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Non disclosure of information agreement

A non-disclosure agreement (NDA), or “confidentiality agreement”, requires each bound party to keep any and all confidential information to themselves. The information shared commonly involves trade secrets that an individual or company does not want to reveal to competitors or the general public. If any bound party shares the confidential information meant to be kept secret, they could be liable for significant monetary damages. By State Business Associate (HIPAA) NDA – Non-disclosure required for any individual or company (“business associate”) when accessing protected health information (PHI). Download: Adobe PDF, MS Word (.docx), OpenDocument Business Plan NDA – Allows an entity to show their internal ideas and strategies to a partner or 3rd party. Download: Adobe PDF, MS Word (.docx), OpenDocument Business Sale NDA – Use to privately disclose information regarding sales, customers, and financial details to a prospective buyer. 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Download: Adobe PDF, MS Word (.docx), OpenDocument Real Estate Buyer NDA – Allows the seller of a property to disclose information to a potential buyer that they wouldn’t want to be made public. Download: Adobe PDF, MS Word (.docx), OpenDocument Software Development NDA – Share information with another party in an effort to create patentable software. Download: Adobe PDF, MS Word (.docx), OpenDocument Trade Secret NDA – Use to specifically outline proprietary information that is to be shared with a 3rd party with the intention of being kept secret from the public. Download: Adobe PDF, MS Word (.docx), OpenDocument Unilateral NDA – Standard form when 1-Party is disclosing information that is not intended to be shared by a recipient. Download: Adobe PDF, MS Word (.docx), OpenDocument Violation (Notice) of an NDA – Otherwise Known as a Cease and Desist Order; this instructs an individual that if they intend on releasing any further information that legal action will be sought. Download: Adobe PDF, MS Word (.docx), OpenDocument Volunteer NDA – For any participant involved in providing their time and labor for free while committing themselves to hold any information they are shown in confidence. Download: Adobe PDF, MS Word (.docx), OpenDocument Website Design NDA – Create a unilateral or mutual agreement in order to make a website while protecting the information of the business and the designer. Download: Adobe PDF, MS Word (.docx), OpenDocument What is a Non-Disclosure Agreement? A non-disclosure agreement, or “NDA”, allows 1 or more parties to share confidential information, such as trade secrets, that are prohibited to be shared with a 3rd party. If any of the bound parties break an NDA, the party that released or used the information for their personal benefit may be liable for monetary damages. Unilateral NDA vs Mutual NDA When deciding on which type of NDA, the 2nd question becomes should it be unilateral or mutual? This is determined by how many parties will be sharing information and be bound to withholding the other’s information. Unilateral NDA – 1 party releases information to someone else, most commonly in employer-employee arrangements where the employee will have full access to all company and business information in order to do their job. In this case, if the information were ever to be released to a competitor or to the public it would bring irreparable harm to the company. Mutual NDA – 2 parties release and share information amongst themselves in an effort to create an end product or service. The information that is shared is to be held in secret with both parties being legally bound to the non-disclosure whereas if any should release the shared proprietary information they would be held legally and financially responsible. NDA vs Non-Compete The main difference is that a Non-Disclosure Agreement (NDA) prohibits an individual from releasing information to a competitor while a Non-Compete Agreement does not allow the individual to be employed by a competitor. Non-Compete Agreement Does not allow the employee to work for a competitor. Does not allow the employee to disclose proprietary information. Restricted in many States (such as Arizona, California, Florida, Hawaii, Massachusetts, Texas, Utah, Virginia, and Washington). Restricted to the industry of employment. Non-Disclosure Agreement Allows the employee to work for a competitor. Does not allow the employee to disclose proprietary information. Not restricted in any State. Not restricted to the industry of employment. Conclusion As an employer, if your State allows a Non-Compete Agreement, it should be taken advantage of and be created separately from the Non-Disclosure Agreement. Another reason for a separate agreement is that most States are putting laws in place to prohibit contracts that do not allow an individual from seeking work. Therefore, if laws change, any former employee would be barred from disclosing any trade secrets learned. Violation of an NDA If there is a breach of confidentiality the party that disclosed the information may be liable for monetary damages depending on the severity. As an example, Sears paid \$25 Million in a judgment for violating an NDA using a trade secret to their own benefit. What To Do? If a party has breached an NDA, the violated party should first send a Cease and Desist Order informing the violator that they are breaking their agreement. This does not guarantee that there will not be legal action but stops them from further using or spreading the information. The next step involves determining whether or not the Confidential Information affected the violated party in more than 1 State, if so, the violator may be charged in district (federal) court through the Defend Trade Secrets Act. If not, then the Plaintiff will have to file their complaint in their respective State court. Penalties Under 18 U.S. Code § 1832(b) of the federal Defend Trade Secrets Act, a victim of theft may be awarded a maximum of \$5,000,000 or 3 times the value of what was stolen. Definitions and Provisions Confidential Information – Or “proprietary information” that is only known to a single or select parties. Effective Date – The day the agreement becomes active. Misappropriation – An individual or entity that uses confidential information for their own use or shares with a 3rd party. Obligations – Each party’s role. The Parties – Usually there are two (2) parties, the Releasor and the Recipient. Recipient – The individual or entity that is receiving confidential information. Releasor – The individual or entity that is releasing confidential information. Relationship – The reason for the 2 parties are sharing confidential information (e.g. employer-employee, contractor-client, etc.) Trade Secret – Sensitive information that is only known to an individual or company that is crucial for them to run their business. How to Get an NDA (6 steps) An NDA is a form that can either be written yourself or with the help of an attorney. Legal counsel is always recommended, although if you can complete the form yourself then it just depends on choosing the right form and filling in the blanks. Step 1 – Choose Your Form Select from the NDA Types or for your Specific State. And you will be able to tailor the document to your particular situation and the information you would like protected from being disclosed. Step 2 – Unilateral or Mutual After selecting your form, you will need to decide whether the form is unilateral (1-way) or mutual (2-ways). This is determined by how many of the parties are sharing information. Unilateral – 1 Party is sharing information. Therefore, the recipient of the shared information will be the only one bound to the terms of the agreement. Mutual – 2 Parties are sharing information with each other. Therefore, both parties will be bound to the agreement and required not to share each other’s proprietary information. Step 3 – Define “Confidential Information” This is the most important part of the agreement. In all agreements, it is best to define what exactly is the confidential information. As examples, it could be a movie script, software coding, patentable information, etc. Whatever the information that is being shared, it should not only be mentioned but any related details about it should also be included as well such as the customer it is targeting, marketing strategies, etc. Step 4 – Enter the Consequences for a Breach List the consequences if the receiving party violates the contract by sharing the information with a 3rd party. This is usually in the form of monetary compensation as well as any other damages the disclosing party can reap due to the breach of contract. Enter the governing State, this will force any violator of the agreement to come to the court of your jurisdiction and not theirs. Step 5 – Sign the Agreement It is best to have the parties sign with a Notary Acknowledgment as this will verify the identity of each individual. If the parties elect to not have a 3rd party witness the signatures then it would be best to ensure that the signature that is placed matches the individual’s driver’s license to ensure its validity. Step 6 – Disclose the Information After the execution of the non-disclosure, the respected parties may release confidential information to one another. The receiving party should always keep in mind to retain the information in confidence and to only share with agents, representatives, employees, affiliates, and any other individuals on a “need to know” basis as all liability will be on them if any details shall be made public. NDA Laws The Defend Trade Secrets Act, under 18 § 1836 of the U.S. Code, allows an owner of a “trade secret that is related to a product or service” that is used in more than one (1) State that they may be able to bring the case to the appropriate District Court. Up until this law was created on May 11, 2016, all non-disclosure violations, that were used on a national level, had to be sought on a State-by-State basis. Now that recently this law is in effect, a violator of proprietary information may be held accountable in a more feasible way through the federal court system. State Laws AL – Title 8, Chapter 27 AK – AS 45.50.910 – AS 45.50.945 AZ – Title 44, Chapter 4 AR – § 4-75-601 – § 4-75-607 CA – CIV Division 4, Part 1, Title 5 CO – Title 7, Article 74 CT – Title 35, Chapter 625 DE – Title 6, Chapter 20 FL – Title 39, Chapter 688 GA – Title 10, Chapter 1, Article 27 HI – Title 26, 482B ID – Title 48, Chapter 8 IL – 765 ILCS 1065 IN – Title 24, Article 2, Chapter 3 IA – Title 13, Chapter 550 KS – § 60-3320 – § 60-3330 KY – § 365.880 – § 365.900 LA – RS § 1431 – § 1439 ME – Title 10, Chapter 302 MD – Commercial Law, Title 11, Subtitle 12 MA – § 15-266-30(4), § 1-93-42 & 42A MI – § 445.1901 – § 445.1910 MN – Chapter 325C MS – Title 75, Chapter 26 MO – § 417.450 – § 417.467 MT – Title 30, Chapter 14, Part 4 NE – § 87-501 – § 87-507 NV – Chapter 600A NH – Chapter 350-B NJ – § 56:15-1 – § 56:15-9 NM – Chapter 57, Article 3A NY – No Laws NC – Chapter 66, Article 24 ND – Title 47, Chapter 25.1 OH – § 1333.61 – § 1333.69 OK – Chapter 78, § 85 – § 95 OR – § 646.461 – § 646.475 PA – Title 12, Chapter 53 RI – Chapter 6-41 SC – Title 39, Chapter 8 SD – Title 37, Chapter 29 TN – Title 47, Chapter 25, Part 17 TX – Title 6, Chapter 134A UT – Title 13, Chapter 24 VT – Title 9, Chapter 143 VA – Title 59.1, Chapter 26 WA – Title 19, Chapter 19.108 WV – Chapter 47, Article 22 WI – Chapter 134.90 WY – Title 40, Chapter 24 (Video) What is a Non-Disclosure Agreement? Sample Non-Disclosure Agreement Download: Adobe PDF, MS Word, OpenDocument How to Write an NDA Download: Adobe PDF, MS Word, OpenDocument Section I. The Parties (1) Effective Date. The first calendar date when this agreement is active. (2) 1st Party. One of the Signature Parties who shall agree to how the confidential information this agreement focuses on is handled. (3) 2nd Party. The next Signature Party intent on following the conditions set by this document for handling the concerned information. Section II. Type Of Agreement (4) Indicate if this is a unilateral or mutual agreement. Choose the unilateral checkbox to establish the 1st Party as having sole ownership of the concerned confidential information or select the mutual checkbox the confidential information begin discussed is shared equally between the 1st and 2nd Party. Section III. Relationship (5) Discuss the relationship Party A (or the 1st Party) has with Party B (the 2nd Party). (6) Define Party B’s relationship with Party A. Section X. Governing Law (7) Governing Law. The State whose laws enforce and control this agreement as well as the behavior of the 1st and 2nd Party over the confidential information being discussed. First Party’s Signature (8) 1st Party’s Signature. If the 1st Party is a Business Entity, then its approved Signature Representative may sign this document on the Entity’s behalf. (9) Date. The month, two-digit day, and the year when the 1st Party signed his or her name on this document. (10) Print Name. The full name of the 1st party should be printed as clarification of his or her identity. Second Party’s Signature (11) 2nd Party’s Signature. The binding signature of the individual or Business Entity defined as the 2nd Party or Party B must be delivered. (12) Date. The current date marking the day the 2nd Party signed his or her name is expected. (13) Print Name. The 2nd Party’s full name must be recorded in print or typed.

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