



**IndiaBizForSale**

## **Non-Disclosure Agreement (India)**

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## **Description**

### **Non-Disclosure Agreement (India)**

Non-Disclosure agreements or Confidentiality agreements are contracts entered into by two or more parties in which some or all of the parties agree that certain types of information that is disclosed by one party to the other or that are created by one of the parties will remain confidential. Such agreements are often used when a company or individual has a secret process or a new product that it wants another company to evaluate as a precursor to a comprehensive licensing agreement; when a company wants to engage an independent contractor or employ an employee to work on company's proprietary ideas, concepts etc.; when a company is looking to discuss its business and financial information for the purpose of seeking investments from investors; or, perhaps one party wants to evaluate another's existing commercial product for a new and different application.

It is important to define exactly what constitutes confidential or proprietary information and what can and cannot be disclosed. Nondisclosure agreements, thus, protect sensitive technical or commercial information from disclosure to others and also provides adequate remedy to the disclosing party in the event that the information is revealed to another individual or company or third party thereby providing the injured party to claim a breach of contract and can seek injunctive and monetary damages.

**A signed Non-Disclosure agreement will be best safeguard to protect the information in three ways:**

1. It emphasises the importance of non-disclosure or confidentiality.
2. It can act as a deterrent to any party who might consider deliberate disclosure.
3. Should a violation occur, a non- disclosure agreement will work to your advantage in a court of law.

# Instructions

## Non-Disclosure Agreement (India)

- ❑ Both parties should carefully review the Agreement.
- ❑ This Agreement may be customised for both Mutual and Unilateral Non Disclosure Agreements by changing the referencing terms of the parties in the way it is described in the instructions below in brackets.
- ❑ Parties should clearly state what confidential information consists of more particularly in the Exhibit A.
- ❑ Parties should clearly mention the Approved Purpose (as mentioned in Clause 2 below) for which the confidential information is being disclosed.

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## NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement ("Agreement") is between

***[For an Unilateral NDA: Reference the party disclosing information as Disclosing Party and the party receiving information as Receiving Party]***

\_\_\_\_\_, a company incorporated under the Companies Act 1956, with its principal place of business at \_\_\_\_\_ (hereinafter referred to as "Disclosing Party")

And; \_\_\_\_\_ a company incorporated under the Companies Act 1956, with its principal place of business at \_\_\_\_\_ *[OR an individual residing at \_\_\_\_\_]* (hereinafter referred to as "Receiving Party")

***[For a Two-Way or Mutual NDA, each party would be a disclosing and receiving party (or discloser and recipient) at the same time]***

\_\_\_\_\_, a company incorporated under the Companies Act 1956, with its principal place of business at \_\_\_\_\_ And; \_\_\_\_\_ a company incorporated under the Companies Act 1956, with its principal place of business at \_\_\_\_\_ *[OR an individual residing at \_\_\_\_\_]* each party ("Disclosing Party") has disclosed or may disclose to the other ("Receiving Party") certain "Confidential Information" as defined below.

WHEREAS, in connection with a contemplated business relationship between Disclosing Party and Receiving Party, Disclosing Party desires to disclose to Receiving Party certain confidential or proprietary information ("Confidential Information") for the purpose of the Approved Purpose

In consideration of the mutual agreements and covenants herein contained, the parties hereto agree as follows:

### **1. Information**

- 1.1. For purposes of this Agreement, "Confidential information" shall include all information or material that is related to the business of the Disclosing Party which i) may derive economic value, actual or potential, from not being generally known to or readily ascertainable by other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts by Disclosing Party that are reasonable under the circumstances to maintain its secrecy and Classification including: (a) information disclosed in tangible form clearly and conspicuously labelled or marked as *Confidential, Classification, Proprietary* or some similar warning; (b) identifying any oral presentation or communication as confidential immediately before, during or after such oral presentation or communication; or (c) otherwise treating such information as Confidential.

