

Form: Confidentiality Agreement (Pro-Recipient of Information Oriented)

Description: This is a sample form of Confidentiality Agreement or Non-Disclosure Agreement. It is drafted in favor of the Recipient of information to limit the scope of the Recipient's obligations. It can be used by a potential investor in a company or a potential acquirer of a company, where the other side insists on a Confidentiality Agreement.

CONFIDENTIALITY AGREEMENT

This CONFIDENTIALITY AGREEMENT (the "Agreement") is by and between _____ (hereinafter "Disclosing Party"), and the undersigned potential recipient of confidential information (hereinafter "Recipient").

WHEREAS, Recipient has requested information from Disclosing Party in connection with consideration of a possible transaction or relationship between Recipient and Disclosing Party.

WHEREAS, in the course of consideration of the possible transaction or relationship, Disclosing Party may disclose to Recipient confidential information concerning Disclosing Party and its activities.

THEREFORE, the parties agree as follows:

1. Definitions. For purposes of this Agreement, "Confidential Information" shall include all confidential information or confidential material that is disclosed to Recipient by Disclosing Party that has commercial value or other utility in the business of Disclosing Party, and that is marked or clearly identified as "confidential." For purposes of this Agreement, the term "Representative" shall include Recipient's directors, officers, employees, agents, potential funding sources, affiliates, partners, accountants, consultants and financial, legal, and other advisors.

2. Exclusions. Confidential Information does not include information that: (a) was in Recipient's possession prior to its being furnished to Recipient under the terms of this Agreement; (b) is now, or hereafter becomes, through no act or failure to act on the part of Recipient, known to the public; (c) is rightfully obtained by Recipient from a third party, without Recipient's knowledge of a breach of any obligation to Disclosing Party; or (d) is independently developed by Recipient without use of or reference to the Confidential Information.

3. Confidentiality. Recipient and its Representatives shall not disclose any of the Confidential Information in any manner whatsoever, except as provided in paragraphs 4 and 5 of this Agreement, and shall hold and maintain the Confidential Information in confidence pursuant to the terms of this Agreement.

4. Permitted Disclosures. Recipient may disclose Disclosing Party's Confidential Information to Recipient's Representatives with a bona fide need to know such Confidential Information, but only to the extent necessary to evaluate or carry out a proposed transaction or relationship with Disclosing Party and only if such Representatives are advised of the confidential nature of such Confidential Information and the terms of this Agreement and are bound by a written confidentiality agreement or by a legally enforceable code of professional responsibility to protect the confidentiality of such Confidential Information. Pursuant to applicable tax law, notwithstanding any agreement or representation, written or oral, by either the Disclosing Party or the Recipient, each of the Disclosing Party and the Recipient (and their respective Representatives) may disclose to any and all persons, without limitations of any kind, the tax structure and tax aspects of the transaction, and all materials of any kind (including opinions or other analyses) that are provided to it relating to such tax structure and tax aspects.

5. Required Disclosures. Recipient may disclose Disclosing Party's Confidential Information if and to the extent that such disclosure is required by law, regulations or court order, provided that Recipient provides Disclosing Party prompt notice of such required disclosure.

6. Use. Recipient and its Representatives shall use the Confidential Information solely for the purpose of evaluating a possible transaction or relationship with Disclosing Party. Nothing in this Agreement shall be construed as granting any rights to Recipient, by license or otherwise, to any of Disclosing Party's Confidential Information.

7. Return or Destruction of Documents. If Recipient does not proceed with the possible transaction with Disclosing Party, Recipient shall return to Disclosing Party or destroy at Recipient's option, any and all records, notes, and other written, printed or other tangible materials in its possession pertaining to the Confidential Information promptly on the written request of Disclosing Party; provided, however, that Recipient may retain one copy of any or all of the foregoing for its legal files for monitoring compliance under this Agreement.

8. Reciprocal Obligations. If Recipient provides any confidential information to Disclosing Party, the Disclosing Party shall be subject to the same obligations and limitations contained in this Agreement applicable to the Recipient with respect to the confidential information provided by the Disclosing Party.

9. Irreparable Harm. Recipient understands and acknowledges that any disclosure or use of any of the Confidential Information in violation of this Agreement may cause Disclosing Party irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that Disclosing Party shall have the right to seek from the arbitrator referenced below specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as Disclosing Party shall deem appropriate.

10. Arbitration. Any and all disputes arising hereunder shall be resolved solely and exclusively through confidential binding arbitration in [CITY], [STATE] through the commercial arbitration rules of JAMS in existence at the time of the commencement of the arbitration, heard before one arbitrator. Each party shall bear its own attorneys' fees, expert witness fees, and arbitrator costs in connection with such arbitration.

11. Survival. This Agreement shall continue in full force and effect for a period of one (1) year after the date hereof.

12. Successors and Assigns. This Agreement and each party's obligations hereunder shall be binding on the representatives, assigns, and successors of such party and shall inure to the benefit of the assigns and successors of such party.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of [STATE], without regard to conflict of law principles.

14. Counterparts and Right. This Agreement may be signed in counterparts, which together shall constitute one agreement. The person signing on behalf of Recipient represents that he or she has the right and power to execute this Agreement.

15. Miscellaneous. This Agreement expresses the full and complete understanding of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous proposals, agreements, representations and understandings, whether written or oral, with respect to the subject

matter. This Agreement may not be amended or modified except in writing signed by each of the parties to the Agreement. This Agreement shall be construed as to its fair meaning and not strictly for or against either party. The headings hereof are descriptive only and not to be construed in interpreting the provisions hereof.

Date: _____

("Disclosing Party")

By: _____

Title: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

("Recipient")

By: _____

Title: _____

Address: _____

Phone: _____

Fax: _____

Email: _____