Agreement for Exchange of Confidential Information for Technical Information Exchanges

IBM

This Agreement protects confidential information (Information) while maintaining each party's ability to conduct its respective business activities. The following terms apply when one party (Discloser) discloses Information to the other (Recipient). Discloser and Recipient include entities Controlled by a party to this Agreement, where "Control" means direct or indirect beneficial ownership of more than fifty percent (50%) of the voting stock, or decision-making authority in the event that there is no voting stock, in another entity.

Disclosure

Information disclosed orally or not marked with a restrictive legend must be identified as confidential at the time of disclosure. Each disclosure of Information is subject to this Agreement for five years following the initial date of disclosure.

Obligations

Recipient will use Information only for the purpose for which it was disclosed (if not obvious, a supplement may be used to describe such purpose) or for the benefit of Discloser, and will use reasonable care to avoid disclosure of the Information other than to Recipient's:

> a) employees and employees of any legal entity that Controls it, or with which it is under common Control, who have a need to know; or
> b) contractors, subcontractors, financial and legal advisors who have a need to know.

Permitted Disclosures: Before disclosure to any party in (a) or (b), Recipient will have a written agreement with such party sufficient to require that party to treat Information substantially the same as described in this Agreement.

Exceptions: If required to disclose Information by law or court order, Recipient will endeavor to give Discloser prompt notice to allow Discloser a reasonable opportunity to obtain a protective order.

In the event that the Discloser provides any Information in the form of program code and its associated documentation (a **Program**) for use by the Recipient under this Agreement, such use shall be subject to the terms of an appropriate license to be agreed by the parties in addition to the terms of this Agreement; and in the event (but to the extent only) of any conflict between the provisions of this Agreement and those of any such license, those of the license shall prevail.

Disclaimers

Discloser provides Information without warranties of any kind and is not liable for any damages arising out of Recipient's use of Information disclosed under this Agreement.

This Agreement does not require either party to disclose or to receive Information, perform any work, or enter into any license, business engagement or other agreement. Neither this Agreement nor any disclosure of Information under it creates any joint or fiduciary relationship or grants Recipient any right or license, either directly or indirectly, by implication or estoppel or otherwise, under any trademark, copyright or patent, now or subsequently owned or controlled by Discloser.

The receipt of Information under this Agreement does not preclude Recipient from developing, manufacturing, marketing or providing products or services which may be competitive with products or services of Discloser, or entering into any business relationship with any other party.

Any Information is subject to change or withdrawal without notice.

Recipient may disclose, disseminate, and use Information that is:
a) already in its possession or obtained from a source other than Discloser without obligation of confidentiality,
b) developed independently,
c) publicly available when received or subsequently becomes publicly available through no fault of the Recipient, or
d) disclosed by Discloser to another without obligation of confidentiality.

General

Neither party may assign, or otherwise transfer, its rights or delegate its duties or obligations under this Agreement without prior written consent of the other. Any attempt to do so is void.

Nothing in this Agreement limits the parties' ability to assign its employees to other projects. Experience naturally acquired by either party's employees (or subcontractors) during the course of the parties' relationship may be utilized in its business activities and such utilization does not violate the Obligations section of this Agreement.

Either party may terminate this Agreement by providing at least one month's written notice to the other. Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees. To the extent Recipient is not otherwise licensed or authorized to retain the Information, Recipient agrees to return or destroy Information upon Discloser's written request.

Only a written agreement signed by both parties can modify this Agreement.

Both parties agree to the application of the laws of the State of New York to govern, interpret, and enforce all of the parties' respective rights, duties, and obligations arising from, or relating to, the subject of this Agreement, without regard to conflict of law principles. Each party hereby agrees to waive its rights to a jury trial.

Each party will comply with all applicable export and import laws and associated embargo and economic sanction regulations, including those of the United States. Further, the Recipient agrees that unless authorized by applicable government license or regulation, including but not limited to any U.S. authorization, the Recipient will not directly or indirectly export or re-export, at any time, any technical information, technology, software, or other commodity furnished or developed under this, or any other, agreement between the parties, or any other product that is developed or produced from or using Discloser's technical information, technology, software, or other commodity provided under this Agreement to any prohibited country (including release of such technical information, technology, software, or other commodity to nationals, wherever they may be located, of any prohibited country) as specified in applicable export, embargo, and sanctions regulations. This Section will survive termination or expiration of this Agreement.

If any provision of this Agreement is deemed invalid or unenforceable, the remaining provisions remain in full force and effect.

This Agreement, including any applicable supplements, is the complete agreement regarding the exchange of Information, and replaces all prior oral or written communications, representations, warranties, covenants, and commitments between you and IBM regarding the exchange of Information. Neither party is liable to the other, in equity or otherwise, for any representation that is not set out in this Agreement. Each party acknowledges that it has not relied on or been induced to enter into this Agreement by a representation other than those expressly set out in this Agreement. Each party accepts the terms of this Agreement by signing this Agreement (or another document that incorporates it by reference) by hand or electronically. Once signed, any reproduction of this Agreement or a supplement made by reliable means is considered an original.

Agreed to:

By_____
Authorized signature

Title:

Name (type or print):

Date:

Agreed to:
International Business Machines Corporation (IBM)

By_____
Authorized signature

Title:

Name (type or print):

Date: