

NONDISCLOSURE AGREEMENT
(DSS Access to certain INDUSTRY Information
In connection with
“Partnership with Industry” Program”)

This Agreement ("Agreement") is entered into effect as of the ____ of _____, _____ ("Effective Date") by and between INDUSTRY, having a place of business at __[street address]_____, and _[employee name]_____, (hereinafter “DSS employee”) an employee of the Defense Security Service (hereinafter "DSS"); collectively, the "Parties"; severally, a "Party".

WITNESSETH:

WHEREAS, INDUSTRY has certain information resident in its internal systems and otherwise relating to its technology and business operations, which information it considers to be proprietary, and which is not accessible by non-INDUSTRY employees without restriction; and

WHEREAS, DSS is participating in a program at

_____ (the
“Program”).

WHEREAS, DSS desires that certain of its employees access the information from INDUSTRY for purposes of discharging the DSS duties and to derive full benefit from the Program; and

WHEREAS, INDUSTRY wishes to preserve the trade secret status of certain exposed technical information, and otherwise, have its proprietary information protected from unauthorized use, reproduction, or disclosure; and

WHEREAS, the Parties have agreed that the DSS employee may obtain access to the email and online systems and may access certain INDUSTRY trade secret and other proprietary information under an agreement specifying the conditions of such access, and that the DSS employee will not access or use other INDUSTRY proprietary information which may reside within the email and online systems which the Parties have agreed shall not be provided to DSS.

NOW, THEREFORE, the Parties hereto agree as follows:

1. DSS employee agrees that it will not disclose to any person outside INDUSTRY, nor to any person within INDUSTRY not having a "need to know" for the purposes of this Agreement, and will not use or reproduce, except for the purposes of this Agreement, any information ("Proprietary Information"):

a. contained in any INDUSTRY or third party document which DSS receives or to which he/she is exposed and which is marked with a legend identifying the document either as proprietary or competition-sensitive;

b. that is disclosed hereunder in electronic form to the DSS employee in INDUSTRY' online systems, or which the DSS employee prints off in documentary form, whether or not such printed material is designated by an appropriate stamp, marking, or legend thereon to be of a proprietary nature to INDUSTRY; or

c. which is orally or visually disclosed to the DSS employee otherwise and is identified at time of disclosure as being proprietary to INDUSTRY or said third party, provided that, within thirty (30) days of such oral or visual disclosure, a written notice specifically identifying such orally or visually disclosed proprietary information is provided by INDUSTRY to the DSS employee.

2. DSS employee agrees to take appropriate action in accordance with Paragraph 1 above, to provide for the protection, safekeeping, and restricted use, reproduction, and re-disclosure of Proprietary Information received under this Agreement.

3. DSS employee shall not be liable for re-disclosure of any such Proprietary Information if it is disclosed by DSS employee with the prior written approval of INDUSTRY.

4. This Agreement shall commence on the Effective Date and expire ____ (___) months there from. Notwithstanding the earlier termination of, or expiration of the term of, this Agreement, Proprietary Information received hereunder shall be protected by DSS employee as required by this Agreement for a period of three (3) years from the date of receipt thereof.

5. DSS employee shall not be liable for the inadvertent or accidental access to Proprietary Information which is not the subject of this Agreement, nor for disclosure of Proprietary Information received hereunder, provided that it has exercised the same degree of care in protecting such Proprietary Information in each case as he/she normally exercises to protect Government non-public information and provided, further, that

immediately upon discovering the inadvertent access, loss, or unauthorized use of Proprietary Information received under this Agreement, DSS employee notifies INDUSTRY thereof and takes all reasonable steps to retrieve, and prevent further unauthorized access to, and/or disclosure of, such Proprietary Information.

6. In the event and to the extent that Proprietary Information received under this Agreement: (i) is or becomes publicly available without breach of this Agreement; or (ii) was, and can be shown conclusively to have been, known to DSS employee or DSS at the time of its receipt hereunder from INDUSTRY; or (iii) is received by DSS employee from a third party free to disclose such information; or (iv) is and can be shown to have been independently developed by employees and/or contractors of the United States Government not having access directly or indirectly to such Proprietary Information, DSS employee shall not be liable to INDUSTRY for disclosure of such publicly available, known, third party disclosed, or independently developed information; however, no right shall be created for DSS employee to disclosure of the specific Proprietary Information received hereunder.

7. DSS employee agrees to: (i) access the online systems only from computer terminals furnished and designated by INDUSTRY; and (ii) refrain from access of those areas and data files within the online systems which are specifically identified and set forth on Attachment "A" affixed hereto and incorporated herein and; (iii) ensure that any Proprietary Information which DSS re-transmits to other federal agencies or to third parties (with INDUSTRY' consent) is properly marked with appropriate proprietary legends.

8. DSS employee acknowledges that INDUSTRY represents to him or her that the Proprietary Information contained in the online systems and otherwise is: (i) not customarily disclosed outside INDUSTRY, (ii) is considered by INDUSTRY to be commercially confidential and competition-sensitive; and (iii) is considered by INDUSTRY to be information of the type that would be subject to exemption from disclosure by the DSS pursuant to 5 U.S.C. 552(b)(4) and the prohibitions on disclosure under 18 USC 1905.

9. Proprietary Information received under this Agreement may be used by DSS in the discharge of its quality assurance, inspection, and administrative duties and contractor oversight responsibilities and, otherwise, only as is authorized in writing by INDUSTRY. However, nothing herein shall be interpreted or deemed to abridge, limit, or otherwise restrict the DSS right to prepare audit reports, conduct investigations, and/or make referrals to other federal agencies based upon Proprietary Information which DSS

employee has been exposed to, and/or has routinely accessed in the online systems pursuant to this Agreement.

10. Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise in any Proprietary Information disclosed under this Agreement, nor to waive INDUSTRY' right to require a subpoena from the DSS with respect to any Proprietary Information which INDUSTRY may possess.

11. The respective address and point of contact for each Party to which all correspondence and notices hereunder are to be sent is as follows:

If to the DSS:

If to INDUSTRY:

Attn:

INDUSTRY, Inc.

Attn:

Each Party may change its respective address or point of contact by delivering a written notice thereof to the other Party.

12. This Agreement shall become effective on the date first set forth above and it shall terminate upon the termination of the DSS assignment, at which time all Proprietary Information received hereunder (and any copies thereof) shall be returned to INDUSTRY and all access to INDUSTRY' online system shall be terminated, unless a different arrangement has been entered into between the Parties in writing. Expiration of the term of this Agreement, however, shall have no effect on the obligations imposed on DSS employee with respect to the protection of Proprietary Information received hereunder for the full period of time required by paragraph 4 of this Agreement.

13. This document, together with Attachment A, is the entire agreement between the parties concerning the exchange and protection of Proprietary Information relating to the DSS and his/her assignment, and it supersedes any prior written or oral agreements relating thereto and may not be amended or modified except by subsequent agreement in writing signed by a duly authorized officer or representative of each Party.

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be duly executed in duplicate originals by its respective duly authorized representative as follows:

INDUSTRY, Inc.

By:

By:

Typed Name:

Typed Name:

Title:

Title:

Date:

Date:

Attachment "A" – list of INDUSTRY data files and sites to which DSS may not have access.