**NON-DISCLOSURE AGREEMENT**



This Non-Disclosure Agreement (this "Agreement") is made and effective       (the “Effective Date”), by and between      , having an address at       (the “Receiving Party”) and , having an address at 748 Starbuck Ave., Watertown, NY 13601 (the “Disclosing Party”). Receiving Party and Disclosing Party are each sometimes referred to herein as a “Party” and collectively as the “Parties.”

WHEREAS, Disclosing Party owns and possesses certain confidential and proprietary information relating to its business operations;

WHEREAS, the Parties are discussing and evaluating the possibility of entering into a business relationship (the “Purpose”) and have a serious, good faith interest in the Purpose, and Receiving Party has requested that Disclosing Party disclose certain confidential and/or proprietary information;

WHEREAS, during the course of past, present and future discussions or communications between the Parties with respect to the Purpose, Disclosing Party has furnished and disclosed and/or will, from time to time, furnish and disclose its confidential and/or proprietary information to Receiving Party, and Receiving Party will become familiar with and obtain knowledge about, the confidential and/or proprietary information of Disclosing Party; and

WHEREAS, in exchange for Disclosing Party’s agreement to furnish or disclose confidential and/or proprietary information to Receiving Party for the Purpose, Receiving Party agrees to not disclose and to not use Disclosing Party’s confidential and proprietary information in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of Disclosing Party’s disclosure of confidential and/or proprietary information, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Confidential Information.
   1. During the course of discussions or communications between the Parties, and during the course of the performance of any written agreement to carry out the Purpose, whether now existing or entered into between the Parties after the Effective Date, Receiving Party may receive, or become familiar with and obtain knowledge about, certain financial, business, scientific, technical, economic or engineering information and/or know-how of a confidential and/or proprietary nature (the “Confidential Information”) of Disclosing Party, whether before or after the date of this Agreement and whether contained in written documents, transmitted orally or disclosed by other means, and whether or not labeled or identified as confidential. Confidential Information shall include, but not be limited to, Disclosing Party’s and its parent’s, affiliates’ and related parties’ product information; customer lists; special requirements of particular customers; current and anticipated volume requirements of customers generally for products; products and product components and materials; specifications and drawings of any new or existing products; sources of supply for components and materials used for production; component and material requirements and specifications; costs; testing quality information; manufacturing processes; proprietary design, tooling and process concepts; assembly and packaging; quality and composition of components and materials; business and marketing plans and forecasts; internal financial statements and projections; information relating to the fabrication, design, assembly or use of a component or product; technical component or product information and know-how; and engineering hardware and software. Confidential Information shall also include all notes, analyses, compilations, studies, or other documents, whether prepared by Disclosing Party or others, that contain or otherwise reflect such information.
   2. Confidential Information does not include information that Receiving Party can demonstrate in writing by clear and convincing evidence: (i) is or becomes generally available to the public other than as a result of a disclosure prohibited under this Agreement; (ii) was known by Receiving Party on a non-confidential basis prior to its disclosure by Disclosing Party under this Agreement; (iii) is disclosed to Receiving Party by a third party on a non-confidential basis, provided that the third party has a valid right to disclose the information; or (iv) is independently developed by Receiving Party without use of or reference to the Confidential Information.

2. Non-Disclosure of Confidential Information. Receiving Party agrees to hold the Confidential Information in strict confidence, not to disclose it to any third party without the prior written consent of the Disclosing Party, or allow any third party access to it, either before or after expiration or termination of this Agreement, without Disclosing Party's prior written consent and provided, further, that any disclosure of Confidential Information shall be on a "need-to-know" basis only. In addition, Receiving Party shall not disclose to any third party (a) the fact that Confidential Information has been made available, (b) the fact that discussions or negotiations are taking place between the Parties relating to the Purpose, (c) any of the terms, conditions or other facts with respect to any possible project, relationship or transaction between the Parties, including the status thereof; or (d) the existence of this Agreement. All Confidential Information must be retained by Receiving Party in a secure place with access limited to only such of Receiving Party's employees who need-to-know such information for purposes of this Agreement and to such third parties as Disclosing Party has consented to by prior written approval, and in each case only where such employees and/or third parties are bound by written confidentiality agreements with terms no less restrictive than those contained in this Agreement. In addition, Receiving Party must establish adequate internal safeguards against unauthorized use or disclosure to third parties, which shall include, but not be limited to, maintaining Confidential Information in locked drawers or other areas where access is similarly restricted. Receiving Party shall use the same care, which shall be at least reasonable care, to prevent and avoid disclosure or unauthorized use of Confidential Information as it provides to protect its own confidential or proprietary information. Receiving Party shall be responsible and liable for any breach of this Agreement by its officers, employees, agents, contractors or other representatives.

