



Legal Guide:
Non-Disclosure & Confidentiality Agreement
(for use in Negotiations of Potential Business Relationship or Joint Venture)

A Beginners Step-by-Step Guide for Business Owners, Beginners, and Non-Lawyers

Updated: March 18, 2010

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- [USA: Confidentiality / Non-Disclosure Agreement](#)
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1. Introduction

If you are planning to have discussions or negotiations with a potential business partner or are considering entering into a joint venture arrangement with another business, it will be necessary during the early discussions and negotiation stage to disclose certain information about your business to the other party to facilitate reaching an agreement with the other business.

However, during the early discussions / negotiation stage you may be reluctant to disclose the information without some form of written agreement to protect the legal rights of the parties.

The legal document used to protect your legal rights is called a “Non-Disclosure Agreement” (also known simply as an “NDA”) or a “Confidentiality Agreement”. All these titles refer essentially to the same type of document.

2. When Is an NDA / Confidentiality Agreement Used?

An NDA / Confidentiality Agreement is useful under any situation where you will need to disclose information to a third party that you consider as

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confidential. This may include information about your business methods, client information, financial information, business proposals, potential business ideas, new product ideas, or anything else you consider is confidential and you would like the recipient to not disclose to anyone else.

For example a NDA/Confidentiality Agreement would be useful during negotiations / discussions with any of the following situations parties where you are considering a business relationship or a joint venture:

- (a) another business that you plan to work with as part of a joint venture
- (b) potential investors
- (c) potential business partners
- (d) manufacturers
- (e) distributors or retail stores
- (f) other industry players
- (g) potential customers
- (h) marketing / promotional companies

Perhaps during your negotiations you may have to disclose certain information to the other party which you wish to keep confidential including:

- (a) client information
- (b) methods of doing business
- (c) supplier information
- (d) financial information about the business

3. Basics of an NDA / Confidentiality Agreement

An NDA / Confidentiality Agreement usually contains provisions with the following basic elements:

1. Name of the parties
2. Date of the Agreement and the time period for the confidentiality
3. Obligation of recipient not to disclose the confidential information

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4. Definition or description of what will be considered as “confidential” (e.g.: client list, or product, or potential business relationship)
5. Exceptions for certain information that is not considered confidential (e.g.: information that is already in the public domain and easily obtainable is generally not considered to be confidential)
6. Legal rights and remedies available to the disclosing party in the event that the recipient party discloses Confidential Information (e.g.: the disclosing party will have the right to obtain a court order to stop the recipient party from disclosing the information).
7. General legal provisions

4. Prepare an NDA / Confidentiality Agreement Now

You can easily prepare an NDA / Confidentiality by filling in an online form. Click one of the following links then follow the instructions below when filling out the online form:

- [USA: NDA form](#)
- [Canada: NDA form](#)

| Section in online form: | Subsection | Additional Notes: |
|-------------------------|--------------------------|---|
| Governing Law | | Generally, State / Province selected is the where the disclosing party is located |
| Form of Agreement | Choose form of agreement | You can choose “Confidentiality Agreement” or “Non-Disclosure Agreement”. Practically, there is no difference between the two. Choose the label that you feel most comfortable using. |

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| Section in online form: | Subsection | Additional Notes: |
|-------------------------|--------------------|--|
| | Type of Agreement: | <p>You have several options to choose from. Select:</p> <p>5. Other Purpose. Use this for evaluating a potential business relationship with another part (eg. a joint venture or other business arrangement).</p> |

| Section in online form: | Subsection | Additional Notes: |
|-------------------------------|--|--|
| Parties Providing Information | Number of Parties Providing Confidential Information | <p>Select the number of parties who will be providing confidential information. Normally this will be 1 party, however, you may also wish to include others.</p> |
| | Person Providing Confidential Information | <p>Enter the name of each party providing or disclosing confidential information.</p> <p>It is important to enter in the full proper legal name of the party and to make sure that the name is spelled properly without spelling errors.</p> <p>(a) For an individual: reference should be made to a legal document such as a birth certificate, passport, driver's license, or other government issue identification. The name on a credit card is usually not sufficient. If the person usually multiple names,</p> |

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| Section in online form: | Subsection | Additional Notes: |
|-------------------------------|--|---|
| | | <p>you may wish to enter the name in a format as follows:</p> <p>“Bill Smith also known as William Smith”</p> <p>(b) For a corporation: reference should be made to the corporation’s official incorporation certificate to obtain to proper full legal name of the corporation.</p> <p>Be sure to enter the address of the disclosing party. Try to avoid using a Post Office box. An actual address is preferable. If an individual is reluctant to use their residential address, use their business address instead. Specify the type (individual or corporation) and for individual, also enter the gender.</p> |
| Parties Receiving Information | Number of Parties Receiving Confidential Information | <p>Select the number of parties who will be receiving the confidential information.</p> <p>Depending on the nature of the confidential information, even if the party receiving the information is a corporation, you may also wish to include the individuals who will have access to the information. However, sometimes, individuals part of a corporation may be reluctant to be named as a party to the agreement.</p> |

