

[Although I am a California lawyer, I am not your lawyer. This is not legal advice. This document is simply being presented as an example to a related blog post. Please note that the laws are different in each state. Please consult a lawyer in your state if you have legal questions or legal needs. Thank you.]

MUTUAL NONDISCLOSURE AGREEMENT

This mutual nondisclosure agreement is between PARTY ONE NAME, IN CAPITAL LETTERS, a[n] State of Organization, if not an individual [corporation] [general partnership][individual][limited liability company][limited liability partnership][limited partnership][sole proprietorship][other] and PARTY TWO NAME, IN CAPITAL LETTERS, a[n] State of Organization, if not an individual [corporation] [general partnership][individual][limited liability company][limited liability partnership][limited partnership][sole proprietorship][other].

Each party has developed certain confidential information that it may disclose to the other party for the purpose of Explain why the parties are exchanging information.

Each party wants to review, examine, inspect, or obtain the other party's confidential information only for the above-described purposes, and to otherwise maintain the confidentiality of that information pursuant to this agreement.

The parties hereby agree as follows:

1. CONFIDENTIAL INFORMATION.

Each party (in such capacity, a "Disclosing Party") may (but is not required to) disclose certain of its confidential and proprietary information to the other party (in such capacity, a "Receiving Party"). "Confidential Information" means:

- (a) information relating to the Disclosing Party or its current or proposed business, including financial statements, budgets and projections, customer identifying information, potential and intended customers, employers, products, computer programs, specifications, manuals, software, analyses, strategies, marketing plans, business plans, and other confidential information, whether provided orally, in writing, or by any other media, that was or will be:
 - (i) provided or shown to the Receiving Party or its directors, officers, employees, agents, and representatives (each a "Receiving Party Representative") by or on behalf of the Disclosing Party or any of its directors, officers, employees, agents, and representatives (each a "Disclosing Party Representative"); or
 - (ii) obtained by the Receiving Party or a Receiving Party Representative from review of documents or property of, or communications with, the Disclosing Party or a Disclosing Party Representative; and
- (b) all notes, analyses, compilations, studies, summaries, and other material, whether provided orally, in writing, or by any other media, that contain or are based on all or

part of the information described in subsection (a) (the “**Derivative Materials**”).

The Disclosing Party shall identify Confidential Information disclosed orally within Number of Days days of disclosure. The Disclosing Party’s failure to identify information as Confidential Information is not an acknowledgment or admission by the Disclosing Party that that information is not confidential, and is not a waiver by the Disclosing Party of any of its rights with respect to that information.

2. OBLIGATION TO MAINTAIN CONFIDENTIALITY.

(a) **Confidentiality.** The Receiving Party shall, and shall ensure that each Receiving Party Representative, keep the Confidential Information confidential. Except as otherwise required by law, the Receiving Party and Receiving Party Representatives may not:

- (i) disclose any Confidential Information to any person or entity other than:
 - A. a Receiving Party Representative who needs to know the Confidential Information for the purposes of its business with the Disclosing Party; and
 - B. a Receiving Party Representative who signs a confidentiality agreement; and
 - C. with the Disclosing Party’s prior written authorization; or

(ii) use the Confidential Information for any purposes other than those contemplated by this agreement.

(b) **No Reverse Engineering.** The Receiving Party may not reverse engineer, disassemble, or decompile any prototypes, software, or other tangible objects that embody the Disclosing Party’s Confidential Information and that are provided to the Receiving Party under this agreement.

(c) **Term.** The Receiving Party shall, and shall require each Receiving Party Representative to, maintain the confidentiality and security of the Disclosing Party’s Confidential Information until the earlier of: (i) such time as all Confidential Information of the Disclosing Party disclosed under this agreement becomes publicly known and is made generally available through no action or inaction of the Receiving Party or (ii) the third anniversary of the disclosure. However, to the extent that the Disclosing Party has disclosed information to the Receiving Party that constitutes a trade secret under law, the Receiving Party shall protect that trade secret for as long as the information qualifies as a trade secret.

3. EXCLUSIONS.

The obligations and restrictions of this agreement do not apply to that part of the Confidential Information that the Receiving Party demonstrates:

(a) was or becomes generally publically available other than as a result of a disclosure by the Receiving Party in violation of this agreement;

- (b) was or becomes available to the Receiving Party on a nonconfidential basis before its disclosure to the Receiving Party by the Disclosing Party or a Disclosing Party Representative, but only if:
 - (i) the source of such information is not bound by a confidentiality agreement with the Disclosing Party or is not otherwise prohibited from transmitting the information to the Receiving Party or a Receiving Party Representative by a contractual, legal, fiduciary, or other obligation; and
 - (ii) the Receiving Party provides the Disclosing Party with written notice of such prior possession either (A) before the execution and delivery of this agreement or (B) if the Receiving Party later becomes aware (through disclosure to the Receiving Party) of any aspect of the Confidential Information as to which the Receiving Party had prior possession, promptly on the Receiving Party so becoming aware; or
- (c) is requested or legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand, or similar process), or is required by a regulatory body, to be disclosed. However, the Receiving Party shall:
 - (i) provide the Disclosing Party with prompt notice of any such request or requirement before disclosure so that the Disclosing Party may seek an appropriate protective order or other appropriate remedy; and
 - (ii) provide reasonable assurance to the Disclosing Party in obtaining any such protective order.

If a protective order or other remedy is not obtained or the Disclosing Party grants a waiver under this agreement, then the Receiving Party may furnish that portion (and only that portion) of the Confidential Information that, in the written opinion of counsel reasonably acceptable to the Disclosing Party, the Receiving Party is legally compelled or otherwise required to disclose. The Receiving Party shall make reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any part of the Confidential Information so disclosed; or

- (d) was developed by the Receiving Party independently without breach of this agreement.

4. RETURN OF PROPERTY.

If a Disclosing Party requests, the Receiving Party shall, and shall cause each Receiving Party Representative to promptly (and no later than Number of Days days after the request):

- (a) return all Confidential Information to the Disclosing Party; and
- (b) destroy all Derivative Material and within Number of Days days of this destruction, provide a written certificate to the Disclosing Party confirming this destruction.

5. NO PUBLICITY.

The parties shall keep the existence of this agreement, and the transactions or discussions contemplated by this agreement, strictly confidential, except as required by law and except as the parties otherwise may agree in writing before a disclosure.

6. OWNERSHIP RIGHTS.

Each party acknowledges that the Confidential Information is, and at all times will be, the Disclosing Party's sole property, even if suggestions made by a Receiving Party are incorporated into the Confidential Information. Neither party obtains any rights, by license or otherwise, in the other party's Confidential Information. Neither party solicits any change in the other party's organization, business practice, service, or products, and the disclosure of the Confidential Information may not be construed as evidencing any intent by a party to purchase any products or services of the other party or as an encouragement to expend funds in development or research efforts. The Confidential Information may pertain to prospective or unannounced products. Neither party may use the other party's Confidential Information as a basis on which to develop or have a third party develop a competing or similar plan or undertaking.

7. FUTURE PRODUCTS; RESIDUALS.

The confidentiality terms of this agreement do not limit either party's right to develop or acquire products independently without use of the other party's Confidential Information. Further, each party may use for any purpose and residuals resulting from access to or work with the other party's Confidential Information. However, neither party may disclose the other party's Confidential Information except as expressly permitted under this agreement. The term "residuals" means information in intangible form that is retained in memory by people who have had access to the Confidential Information, including ideas, concepts, know-how, or techniques contained in that Confidential Information. Neither party is required to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. This section does not give either party a license under the other party's copyrights or patents.

8. NO OBLIGATION.

Nothing in this agreement obligates either party to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this agreement concerning the business opportunity, if any, and to cease further disclosures, communications, or other activities under this agreement on written notice to the other party. Any commitment to proceed with a transaction will be set forth in a separate agreement signed by the parties.

9. NO WARRANTY.

ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS, OR PERFORMANCE OF ANY SUCH INFORMATION.

10. GOVERNING LAW; ATTORNEYS' FEES; EQUITABLE RELIEF.

- (a) **Choice of Law.** The laws of the state of State govern this agreement (without giving effect to its conflicts of law principles).
- (b) **Choice of Forum.** Both parties consent to the personal jurisdiction of the state and federal courts in County, State.
- (c) **Attorneys' Fees.** If either party employs attorneys to enforce any rights arising out of or relating to this agreement, the losing party shall reimburse the prevailing party for its reasonable attorneys' fees and costs.
- (d) **Equitable Relief.** The parties acknowledge that a breach of this agreement will cause irreparable harm to the Disclosing Party and monetary damages may not be a sufficient remedy for an unauthorized disclosure of the Confidential Information. If a Receiving Party discloses the Confidential Information in violation of this agreement, a Disclosing Party may, without waiving any other rights or remedies and without posting a bond or other security, seek an injunction, specific performance, or other equitable remedy to prevent competition or further disclosure, and may pursue other legal remedies.