- 1.2. The provisions of clause 1.1 above shall not apply to the whole or any part of the Information to the extent that it is:
  - 1.2.1. trivial or obvious;
  - 1.2.2. already in the other's possession other than as a result of a breach of this clause; or
  - 1.2.3. in the public domain.
- 1.3. For the purposes of this Agreement, Confidential Information would also include information (written or oral) including, but not limited to, drawings, drafts, sketches, designs, work-in-progress, information and details about products or concepts etc. that shall be disclosed to the Receiving Party for the Approved Purpose.
- 1.4. *It is further agreed by both parties that, Confidential Information shall also include all Work Products. (Optional)*
- 1.5. For the purposes of the Agreement, Confidential Information shall also include the list of items in Exhibit A.

## 2. **Approved Purpose**

“Approved Purpose” shall mean

\_\_\_\_\_ *[Specify for what purpose the Confidential Information is being disclosed and used]*

## 3. **Ownership of Confidential Information**

All Confidential Information disclosed by any party shall remain the property of such party. Nothing herein shall require the disclosure of any Confidential Information.

## 4. **Use of Information and Disclosure**

The Receiving Party agrees to take reasonable care to safeguard the confidential nature of the foregoing Confidential Information, and such reasonable care shall not be less than the degree of care used to prevent disclosure of its own proprietary material.

Further:

- 4.1. Receiving Party shall use Confidential Information given by the Disclosing Party to Receiving Party hereunder only for purposes related to the Approved Purpose and not for its own or the benefit of any third party.
- 4.2. Receiving Party will not, without the prior written consent of the Disclosing Party, disclose, give away, divulge, exchange or make known or available in any manner to any person, Disclosing Party, corporation or other entity (whether or not the Receiving Party receives any benefit there from) the Disclosing Party's Confidential Information or any information derived there from to any person other than a director, officer, employee, Receiving Party or other representative (“Authorised Person”) who needs to know such Confidential Information in connection with the Services ;
- 4.3. Receiving Party shall keep confidential all information (written or oral) concerning the business and affairs of the Disclosing Party that it shall have

obtained or received as a result of the discussions leading up to or the entering into or performance of this Agreement (the “Confidential Information”);

- 4.4. Receiving Party (a) must receive and hold the Confidential Information in trust and in the strictest confidence; (b) must protect the Confidential Information from disclosure and in no event take any actions causing, or fail to take actions necessary in order to prevent, any Confidential Information to lose its character as Confidential Information and (c) must not use, reproduce, distribute, disclose or otherwise disseminate the Confidential Information except in connection with the Services. Any and all reproductions of the Confidential Information must prominently contain a “Confidentiality and/or Proprietary” Label;
- 4.5. Receiving Party shall be under no obligation if any Confidential Information:
  - (a) is or becomes part of the public domain other than by breach of this Agreement by Receiving Party;
  - (b) is released to the public in writing by the Disclosing Party;
  - (c) is developed by the Receiving Party independent of any Confidential Information;
  - (d) is rightly received by Receiving Party from a third party; or
  - (e) is known to the Receiving Party prior to receipt hereunder and can verify such knowledge.

## **5. Return of Information**

Upon the written request of Disclosing Party or following the termination of this Agreement, Receiving Party shall return or destroy all Confidential Information of the Disclosing Party and any notes, correspondence, analyses, compilations, documents or other records containing Confidential Information, including all copies thereof, then in the possession of the Receiving Party or its representatives, except that a copy of such materials may be maintained by the legal counsel of the Receiving Party so long as such information is maintained as confidential pursuant to the terms of this Agreement. Any such return of Confidential Information shall not abrogate the continuing obligations of the Receiving Party under this Agreement.

## **6. Permitted disclosure**

- 6.1. The Receiving Party shall take all practical steps to keep the Disclosing Party’s Confidential Information confidential and shall restrict access to the Confidential Information to those employees, agents and professional advisers to whom disclosure is necessary in pursuit of the Approved Purpose. Each Party shall inform all such employees, agents and professional advisers of the provisions of this Agreement and shall be responsible for ensuring compliance with the said provisions by all such employees, agents and professional advisers.
- 6.2. In the event that the Receiving Party is required by law or legal process to disclose the Disclosing Party’s Confidential Information, the Receiving Party shall notify the Disclosing Party in writing prior to making such disclosure in order to facilitate seeking a protective order or other appropriate remedy from the proper authority; and that the Parties agree to cooperate with each other in seeking such court order or other remedy, and further agree that if the Receiving Party is not successful in obtaining such court order, it will furnish only that portion of the Confidential Information that is legally required and will exercise

all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information.

## **7. Term**

The term of the Agreement will remain in effect with the respect to any Confidential Information for \_\_\_\_\_ years from the time of its disclosure.

## **8. Acknowledgements And Disclaimers**

- 8.1. All Confidential Information is provided "AS IS" and without any warranty, express, implied or otherwise, including but not limited to any warranties regarding its accuracy, completeness, performance or non-infringement of third party rights or its merchantability or fitness for a particular purpose. Receiving Party must make its own assessment of the other party's Confidential Information and must satisfy itself as to its accuracy and completeness.
- 8.2. Disclosing Party is not obliged to enter into any further agreement or discussion with the Receiving Party or to refrain from entering into an agreement or discussion with a third party as a result of the entry into this Agreement.
- 8.3. Any reliance by the Receiving Party, or other person, on any Confidential Information is solely at its own risk.

## **9. Representations and Warranties**

- 9.1. The Disclosing Party warrants that it has all necessary rights to disclose lawfully the Confidential Information and the Confidential Information has not been provided in breach of any other agreement or arrangement with third parties.
- 9.2. Each party warrants that it is a corporation with full corporate power and authority to enter into and do all things necessary for the performance of this agreement. Each signatory to this agreement warrants that he or she is authorized to sign on behalf of the corporation for whom he or she acts.

## **10. Independent Contractor Status *[Optional]***

The parties agree that Receiving Party shall be an independent contractor and not an agent, employee or representative of Disclosing Party. Nothing in this Agreement will be deemed to create any joint venture, partnership or principal-agent relationship between Disclosing Party and Receiving Party, and neither will hold itself out in its advertising or in any other manner which would indicate any such relationship with the other.

## **11. No Publicity**

The Receiving Party agrees that it will not, without the prior written consent of the Disclosing Party, issue any press release or announcement or otherwise disclose the existence or nature of any discussions or negotiation with the Disclosing Party, this Agreement and the Services.



**12. No Assignment**

This Agreement may not be assigned by the Receiving Party without the prior written consent of the Disclosing Party, which consent shall not be unreasonably withheld. The Disclosing Party may assign its clients and obligations to any other person or Disclosing Party, and give a 30-day written notice to the Receiving Party prior to doing so.

**13. Severability**

If any provision of this Agreement shall be held invalid in a court of law, the remaining provisions shall be construed as if the invalid provision were not included in this Agreement.

**14. Waiver**

No failure or delay on the part of either party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any such right, power or privilege or of any other right, power or privilege operate as a waiver of any subsequent exercise thereof.

**15. No Licence**

By disclosing information or executing this agreement, the Disclosing Party does not grant any licence, explicitly or implicitly, under any trademark, patent, copyright, mask work protection right, trade secret or any other intellectual property right to Receiving Party.

**16. Force Majeure**

If at any time during the existence of this contract, either Party is unable to perform whole or in part any obligation under this contract, because of war, hostility, military operations of any character, civil commissions, sabotage, quarantine restrictions, acts of Government, fire, floods, explosions, epidemics, strikes or other labor trouble embargoes and any other matter beyond human control/capability, then the date of any obligation shall be postponed during the time which such circumstances are operative.

**17. Governing Law; Dispute Resolution**

This Agreement shall be construed according to and governed by the Honourable Courts of \_\_\_\_\_ in the State of \_\_\_\_\_, India, without regard to the conflicts of laws or provisions thereof. All legal proceedings, including the rendering of any award, shall take place in \_\_\_\_\_, India, which shall be the exclusive forum for resolving any dispute, controversy or claim arising out of or related in any manner to this Agreement.

All the disputes, differences, controversies / differences of opinions, breaches and violation arising from or related to the agreement arises out of this Agreement between parties then same shall be resolved by mutual discussions / reconciliations in good faith.

If the dispute, difference, controversies / differences of opinion, breaches and violation arising or related to the agreement cannot be resolved within 60(sixty) days of commencement of reconciliations / discussions, then such a dispute shall be finally resolved by final and binding arbitration under the provisions of the Arbitration and Conciliation Act, 1996 as modified from time to time and rules framed thereunder, the arbitration rules of Indian Council of Arbitration and by three arbitrators appointed in accordance with the said rules. The Arbitration shall be held in \_\_\_\_\_ and all arbitration proceedings shall be conducted in English.

In connection with the arbitration proceedings, the parties to the Dispute hereby agree to co operate in good faith with each other and the arbitral tribunal and to use their respective best efforts to respond promptly to any reasonable discovery demand made by such party and the arbitral tribunal.

The costs of the arbitration shall be borne by the parties to the dispute in accordance with the provisions of the Arbitration and Conciliation Act 1996 as modified from time to time and rules framed thereunder and applicable provisions of the arbitration rules of Indian Council of Arbitration. The Award may include interest from the date of any breach or other violation of this Agreement and rate of such interest, if any, shall be specified by the arbitral tribunal and shall be calculated from the date of any such breach or other violation to the date when the Award is paid in full. Each of the parties expressly understands and agrees that the Award shall be the sole, exclusive, final and binding remedy between them regarding any and all disputes presented to the arbitral tribunal. Application shall be made to any court with jurisdiction over the party (or its assets) against whom the Award is rendered for a judicial acceptance of the Award and an order of enforcement.

## **18. Injunctive Relief**

18.1. The Parties acknowledge that compliance with this Agreement is necessary to protect the goodwill and other proprietary interests of the Disclosing Party and that a breach of this Agreement will give rise to irreparable and continuing injury to the Disclosing Party which is not adequately compensable in monetary damages or at law. Accordingly, the Parties agree that the Disclosing Party may obtain injunctive and other equitable relief against the breach or threatened breach of the foregoing provisions, in addition to any other legal remedies that may be available under this Agreement. If the Disclosing Party shall make application to a court of competent jurisdiction for injunctive relief to enforce this Agreement, the Receiving Party waives, to the greatest extent permissible, any requirement that the Disclosing Party post bond or other security as a precondition to an injunction, whether temporary or permanent.

18.2. Each Party agrees that if the Receiving Party shall violate any of the obligations under this Agreement, the Disclosing Party shall be entitled to an accounting and repayment of all profits, compensation, commissions, remuneration, or other benefits that the Receiving Party or any third party given access to (or possession of) the Disclosing Party's Confidential Information, directly or indirectly, by the Receiving Party, directly or indirectly, has realized and/or may realize as a result of, growing out of, or in connection with such violation. These remedies shall be in addition to, and not in limitation of, any injunctive

relief or other rights to which the Disclosing Party is or may be entitled at law, or in equity, or under this Agreement.

18.3. In the event either Party initiates action to enforce its rights hereunder, the prevailing party shall recover from the non-prevailing party its reasonable expenses, court costs, including taxed and untaxed costs, and reasonable attorneys' fees, whether suit be brought or not.

## **19. Electronic Signature**

### 19.1. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. To expedite the process of entering into this Agreement, the parties agree that signed Transmitted Copies shall be deemed equivalent to original documents until such time as original documents are executed and delivered..

### 19.2. Notice

All notices under this Agreement shall be in writing and shall be deemed given:

19.2.1. when personally delivered; or

19.2.2. when sent by confirmed fax; or

19.2.3. when sent by confirmed e-mail; or

19.2.4. when sent by pre-paid first class post to the address of the party set out in this Agreement or (if any) such address as such party last provided to the other by written notice.

## **20. Final Agreement**

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both Parties.

## **21. Headings**

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

**SIGNATURE:** The Parties have executed this Agreement on \_\_\_\_\_, 20\_\_.

Signed for and on behalf of Disclosing Party by:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

Signed for and on behalf of Receiving Party by:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

## **EXHIBIT A**

1. Confidential Information shall also include: