

CONFIDENTIALITY, NONDISCLOSURE, AND USE AGREEMENT

This Agreement (“Agreement”), made and entered into this ___ day of _____, 20___ (“Effective Date”) by and between **Roush & Yates Racing Engines, LLC**, 297 Rolling Hill Road, Mooresville, N.C. 28117, (“RYRE”), and _____ with an address of _____.

WHEREAS, the above parties acknowledge that in order for each party to evaluate a business relationship with the other party, it may be both necessary and desirable for each party to exchange or release to the other party information that the disclosing party considers confidential and/or proprietary.

WHEREAS, for purposes of this Agreement a party disclosing information shall be referred to as a Disclosing Party and any party receiving Confidential Information shall be referred to as a Receiving Party with the intent that those terms may apply to all the parties depending upon whether they are disclosing or receiving information.

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. “Confidential Information” shall mean any invention, product, process, apparatus or design of the Disclosing Party or any knowledge or information with respect thereto or any other trade knowledge of the Disclosing Party (including without limitation, business methods, processes, operating techniques, “know how”, customer and supplier information, and short-term and long-range sales and product plans), and all drawings, disclosures, designs, data, reports, calculations, models, component parts, patent applications or the like of any kind relating in any way to the business of the Disclosing Party, and which is conspicuously identified by the Disclosing Party as “Confidential”, “Proprietary” or with similar legend. “Confidential information” shall also include any information that is a “trade secret” as that term is defined in the Uniform Trade Secrets Act. “Confidential Information” shall also include any non-written information disclosed by the Disclosing Party to the Receiving Party if the Disclosing Party reduces such information to writing, conspicuously identifies it as “Confidential”, “Proprietary” or with similar legend and sends it to the Receiving Party within thirty (30) days of disclosure. “Confidential Information” shall also mean and include the fact that the parties have entered or intend to enter into discussions or negotiations, that any such discussions or negotiations are in progress, and the terms and conditions, or any proposed terms and conditions, related thereto.

Confidential Information, whether written or non-written, disclosed by the Disclosing Party prior to the execution of this Agreement shall be deemed subject

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to its terms if the Disclosing Party reduces such information to writing, conspicuously identifies it as set forth above, and sends it to the Receiving Party within thirty (30) days of initial disclosure.

2. The Receiving Party agrees to hold all Confidential Information of the Disclosing Party in the strictest confidence, utilizing the same degree of protective care that normally prudent businessmen would use to protect the confidence of their own confidential and/or proprietary information, but no less than reasonable care. The Receiving Party shall not, directly or indirectly, reveal, report, publish, disclose or otherwise transfer any Confidential Information of the Disclosing Party to any person or entity or utilize any Confidential Information of the Disclosing Party for any purpose at any time except as the Disclosing Party may expressly authorize in writing prior to any such revelation, report, publication or disclosure. The Receiving Party shall take any and all appropriate steps to impose the obligations of this Agreement on its employees or agents.

However, nothing herein shall prevent a Receiving Party from disclosing Confidential Information to an employee of its parent corporation or any other corporation under common ownership and control; providing said employees are informed of the confidential nature of the information and further provided that Receiving Party shall be liable for any violation of the provisions of this Agreement that occur as the result of the conduct of any employee of the parent or any employee of a company under common ownership and control.

3. The Disclosing Party's disclosure of any Confidential Information to the Receiving Party shall not be construed by implication or otherwise to convey any rights under any patents, patent applications, trade secrets or any other proprietary rights of the Disclosing Party or to grant any license to the Receiving Party relating to such Confidential Information. The Receiving Party shall not commercialize, embody in any of its products or exploit in any way whatsoever any Confidential Information disclosed to it by the Disclosing Party without the prior written consent of the Disclosing Party.
4. IN PROVIDING ANY INFORMATION HEREUNDER, NEITHER PARTY MAKES ANY REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO ITS ADEQUACY, ACCURACY, SUFFICIENCY OR FREEDOM FROM DEFECT OF ANY KIND, NOR SHALL EITHER PARTY INCUR ANY RESPONSIBILITY OR OBLIGATION WHATSOEVER BY REASON OF SUCH INFORMATION, EXCEPT AS PROVIDED HEREUNDER. WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY PROPRIETARY INFORMATION DISCLOSED HEREUNDER.

NOTWITHSTANDING THE FOREGOING, EACH PARTY REPRESENTS AND WARRANTS THAT ITS DISCLOSURE TO THE OTHER PARTY OF CONFIDENTIAL INFORMATION AND PARTICIPATION IN DISCUSSIONS WITH THE OTHER PARTY DOES NOT AND SHALL NOT CONSTITUTE OR GIVE RISE TO ANY VIOLATION, BREACH OR DEFAULT UNDER ANY AGREEMENT OR ARRANGEMENT OF SUCH PARTY WITH ANY THIRD PARTY; AND EACH FURTHER REPRESENTS AND WARRANTS THAT NO CONFIDENTIAL INFORMATION OR TRADE SECRETS OF ANY THIRD PARTY ARE BEING OR WILL BE DISCLOSED BY SUCH PARTY IN CONNECTION WITH CONFIDENTIAL INFORMATION, UNLESS SUCH PARTY HAS RECEIVED WRITTEN AUTHORIZATION FROM SUCH THIRD PARTY. EACH PARTY AGREES TO INDEMNIFY, DEFEND AND HOLD THE OTHER PARTY HERETO HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, DAMAGES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING FROM OR RELATING TO SUCH PARTY'S BREACH OR CLAIMED BREACH OF THE FOREGOING REPRESENTATIONS AND WARRANTIES.

