

[DCT COMMENT TO STUDENTS: This document is a sanitized version of my redline of a counterparty's proposed confidentiality agreement. CAUTION: In revising this draft, I did NOT make all the changes I might have requested in different circumstances, so do NOT use this as a "go-by" model.]

Commented [DCT1]: NOTE TO STUDENTS: See the running header above with the hand-typed "REV. 2022-09-22"; that helps everyone make sure they're discussing — or signing — the same version.

Confidentiality Agreement

Commented [DCT2]: [THIS COMMENT WAS IN THE REDLINE SENT TO THE OTHER PARTY:] To help [CLIENT]'s business people review this, I'm taking the liberty of expanding the formatting and breaking up some of the longer paragraphs, without redlining those particular changes. (I'm redlining all other changes.)

Dear Mary,

1. This confidentiality agreement ("Agreement") acknowledges that Gigunda Energy Corporation ("Gigunda") has requested access to certain confidential and proprietary information, personnel and properties of MathWhiz LLC (the "Company"), in connection with a possible transaction with the Company ("Transaction").
2. As a condition to Gigunda being furnished such information (hereinafter referred to as the "Evaluation Material" and further defined below), Gigunda agrees to treat the Evaluation Material in accordance with the provisions of this Agreement and to take or refrain from taking certain other actions herein set forth.
3. Evaluation Material shall include all confidential and proprietary information relating to the Company including but not limited to personnel and properties of the Company whether prepared by the Company, its investment advisors or otherwise, that is to be furnished to Gigunda by or on behalf of the Company.
4. In connection with the term Evaluation Material, each of the terms Gigunda and the Company shall include its officers, directors, members, managers, employees, partners, joint ventures, agents, legal counsel, accountants and financial or other advisors and with respect to Gigunda shall include current or prospective financing sources.
5. Notwithstanding the foregoing, the term "Evaluation Material" does not include any information that (i) is already in the possession of Gigunda, (ii) is independently developed by Gigunda, (iii) is or becomes generally available to the public other than as a result of a breach by Gigunda or its representatives of this Agreement, or (iv) becomes available to Gigunda on a non-confidential basis from a source other than the Company or its representatives.
6. As a condition to the Company furnishing the Evaluation Material, the parties hereto agree as follows:
7. *Nondisclosure of Evaluation Material:* Except as required by law, the Evaluation Material will be kept confidential by Gigunda and will not be used other than in connection with Gigunda's evaluation and possible negotiation and consummation of a possible Transaction;

provided that any of such information may be disclosed to representatives who need to know such information for the purpose of evaluating and possibly negotiating and consummating any such possible Transaction.

8. Gigunda will inform its representatives of the confidential nature of the Evaluation Material and will direct them to treat the Evaluation Material confidentially.
9. In the event that Gigunda or its representatives receive a request or become legally compelled to disclose all or a part of the information contained in the Evaluation Material, Gigunda agrees, to the extent permitted by law and practicable, to promptly notify the Company of the existence, terms and circumstances surrounding such a request, so that the Company may seek at its own cost an appropriate protective order and / or waive compliance with the provisions of the Agreement.
10. Neither the investment in, management of or acquisition of any business, nor the occurrence or existence of such similar or competitive activities shall, by itself without the Company otherwise proving that this Agreement has been breached, be cause for any action or allegation by the Company or any presumption that Gigunda or any of its affiliates has failed to observe the obligations set forth herein or in and of itself be deemed a breach of this Agreement.
11. *Treatment of Evaluation Material:* As soon as possible upon the Company's request, Gigunda will return all or will destroy all written Evaluation Material provided to it.
12. Also, unless otherwise required by law or internal document retention policies, Gigunda will destroy all documents, memoranda, notes and other writings whatsoever prepared by Gigunda or its respective representatives based on the information in the Evaluation Material, and such destruction shall, upon request of the Company, be certified in writing to the Company by an authorized officer supervising such destruction.
13. *Miscellaneous:* Money damages may not be a sufficient remedy alone for any violation of the terms hereof and, accordingly, the Company may be entitled to seek specific injunctive and performance relief as remedies for any such violation. These remedies will not be exclusive but will be in addition to all other remedies available to the Company at law.
14. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware and each party irrevocably consents to the jurisdiction of the federal and/or local courts located in Delaware, in connection with this Agreement.
15. If any provision of this Agreement shall be held by a court of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force and effect.
16. *Termination:* This Agreement and (except as provided below) the confidentiality obligations contained herein will be in effect for two (2) years from the date of execution.

Commented [DCT3]: NOTE TO STUDENTS: You'll see that I did NOT change the D.R.Y. violation "two (2) years" here.

17. **[NEW:]** *Exception to termination:* For certain “trade secret” Evaluation Material specified below, the confidentiality obligations of this agreement will remain in effect until such time — if any — as the content comes within the scope of the exclusions from confidentiality in paragraph 5:

Commented [DCT4]: NOTE TO STUDENTS: Instead of doing this entire paragraph 17 in redlining, I just flagged it as “[NEW:]” for easier reading.

(a) For this purpose, the term “trade secret” has the meaning stated in the Defend Trade Secrets Act, at [18 U.S.C. § 1893\(3\)](#).

Commented [DCT5]: NOTE TO STUDENTS: See how I avoided doing a detailed definition of “trade secret,” and instead referenced a federal statute — with a link to the text.

(b) For particular information in Evaluation Material to qualify for this trade-secret exception to expiration, the Company must designate the information as a trade secret, in writing and with reasonable particularity, before the obligations of this agreement would otherwise expire.

(c) For purposes of subdivision (b), a sufficient written trade-secret designation could be one or both of:

(1) marking a written copy or summary of the information as “trade secret” when initially provided to Gigunda; and/or

(2) following up an unmarked disclosure of the information (including without limitation an oral disclosure) with a written copy or summary that is so marked.

Please sign below to indicate your acceptance of and agreement with the foregoing and return a duplicate of this Agreement to Gigunda.

[SIGNATURE BLOCKS OMITTED]