



Non-clients wishing to attend one of EQECAT's conferences - or other events where presentations will be provided - are required to complete, sign and return the attached Confidentiality and Non-Disclosure Agreement (NDA) at the time of registration. We will return a fully executed copy prior to the event if received within 14 days of the event, otherwise an executed copy will be provided at the time of on-site registration.

Please print, scan, and email the completed NDA to [events@eqecat.com](mailto:events@eqecat.com) or print and fax the completed NDA to (201) 342-0173.

If you have any questions, please contact Michael Aita at (201) 287-8321.

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS AGREEMENT, entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 2012 by and between EQECAT, Inc., a California corporation (hereinafter referred to as the "Company") with its principal place of business at 475 14th Street, Suite 550, Oakland, California 94612, and \_\_\_\_\_, an individual with a principal place of residence at \_\_\_\_\_ (hereinafter referred to as "Receiving Party").

1. In connection with the exchange of information between the parties, the Company will disclose information to the other party and as the terms are used in this Agreement, each party may be in one instance the Receiving Party and in another the Disclosing Party. The information is being disclosed pursuant to a live presentation delivered (hereinafter referred to as the "Event"), and the Disclosing Party is willing, in accordance with the terms and conditions of this Agreement, to disclose to the Receiving Party certain confidential information, which is proprietary, relating to the Disclosing Party's business which includes, but is not necessarily limited to contracts, legal documentation, present or future business plans or strategies, insight into modeling technology, product development plans, position on different industry topics, customer data, customer lists, business practices and procedures, reports, memoranda, technology, designs, drawings, commercial or financial information and any information related to the existence of, or negotiations in connection with the Event not generally ascertainable from public or published information (hereinafter referred to as the "Confidential Information").

2. In consideration of the disclosure referred to in Paragraph 1 hereof, the Receiving Party agrees that the Confidential Information shall be kept strictly confidential and shall not be sold, traded, published or otherwise disclosed to anyone in any manner whatsoever, including by means of electronic transmission, photocopy or reproduction, without the Disclosing Party's prior written consent, except as provided in Paragraphs 3, 4 and 5 below.

3. The Receiving Party may disclose the Confidential Information without the Disclosing Party's prior written consent only to the extent such information:

(a) is already known to the Receiving Party as of the date of disclosure hereunder which can be verified by Receiving Party's written documentation;

(b) is already in possession of the public or becomes available to the public other than through the act or omission of the Receiving Party; Confidential Information shall not be deemed to be available to the public or to be in the Receiving Party's possession merely if it:

(1) Is specific information that falls within an area of general knowledge available to the public or to the Receiving Party, but without the specific Confidential Information, including its meaning and importance, being public knowledge or known to the Receiving Party; or

- (2) Can be reconstructed from a combination of information that can be pieced together from multiple sources that are available to the public or to the Receiving Party, if no one of those sources actually lead one to the entire combination, together with its meaning and importance.
- (c) is required to be disclosed under applicable law or by a governmental order, decree, regulation or rule (provided that the Receiving Party shall give written notice to the Disclosing Party prior to such disclosure); or
- (d) is acquired independently from a third party that has the right to disseminate such information at the time it is acquired by the Receiving Party.

4. The Receiving Party may disclose the Confidential Information without the Disclosing Party's prior written consent to an Affiliated Company (as hereinafter defined), provided that the Receiving Party guarantees the adherence of such Affiliated Company to the terms of this Agreement. "Affiliated Company" shall mean any company or legal entity which (a) controls either directly or indirectly a Party, or (b) which is controlled directly or indirectly by such Party, or (c) is directly or indirectly controlled by a company or entity which directly or indirectly controls such Party. "Control" means the right to exercise 50% or more of the voting rights in the appointment of the directors of such company.

5. The Receiving Party shall be entitled to disclose the Confidential Information without the Disclosing Party's prior written consent to such of the following persons who have a clear need to know.

- (a) employees, officers and directors of the Receiving Party;
- (b) employees, officers and directors of an Affiliated Company; or
- (c) any professional consultant or agent retained by the Receiving Party for the purpose of carrying out the purposes of the Event.

