

CONFIDENTIALITY AGREEMENT (USA)

[For use with competitor.]

THIS AGREEMENT made effective as of the ____ day of _____, _____.

BETWEEN:

[NAME OF COMPANY]
(the "Company")

- and -

[NAME OF INTERESTED PARTY]
(the "Interested Party")

WHEREAS:

- A. The Company is in the business of [describe the nature of the business] (the "Business");
- B. The Interested Party is also in the business of [describe the nature of the business];
- C. The Interested Party is interested in investigating the Business for the purpose of potential acquisition or joint venture (the "Opportunity");

NOW THEREFORE, in consideration of the Company agreeing to discuss the Business and Opportunity with the Interested Party, and otherwise disclosing particulars of the Business and Opportunity to the Interested Party, the parties hereby undertake and agrees as follows:

1. **Scope of This Agreement:** The parties agree that this Agreement is only for the purposes of protecting each party's confidential information and each party's business opportunities. Any agreement between the parties as to any sale of the Business or joint business activities will be set out in specific subsequent written agreements.
2. **Supersedes Prior Agreements:** This Agreement supersedes any prior agreements between the parties with respect to confidentiality obligations or the subject matter of this Agreement.
3. **Secret Negotiations:** Each party undertakes and agrees not to disclose to any person (other than its professional advisors and most senior executives, who will be deemed to be bound by this Agreement), that the Business might be for sale or that the Interested Party is engaging in discussions with Company management and/or shareholders regarding a potential acquisition of the Business or joint venture with the Company. Notwithstanding the forgoing, the parties acknowledge that rumors do circulate in the industry notwithstanding the best efforts of the parties and that no party will be accountable for rumors or information about these negotiations that circulate through no fault of that party.
4. **Confidential Information:** The term "Confidential Information" shall include but shall not be limited to these negotiations, the existence of this Agreement, and all confidential or proprietary information or trade secrets furnished by one party to the other with respect to the Business, the Opportunity or a potential joint venture, whether in oral, written, graphic or machine-readable form, and all copies or reproductions thereof, including but not limited to business plans, marketing plans, financial statements or projections, product or service outlines, processes, procedures, customer lists, supplier lists, employee and independent contractor information. The term "Confidential Information" shall not include such information and data as the parties agree in writing is not proprietary or confidential, or information made available to the general public by the disclosing party, or information which lawfully comes into the hands of a party from a third person who was permitted to disclose the information. Confidential Information shall at all times remain the exclusive property of the disclosing party.