

CONFIDENTIALITY Agreement

BACKGROUND:

1. Fitness Shadow and you desire to enter into a confidentiality agreement with regard to the information concerning the business of Fitness Shadow and Fitness Shadow is being provided to establish potential business relationships concerning fitness at facilities in New York. (the 'Permitted Purpose').
2. In connection with the Permitted Purpose, you will receive certain confidential information (the 'Confidential Information').

IN CONSIDERATION OF and as a condition of Fitness Shadow providing the Confidential Information to you in addition to other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, the parties to this Agreement agree as follows:

Confidential Information

1. All written and oral information and materials disclosed or provided by Fitness Shadow to you under this Agreement is Confidential Information regardless of whether it was provided before or after the date of this Agreement or how it was provided to you.
2. 'Confidential Information' means all data and information relating to the business and management of Fitness Shadow, including proprietary and trade secret technology and accounting records to which access is obtained by you, including Work Product, Production Processes, Other Proprietary Data, Business Operations, Marketing and Development Operations, and Customers.
 1. Confidential Information will also include any information which has been disclosed by a third party to Fitness Shadow and governed by a non-disclosure agreement entered into between the third party and Fitness Shadow. Confidential Information will not include information that:
 1. is generally known in the industry of Fitness Shadow;
 2. is now or subsequently becomes generally available to the public through no wrongful act of yours;
 3. You rightfully had in its possession prior to receiving the Confidential Information from Fitness Shadow;
 4. is independently created by you without direct or indirect use of the Confidential Information;
 5. You rightfully obtains from a third party who has the right to transfer or disclose it.
 2. 'Work Product' means work product resulting from or related to work or projects performed or to be performed for Fitness Shadow or for clients of Fitness Shadow, of any type or form in any stage of actual or anticipated research and development;
 3. 'Production Processes' means processes used in the creation, production and manufacturing of the Work Product, including but not limited to formulas, patterns, molds, models, methods, techniques, specifications, processes, procedures, equipment, devices, programs, and designs;

4. 'Other Proprietary Data' means information relating to Fitness Shadow's proprietary rights prior to any public disclosure of such information, including but not limited to the nature of the proprietary rights, production data, technical and engineering data, technical concepts, test data and test results, simulation results, the status and details of research and development of products and services, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights and trade secrets);
5. 'Business Operations' means internal personnel and financial information, vendor names and other vendor information (including vendor characteristics, services and agreements), purchasing and internal cost information, internal services and operational manuals, and the manner and methods of conducting Fitness Shadow's business;
6. 'Marketing and Development Operations' means marketing and development plans, price and cost data, price and fee amounts, pricing and billing policies, quoting procedures, marketing techniques and methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of Fitness Shadow which have been or are being discussed; and
7. 'Customers' means names of customers and their representatives, contracts and their contents and parties, customer services, data provided by customers and the type, quantity and specifications of products and services purchased, leased, licensed or received by clients of Fitness Shadow.

Confidential Obligations

3. Except as otherwise provided in this Agreement, you must keep the Confidential Information confidential.
4. Except as otherwise provided in this Agreement, the Confidential Information will remain the exclusive property of Fitness Shadow; and will only be used by you for the Permitted Purpose. You will not use the Confidential Information for any purpose which might be directly or indirectly detrimental to Fitness Shadow or any of its affiliates or subsidiaries.
5. The obligations to ensure and protect the confidentiality of the Confidential Information imposed on you in this Agreement and any obligations to provide notice under this Agreement will survive the expiration or termination, as the case may be, of this Agreement and will continue for a period of 1 year from the date of such expiration or termination.
6. You may disclose any of the Confidential Information:
 1. to such of employees, agents, representatives and advisors that have a need to know for the Permitted Purpose provided that:
 1. You have informed such personnel of the confidential nature of the Confidential Information;
 2. such personnel agree to be legally bound to the same burdens of confidentiality and non-use as you;
 3. You agree to take all necessary steps to ensure that the terms of this Agreement are not violated by such personnel; and
 4. You agree to be responsible for and indemnify Fitness Shadow for any breach of this Agreement by personnel.

2. to a third party where Fitness Shadow has consented in writing to such disclosure; and
 3. to the extent required by law or by the request or requirement of any judicial, legislative, administrative or other governmental body.
7. You agree to retain all Confidential Information at his usual place of business and to store all Confidential Information separate from other information and documents held in the same location. Further, the Confidential Information is not to be used, reproduced, transformed, or stored on a computer or device that is accessible to persons to whom disclosure may not be made, as set out in this Agreement.

Non-Competition

8. Other than with the express written consent of Fitness Shadow, which consent may not be unreasonably withheld, you will not, for a period of one (1) year, be directly or indirectly involved with a business which is in direct competition with the business lines of Fitness Shadow that are the subject of this Agreement. you may obtain your own clients, but you may not compete in or for the same facilities or same clients Fitness Shadow has already obtained.
9. For a period of one (1) year, you will not divert or attempt to divert from Fitness Shadow any business Fitness Shadow had enjoyed, solicited, or attempted to solicit, from its customers, at the time the parties entered into this Agreement.

Non-Solicitation

10. You or your affiliates, subsidiaries and representatives will not, for a period of one (1) year, directly or indirectly solicit for employment or employ any person who is now employed or retained by Fitness Shadow or any affiliate of Fitness Shadow without the prior written consent of Fitness Shadow.

Ownership and Title

11. Nothing contained in this Agreement will grant to or create in you, either expressly or impliedly, any right, title, interest or license in or to the intellectual property of Fitness Shadow.

Remedies

12. You agree and acknowledge that the Confidential Information is of a proprietary and confidential nature and that any failure to maintain the confidentiality of the Confidential Information in breach of this Agreement cannot be reasonably or adequately compensated for in money damages and would cause irreparable injury to Fitness Shadow. Accordingly, you agree that Fitness Shadow is entitled to, in addition to all other rights and remedies available to it at law or in equity, to an injunction restraining you and any agents of yours, from directly or indirectly committing or engaging in any act restricted by this Agreement in relation to the Confidential Information.

Return of Confidential Information

13. You will keep track of all Confidential Information provided to her and the location of such information. Fitness Shadow may at any time request the return of all Confidential Information from you. Upon the request of Fitness Shadow, or in the event that you cease to require use of the Confidential Information, or upon the expiration or termination of this Agreement, as the case may be, you will:

1. return all Confidential Information to Fitness Shadow and will not retain any copies of this information;
2. destroy or have destroyed all memoranda, notes, reports and other works based on or derived from your review of the confidential information; and
3. will provide a certificate to Fitness Shadow that such materials have been destroyed or returned, as the case may be.

Notices

14. In the event that you are required in a civil, criminal or regulatory proceeding to disclose any part of the Confidential Information, you will give to Fitness Shadow prompt written notice of such request so Fitness Shadow may seek an appropriate remedy or alternatively to waive your compliance with the provisions of this Agreement in regards to the request.
15. If you lose or fail to maintain the confidentiality of any of the Confidential Information in breach of this Agreement, you will immediately notify Fitness Shadow and take all reasonable steps necessary to retrieve the lost or improperly disclosed Confidential Information.
16. Any notices or delivery required in this Agreement will be deemed completed when hand-delivered, delivered by agent, or seven (7) days after being placed in the post, postage prepaid, to the parties at the addresses contained in this Agreement or as the parties may later designate in writing.

Representations

17. In providing the Confidential Information, Fitness Shadow makes no representations, either expressly or impliedly as to its adequacy, sufficiency, completeness, correctness or its lack of defect of any kind, including any patent or trademark infringement that may result from the use of such information.

Assignment

18. Except where a party has changed its corporate name or merged with another corporation, this Agreement may not be assigned or otherwise transferred by either party in whole or part without the prior written consent of the other party to this Agreement.

Amendments

19. This Agreement may only be amended or modified by a written instrument executed by Fitness Shadow and your approval of these changes will be required for you to maintain a relationship with Fitness Shadow.

Governing Law

20. This Agreement will be construed in accordance with and governed by the laws of the State of New York.

Additional Provisions

21. Any information disclosed will not be shared with any person(s) in or out of the fitness industry.

General Provisions

22. This Agreement will inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns, as the case may be, of Fitness Shadow and you.
23. This Agreement may be executed in counterparts.
24. Time is of the essence in this Agreement.
25. This Agreement constitutes the entire agreement between the parties and there are no further items or provisions, either oral or otherwise.