

SMITHSONIAN CONFIDENTIALITY AND DISCLOSURE CLAUSES

The Smithsonian Institution is a trust instrumentality of the United States and has adopted a written policy for responding to requests for Smithsonian Institution records, including paper documents, electronic data, email, contracts, and other information stored or maintained by the Smithsonian, consistent with the principles of disclosure under the Freedom of Information Act, 5 United States Code (U.S.C.), § 552 and available at <http://www.si.edu/About/Records-Requests>:

1. **Confidential Information.** Confidential Information consists of trade secrets, product concepts, customer information, marketing communication material, marketing strategies, and other commercial or financial information that if affirmatively used by a competitor of the disclosing party would cause the disclosing party substantial competitive harm or information the release of which would violate the privacy rights of a third party with no overriding public interest. If Confidential Information is disclosed in tangible form, it shall be clearly designated in writing as such by the disclosing party. If Confidential Information is disclosed other than in writing, the information deemed to be Confidential Information shall be confirmed in writing as such within thirty days of such disclosure.
2. **Exceptions to Confidential Information.** Confidential Information shall not include any information, whether or not designated in writing as Confidential Information, which:
 - (a) was publicly available at the time of disclosure;
 - (b) was known by the receiving party prior to such disclosure;
 - (c) becomes publicly available after disclosure through no fault of the receiving party;
 - (d) is received from a third party who acquired the information without committing a wrongful or tortious act; or
 - (e) is developed independently by the receiving party without reference to or use of Confidential Information.

Either Party shall notify the other promptly in writing of any misappropriation, unauthorized disclosure, or use by any person of the Confidential Information which may come to the recipient party's attention. Recipient will take all steps reasonably requested by Discloser to stop, limit, or otherwise remedy such misappropriation, unauthorized disclosure, or use.

3. **Limited Disclosure.** Each party agrees that it will not disclose Confidential Information provided to it by the other party to others except to the extent that it is necessary to disclose such Confidential Information to its directors, officers, representatives, legal and financial consultants, and employees having a need to know such Confidential Information ("authorized parties") for the purpose of pursuing a business and contractual relationship between the parties. The parties shall use at least the same degree of care that each party uses to protect its own Confidential Information of similar importance, but no less than a reasonable degree of care. Further, the parties may disclose Confidential Information if required by law, subpoena, order or request of a federal governmental authority or court of competent jurisdiction, and further, provided that the party obligated to disclose such Confidential Information shall (i) assert the confidential nature of the Confidential Information to be disclosed, (ii) use reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed, and (iii) immediately notify the other party of the requirement, order, or request to disclose in advance of such disclosure in order to afford the other party the opportunity to contest disclosure. In the event disclosure is requested in accordance with Smithsonian's records disclosure policy, Smithsonian will provide the disclosing party the opportunity to identify Confidential Information prior to release, but final decisions regarding release shall be made by Smithsonian in accordance with its policy. No other use or disclosure of Confidential Information may be made by any party without the prior written consent of the disclosing party.
4. **Return of Confidential Information.** The receiving party will either return or destroy all tangible materials embodying Confidential Information within ten business days of receipt of the disclosing party's written request to do so and, if further requested by the disclosing party, the receiving party will provide written certification of such destruction.

Contractor's Name:		
Purchase Order #:		
Individual's Name:		
Individual's Signature:		Date: