

**MUTUAL NONDISCLOSURE AGREEMENT**

This Nondisclosure Agreement is made and entered into this , (the “**Effective Date**”) by and among with a principal place of business at (the **“Second Party”**) and **Shark Tech, LLC dba Metal Shark** with a principal place of business at 13980 Shell Belt Rd. Bayou La Batre, AL 36509 (“**Company**”) (each a “Party” and collectively the “Parties”).

**- PREAMBLE -**

 WHEREAS, the Parties anticipate the need to disclose to each other information and materials concerning their business activities in connection with a possible business arrangement between the Parties (the “**Proposed Transaction**”).

 NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties acknowledge and agree as follows:

# CERTAIN definitions

## “**Confidential Information**” means any data, information or materials (whether in oral, written, electronic or any other form) not generally known to third parties and which is proprietary to the Party disclosing such information (the “Disclosing Party”) including, without limitation, information relating to product strategies, financing strategies, organizational strategies, site location strategies, permitting strategies, design/build and other contract discussions and strategies, technical know-how, trade secret information, financial information, plant speciﬁcations, prospective investor lists and strategies, pricing policies, operational methods, marketing information including without limitation strategy, sales, ﬁnance and business systems and techniques, business plans, and other business affairs of the Disclosing Party. All information of the Disclosing Party that is disclosed to the other Party (the “Receiving Party”) or to which the other Party obtains access, whether originated by the Receiving Party or by the Disclosing Party or others, shall be presumed to be Confidential Information.

## **“Definitive Agreement”** has the meaning ascribed thereto in Section 2.1 (c) below.

## “**Proposed Transaction**” has the meaning ascribed thereto in the Preamble above.

# OBLIGATIONS WITH RESPECT TO CONFIDENTIAL INFORMATION

##  It is understood that unauthorized disclosure or use, whether intentional or unintentional, of any of the Conﬁdential Information would be detrimental to the Disclosing Party. Accordingly, each Party agrees:

### Obligation of Confidentiality. The Parties will at all times protect the confidentiality of the Confidential Information using reasonable measures, consistent with the measures they use to maintain the confidentiality of their own information of similar importance (and in no event using less than a reasonable standard of care) to protect against unauthorized disclosure or use of the Confidential Information.

### Access to Confidential Information. The Parties will limit disclosure of Confidential Information only to those of its directors, officers, partners, personnel, agents (including attorneys, accountants, consultants, lenders, and similar professional advisors) and authorized representatives who (i) need to know such Confidential Information for the purpose of evaluating the Proposed Transaction, (ii) have been advised of the obligations under this Agreement and (iii) are under nondisclosure obligations at least as protective of the Confidential Information as those set forth herein.

### Copying and Use of Confidential Information. The Parties will copy and use the Confidential Information solely to the extent necessary to evaluate the Proposed Transaction; provided, however, that if the Parties proceed with the Proposed Transaction and execute a definitive agreement relating thereto (the “**Definitive Agreement**”), then the Parties may additionally copy and use the Confidential Information for the purpose of and to the extent necessary to exercise their rights and/or fulfill their obligations under the Definitive Agreement.

## Exceptions. This Agreement imposes no obligation upon the Parties with respect to Confidential Information which:

### was in the Party’s possession on a non-confidential basis before receipt from one another;

### is or becomes generally available to the public other than as a result of a violation of this Agreement by the Parties.

### is subsequently received by the Parties from a third party on a non-confidential basis, provided that such third party was not known by the Parties to be bound by any confidentiality obligation to each other with respect to such information; or

### is independently developed by the Parties without the use of or reference to Confidential Information.

## Compelled Disclosure. Notwithstanding contrary provisions of this Agreement, the Parties may disclose Confidential Information (a) pursuant to applicable law, regulation, subpoena or order of a court or administrative or regulatory entity, provided, however, that, if legally permitted, the Parties provide notice of such compelled disclosure to each other to allow the other to make a reasonable effort to obtain a protective order or other confidential treatment of such Confidential

## Information, and (b) to regulatory authorities having jurisdiction over the Parties at the request of such regulatory authorities.

# RETURN OF CONFIDENTIAL INFORMATION

## Return or Destruction. The Parties will (a) promptly return or destroy all Confidential Information and all copies thereof in their possession or within their custody or control, except as permitted by Section 3.2 below, and (b) provide each other with a written confirmation of such return and destruction, signed by an authorized officer of each party.

## Retention of Copies. The Parties may retain copies of Confidential Information as reasonably required to comply with legal, regulatory or audit requirements or their internal records retention policies and procedures. The Parties will not be required to destroy, delete, or modify any backup tapes or other media pursuant to automated archival processes in their ordinary course of business.

