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NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement (the "Agreement") is made and effective _____, by and between _____, a company organized and existing under the laws of the State of _____ whose principal place of business is at, _____; ("ABC"), and RIX Industries, a California corporation, located at 4900 Industrial Way, Benicia, California, 94510, ("RIX")

Preamble

WHEREAS, each party to this Agreement possesses confidential and/or proprietary information related to technology and business activities, including, but not limited to, air and gas compressors, business outlooks, revenue, pricing, trade secrets, computer programs and software (including, but not limited to, code, software output, screen displays, file hierarchies, graphics and user interfaces), formulas, data, inventions, techniques, product designs, strategies and third party confidential information ("INFORMATION"); and

WHEREAS, each party in possession of INFORMATION (the "Disclosing Party") desires to disclose INFORMATION to the other party (the "Receiving Party");

NOW, THEREFORE, in consideration of the promises made herein, the parties agree as follows:

1. **Permitted Use.** For a period of ten (10) years from the effective date, the Receiving Party shall handle, use and treat the Disclosing Party's INFORMATION as follows:
 - a. Hold all INFORMATION received from the Disclosing Party in strict confidence, using at least the same degree of care as the Receiving Party uses to protect its own INFORMATION of a like nature, but no less than a reasonable degree of care, to prevent unauthorized use or disclosure of the INFORMATION;
 - b. Use such INFORMATION only for the purpose of:
 - i. Evaluating the possibility of forming a business relationship with the other party concerning such INFORMATION, and
 - ii. If such relationship is formed, furthering the purpose and intent of that agreement;
 - c. Reproduce such INFORMATION only to the extent necessary for such purpose;
 - d. Restrict disclosure of such INFORMATION to its employees, consultants and independent contractors with a need to know, and advise them of the obligations assumed herein; and
 - e. Except as otherwise specifically permitted herein, not disclose such INFORMATION to any third party, without prior written approval of the Disclosing Party. The parties agree that they are responsible for any disclosure of INFORMATION by any of their employees, consultants or independent contractors. The parties agree they will not disclose the existence, nature or terms of this Agreement to any third party without the other party's prior written consent. In

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addition, the Receiving Party shall not reverse engineer, disassemble, decompile, or otherwise analyze the physical construction of any equipment, component, software, or other INFORMATION received from the Disclosing Party. The restrictions on the Receiving Party's use and disclosure of INFORMATION shall not apply to INFORMATION which the Receiving Party can demonstrate:

- i. Was independently developed by the Receiving Party without the use of INFORMATION of the Disclosing Party; or
- ii. Was or has become generally available to the public without breach of this Agreement; or
- iii. At the time of disclosure, was known to the Receiving Party free of restriction, as evidenced by documentation in the Receiving Party's possession; or
- iv. Was approved for release by written authorization of the Disclosing Party, but only to the extent of and subject to any conditions of such written authorization; or
- v. Was disclosed in response to a valid order of a court or other governmental body in the United States, but only to the extent of and for the purposes of such order; provided, however, that the Receiving Party shall first notify the Disclosing Party in writing of the order and permit the Disclosing Party to seek an appropriate protective order.

2. **Designation.** INFORMATION shall be subject to the restrictions of Section 1 if:
 - a. It was in writing or other tangible form and marked as proprietary or confidential when disclosed;
 - b. Under similar circumstances a reasonable person would know to treat it as confidential; or
 - c. It was not disclosed in tangible form, but was identified as confidential or proprietary at the time of disclosure.

The parties agree to use reasonable efforts to summarize the content of oral disclosures of INFORMATION in writing but failure to do so shall not affect the nature of the INFORMATION if such INFORMATION was identified as confidential or proprietary when disclosed.