3. Non-Use of Confidential Information. Receiving Party shall not disclose or permit to be disclosed to any third party any Confidential Information. Furthermore, Receiving Party agrees that it will not use, directly or indirectly, the Confidential Information for any purpose other than the Purpose.

4. Legal Process Seeking Disclosure. In the event that Receiving Party receives a request to disclose all or any part of the Confidential Information under the terms of any subpoena or order issued by a court or governmental body or agency, Receiving Party agrees:

a. to notify Disclosing Party immediately of the existence, terms and circumstances surrounding such request,

b. to consult with Disclosing Party on the advisability of taking legally available steps to resist or narrow such request, such as by seeking a protective order, and to provide reasonable cooperation to Disclosing Party in its efforts to obtain a protective order or other appropriate relief, and

c. if disclosure of such Confidential Information is required to prevent Receiving Party from being held in contempt or other penalty, to furnish only such portion of the Confidential Information as, in the written opinion of counsel satisfactory to Disclosing Party, it is legally compelled to disclose and to exercise its best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to the disclosed Confidential Information.

5. No Warranty of Information. The Confidential Information is being provided on an "AS IS" basis. NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, ARE MADE AND ALL WARRANTIES ARE EXPRESSLY DISCLAIMED RESPECTING THE PROVISION OF CONFIDENTIAL INFORMATION, INCLUDING WITHOUT LIMITATION, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND OF MERCHANTABILITY AND THAT ANY CONFIDENTIAL INFORMATION IS ACCURATE AND CORRECT.

6. Non-Compete; Non-Solicitation. Receiving Party shall not solicit or employ, or contract for services with any person who is an officer or employee of NYAB involved in design, development, engineering, or purchasing as it relates to the product(s), component(s), or materials subject to the supplier contract (each, a “Person”) for the duration of this supplier contract and for six (6) months following the separation of the Person from NYAB.

7. Notice of Breach. Receiving Party shall notify Disclosing Party immediately of any breach or suspected breach of this Agreement, and shall provide to Disclosing Party detailed information regarding the cause and nature of the breach, the specific Confidential Information at issue, and the steps it has taken and proposes to take in response to such actual or suspected breach.

8. Indemnification. Receiving Party agrees to indemnify, defend and hold harmless Disclosing Party and its parent, affiliates and related parties, and their respective officers, directors, members, managers, employees, contractors, agents and representatives from and against any and all claims, demands, actions, suits and proceedings (whether civil, criminal or administrative), and all liability, loss, expense (including reasonable attorneys’ fees and the cost of enforcing this indemnity), costs or damages, arising out of, resulting from or in any way relating to any unauthorized use or disclosure of the Confidential Information by Receiving Party or any of its officers, employees, agents, contractors or other representatives or any other breach of this Agreement.

9. Return or Destruction of Confidential Information. All Confidential Information is and shall remain the property of Disclosing Party. Upon the expiration or termination of this Agreement or upon the written request of Disclosing Party at any time, Receiving Party shall, in Disclosing Party’s discretion, either (a) promptly deliver to Disclosing Party all documents and other matter furnished by Disclosing Party that contain or constitute Confidential Information, together with all copies of Confidential Information in the possession or under the control of Receiving Party, or (b) destroy all Confidential Information, together with all copies of Confidential Information in the possession or under the control of Receiving Party, and certify the same to Disclosing Party in a writing signed by an authorized officer of Receiving Party.

10. Right to Equitable Remedies; Attorneys’ Fees. Receiving Party acknowledges that monetary compensation alone is an insufficient remedy for a breach or threatened breach of this Agreement and that any such breach would cause Disclosing Party irreparable harm. Accordingly, Receiving Party agrees that, in the event of a breach or threatened breach of this Agreement, Disclosing Party shall be entitled to injunctive relief, in addition to any other remedy Disclosing Party may have, without the requirement of posting a bond or other security. Receiving Party agrees to pay all reasonable costs and attorneys’ fees incurred by Disclosing Party in order to enforce this Agreement, regardless of whether litigation is commenced or prosecuted to a judgment.

11. Term; Survival of Confidentiality and Non-Use Obligations.

1. This Agreement shall expire two (2) years after the Effective Date. Either Party may terminate this Agreement at any time by providing thirty (30) days’ advance written notice to the other Party.
2. Receiving Party’s obligations of confidentiality and non-use regarding the Confidential Information set forth in this Agreement shall survive the expiration or termination of this Agreement and/or the return of such Confidential Information and shall continue for a period of seven (7) years after the expiration or termination of this Agreement.
3. Notwithstanding the expiration or termination of this Agreement, and notwithstanding the terms of Section 11(b) above, Receiving Party’s obligations of confidentiality and non-use with respect to Disclosing Party’s trade secrets shall continue for so long as such trade secrets are legally protectable as such.

12. Ownership of Confidential Information; No License Granted. Disclosing Party shall own and maintain ownership of all of its Confidential Information, and all copies thereof, disclosed to Receiving Party. Nothing in this Agreement shall be construed as providing or granting to Receiving Party any intellectual property rights or other rights in or to the Confidential Information other than to use the Confidential Information for the Purpose. No license to either Party under patents, trademarks, copyrights or otherwise is granted or implied by disclosure of Confidential Information under this Agreement.

13. Commitments. Except for this Agreement, neither Party will be committed in any way with respect to the matters to be discussed by them, unless and until a formal agreement with respect to such matters is entered into by the Parties.

14. Relationship of the Parties. Neither this Agreement nor the exchange of any Confidential Information between the Parties is intended to be interpreted that the Parties have formed or will form a partnership, joint venture or other relationship. Any business relationship between the Parties, if any, must be governed by separate agreement to be entered into by the Parties.

15. General.

a. This Agreement is governed and construed under the laws of the State of New York without regard to conflicts of laws principles. Venue of any litigation with respect to this Agreement shall be in a court of competent jurisdiction located within the geographic boundaries of the applicable federal, state or provincial court in and for the district in which New York Air Brake LLC’s address first set forth above (or hereafter changed by notice from New York Air Brake LLC to Company) is located. The Parties agree and submit to the jurisdiction of all such courts.

b. This Agreement may not be amended except in a writing signed by the Parties.

c. The provisions of this Agreement are to be considered as severable, and in the event that any provision is held to be invalid or unenforceable, the Parties intend that the remaining provisions will remain in full force and effect.

d. The “WHEREAS” clauses set forth at the outset of this Agreement are hereby incorporated into and made a part of this Agreement.

e. All waivers under this Agreement must be in writing and signed by the Party waiving its rights in order to be enforceable. Failure by the Parties to enforce or exercise any provision, right or option contained in this Agreement will not be construed as a present or future waiver of such provision, right or option, and no waiver granted on one occasion shall be deemed to be a waiver on any future occasion unless expressly provided in a writing signed by the Party waiving its rights.

f. This Agreement constitutes the entire agreement between the Parties relating to the subject matter addressed in it and supersedes any and all prior oral and written agreements.

g. This Agreement shall not be assigned or transferred to any other person or entity by Receiving Party without the express written consent of Disclosing Party. Subject thereto, this Agreement shall extend to and bind the respective Party's successors and permitted assigns. Any attempted or purported assignment or transfer by Receiving Party in violation of this Section shall be null and void.

h. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement. An electronic or facsimile of a Party’s signature shall be deemed to be an original signature for all purposes.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have executed this Non-Disclosure Agreement as of the Effective Date.

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| Signed for and on behalf of:  New York Air Brake LLC | Signed for and on behalf of: |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |