

Confidentiality Clause

Here is a draft of an NDA, incorporating the specific clauses and details from your provided examples:

1. NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (this “Agreement”) is made and entered into as of this [Day] day of [Month], [Year] (the “Effective Date”) by and between:

[**Company Name 1**], a [State/Country] corporation, with its principal place of business at [Address] (“Disclosing Party” or “Receiving Party” as the context requires, or “Party A”);

and

[**Company Name 2**], a [State/Country] corporation, with its principal place of business at [Address] (“Disclosing Party” or “Receiving Party” as the context requires, or “Party B”).

(Each a “Party” and collectively, the “Parties”).

WHEREAS, the Parties desire to engage in discussions concerning [briefly describe purpose, e.g., "a potential business collaboration involving the Work Plan"] (the “Purpose”), and in connection therewith, one Party may disclose to the other Party certain confidential and proprietary information;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

2. 1. Confidentiality Obligations

1.1. Protection and Use of Confidential Information. The Receiving Party agrees to take and maintain proper and appropriate steps to protect Confidential Information of the Disclosing Party. The Receiving Party will use Confidential Information only in connection with the Work Plan. Both Parties have reserved all rights to their respective Confidential Information not expressly granted herein. [Adapted from Example 3, 4.4 and Example 4, 4.2]

1.2. Disclosure to Personnel. The Receiving Party agrees to disclose the Confidential Information of the Disclosing Party only to employees or agents of the Receiving Party who are directly involved with the Work Plan contemplated by this Agreement, and even then only to such extent as is necessary and essential to perform the Work Plan. The Receiving Party agrees to inform such employees and agents of the confidential nature of the information disclosed hereunder and to cause all such employees and agents to abide by the terms of this Agreement. [Adapted from Example 4, 4.2]

1.3. Unauthorized Disclosure; Compelled Disclosure. The Receiving Party shall not disclose the Disclosing Party's Confidential Information to any unauthorized party without the Disclosing Party's prior express written consent or unless required by court order or order of a similar governmental entity. If a Party is required by court order or order of a similar governmental entity to disclose the other's Confidential Information, they shall give the other Party prompt notice of such requirement so that an appropriate protective order or other relief may be sought. [Adapted from Example 4, 4.3]

1.4. Retroactive Marking. If the Parties discover that information should have been marked Confidential, they agree to inform the other Party of such a designation, and the parties agree to retroactively mark any such information as Confidential. [Adapted from Example 5, 7.7]

3. 2. Return or Destruction of Confidential Information

All documents and/or tangible materials containing or comprising Confidential Information of the Disclosing Party will remain the property of the Disclosing Party. Upon the request of the Disclosing Party, the Receiving Party will destroy all Confidential Information of the Disclosing Party and any documents prepared by the Receiving Party using Confidential Information of the Disclosing Party and the Receiving Party agrees to provide confirmation of such destruction in writing. The Receiving Party may, however, keep one copy of any such document in the files of its legal department or outside counsel for record purposes only. [Adapted from Example 3, 4.4]

4. 3. Term and Survival

The limitations on disclosure and use of Confidential Information under this Agreement shall last 5 years from the Effective Date. [Adapted from Example 5, 7.7]

5. 4. Remedies

Notwithstanding any other provision of this Agreement, each Receiving Party acknowledges that a breach of confidentiality and use as provided in this Agreement may result in irreparable harm and damages to the Disclosing Party in an amount difficult to ascertain and that cannot be adequately compensated by a monetary award. Accordingly, in addition to any other relief to which the Disclosing Party may be entitled at law or in equity, the Disclosing Party shall be entitled to seek a temporary and/or permanent injunctive relief from any breach or threatened breach by the Receiving Party. [Adapted from Example 3, 4.5]

6. 5. Representations, Warranties, Disclaimers and Limitation of Liability

5.1. "AS IS" Disclaimer. ANY PROTOTYPES, MATERIALS, COMPONENT PARTS, DESIGNS, SPECIFICATIONS, KNOW-HOW, PROCEDURES, PROCESSES, DATA, INFORMATION, INVENTIONS AND WORK PERFORMED UNDER THIS

AGREEMENT BY EITHER PARTY, ARE PROVIDED “AS IS”, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. EACH PARTY SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY OF NONINFRINGEMENT OF PATENTS, COPYRIGHTS, OR ANY OTHER INTELLECTUAL PROPERTY RIGHT. [Adapted from Example 5, 8.1]

5.2. No Guarantee of Results. EACH PARTY ALSO SPECIFICALLY DISCLAIMS ANY GUARANTEE THAT IT WILL BE ABLE TO SUCCESSFULLY ACHIEVE THE DESIRED RESULTS REGARDING THE WORK UNDER ANY STATEMENT OF WORK, OR THAT ANY PROTOTYPE(S) WHICH MAY BE DEVELOPED PURSUANT TO THIS AGREEMENT WILL MEET ANY DEVELOPMENT OBJECTIVES, OR ANY REQUIREMENTS OF EITHER PARTY. THE FOREGOING NOTWITHSTANDING, EACH PARTY WILL MAKE REASONABLE GOOD FAITH EFFORTS TO COMPLETE THE ACTIVITIES DESCRIBED IN THE STATEMENTS OF WORK. FAILURE TO ACHIEVE THE DESIRED RESULTS UNDER A STATEMENT OF WORK DOES NOT CONSTITUTE BREACH OF CONTRACT. [Adapted from Example 5, 8.2]

7. 6. General Provisions

6.1. Entire Agreement; Amendments. This Agreement, together with the Schedules attached hereto, sets forth and constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and all prior agreements, understandings, promises, and representations, whether written or oral, with respect thereto are superseded hereby (including that certain Mutual Confidentiality Disclosure Agreement between the Parties or their respective Affiliates dated [***] (the “Prior NDA”). The foregoing shall not be interpreted as a waiver of any remedies available to either Party as a result of any breach, prior to the Effective Date, by the other Party (or its Affiliates) of its obligations under the Prior NDA. Each Party confirms that it is not relying on any representations or warranties of the other Party except as specifically set forth in this Agreement. No amendment, modification, release, or discharge with respect to this Agreement shall be binding upon the Parties unless in writing and duly executed by authorized representatives of both Parties. [Adapted from Example 1, 13.9]

6.2. Effect on Other Agreements. As of the Effective Date of this Agreement, the Prior JDA is terminated. Any rights and obligations that were to survive termination of the Prior JDA (pursuant to Section 14.06 of the Prior JDA) are also terminated, except the confidentiality and use restrictions on Prior JDA Background Information and Prior JDA Project Results. Such confidentiality and use restrictions, as set forth in the Prior JDA, will survive termination but will be superseded and replaced by the confidentiality and use restrictions set forth in Article [Insert Article Number for Confidentiality] (Disclosure, Confidentiality, and Restricted Use) of this Agreement. As of the Effective Date of this Agreement, the Memorandum of Understanding is terminated, but the confidentiality obligations set forth in the Memorandum of Understanding shall survive termination. This Agreement does not modify, abrogate, terminate or supersede any other prior written agreements between the Parties except as specifically noted herein, and such agreements will continue to be applicable in accordance with their terms. For clarity, this Agreement does not modify, abrogate, terminate or supersede the terms and conditions of the Non-Disclosure Agreement or the License Agreement.

[Adapted from Example 2]

6.3. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a “Notice”) must be in writing and addressed to the Parties at the addresses set forth below (or to such other address that may be designated by the receiving Party from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

With a copy (which shall not constitute notice) to:

Cooley LLP

3175 Hanover Street

Palo Alto, CA 94304

Attention: [***]

Email: [***] [Adapted from User's Instructions and Example 1]

6.4. English Language. This Agreement shall be written and executed in, and all other communications under or in connection with this Agreement shall be in, the English language. Any translation into any other language shall have no legal effect. [Adapted from Example 1, 13.10]

6.5. Arm’s Length Transaction. This Agreement represents a negotiated, arm’s length transaction. [Adapted from Example 2, 20.11]

IN WITNESS WHEREOF, the Parties have executed this Non-Disclosure Agreement as of the Effective Date.

8. [COMPANY NAME 1]

By: _____

Name:

Title:

9. [COMPANY NAME 2]

By: _____

Name:

Title: