



From the Desk of

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Non-Disclosure Agreements

Prior to disclosing or even discussing an invention, a non-disclosure agreement (NDA) should be signed between the party disclosing the information and the party receiving the information. Bear in mind that where the receiving party is a corporation or like entity, the person signing the NDA should have the authority to bind the corporation, or the enforceability of the NDA will be in jeopardy. An NDA should be signed even if one has a patent application on file. The reason for this is that a patent cannot be enforced until it issues while breach of an NDA is immediately actionable. A sample NDA is attached hereto as Appendix A.

APPENDIX A

Sample Non-Disclosure Agreement

This non-disclosure agreement (“Agreement”) is between _____ Corporation (hereinafter referred to as (“_____”)), a _____ Corporation having a business address at _____ and _____ (hereinafter referred to as “Company”), a corporation of _____, having a business address at _____.

I. RECITALS

A. Company wishes to receive certain trade secret, confidential and proprietary information (hereinafter collectively “Information”) pertaining to _____. This exchange includes all communication of Information between the parties in any form whatsoever, including oral, written and machine readable form, pertaining to the above.

B. Company wishes to receive the Information for the sole purpose of _____.

C. _____ is willing to disclose the Information and Company is willing to receive the Information (as “Receiving Party”) on the terms and conditions set forth herein.

Therefore, _____ and Company agree, as follows:

1. That the disclosure of Information by _____ is in strictest confidence and thus Company will:

a. (1) Not disclose to any other person the Information and (2) use at least the same degree of care to maintain the Information secret as the Company uses in maintaining as secret its own secret information, but always at least a reasonable degree of care;

b. Use the Information only for the above purpose;

c. Restrict disclosure of the Information solely to those employees of Company having a need to know such Information in order to accomplish the purpose stated above;

d. Advise each such employee, before he or she receives access to the Information, of the obligations of Company under this Agreement, and require each such employee to maintain those obligations;

e. Within fifteen (15) days following request of _____, return to all documentation, copies, notes, diagrams, computer memory media and other materials containing any portion of the Information, or confirm to _____, in writing, the destruction of such materials; and

f. Immediately upon sale of Company or merger of Company with a third party, return to _____ all documentation, copies, notes, diagrams, computer memory media and other materials containing any portion of the Information, or confirm to _____, in writing, the destruction of such materials.

The materials provided herein are designed for informational purposes only and do not constitute legal advice. Even though the content is about legal issues, the information is neither legal advice nor legal representation.

2. This Agreement imposes no obligation on Company with respect to any portion of the Information received from which (a)(1) was known to the Company prior to disclosure by _____ and (2) as to which the Company has no obligation not to disclose or use it, (b) is lawfully obtained by the Company from a third party under no obligation of confidentiality, (c) is or becomes generally known or available other than by unauthorized disclosure, (d) is independently developed by the Company or (e) is generally disclosed by _____ to third parties without any obligation on the third parties.
3. This Agreement imposes no obligation on Company with respect to any portion of the Information disclosed by _____, unless such portion is (a) disclosed in a written document or machine readable media marked “CONFIDENTIAL” at the time of disclosure or (b) disclosed in any other manner and summarized in a memorandum mailed to the Company within thirty (30) days of the disclosure. Information disclosed by _____ in a written document or machine readable media and marked “CONFIDENTIAL” includes, but is not limited to, the items, if any, set forth in Schedule A attached hereto. Schedule A is incorporated herein by reference. Company hereby acknowledges receipt of the items listed in Schedule A, if any.
4. The Information shall remain the sole property of _____.
5. _____ DOES NOT MAKE ANY REPRESENTATION WITH RESPECT TO AND DOES NOT WARRANT ANY INFORMATION PROVIDED UNDER THIS AGREEMENT, BUT SHALL FURNISH SUCH IN GOOD FAITH. WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED WITH RESPECT TO THE INFORMATION WHICH MAY BE PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. _____ SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER RESULTING FROM RECEIPT OR USE OF THE INFORMATION BY THE COMPANY.
6. In the event of a breach or threatened breach or intended breach of this Agreement by Company, _____, in addition to any other rights and remedies available to it at law or in equity, shall be entitled to preliminary and final injunctions, enjoining and restraining such breach or threatened breach or intended breach.
7. The validity, construction, and performance of this Agreement are governed by the laws of the state of Connecticut.
8. The rights and obligations of the parties under this Agreement may not be sold, assigned or otherwise transferred.
9. If any arbitration, litigation or other legal proceeding relating to this Agreement occurs, the prevailing party shall be entitled to recover from the other party (in addition to any other relief awarded or granted) its reasonable costs and expenses, including attorney’s fees, incurred in the proceeding.

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This Agreement is binding upon _____ and Company, and upon the directors, officers, employees and agents of each. This Agreement is effective as of the later date of execution and will continue indefinitely, unless terminated on thirty (30) days written notice by either party. However, Company's obligations of confidentiality and restrictions on use of the Information disclosed by _____ shall survive termination of this Agreement.

(Company)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____