknowledges and agrees that an award of money damages would be an inadequate remedy for any breach of this Agreement by the Receiving Party and any such breach might cause the Disclosing Party irreparable harm. The Receiving Party also agrees that, in the event of any breach or threatened breach of this Agreement, the Disclosing Party will also be entitled, without the requirement of posting a bond or other security, to seek in a court of law equitable relief, including injunctive relief and specific performance. Such remedies will not be the exclusive remedies for any breach of this Agreement but will be in addition to all other remedies available at law to the Disclosing Party. The Receiving Party hereby acknowledges and agrees that the Receiving Party shall be liable to the Disclosing Party for any breach of the terms and conditions of this Agreement by its representatives as if the breach was committed by the Receiving Party.

## 9. MISCELLANEOUS

(a) Ownership and Intellectual Property. All Confidential Information shall remain the exclusive property of the Disclosing Party and, except as otherwise expressly provided in the Agreement, the right to use, possess or disclose it shall remain in the Disclosing Party. Neither the Receiving Party nor any of its representatives is granted, by license, assignment or otherwise, any rights in any Confidential Information or in any copyright or any other intellectual property right of any description, past, existing or future, whether directly or indirectly. Neither the Receiving Party nor any of its representatives will use the Disclosing Party's name or marks, or refer to or identify the Disclosing Party in any advertising or publicity release or promotional or marketing correspondence without the Disclosing Party's express prior written consent.

- (b) Assignment. Second Party may not assign or transfer or purport to assign or transfer any rights or obligations under the Agreement. Company may assign or transfer any rights or obligations under this Agreement to an affiliated company.
- (c) Modification. The agreements set forth in this Agreement may be modified or waived only by a separate writing signed by Company and Second Party expressly modifying or waiving such agreements.
- (d) Waiver. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege hereunder will operate as a waiver of such right, power or privilege, and no single or partial exercise thereof will preclude any other or further exercise of any such right, power or privilege. To the maximum extent permitted by applicable law, (i) no claim or right arising out of this Agreement can be discharged by one party, in whole or in part, by waiver or renunciation of the claim or right unless in writing signed by the other party; (ii) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (iii) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement.
- (e) Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.
- (f) Jurisdiction. Any dispute between the parties that cannot be settled by mutual agreement and that relates to the interpretation, carrying out of obligations, breach, termination or enforcement of this Agreement or in any way arises out of or is connected with this Agreement shall be exclusively submitted to the jurisdiction of the state and federal courts of the Commonwealth of Massachusetts.
- (g) Governing law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts without regard to conflicts of laws principles.
- (h) Entire Agreement. This Agreement constitutes and expresses the entire agreement and understanding between the parties superseding any prior understanding, commitments, or agreements, oral or written, with respect to Confidential Information. Any changes or modifications to this Agreement must be in writing and signed by an authorized representative of both parties expressly so modifying or amending this Agreement.
- (i) Counterparts. This Agreement may be executed and delivered, including by facsimile, in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute one and the same agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first written above.

For: PUMA North America, Inc.

Second Party

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date