Prior to making any such disclosures to persons under subparagraph (c) above, however, the Receiving Party shall obtain an undertaking of confidentiality, in the same form and content as this Agreement, from each such person.

6. The Receiving Party and its Affiliated Companies, if any, shall only use or permit the use of the Confidential Information disclosed under Paragraphs 4 or 5 above to evaluate the Event for the purposes described in Paragraph 1.

7. The Receiving Party shall be responsible for ensuring that all persons to whom the Confidential Information is disclosed under this Agreement shall keep such information confidential and shall not disclose or divulge the same to any unauthorized person. Neither Party shall be liable in an action initiated by one against the other for special, indirect or consequential damages resulting from or arising out of this Agreement, including, without limitation, loss of profit or business interruptions, however same may be caused.

8. This Agreement shall be in force and effect upon execution and continuing for a period of five years. The Confidential Information and all work papers related thereto shall remain the property of the Disclosing Party, and the Disclosing Party may demand the return thereof at any time upon giving written notice to the Receiving Party. Within 30 days of receipt of such notice, the Receiving Party shall return all of the original Confidential Information, and all work papers related thereto, and shall destroy all copies and reproductions (both written and electronic) in its possession and in the possession of persons to whom it was disclosed pursuant to Paragraphs 4 and 5 hereof, save one file copy.

9. This Agreement shall be governed by the laws of the State of California. The Receiving Party acknowledges that remedies at law may be inadequate in the event of a breach hereof and agrees that the Disclosing Party shall be entitled to injunctive relief for any breach of or non-compliance with the provisions of this Agreement.

10. The parties agree that any and all differences and disputes arising out of this Confidentiality Agreement will be put to arbitration in the City of Houston pursuant to the laws relating to arbitration there in force and subject to the rules of the American Arbitration Association before an arbitrator selected by both parties. If the parties cannot mutually agree upon one arbitrator, the arbitration will proceed before a board of three arbitrators. The arbitrators shall be selected one person by the Disclosing Party, one person by the Receiving Party and the third by the two previously selected. The decision of any two of the three arbitrators on any point or points shall be final. The arbitrators may grant any relief other than punitive damages which they, or a majority of them, deem just and equitable and within the scope of the agreement of the parties, including, but not limited to specific performance. Awards made pursuant to this clause may include costs including reasonable attorney's fees for the prevailing party. Both parties hereby waive any and all claims to punitive damages in any forum.

11. Each party (the "Indemnitors") hereby agrees to indemnify, defend, and hold the other party, their affiliates and subsidiaries, and their partners, directors, officers and employees (the "Indemnitees") harmless from and against any and all loss, cost, expense, liability, claim or cause of action, including legal fees and other costs of litigation incurred in connection with claims which the Indemnitees may be subject to as a result of the breach of any provision of this agreement by the Indemnitor.

12. Neither party shall at any time, or in any manner, nor for any purposes whatsoever, entice, either directly or indirectly any person employed by the other party or under contract with the other party, or its subcontractor, or employ any person who has resigned or has been discharged from service of that party until after a period of not less than one year after the effective date of

resignation or discharge of such person when the acquaintance with or knowledge of the individual was made or obtained solely through the information provided by one party (Disclosing Party) to the other party (Receiving Party) in connection with the Event which is the subject of this Confidentiality Agreement.

13. Without the prior written consent of the Disclosing Party, the Recipient and its Representatives will not disclose to any person the fact that the Confidential Information has been made available to the Recipient, that discussions or negotiations are taking place during and after the Event except as required by law, and then only upon furnishing the Disclosing Party with prior written notice.

14. Unless otherwise expressly stated in writing, any prior or future proposals or offers made in the course of the Parties' discussions are implicitly subject to all necessary management and government approvals and may be withdrawn by either at any time.

15. No amendments, changes or modifications to this Agreement shall be valid except if the same are in writing and signed by a duly authorized representative of each of the Parties herein.

16. This Agreement comprises the full and complete agreement of the Parties hereto with respect to the disclosure of the Confidential Information and supersedes and cancels all prior communications, understandings and agreements between the Parties hereto, whether written or oral, express or implied.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have caused this Agreement to be executed on the date first written above.

**EQECAT, INC.:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_

**Receiving Party:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_