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| Section in online form: | Subsection | Additional Notes: |
|-------------------------|---|--|
| | Person Receiving Confidential Information | <p>Enter the name of the person/company who will be receiving confidential information.</p> <p>If you are contracting with an individual, enter the individual's name and information. If you are contracting with a corporation, enter the corporation's name.</p> <p>It is important to enter in the full proper legal name of the party and to make sure that the name is spelled properly without spelling errors.</p> <p>(a) For an individual: reference should be made to a legal document such as a birth certificate, passport, driver's license, or other government issue identification. The name on a credit card is usually not sufficient. If the person usually multiple names, you may wish to enter the name in a format as follows:</p> <p>"Bill Smith also known as William Smith"</p> <p>(b) For a corporation: reference should be made to the corporation's official incorporation certificate to obtain to proper full legal name of the corporation.</p> <p>Be sure to enter the address of the receiving party. Try to avoid using a Post Office box. An actual address is</p> |

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| | | preferable. If an individual is reluctant to use their residential address, use their business address instead. Specify the type (individual or corporation) and for individual, also enter the gender . |
| Permitted Purpose | Permitted Purpose / Intended Use(s) of the Confidential Information | Enter here what permitted uses (or purposes) that the confidential information may be used for. For example: “The recipient may use the Confidential Information only for the purpose of investigating the formation of a joint venture” “The recipient may use the Confidential Information only for the purpose of investigating the manufacture of the disclosing party’s products” “The recipient may use the Confidential Information only for the purpose of developing a software interface to permit its own product to communicate with and be compatible with the disclosing party’s software product” |

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| Section in online form: | Subsection | Additional Notes: |
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| | Contractor will use or create computer technology? | Unless the nature of the services the person/company will be providing does not involve the use of any computer technology then you should select "yes" for this option. |
| Duty of Confidentiality | prevented from competing for | <p>Since a recipient will be receiving confidential information, the disclosing party may want to prevent the recipient from using the information to start a competing business.</p> <p>The longer the period chosen, the more likely that the period will not be enforceable. As such, you need to select a reasonable period depending on the nature of confidential information.</p> <p>Select the lowest time frame that is reasonably necessary to protect the interests of the disclosing party.</p> <p>Some contractors may not be agreeable to this provision, especially if they are providing services to other customers of theirs.</p> |
| | prevented from soliciting employees for | Since a recipient will be receiving confidential information about the employees of the business, the disclosing party may want to prevent the recipient from using the information to approach the |

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| | | employees to hire them itself. |
| | Duties of Confidentiality continue after termination | This section should be completed. Select the lowest time frame that is reasonably necessary to protect the interests of the disclosing party. The longer the period chosen, the more likely that the period will not be enforceable. As such, you need to select a reasonable period depending on the nature of the business and the confidential information. |
| Additional Clauses | Duties of Confidentiality continue after termination | If there are any special obligations, promises, or text you want inserted, use this section. For example, the parties may want to include a provision that specifies that no information may be removed from the location of the disclosing party: “the recipient agrees that no confidential information may be removed from the offices of the disclosing party”. |
| Execution Date | Signing date | If you know the date the document will be effective, select it from the options, otherwise select “unsure” and fill in the date at the time it is signed. |
| | witnesses required | Select “Yes” here, unless you have a reason to dispense with a witness. In the event that a party to the |

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| Section in online form: | Subsection | Additional Notes: |
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| | | <p>agreement denies that they signed the document, a witness can serve the purpose to testify that they in fact they were present and saw the document signed.</p> <p>A witness should be present and see the party signing the document.</p> <p>If the parties are not signing the document at the same time or in the same room, then separate witnesses should be used for each party.</p> |

5. Next Steps

Once you have completed the form, print out 2 copies and have 2 originals signed and witnessed. One original should be kept in your records and the other original should be given to the other party.

If during your negotiations you are able to reach an agreement with the other party, you should then proceed to formalize the terms of the arrangement using a Joint Venture Agreement or a Partnership Agreement depending on your needs. (see links below).

6. Other Useful Resources Online

Downloadable Legal Forms:

- Incorporate a company: • [USA](#) • [Canada](#)
- Business Agreements: • [USA](#) • [Canada](#)
- Joint Venture Agreement: • [USA](#) • [Canada](#)
- Partnership Agreement: • [USA](#) • [Canada](#)

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