# OWNERSHIP; INJUNCTIVE RELIEF

## Ownership of Confidential Information. The Parties acknowledge that all right, title and interest to all Confidential Information is and will remain at all times in each Party, and that each Party shall not acquire any rights to the Confidential Information other than those expressly granted herein.

## Equitable Relief. In the event of a breach or threatened breach of this Agreement by one of the Parties., the Parties agree that the other Party may suffer irreparable harm and have no adequate remedy at law, and accordingly the other Party will be entitled to seek injunctive and other equitable remedies against such breach in addition to all other remedies the other party may have at law or in equity.

# TERM

The term of this Agreement will commence on the Effective Date and remain in force until five (5) years after the later of (a) the last disclosure of Confidential Information to the Parties, and (b) if the Parties enter into the Definitive Agreement, the effective date of the Definitive Agreement.

# MISCELLANEOUS PROVISIONS

## No Additional Obligations. This Agreement does not constitute a binding agreement or obligation to reach the Definitive Agreement with respect to the Proposed Transaction, and no contract or agreement shall be deemed to exist between the Parties with respect to the Proposed Transaction unless and until the Definitive Agreement is executed and delivered by the Parties.

## Independent Development. Nothing in this Agreement will be construed to preclude the Parties from developing, using, marketing, licensing and/or selling any independently developed product, service, technology, software or data processing information and/or material that is similar to the Confidential Information disclosed under this Agreement, provided the Parties have not done so in breach of this Agreement.

## Notices. All notices required or permitted by this Agreement shall be deemed to have been given when actually delivered (i) by hand, (ii) by a national overnight courier service (e.g., FedEx) or (iii) by certified mail, return receipt requested, postage prepaid and addressed as follows:

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| --- | --- |
| If to Company: | If to Second Party:  |
| Metal Shark Boats 13980 Shell Belt Rd. Bayou La Batre, AL 36509 Attn: Nate Geiger  |    Attn:  |
|  |  |
| with a copy (which shall not constitute notice) to:   Attn:  | with a copy (which shall not constitute notice) to:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

## or to such other addresses as a Party designates to the other pursuant to this Section.

## Governing Law; Venue. This Agreement will be governed in all respects by the laws of the State of Louisiana, without giving effect to principles of conflicts of law. The Parties consent to the exclusive jurisdiction of the federal and state courts located in Lafayette having subject matter jurisdiction in connection with any litigation arising out of this Agreement, and hereby waive any claim of lack of venue or of *forum non conveniens*.

## This Agreement shall be governed by and construed in accordance with the laws of the State of Louisiana. Any suit, action or proceeding under this Agreement may only be brought in the Courts in the State of Louisiana or the United States District Court for the Western District of Louisiana having subject matter jurisdiction in connection with any litigation arising out of this Agreement, and hereby waive any claim of lack of venue or of *forum non conveniens.*

## Waiver of Jury Trial. **The Parties hereby waive any right to a trial by jury in any claim, suit, proceeding or action arising under this Agreement and agree that any such claim, suit, proceeding or action shall be tried before a judge and not before a jury.**

## Entire Agreement. This Agreement supersedes all prior agreements, oral and written, and constitutes the entire agreement between the Parties related to the subject matter of this Agreement.

## [Intentionally omitted]

## Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either Party without the other Party’s prior written consent, and any assignment in violation of the foregoing shall be null and void. This Agreement will be binding upon the Parties hereto and inure to the benefit of their respective successors and permitted assigns.

## Amendment; Waiver. No waiver, modification, or amendment to this Agreement will be binding upon the Parties unless it is in writing signed by an authorized representative of the Party against whom enforcement thereof is sought. A failure or delay of either Party to enforce at any time any of the provisions of this Agreement, to exercise any option which is herein provided, or to require at any time performance of any of the provisions hereof, shall in no way be construed to be a waiver of such provision of this Agreement.

## Severability. In the event that any provision of this Agreement is deemed in violation of any law or is found to be otherwise unenforceable, the Parties hereby authorize the court to replace such provision with an enforceable provision which, in the court’s opinion, comes closest to the intention of the Parties underlying the illegal or unenforceable provision.

## Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which, when taken together, shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be duly executed as of the date set forth above.

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| --- | --- | --- |
| Metal Shark boats |  |   |
| By: | Sandra Armstrong |  | By: |  |
| Name: | Sandra Armstrong |  | Name: |  |
| Title: | Vice President – Supply Chain |  | Title: |  |