5. For purposes of this Agreement, the nondisclosure provision hereof shall not apply to any information that is: (a) in the public domain; (b) disclosed with the prior written approval of the Disclosing Party; (c) independently developed by the Receiving Party, provided that the Receiving Party can provide reasonable written proof of independent development; (d) subsequently received by the Receiving Party in good faith from an independent third party not under an obligation of confidentiality to the Disclosing Party with respect to such information, or (e) was already possessed by the Receiving Party without such restrictions prior to receipt from the Disclosing Party, as evidenced by the Receiving Party's pre-existing records.
6. Each party understands and agrees that monetary damages will not provide sufficient relief to the other for any breach of this Agreement and that the non-breaching party is entitled to seek specific performance and/or injunctive relief against the breaching party as remedies for any such breach. Such remedies are not the exclusive remedies for a breach of this Agreement, but are in addition to any and all other remedies available at law or equity.
7. This Agreement shall remain in full force and effect for a period of five (5) years from the Effective Date unless it shall be canceled or superseded by written mutual consent of the parties or until the Confidential Information comes within the public domain, without the direct or indirect violation by either party of the terms of this Agreement, whichever comes first. The Receiving Party shall immediately return to the Disclosing Party all Confidential Information or portions thereof in its possession or control upon the earliest of the (i) termination of this Agreement, or (ii) breach of any obligation of this Agreement by Receiving Party, or (iii) request of the Disclosing Party. However, nothing herein

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- is meant to terminate the obligation of the Receiving Party to maintain as confidential the Confidential Information disclosed by the Disclosing Party during the term of the Agreement.
8. The Receiving Party shall control access to any technical data disclosed under this Agreement in accordance with all U.S. export laws and regulations including, without limitation, confining the disclosure of such technical data to U.S. persons unless disclosure to foreign persons is specifically authorized by the proper U.S. government agency.
 9. The parties understand and agree that this Agreement does not constitute a binding obligation on either party with respect to the design, manufacture, sale and/or construction of any materials or components of either party.
 10. This Agreement, the performance of which may be outside the State of North Carolina, shall be construed in accordance with and exclusively governed by the internal laws and judicial decisions of the State of North Carolina without regard to its conflicts of law principles.
 11. This Agreement constitutes the entire understanding between the parties with respect thereto. This Agreement may be modified only in writing signed by a duly authorized representative of each party.
 12. This Agreement is personal to each party and may not be assigned or transferred without the prior written consent of the other party. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective legal representatives, successors and permitted assigns.
 13. It is further understood that the failure or delay by either party in exercising any right, power or privilege hereunder shall not operate as a waiver thereof, preclude any other or further exercise thereof, or the exercise of any right, power or privilege hereunder.
 14. Any notice, request, demand or other communication required hereunder shall be in writing and deemed to have been fully given upon receipt if personally delivered or if mailed via certified mail, return receipt requested, postage prepaid, or the next day, if sent via facsimile or nationally recognized overnight courier mailed to the address first listed above or at any other address given by any party in writing to the other party.
 15. If any part of this Agreement shall be held invalid, illegal and/or unenforceable, it shall be deemed separable and the remainder of this Agreement shall continue in full force and effect, and in lieu of such invalid, illegal and/or unenforceable provision there shall automatically be added as part of this Agreement a provision

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as similar in terms to such invalid, illegal and/or unenforceable provision as may be possible which is valid, legal and enforceable.

16. A Receiving Party required to make disclosure of Confidential Information pursuant to applicable law will (i) give the Disclosing Party prompt notice of the requirement and the proposed content of any disclosure, (ii) co-operate with the Disclosing Party in limiting the extent of the disclosure and in obtaining an appropriate protective order or pursuing such legal action, remedy or assurance as the Disclosing Party deems necessary to preserve the confidentiality of the Confidential Information; (iii) disclose only that portion of the Confidential Information that it is legally compelled to disclose, and (iv) otherwise continue to protect such information as Confidential Information as set forth in this Agreement.
17. Both parties agree that, for the purpose of any lawsuit initiated to enforce the terms of this Agreement, venue shall be proper in the County of Iredell, North Carolina. Both parties agree to submit to the personal jurisdiction of the State of North Carolina.
18. Each party covenants, represents, and warrants to the other that (i) it is duly organized or formed and validly existing in good standing under the laws of the state of its incorporation or formation and (ii) the individual(s) executing and delivering this Agreement on its behalf have all requisite power and authority to execute, deliver, and perform its obligations under this Agreement and to bind it hereunder.
19. The parties are independent contractors. Each will bear all costs and expenses it incurs in connection with this Agreement. This Agreement does not obligate either party to enter into a contract, subcontract, teaming agreement, joint venture, partnership, or other business relationship with the other party.

IN WITNESS WHEREOF, this Agreement is effective on the Effective Date first written above.

ROUSH & YATES RACING ENGINES, LLC _____
(Company Name)

CONFIDENTIALITY, NONDISCLOSURE, AND USE AGREEMENT
Roush & Yates Racing Engines, LLC & _____.

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____