

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (the "Agreement") is made and entered into as of the Effective Date by and between Disclosing Party and Receiving Party (each a "Party" and collectively the "Parties").

1. DEFINITIONS.

1.1 "Confidential Information" means all information, whether oral, written, electronic or other form, disclosed by either Party to the other, including without limitation business plans, financial data, trade secrets, technical disclosures, inventions, designs, prototypes, source code, algorithms, research, analyses, forecasts, customer lists, and other proprietary information, whether or not marked as confidential.

1.2 "Permitted Purpose" means evaluation and negotiation of a potential business relationship between the Parties.

2. NON-DISCLOSURE; NON-USE.

2.1 Each Party shall hold in confidence and not disclose Confidential Information to any third party except to its Representatives who have a bona fide need to know and who are bound by confidentiality obligations at least as restrictive as those herein.

2.2 Each Party shall use the Confidential Information solely for the Permitted Purpose and shall not use such Confidential Information for any other purpose including, without limitation, commercial exploitation or competing activities.

3. EXCLUSIONS.

Confidential Information shall not include information which: (a) is or becomes generally available to the public through no wrongful act of the Receiving Party; (b) was rightfully in the Receiving Party's possession prior to disclosure; (c) is rightfully received from a third party without breach of any obligation of confidentiality; or (d) is independently developed by the Receiving Party without use or reference to the disclosing Party's Confidential Information.

4. TERM.

This Agreement shall commence on the Effective Date and continue for a period of three (3) years; provided, however, that the Receiving Party's duty with respect to trade secrets shall survive for as long as such information remains a trade secret under applicable law.

5. REMEDIES.

The Parties acknowledge that monetary damages may be inadequate and that injunctive or equitable relief may be necessary to prevent actual or threatened breaches. The Parties agree that, in addition to any other remedies, the aggrieved Party shall be entitled to seek injunctive relief without proof of actual damages or the posting of a bond.

6. REPRESENTATIONS AND WARRANTIES.

Each Party represents and warrants that it has the full right and authority to disclose the Confidential Information, and that such disclosure will not violate any contractual or legal obligation to any third party.

7. NO LICENSE.

Except as expressly set forth herein, no license, express or implied, under any patent, trademark, copyright, trade secret or other intellectual property right is granted by either Party.

8. INDEMNIFICATION.

Each Party shall indemnify, defend and hold harmless the other Party from and against any and all claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) arising out of the breach of this Agreement by the indemnifying Party.

9. GOVERNING LAW; JURISDICTION.

This Agreement shall be governed by and construed in accordance with the substantive laws of the State of New York, without regard to conflict of laws principles. The Parties submit to the exclusive jurisdiction of the state and federal courts located in New York County, New York.