

## CONFIDENTIALITY and NON-COMPETE AGREEMENT

This CONFIDENTIALITY AGREEMENT is dated as of this \_\_\_ day of \_\_\_\_\_ 2002 (the "Effective Date") by and between Newport Coast Capital Management, LLC or Assigns (the "Company" and \_\_\_\_\_ ("Recipient."))

### RECITALS

WHEREAS, the Company is providing to Recipient a confidential private placement memorandum and research material which contains certain confidential and proprietary information about the Company, including information regarding the Company's business, plans, intellectual property, markets, projected activities, customers and potential customers, requirements and sources, suppliers, contracts, means, methods and processes of manufacturing proprietary products a and/or providing services, trade secrets, and financial information (collectively, "Confidential Information").

NOW, THEREFORE, the parties hereto agree as follows:

1. Recipient hereby covenants and agrees that Recipient shall keep the Confidential Information in strictest confidence and shall not use, disclose, or publish, or assist any third party in using, disclosing or publishing, any Confidential Information, except as provided in this Agreement. Recipient also agrees not to pursue the sales transaction(s) and/or agreements contemplated and discussed in the Confidential Information without the express written consent of the Company.
2. Recipient may only use the Confidential Information for the purpose of conducting its due diligence review of the Company in connection with evaluating a possible business transaction. Recipient may not and shall not disclose the Confidential Information to any of its partners, employees or outside experts and advisors. Recipient shall protect the Confidential Information from unauthorized use or disclosure by using the same degree of care, but no less than a reasonable degree of care, as Recipient uses to protect its own confidential information of like nature.
3. Upon completion of its due diligence review, the foregoing restrictions shall nonetheless continue and remain in effect, and Recipient shall return to the Company upon written request therefor, all copies of Confidential Information then held by Recipient, or shall certify to the Company's satisfaction that all such copies have been destroyed, and that Recipient shall not retain any of the Confidential Information of the Company in its possession or control.
4. The provisions of this Agreement shall not apply to information disclosed by the Company that would otherwise be within the definition of Confidential Information if Recipient can establish that such information (a) was in Recipient's possession before receipt of such information from the Company, (b) is or has become available to the public through no fault of Recipient, (c) was received in good faith by Recipient from a third party who is not subject to an obligation of confidentiality owed to the Company, or (d) was independently developed by Recipient without reference to Confidential Information received hereunder.

5. If Recipient is required by judicial or administrative process to disclose the Confidential Information, Recipient shall promptly notify the Company and allow the Company a reasonable time to oppose such process.

6. The parties hereto agree that significant irreparable damage and harm could result to the Company if the Confidential Information was disclosed or used in violation of this Agreement, or if Recipient were to pursue this sales transaction and/or agreements referenced in the Confidential Information. The parties therefore agree that the Company shall be entitled to equitable relief by way of injunction if Recipient has breached, or in order to prevent Recipient from breaching, any provisions of this Agreement. No failure or delay by the Company in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. Each party agrees to indemnify the other for any costs and expenses, including legal expenses, incurred in connection with the enforcement of this Agreement.

7. This Agreement shall be binding upon the successors and assigns of each party and shall inure to the benefit of, and be enforceable by, the successors and assigns of each party.

8. The provisions of this Agreement shall be severable in the event that any of the provisions hereof are held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.

9. This Agreement may be waived, amended or modified only by an instrument in writing signed by the party against whom such waiver, amendment or modification is sought to be enforced, and such written instrument shall set forth specifically the provisions of this Agreement that are to be so waived, amended or modified.

10. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, without regard to conflicts of laws rules and principles.

11. This Agreement may be executed in any number of counterparts, including electronically transmitted counterparts, and each of such counterparts shall for all purposes be deemed original, and all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Newport Coast Capital Management, LLC \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_