

Monterey Bay Aquarium Research Institute

NONDISCLOSURE AGREEMENT

The Monterey Bay Aquarium Research Institute and **Hydratech, LLC (1331 S. West Ave. Fresno, CA 93706)** are to be engaged in transferring certain information relating to the **PowerBuoy for the purpose of designing and building a custom hydraulic cylinder**. All Information is considered to be confidential and the proprietary property of the disclosing party ("DISCLOSER"). DISCLOSER is willing to disclose and the receiving party ("RECIPIENT") is willing to receive such Information subject to the following terms and conditions:

1. The Information shall be supplied to RECIPIENT in written form and shall be identified as being confidential and disclosed under this Agreement. All Information in the form of diagrams and descriptions relating to the **PowerBuoy** shall be identified as confidential and disclosed under this Agreement. Any Information which is disclosed in oral form shall be confirmed in written summary form within thirty (30) day period of time.
2. RECIPIENT shall hold the Information in confidence and shall use the same level of care to prevent the use or disclosure of the Information as it exercises in protecting its own information of similar nature.
3. RECIPIENT shall not use the Information for any purpose other than the aforesaid **hydraulic cylinder design and fabrication** project and determination of interest without prior written consent of DISCLOSER.
4. RECIPIENT reserves the right to disclose the Information to officers and employees of RECIPIENT and its affiliated companies and to consultants thereof for the purpose of evaluating the Information. All reasonable steps shall be taken to assure that such officers, employees, and consultants to whom Information is disclosed will also comply with the obligations RECIPIENT undertakes under this Agreement.
5. Nothing contained in this Agreement shall be construed, by implication or otherwise, as an obligation to enter into any further agreement relating to the Information or as a grant of a license to RECIPIENT or its affiliated companies to use the Information other than for **design and fabrication of a hydraulic cylinder**. Should RECIPIENT desire to commercialize any aspect of the Information, it will seek to reach a mutually satisfactory agreement with DISCLOSER concerning such commercial use.
6. The confidentiality and non-use obligations of this Agreement shall not apply to:
 - a. Information which at the time of disclosure or use is in the public domain; or
 - b. Information which, after disclosure, becomes part of the public domain by publication or otherwise, except by breach of this Agreement by RECIPIENT; or
 - c. Information which RECIPIENT or its affiliates can establish by reasonable proof was in their possession at the time of the disclosure by DISCLOSER or was subsequently and independently developed by employees of RECIPIENT or its affiliated companies who had no knowledge of DISCLOSER's Information; or
 - d. Information which RECIPIENT shall receive, without obligation or confidentiality, from a third party who has the right to disclose it to RECIPIENT; or
 - e. Information which is transmitted to the receiving party after the disclosing party has received written notice from the receiving party that it does not desire to receive Information; or
 - f. Information which the receiving party is obligated to produce under order of a court of competent jurisdiction.

RECIPIENT's and DISCLOSER's confidentiality and non-use obligations under this Agreement shall expire on the fifth (5th) anniversary of the latest date set forth below.

IN WITNESS WHEREOF, the parties hereto have respectively caused this Agreement to be signed by their duly authorized representatives on the date herein set forth.

Monterey Bay Aquarium Research Institute

Hydratech LLC

By: **Andy Hamilton** (MBARI Project PI)

By: _____



Name, Title of Authorized Business

Date: 5/24/2011

Date: _____