11. AMENDMENTS.

No amendment to this agreement will be effective unless it is in writing and signed by a party or its authorized representative.

SAMPLE

12. ASSIGNMENT AND DELEGATION.

- (a) **No Assignment.** Neither party may assign any of its rights under this agreement, except with the prior written consent of the other party, which consent may not be unreasonably withheld. All voluntary assignments of rights are limited by this subsection.
- (b) **No Delegation.** Neither party may delegate any performance under this agreement, except with the prior written consent of the other party, which consent may not be unreasonably withheld.
- (c) **Enforceability of an Assignment or Delegation.** If a purported assignment or purported delegation is made in violation of this section 12, it is void.

13. COUNTERPARTS; ELECTRONIC SIGNATURES.

- (a) **Counterparts.** The parties may execute this agreement in any number of counterparts, each of which is an original but all of which constitute one and the same instrument.
- (b) **Electronic Signatures.** This agreement, agreements ancillary to this agreement, and related documents entered into in connection with this agreement are signed when a party's signature is delivered by facsimile, email, or other electronic medium. These

signatures must be treated in all respects as having the same force and effect as original signatures.

14. SEVERABILITY.

If any provision in this agreement is, for any reason, held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability will not affect any other provisions of this agreement, but this agreement will be construed as if the invalid, illegal, or unenforceable provisions had never been contained in this agreement, unless the deletion of those provisions would result in such a material change that would cause completion of the transactions contemplated by this agreement to be unreasonable.

15. NOTICES.

(a) **Writing; Permitted Delivery Methods.** Each party giving or making any notice, request, demand, or other communication required or permitted by this agreement shall give that notice in writing and use one of the following types of delivery, each of which is a writing for purposes of this agreement: personal delivery, mail (registered or certified mail, postage prepaid, return-receipt requested), nationally recognized overnight courier (fees prepaid), facsimile, or email.

(b) **Addresses.** A party shall address notices under this section 15 to a party at the following addresses:

If to Party One Name
Contact Name/Position
Mailing Address
City, State Zip Code
Fax Number
Email Address

If to Party Two Name:
Contact Name/Position
Mailing Address
City, State Zip Code
Fax Number
Email Address

SAMPLE

(c) **Effectiveness.** A notice is effective only if the party giving notice complies with subsections (a) and (b) and if the recipient receives the notice.

16. WAIVER.

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this agreement will be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, and no waiver will constitute a continuing waiver, unless the writing so specifies.

17. ENTIRE AGREEMENT.

This agreement constitutes the final agreement of the parties. It is the complete and exclusive expression of the parties' agreement with respect to the subject matter of this agreement. All prior and contemporaneous communications, negotiations, and agreements between the parties relating to the subject matter of this agreement are expressly merged into and superseded by this agreement. The provisions of this agreement may not be explained, supplemented, or qualified by evidence of trade usage or a prior course of dealings. Neither party was induced to enter this agreement by, and neither party is relying on, any statement, representation, warranty, or agreement of the other party except those set forth expressly in this agreement. Except as set forth expressly in this agreement, there are no conditions precedent to this agreement's effectiveness.

18. HEADINGS.

The descriptive headings of the sections and subsections of this agreement are for convenience only, and do not affect this agreement's construction or interpretation.

19. EFFECTIVENESS.

This agreement will become effective when all parties have signed it. The date this agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the date of this agreement.

20. NECESSARY ACTS; FURTHER ASSURANCES.

Each party and its officers and directors shall use all reasonable efforts to take, or cause to be taken, all actions necessary or desirable to consummate and make effective the transactions this agreement contemplates or to evidence or carry out the intent and purposes of this agreement.

[SIGNATURE PAGE FOLLOWS]

Each party is signing this agreement on the date stated opposite that party's signature.

PARTY ONE NAME, if party is not an individual

Date: _____

By: _____

Name: Name of Person Signing

Title: Title of Person Signing, if party is not an individual

PARTY TWO NAME, if party is not an individual

Date: _____

By: _____

Name: Name of Person Signing

Title: Title of Person Signing, if party is not an individual

SAMPLE