

Mutual Non-Disclosure Agreement



MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (“Agreement”) is hereby made and entered into by and between:

Bestway (USA), Inc.
(hereinafter referred to as “Bestway”)
3435 S. McQueen Road
Chandler, AZ 85286
Coordinator: Ed Gartin, Inventor Relations
E-mail address: ed.gartin@bestwaycorp.us
Phone: (757) 362-6609

and

Inventor Trade Name: (co. & inventor name)

_____ (hereinafter referred to as “Inventor”)

Address: _____

Contact Person: _____
E-mail address: _____
Phone: _____

Bestway and Inventor are here in after also individually referred to as “Party” or collectively as “Parties”.

1. PURPOSE

The Parties desire to provide a mechanism and capability for the exchange of proprietary information (“Proprietary Information” or “Proprietary and Confidential Information” or “Confidential Information”) in order for the Parties to evaluate potential business opportunities of collaboration for the production of _____

(“Purpose”). Proprietary and Confidential information will include, but it will not be limited to, design concepts, drawings, renderings, test reports, technical descriptions, manufacturing information, marketing strategy, pricing, product samples, and other documentation related to the device’s operation construction, performance, marketing and sale.

2. DISCLOSURE PERIOD

The period during which either Party may furnish to the other information relating to and for the Purpose shall be one (1) calendar year from the date of last signature of this Agreement, unless otherwise extended or terminated by the Parties in writing.

3. TERM

The term of this Agreement, which coincides with the period of protection of the disclosed Proprietary Information as provided for in this Agreement, shall begin on the date of last signature below and shall end five (5) calendar years after the end of the Disclosure Period.

4. COORDINATORS

Each party shall designate coordinators, who shall supervise the disclosure of Proprietary Information.

5. PROPRIETARY INFORMATION

“Proprietary Information” shall be any and all business, technical and other information which is identified or labeled as “Proprietary” or “Confidential,” whether written, oral or otherwise furnished by one Party (the “Disclosing Party”) to the other Party (the “Receiving Party”) and shall include, but not be limited to all data, reports, interpretations, forecasts, specifications, manuals, processes, profiles, system and management architectures, diagrams, graphs, models, sketches, technical data, business information, financials, products, plans, strategies, marketing information and materials, software (including source and object code), concepts, know-how, methodologies and other information and records which Receiving Party or its respective agents or employees shall have been furnished or had access to heretofore or hereafter in the course of the Parties’ discussions. Proprietary Information shall also include information received as a result of plant tours, demonstrations, other visual or audio presentations or verbal disclosures which Disclosing Party indicates in writing to the Receiving Party no later than ten (10) calendar days after conveying such information that it is Proprietary Information. Proprietary and Confidential Information shall also include all information of a third party to which either Party has

Mutual Non-Disclosure Agreement

access. Notwithstanding the foregoing the Receiving Party will treat as Proprietary and Confidential information all disclosures that, due to their character and nature, a reasonable person under like circumstances would treat as Proprietary and Confidential.

- a. The foregoing shall not apply to:
 - i. Information that at the time of disclosure had been previously published and available to the public;
 - ii. Information which is published after disclosure and available to the public, unless such publication is a breach of this Agreement;
 - iii. Information which, prior to disclosure hereunder was already in the possession of the Receiving Party as evidenced by records kept in the ordinary course of business or by proof of actual prior possession; and
 - iv. Information, which subsequent to disclosure hereunder, is obtained from a third person who (insofar as is known) is not in violation of any contractual, legal or fiduciary obligation with respect to such information.
- b. If any exception listed above applies to only a portion of any Proprietary and Confidential data, the remainder shall continue to be subject to the foregoing prohibitions and restrictions.

Proprietary Information is not to be deemed to be in the public domain merely because any part of the Proprietary Information is embodied in a general disclosure or because individual features, components, or combinations thereof are now or become known to the public.

6. RESTRICTIONS

Each Party agrees that, during the term of this Agreement, it shall: (a) use any Proprietary Information disclosed to it only for the Purpose stated above; (b) not disclose the Proprietary Information to any third party; (c) not disclose the Proprietary Information to any employee who does not have a need-to-know such information; and (d) employ the same standard of care it uses to protect its own Proprietary Information. In no case shall the standard of care with respect to the Proprietary Information be less than reasonable care.

If the Receiving Party is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, similar process or otherwise), to disclose any Proprietary Information, the Receiving Party shall

provide the Disclosing Party with prompt notice of such request(s) so that the Disclosing Party may seek an appropriate protective order and/or waive the Receiving Party's compliance with the provisions of this Agreement. If, failing the entry of a protective order or the receipt of a waiver hereunder, the Receiving Party shall be compelled to disclose Proprietary Information under pain of liability for contempt or other material censure or material penalty, the Receiving Party may disclose such information to such tribunal(s) without liability hereunder. In any event, the Receiving Party shall disclose only so much of the Proprietary Information as it is legally compelled to disclose, and will take reasonable steps to obtain assurances that any Proprietary Information it must disclose will be treated confidentially to the extent possible.

7. TERMINATION

This Agreement, unless extended by the Parties in writing, shall terminate at the end of the term set forth in this Agreement, provided however, that either Party may terminate this Agreement before the established term date by providing ten (10) calendar days written notice to the other Party. No termination shall affect either Party's obligations and rights herein with respect to information disclosed prior to termination. Upon termination of this Agreement, the Receiving Party shall promptly (and in no event later than ten (10) calendar days after written request therefore) return to the Disclosing Party, all information embodied in writings, drawings, or the like including all copies thereof, submitted or made available by the Disclosing Party to the Receiving Party, its affiliates or subsidiaries or the Receiving Party shall certify as to the destruction thereof to the Disclosing Party, except for automatically generated electronic backup copies, which will not be used for any purpose. Notwithstanding such return, the Receiving Party and its respective agents and employees shall hold in confidence all Proprietary Information according to the terms of this Agreement.

8. PUBLICATIONS

Each Party shall not disclose or publish any news release, public announcement or advertisement in connection with this Agreement and/or the subject matter of this Agreement and/or any project connected with this Agreement without the prior written approval of the other Party. Notwithstanding the Term and Termination provisions of this Agreement, his obligation shall be perpetual.

Mutual Non-Disclosure Agreement

9. GOVERNMENT LAWS

Parties shall abide by all laws, ordinances, rules or regulations of any governmental authority with jurisdiction affecting the performance of this Agreement.

10. OTHER RIGHTS AND OBLIGATIONS

Except as expressly set forth herein, no license is either granted or implied in the Proprietary Information, patents, inventions, copyrights, or trademarks of either Party. Communications from either Party shall not be in violation of the proprietary rights of any third party. Neither Party is required by this Agreement to disclose Proprietary Information to the other Party; all such disclosures are at the sole discretion of the Disclosing Party. This Agreement does not create any agency, partnership, or business relationship between the Parties.

11. WARRANTIES

Each Party warrants that it has the right to make the disclosures under this Agreement. Except as otherwise specifically provided in this Agreement, NO OTHER WARRANTIES ARE MADE BY EITHER PARTY UNDER THIS AGREEMENT. ANY INFORMATION EXCHANGED UNDER THIS AGREEMENT IS PROVIDED "AS IS."

12. DISPUTES AND GOVERNING LAW

The Parties shall use reasonable efforts to settle any dispute under this Agreement including where appropriate referral to higher management for resolution. If an amicable settlement is not possible, it is the intent of the Parties that this Agreement be construed, interpreted, and applied in accordance with the laws of the State of Arizona exclusive of its conflicts of law rules. All disputes arising out of or related to this Agreement will be subject to the exclusive jurisdiction and venue of the state and federal courts located in Phoenix, Arizona, and the Parties hereby expressly consent to such jurisdiction and venue. THE PARTIES HEREBY UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL FOR ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT AND/OR THE PROPRIETARY AND CONFIDENTIAL INFORMATION WITH RESPECT TO ANY DISPUTE RELATING TO THIS AGREEMENT.

