

# Mutual Non Disclosure Agreement

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The mutual non-disclosure agreement is a simple agreement between two parties not to disclose specific information revealed between the parties to any third party.

## [Use the on-line form \(saves time\)](#)

- A. Fill in the on-line form,
- B. Click to sign and send.

## Use the Printable Agreement

1. Print the agreement
2. Fill in the form fields for the 1<sup>st</sup> party
3. Obtain the 2<sup>nd</sup> party's company and signer's information
4. Fill in the form fields for the 2<sup>nd</sup> party
5. Sign the document manually
6. Initial the selected purpose
7. Send the document to the 2<sup>nd</sup> party
8. Obtain the 2<sup>nd</sup> party's signature
9. Make sure the 2<sup>nd</sup> party initials the selected purpose
10. Make sure you both get a copy of the signed document
11. File the completed NDA with your corporate records keep

## Review Detailed Instructions

## Explanation of the Agreement Terms

# Non Disclosure Agreement

## BETWEEN

Company: \_\_\_\_\_  
Street: \_\_\_\_\_  
City: \_\_\_\_\_  
State/ZIP: \_\_\_\_\_  
Incorp. in: \_\_\_\_\_

## AND

Company: \_\_\_\_\_  
Street: \_\_\_\_\_  
City: \_\_\_\_\_  
State/ZIP: \_\_\_\_\_  
Incorp. in: \_\_\_\_\_

**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

- 1.1 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 confidential or proprietary at the time of 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, customers, and pricing is in all cases covered under clause (iii), subject to Section 4.
- 1.2 This Agreement and any discussions between the parties in connection with this Agreement are also Proprietary Information.
- 1.3 This Agreement is intended to encompass the Affiliates of both Parties. Recipient shall have obtained the prior written agreement of such Affiliates to comply with obligations of confidentiality for the Discloser's Proprietary Information as strict as those herein and for Discloser to enforce such obligations. 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 obligations of such 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" means the legal right to direct the management and business decisions 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.
- evaluating the potential for, or the expansion of, a business relationship between the parties.
- exchanging certain proprietary and/or confidential information in connection with discussions concerning each party's technology or products and corresponding plans for acquisition or use thereof.

# Non Disclosure Agreement

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### 3 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

two years     three years     five years    after the time of disclosure.

### 4 EXCLUSIONS AND SCOPE OF OBLIGATIONS

- 4.1 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 provides prompt written 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.
- 4.2 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.
- 4.3 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.

### 5 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 who are 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.

### 6 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 written request of the Discloser.

# Non Disclosure Agreement

## 7 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 Proprietary Information disclosed hereunder.

## 8 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.

## 9 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.

## 10 GOVERING LAW

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

## 11 JURISDICTION

All disputes between the parties arising out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts located in the State of \_\_\_\_\_. The award shall be final and binding upon the parties hereto.

## 12 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.

## 13 MISCELLANEOUS

- 13.1 The exchange of a fully executed agreement (in counterparts or otherwise) by fax or by electronic mail shall be sufficient to bind the parties to the terms and conditions of this agreement.
- 13.2 The parties acknowledge that they have each had the opportunity to have this agreement reviewed and negotiated by competent counsel, and waive any right they may have to interpret a writing against the drafter thereof.

## 14 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

## Non Disclosure Agreement

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). Notices will be sent to the addresses set forth in this Agreement or such other address as either Party may specify in writing.

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:**

**Company:**

Signature:

Signature:

Print Name:

Print Name:

Title:

Title:

Email:

Email:

## Instructions

This form is best used with [EasyNDA](#). EasyNDA is a non-disclosure agreement management software as a service providing substantial benefits to organizations large and small.

Although it is not required that you use EasyNDA with this form, the benefits of doing so are numerous, including:

<b>Eliminates Business Friction:</b>	EasyNDAs take seconds to complete.
<b>Mobile:</b>	On your phone or tablet, Click, Sign, Send. Don't wait to get back to your office – just do it and get on with your business!
<b>Electronically Signed:</b>	e-Signatures are built into EasyNDA. No saving, uploading, dragging little boxes... Just Click, Sign, Send.
<b>Controls Quality:</b>	No need for review – the form is constant, repeatable, and reliable.
<b>Document Management:</b>	All your NDAs are located in one place. Know what your team has signed: know your “disclosure exposure.”
<b>Access Management:</b>	Give team members access to your NDA repository on EasyNDA and rights to sign standard NDAs.

Learn more at <http://www.EasyNDA.com>

To use this form with EasyNDA,

- C. **Fill in the 1<sup>st</sup> party info** (required, outlined in red)
  - a. Fill in the 2<sup>nd</sup> party signer's email address
  - b. (optional) Fill in the 2<sup>nd</sup> party info (outlined in black)
- D. **Click the big button** on the signature line
  - a. EasyNDA.com will open with your form filled-in and ready for your electronic signature.
  - b. If this is your first visit, you'll need to verify your email address before you can sign the document.
- E. **Click to sign and send.**

Skip this PDF form and [Go straight to the on-line form.](#)

To use the form without the benefits of EasyNDA:

1. Print the form
2. Fill in the form fields for the 1<sup>st</sup> party
3. Obtain the 2<sup>nd</sup> party's company and signer information
4. Fill in the form fields for the 2<sup>nd</sup> party
5. Print the document
6. Sign the document manually or use an e-signature service
7. Initial the selected purpose
8. Send the document to the 2<sup>nd</sup> party
9. Obtain the 2<sup>nd</sup> party's signature
10. Make sure the 2<sup>nd</sup> party initials the selected purpose
11. Make a copy of the signed document for both you and the other party
12. File the completed NDA with your corporate records keeper

## **Explanation of the Agreement Terms**

- 1. Information Protected**
- 2. Purpose**
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- 4. Exclusions and Scope**
- 5. Recipient's Duties**
- 6. Rights in Proprietary Information**
- 7. Warranty**
- 8. Remedies**
- 9. Termination**
- 10. Governing Law**
- 11. Jurisdiction**
- 12. Entire Agreement**
- 13. Miscellaneous**
- 14. Notices**

### Information Protected

Proprietary information in this agreement is defined as information that the receiving party knows or has reason to know is confidential because it was identified as such verbally or in writing, or because of the nature of the information and context in which it was disclosed. Some information, such as strategy and pricing, is always considered proprietary.

The agreement itself is proprietary.

The agreement also covers affiliates of both parties and requires affiliates to have agreed in writing to comply with the parent parties' obligations of confidentiality.

### Purpose

There are three stock purposes provided in the form. Together, they cover most situations; however, there are conditions under which a narrower purpose is desired, or one that is not covered by the three broad purposes. In that case, a custom purpose may be inserted.

The standard purposes are:

- **TRANSACTION:** evaluating and negotiating possible transaction(s) between the parties or of engaging in transactions
- **BUSINESS RELATIONSHIP:** evaluating the potential for, or the expansion of, a business relationship
- 
- **EXCHANGE:** exchanging certain proprietary and/or confidential information in connection with discussions concerning each party's technology or products and corresponding plans for acquisition or use thereof

### Term

The agreement goes into effect on the Effective Date – that date on or before which proprietary information is first exchanged – and continues until the agreement is terminated.

The *term* of the agreement extends the obligations of confidentiality *beyond* the date the agreement is terminated by the *length of the term*.

Example: Your agreement has a two-year term and an effective date of 1/1/00. Four years later, on 1/1/04, you terminate the agreement. Your mutual obligation of confidentiality extends to 1/1/06.

Regardless of whether the agreement has been terminated or not, the responsibilities of confidentiality apply to both parties for the *period of the term* beyond the date on which proprietary information was disclosed.

### **Exclusions and Scope**

Excluded from protection under the agreement is information that was previously known, is independently developed, received from third parties, etc.

Also excluded from the agreement are both employees, and employees' knowledge that is improved in the fields of the other party's proprietary information.

Finally, this section makes it clear the agreement does not constitute an engagement for service or a business arrangement.

### **Recipient's Duties**

Recipients must use the same "reasonable care" to prevent unauthorized use or distribution of proprietary information as the recipient uses for their own proprietary information.

Duties also include:

- Using information *only* for the purpose defined in the agreement
- Disclosing information *only* to individuals with a "need to know" *and* who have agreed in writing to the obligation of confidentiality

### **Rights in Proprietary Information**

The receiving party has no rights to the disclosed information *except* those rights needed for the purpose of the agreement.

Recipients must:

- Limit use of the information to the purpose of the agreement
- Preserve all proprietary markings on discloser's information
- Return or destroy the information and all its copies upon request

### **Warranty**

Here both parties confirm they have the right to make the disclosures, and at the same time, disclaim all other warranties or representations to the disclosed information.

### Remedies

Both parties agree that money may not be a sufficient remedy in the event of a breach. Therefore, *both* parties agree that *either* party may seek an injunction against the other for either a threatened or actual breach of the agreement.

### Termination

It only takes one day's notice to terminate the agreement. Do so *in writing* to the address on the agreement. Obligations of confidentiality apply only to information exchanged before termination, but extend for the full term of the agreement past the date of termination or disclosure whichever is sooner.

### Governing Law

The state whose laws apply to the agreement is declared here. The state whose laws apply can differ from the location where disputes will be heard (Jurisdiction).

### Jurisdiction

Jurisdiction refers to the location where disputes will be resolved. The location of the court can be different than the state whose laws will apply (Governing Law).

### Entire Agreement

- Subsequent agreements take precedence over this one.
- There is nothing that is not in the agreement (in other words, if it's not written in the agreement, it does not apply).
- This agreement may *only* be amended in a *written* amendment *signed* by both parties.

### Miscellaneous

This section does two things:

1. It makes it OK for the signature page of the agreement to be signed and fax or e-mail it back and forth between the parties.
2. It verifies that each party has had a chance to have the agreement reviewed by an attorney.

### Notices

Notices must be in writing and may be delivered to the address on the agreement by a variety of forms of courier, carrier, post, or confirmed fax. *Email does not count.*

See the agreement for how many days after sending that the notice will be considered as having been "served" for each delivery method.

If either party needs to update the address on the agreement, the update must be made in writing to the other party (*email does not count*).