|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| BETWEEN | | | AND | |
| Company One | | | Your Company | |
| Address company one | | | Your company address | |
| City company one | | | Your company city | |
| State company one | | Company one zip | Your company state | Your company zip |
|  | | |  | |
| Effective Date: | <Effective Date> | |

To protect PROPRIETARY INFORMATION that may be disclosed by one of the above identified parties to the other party while maintaining their ability to conduct business activities with each other, the parties agree to the provisions set forth in this Agreement.

* 1. INFORMATION PROTECTED
     1. Proprietary Information means information that the receiving party (“Recipient”) knows or has reason to know is confidential, proprietary, or trade secret information of the other party (“Discloser”), either (i) because the information is disclosed by the Discloser in writing and is marked as confidential or proprietary, or with words of similar import, at the time of disclosure or (ii) if disclosed by the Discloser in any other manner, is identified as proprietary at the time of disclosure and is also summarized in a written memorandum marked as provided above and delivered to the Recipient within ten (10) business days after disclosure or (iii) because of the nature of the information and the context in which it was disclosed. Without limitation, information concerning business models and strategies, network design and traffic, customers, and pricing is in all cases covered under clause (iii), subject to Section 4.
     2. This Agreement and any discussions between the parties in connection with this Agreement are also Proprietary Information.
     3. This Agreement is intended to encompass the Affiliates of both Parties. Consequently, Affiliates of either Party may disclose Proprietary Information to the other Party or its Affiliates, and Affiliates of either Party may receive Proprietary Information from the other Party and its Affiliates. The terms “Discloser” and “Recipient” shall include Affiliates of the Parties with respect to Proprietary Information disclosed or received by such Affiliates. The rights and obligations of the Parties shall inure to the benefit of their respective corporate Affiliates. The rights of such corporate Affiliates may be enforced by the Parties hereto (but not directly by such Affiliates). “Affiliate” means an entity that, directly or indirectly through one or more intermediaries, controls, or is controlled by, and/or is under common control with, another entity. “Control” (inclusive of the terms “controlled by” and “under common control with”) means the possession of the ability to direct the management and policies of a referenced entity.
  2. PURPOSE OF PROVIDING CONFIDENTIAL INFORMATION

Recipient and Discloser may disclose Proprietary Information for the specific purposes of evaluating and negotiating possible transaction(s) between the parties or of engaging in transactions as agreed to by the parties. Subject to Section 4 below, the Recipient will not, at any time, either directly or indirectly, make any use of the Proprietary Information so disclosed other than for the specific purpose of evaluating, negotiating and implementing potential transactions between the parties.

* 1. TERM

This agreement is effective as of the Effective Date specified above (the “Effective Date”) and continues until terminated by either party as provided in Section 9. Notwithstanding the termination of this Agreement, each party’s duties with respect to the other party’s Proprietary Information shall continue for three (3) years after the time of disclosure.

* 1. EXCLUSIONS AND SCOPE OF OBLIGATIONS
     1. This Agreement does not protect information that: (i) was in Recipient’s rightful possession before receipt from Discloser; (ii) is independently developed by or for Recipient without reference to Discloser’s Proprietary Information; (iii) is rightfully received by Recipient from a third party without a duty of confidentiality; (iv) is or becomes available to the public through no fault of Recipient, (v) is required to be disclosed by a regulatory authority or by governmental or court action, provided that Recipient uses its reasonable efforts to provide advance notice of such required disclosure to Discloser and cooperates with Discloser, at Discloser’s expense, in seeking reasonable protective arrangements; or (vi) is disclosed by the Recipient with the Discloser’s prior written approval.
     2. This Agreement does not restrict the assignment of either party’s employees or the use by a party’s employees of improved general knowledge, skills and experience in the field of the other party’s Proprietary Information gained during the term of this Agreement.
     3. This Agreement shall not be construed as an engagement by either party for any service or other business arrangement whatsoever. Any and all services or undertakings to be performed by either party shall be the subject of a separate written agreement.
  2. RECIPIENT’S DUTIES

Recipient shall keep the Proprietary Information in confidence, and shall use the same degree of care (but no less than a reasonable degree of care) to prevent the unauthorized use, dissemination or publication of the Proprietary Information as the Recipient uses to protect its own Proprietary Information of a similar nature. Recipient shall use Discloser’s Proprietary Information only for the purpose described above and shall not disclose any such Proprietary Information except to employees, agents, principals, consultants, or individual independent contractors of Recipient who have a need to know, and Recipient shall have obtained the prior agreement of such persons to abide by and be bound by obligations of confidentiality as strict as those herein. Recipient shall be primarily liable to Discloser for the compliance of each person described in this Section.

* 1. RIGHTS IN PROPRIETARY INFORMATION

Proprietary Information remains the property of Discloser, and Recipient does not acquire any intellectual property rights under this Agreement except the limited license rights necessary to use Discloser’s Proprietary Information for the purpose described above. Recipient shall preserve all proprietary markings on Discloser’s Proprietary Information provided to Recipient. The Proprietary Information, including all copies thereof, shall be returned to the Discloser or destroyed upon request of the Discloser.

* 1. WARRANTY

Each Discloser warrants that it has the right to make the disclosures under this Agreement. Each party expressly disclaims all other warranties or representations with respect to any confidential information disclosed hereunder.

* 1. REMEDIES

Each party expressly acknowledges and agrees that money damages may not be an adequate remedy for breach of this Agreement and that an aggrieved party is therefore entitled to seek injunctive relief for any threatened or actual breach of this Agreement by the other party.

* 1. TERMINATION

Either party may terminate this Agreement at any time by giving one business day’s written notice to the other party at its address provided above, after which Recipient’s obligations to Discloser are limited to that Proprietary Information disclosed before termination; provided that the obligation of confidentiality and those other provisions of this Agreement, which by their nature, extend beyond its termination, remain in effect beyond the termination until fulfilled and apply to either party's successors and assigns.

* 1. CHOICE OF LAW

This Agreement shall be governed by the laws of the State of New York without regard to its conflict of laws principles.

* 1. ENTIRE AGREEMENT

Subsequent written agreements between the parties concerning specific projects or transactions falling within the general scope of this Agreement take precedence over this Agreement. There are no understandings, agreements or representations, express or implied, not specified herein. This Agreement may not be amended except in writing signed by both parties.

* 1. NOTICES

Any notice or other communication required or permitted under the Agreement must be in writing and may be delivered by hand or by courier, or by a reputable commercial delivery service offering next business day delivery service, or sent by first-class mail to the addresses of the Discloser and Recipient shown on this Agreement or any alternative address of which a party notifies the other in writing, or by confirmed fax with a follow-up by a reputable commercial delivery service offering next business day delivery service. Any such notice shall be deemed served three (3) business days after deposit of such notice in the United States mail, certified, post-paid, or one (1) business day after deposit with a reputable commercial delivery service offering next business day delivery service, or upon personal delivery (or if served by personal delivery after-hours, then the next business day). A copy of any notice to SendIt must also be sent to the attention of ­­­­­­­­­­­­­­[Name and or Title of Person] care of [Entity and address].

The parties acknowledge that they have read this Agreement, understand it, and are bound by its terms. This Agreement has been signed by persons authorized to legally bind their respective organizations.

|  |  |
| --- | --- |
| Company One | Your Company |
| Signature: | Signature: |
| Print Name: | Print Name: |
| Title: | Title: |
| Date: | Date: |