

Form:

Mutual Non-Disclosure Agreement

Description:

The form allows both parties to a potential transaction to share confidential information. The recipient of confidential information is obligated to keep such information confidential and not to use it for any purpose other than the evaluation of the proposed transaction.

Mutual Non-Disclosure Agreement

Each undersigned party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's business or operations (including, without limitation, computer programs, names and expertise of employees and consultants, know-how, formulas, processes, ideas, inventions (whether patentable or not) schematics and other technical, business, financial, customer and product development plans, forecasts, strategies and information), which to the extent previously, presently, or subsequently disclosed to the Receiving Party is hereinafter referred to as "Proprietary Information" of the Disclosing Party.

Notwithstanding the foregoing, nothing will be considered "Proprietary Information" of the Disclosing Party unless either (1) it is first disclosed in tangible form and is conspicuously marked "Confidential," "Proprietary" or the like or (2) it is first disclosed in nontangible form and orally identified as confidential at the time of disclosure and is summarized in tangible form, conspicuously marked "Confidential," and provided to the Receiving Party within 30 days of the original disclosure.

In consideration of the parties' discussions and any access the Receiving Party may have to Proprietary Information of the Disclosing Party, the Receiving Party hereby agrees as follows:

1. Use of Proprietary Information. The Receiving Party agrees:
 - (a) to hold the Disclosing Party's Proprietary Information in confidence and to take reasonable precautions to protect such Proprietary Information (including, without limitation, all precautions the Receiving Party employs with respect to its confidential materials),
 - (b) to not divulge any such Proprietary Information or any information derived therefrom to any third person (except consultants, subject to the conditions stated below),
 - (c) not to make any use whatsoever at any time of such Proprietary Information except to evaluate internally whether to enter into an agreement with the Disclosing Party; and
 - (d) not to copy or reverse engineer any such Proprietary Information.

Any employee or consultant given access to any such Proprietary Information must have a legitimate "need to know" and shall be similarly bound in writing. Without granting any right or license, the Disclosing Party agrees that the foregoing clauses 1(a), 1(b), 1(c), and 1(d) shall not apply to any information that (1) is (or through no improper action or inaction by the Receiving Party or any affiliate, agent, consultant or employee) generally available to the public, or (2) was in the Receiving Party's possession or known by the Receiving Party prior to receipt from the Disclosing Party, or (3) was disclosed to the Receiving Party by a third party which the Receiving Party believes was disclosed without restriction, or (4) was independently developed without use of any Proprietary Information of the Disclosing Party. The Receiving Party may make disclosures required by court order or administrative agency or a validly enforceable subpoena, provided the Receiving Party uses reasonable efforts to limit disclosure and to seek confidential treatment or a protective order and has given the Disclosing Party the opportunity to participate in the proceeding.

2. Return of Proprietary Information. Promptly upon (i) the decision by either party not to enter into the agreement contemplated by paragraph 1, or (ii) a request by the Disclosing Party at any time (which will be effective if actually received or three days after mailed first class postage prepaid to the Receiving Party), the Receiving Party will turn over to the Disclosing Party all Proprietary Information of the Disclosing Party and all documents or media to the extent that they contain any such Proprietary Information and any and all copies or extracts thereof.

3. Termination. This Agreement shall terminate one (1) year after the date hereof.

4. Disclosure. Except to the extent required by law, neither party shall disclose the existence or subject matter of the negotiations or business relationship contemplated between the parties.

5. Miscellaneous. The Receiving Party acknowledges and agrees that due to the unique nature of the Disclosing Party's Proprietary Information, there may be no adequate remedy at law for any breach of its obligations hereunder, that any such breach may allow the Receiving Party or third parties to unfairly compete with the Disclosing Party resulting in irreparable harm to the Disclosing Party, and therefore, that upon any such breach or any threat thereof, the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever remedies it might have at law. This Agreement shall be governed by the law of the State of [State] without regard to the conflicts of law provisions thereof. This Agreement supersedes all prior and contemporaneous discussions, representations, understandings, and agreements between the parties and constitutes the entire agreement between the parties with respect to the subject matter hereof. Any disputes arising out of or in connection with this Agreement shall be resolved solely and exclusively through confidential binding arbitration in front of one arbitrator in [City], [State], pursuant to the commercial arbitration rules of JAMS in effect at the time of the commencement of the arbitration. Each party shall bear its own attorneys' fees and costs. No waiver or modification of this Agreement will be binding upon either party unless made in writing and signed by a duly authorized representative of such party and no failure or delay in enforcing any right will be deemed a waiver. This Agreement shall be construed as to its fair meaning and not strictly for or against either party.

By: _____

By: _____

Title: _____

Title: _____

Date: _____