

State of _____

Rev. 133EE1C

**EMPLOYEE NON-DISCLOSURE
AND CONFIDENTIALITY AGREEMENT**

This Employee Non-Disclosure and Confidentiality Agreement (this “Agreement”) is entered into as of the _____ (the “Effective Date”) by and between _____, a _____ (the “Company”) and _____, an employee of the Company (the “Employee”).

The Company hired the Employee as _____. In connection with the Employee's duties, the Company may disclose to the Employee certain confidential and proprietary information unique and valuable to its ongoing business operations. In consideration of the Employee's employment by the Company and the covenants and mutual promises contained herein, the parties agree as follows:

1. Confidential Information. The term “Confidential Information” as used in this Agreement shall mean any data or information that is competitively sensitive material and not generally known to the public, including, but not limited to, information relating to any of the following: and any other information the Company considers confidential.

2. Exclusions from Confidential Information. The obligation of confidentiality with respect to Confidential Information will not apply to any information:

- a. If the information is or becomes publicly known and available other than as a result of prior unauthorized disclosure by the Employee;
- b. If the information is or was received by the Employee from a third-party source which, to the best knowledge of the Employee, is or was not under a confidentiality obligation to the Company with regard to such information;
- c. If the information is disclosed by the Employee with the Company's prior written permission and approval;
- d. If the information is independently developed by the Employee prior to disclosure by the Company and without the use and benefit of any of the Company's Confidential Information; or
- e. If the Employee may disclose only such portion of the Confidential Information which it is legally obligated to disclose. the Employee is legally compelled by applicable law, by any court, governmental agency, or regulatory authority or subpoena or discovery request in pending litigation, but only if, to the extent lawful, the Employee gives prompt written notice of that fact to the Company prior to disclosure so that the Company may request a protective order or other remedy, the Employee may disclose only such portion of the Confidential Information which it is legally obligated to disclose.

3. Obligation to Maintain Confidentiality. With respect to Confidential Information:

- a. The Employee agrees to retain the Confidential Information in strict confidence, to protect the security, integrity, and confidentiality of such information and to not permit unauthorized access to or unauthorized use,

disclosure, publication, or dissemination of Confidential Information except in conformity with this Agreement.

b. Confidential Information is and will remain the sole and exclusive property of the Company and will not be disclosed or revealed by the Employee, except (i) to other employees of the Company who have a need to know such information and agree to be bound by the terms of this Agreement.

c. The Employee agrees that, in the event the Employee must download, access, process, transfer or otherwise communicate Confidential Information, the Employee will comply with all laws and regulations applicable to exports and re-exports of data and information and will not, directly or indirectly, export or re-export any Confidential Information in violation of such laws and regulations, including without limitation, those prohibiting export or re-export to restricted countries or without governmental authorization.

d. Upon termination of this Agreement or at the request of the Company, the Employee will ensure that all Confidential Information and all documents, memoranda, notes and other writings or electronic records prepared by the Employee that include or reflect any Confidential Information in the Employee's actual or constructive possession are returned to the Company.

e. The obligation not to disclose Confidential Information shall survive the termination of this Agreement, and at no time will the Employee be permitted to disclose Confidential Information, except to the extent that such Confidential Information is excluded from the obligations of confidentiality under this Agreement pursuant to Paragraph 2 above.

4. **Disclaimer.** There is no representation or warranty, express or implied, made by the Company as to the accuracy or completeness of any of its Confidential Information.

5. **Remedies.** The Employee acknowledges that use or disclosure of any Confidential Information in a manner inconsistent with this Agreement will give rise to irreparable injury for which damages would not be an adequate remedy. Accordingly, in addition to any other legal remedies which may be available at law or in equity, the Company shall be entitled to equitable or injunctive relief against the unauthorized use or disclosure of Confidential Information. The Company shall be entitled to pursue any other legally permissible remedy available as a result of such breach, including but not limited to damages, both direct and consequential. In any action brought by the Company under this Section, the Company shall be entitled to recover its attorney's fees and costs from the Employee.

6. **Notices.** All notices given under this Agreement must be in writing. A notice is effective upon receipt and shall be sent via one of the following methods: delivery in person, overnight courier service, certified or registered mail, postage prepaid, return receipt requested, addressed to the party to be notified at the below address or by facsimile at the below facsimile number or in the case of either party, to such other party, address or facsimile number as such party may designate upon reasonable notice to the other party.

_____, _____

Phone number: _____

Fax number: _____

_____, _____

Phone number: _____

Fax number: _____

7. **Termination.** This Agreement will terminate on the earlier of: (a) the written agreement of the parties to terminate this Agreement; (b) the cessation of the Employee's employment; or (c) _____ from the date hereof.

8. **Amendment.** This Agreement may be amended or modified only by a written agreement signed by both of the parties.

9. **Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of _____, without regard to the principles of conflict of laws. Each party consents to the exclusive jurisdiction of the courts located in the State of _____ for any legal action, suit or proceeding arising out of or in connection with this Agreement. Each party further waives any objection to the laying of venue for any such suit, action or proceeding in such courts.

10. **No Offer or Sale.** Nothing in this Agreement will be deemed a sale or offer for sale of Confidential Information nor obligate the Company to grant the Employee a license or any rights, by statute, common law theory of estoppel or otherwise, to Confidential Information.

11. **Miscellaneous.** No joint venture, partnership or agency relationship exists between the Employee, the Company or any third-party as a result of this Agreement. This Agreement will inure to the benefit of and be binding on the respective successors and permitted assigns of the parties. Neither party may assign its rights or delegate its duties under this Agreement without the other party's prior written consent. In the event that any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable parts had not been included in this Agreement. Neither party will be charged with any waiver of any provision of this Agreement, unless such waiver is evidenced by a writing signed by the party and any such waiver will be limited to the terms of such writing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

Employee Signature

Employee Full Name

<hr/>		<hr/>
<hr/>	<hr/>	<hr/>
Company Full Name	Company Representative Signature	Company Representative Name and Title

This page intentionally left blank.

GENERAL INSTRUCTIONS

A non-disclosure agreement (NDA) is common in business today, especially in industries where there might be proprietary information or trade secrets.

WHAT IS AN EMPLOYEE NON DISCLOSURE AGREEMENT?

A company often asks employees with advanced knowledge of their confidential information to sign an NDA. Some companies make this agreement standard for all employees. This means that the employee agrees not to use or make public information learned while working through the company.

This contract specifies the type of information which cannot be disclosed. This allows employees a better understanding of the

2. Information

The information which is protected by the NDA should be well defined.

3. Time Frame

The duration that the contract is enforceable needs to be spelled out.

4. Non-Compete Clause

This clause specifies an amount of time in which the employee cannot directly compete with your company after terminating the relationship.

5. Non-Solicitation Clause

This clause dictates that employees cannot be solicited away from the company for another enterprise.

6. Remedies

information it would be detrimental to share. Trade secrets are protected, but employees might not realize that mailing lists and other client information are also protected.

WHEN DO I NEED ONE?

It's ideal to have an employee NDA signed upon hiring a new employee. In many cases, it is contained within a standard employment contract. Some companies may not have all employees sign an NDA. In this case, the employee non-disclosure agreement might be drawn up to be signed by employees when they are promoted to a position where one is deemed necessary. Payment should still be attached to these agreements, even when a current employee is asked to sign. Payment might include a raise or some form of bonus.

WHAT SHOULD BE INCLUDED?

This section indicates remedies in the event that the contract is breached.

7. Notice

Because you're dealing with proprietary information, you should include a section indicating how notice should be made if the employee discovers a breach in information, e.g., if the employee's computer was hacked.

It is important to note that courts are reluctant to enforce broad non-compete clauses in employment contracts. To increase the likelihood that it can be enforced, your non-compete clause should be very narrow and as specific as possible in regards to position, industry, and region.

An employee non-disclosure agreement works to protect your interests while clearly laying out the type of privacy your company information needs. These are

An employee NDA should include the following:

becoming more and more standard in business and many employees routinely sign them as a term of employment.

1. The Parties

The contract should specify the company and the employee who are entering into the contract.