3. **Disclosure to Affiliates.** This Agreement does not permit the Receiving Party to disclose INFORMATION to any other third party. Further, the Receiving Party may disclose INFORMATION to its affiliate(s) if it has obtained prior written consent from the Disclosing Party and, the affiliate(s) is advised of the obligations assumed herein. For purposes of this Agreement, "affiliate" means any entity which directly or indirectly controls/owns, is controlled/owned by, or is under common control/ownership of at least fifty-one percent (51%) of a party to this Agreement, as of the effective date of this Agreement. Notwithstanding anything in this Agreement to the contrary, this Agreement does not permit the Receiving Party to disclose any INFORMATION to any affiliate(s) or any other third party that has competing commercial interests with the other party.
4. **No License or Representations.** No license to any trademark, patent, copyright, mask work protection right or any other intellectual property right is either granted or

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implied by this Agreement, including, but not limited to, any license to make, use or sell any product embodying any INFORMATION. No representation, warranty or assurance is made by either party with respect to the non-infringement of trademarks, patents, copyrights, mask protection rights or any other intellectual property right.

5. **Return of Information.** All INFORMATION shall remain the sole property of the Disclosing Party and all materials containing any such INFORMATION (including all copies made by the Receiving Party) shall be returned to the Disclosing Party upon the Disclosing Party's written request or termination or expiration of this Agreement or upon the Receiving Party's determination that it no longer needs such INFORMATION. Upon request, the Receiving Party shall certify in writing that all materials containing such INFORMATION have been returned to the Disclosing Party.
6. **Export Compliance.** The parties agree they will not, without the prior written consent of the office of Export Control, United States Department of Commerce, or the Department of State, International Traffic In Arms Regulations (ITAR), knowingly export, re-export or cause to be exported or re-exported, any INFORMATION to any destination prohibited or restricted under United States law. Notwithstanding any other provision of this Agreement, this Section shall survive any termination or expiration of this Agreement.
7. **Term and Termination.** This Agreement shall continue in full force for two (2) years from the effective date above and thereafter, will automatically renew for consecutive one-year terms unless a party notifies the other in writing that it does not wish to renew. Either party may terminate this agreement for any reason on ten (10) days written notice to the other.
8. **Notice.** Any notice or other communication required by this Agreement shall be sent via facsimile, with confirmation, or by registered or certified mail, postage prepaid, return receipt requested, or by courier, addressed to the other party at its address set forth in the signature block below.
9. **Remedies.** The parties agree that any unauthorized use or disclosure of INFORMATION in violation of this Agreement may cause irreparable injury for which the Disclosing Party would have no adequate remedy at law. Therefore, in the event of unauthorized use or disclosure of INFORMATION, the Disclosing Party is entitled to immediately seek injunctive relief, in addition to any other available rights and remedies.
10. **Attorneys' Fees.** In the event either party brings an action to enforce or protect any of its rights under this Agreement, the prevailing party shall be entitled to recover, in addition to its damages, its reasonable attorneys' fees and costs incurred in connection therewith.
11. **Governing Law and Forum.** This Agreement shall be governed by the laws of the State of California, without regard to conflict of laws principles. The parties hereby consent to the exclusive jurisdiction of the courts of California, and stipulate that venue for any dispute arising under this Agreement shall be in San Francisco, California.

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12. **Miscellaneous.** This Agreement constitutes the entire understanding of the parties as to the INFORMATION and supersedes all prior discussions between them relating to it. No amendment or modification of this Agreement shall be effective unless made in writing and signed by an authorized representative of each party. The rights and obligations of the parties under this Agreement, which by their sense and context are intended to survive termination or expiration of this Agreement, shall so survive. No party may assign any of its rights or obligations under this Agreement unless it has obtained the written consent of the other party. Such consent shall not be unreasonably withheld. The failure or delay in enforcing any provision of the Agreement shall not constitute a waiver of the right thereafter to enforce each and every provision of the Agreement. In the event any term, condition or provision of this Agreement is held to be illegal, unenforceable or invalid by a court of competent jurisdiction, the remaining terms, conditions and provisions will remain in full force and effect. This Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns.
13. **Counterparts and Facsimile Delivery.** This Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute the Agreement when a duly authorized representative of each party has signed a counterpart. The parties intend to sign and deliver this Agreement by facsimile transmission. Each party agrees that the delivery of the Agreement by facsimile shall have the same force and effect as delivery of original signatures.

Executed By: Executed By:

ABC Corp.
By: _____
Name: _____
Title: _____

BCA Corporation
By: _____
Name: _____
Title: _____