13. REMEDIES

The Parties acknowledge that due to the unique nature of the Proprietary Information, any actual or

threatened breach of this Agreement may cause irreparable injury to the Disclosing Party, for which a remedy at law may be inadequate. Therefore, the Disclosing Party shall be entitled to seek equitable or injunctive relief, in addition to other remedies to which it may be entitled at law or equity. In any action for equitable relief, the Parties agree to waive any requirement for the posting of a bond or security.

14. RELATIONSHIP OF THE PARTIES TO RELATED CONTRACTS

If the Parties hereinafter enter into a contract that requires or permits use or disclosure of Proprietary Information disclosed pursuant to this Agreement, the terms of such later contract requiring or permitting such use or disclosure shall to that extent, supersede the provisions of this Agreement.

15. NOTICES

Any notices to any Party required hereunder shall be given in writing and sent by nationally recognized overnight courier, prepaid, to the address indicated in this Agreement.

16. GENERAL

- a. Entire Agreement: This Agreement sets forth the entire understanding between the Parties hereto relative to the disclosure of Proprietary Information covered by this Agreement, and supersedes all previous or contemporaneous understandings, commitments, or agreements, written or oral, regarding such information. The Agreement shall not be varied, except by an instrument in writing of subsequent date duly executed by an authorized representative of each Party. This Agreement shall apply in lieu of, and notwithstanding the language of, any specific legend or statement associated with any particular information or data exchanged, and the obligations of the Parties shall be determined exclusively by this Agreement.
- b. Execution: The Parties agree that this Agreement may be executed by fax, email, or similar electronic means and shall be as effective as and as binding as if the Agreement was executed with original signatures. The Parties also agree that this Agreement may be executed in duplicate, with each Party retaining one original.
- c. Waiver: Failure by either Party to enforce any of the provisions of this Agreement, or any right with respect thereto, or failure to exercise any election provided for herein, shall in no way be considered

Mutual Non-Disclosure Agreement

a waiver of such provisions, rights or elections, or in any way affect the validity of this Agreement. The failure by either Party hereto to enforce any of said provisions, rights or elections shall not prejudice such Party from later enforcing or exercising same or any other provisions, rights or elections which it may have under this Agreement.

d. Invalid Terms: If, for any reason, any provision of this Agreement is determined to be illegal or otherwise invalid or unenforceable under applicable present or future laws or regulations, that provision shall be deemed not to be a part of this Agreement, and so much of the remainder of this Agreement as shall otherwise remain intelligible shall be given full force and effect and shall bind the Parties.

e. Assignment: Neither Party shall assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld. Except as provided hereafter, any attempted assignment or transfer by any Party, or occurring by virtue of the purported operation of law, shall be void. A change of corporate name by a Party, merger or other corporate reorganization (provided that the Party remains the surviving entity) or the sale by a Party of all or substantially all of its assets shall not be deemed an assignment or transfer hereunder.

f. Specific Parties: This Agreement only binds the Parties named hereto. It is not intended and does not bind any other entity owned in whole or in part by either Party, including, but not limited to subsidiaries, affiliated companies, joint ventures, or corporations.

17. UNRELATED TRANSACTIONS

Inventor acknowledges that Bestway and/or any of its affiliates may from time to time evaluate investments in, offer financial services to, purchase and sell securities and loans issued by, and enter into other transactions with, companies that may be competitors, suppliers or customers of Inventor. No such activities will be affected by Bestway entering into this Agreement.

18. AUTHORIZED SIGNATURE AUTHORITY

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the

execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. There shall be no presumptions made or inferences drawn because the attorneys for one of the Parties drafted the Agreement.

IN WITNESS WHEREOF, the Parties have hereunto executed this Agreement by their authorized representatives as of the last signature date.

UNDERSTOOD & ACCEPTED For Inventor

Digital Signature: _____

NAME: _____

TITLE: _____

DATE: _____

UNDERSTOOD & ACCEPTED For Bestway (USA), Inc.

BY:

NAME:

TITLE:

DATE: