

NDA



# Non-disclosure agreement

This contract is as anti-legal-gibberish as possible so please have a good read through and make sure you're happy with everything. Then simply sign, send back and reward yourself with some cake.

This sample contract was originally created by [Join Contract Club](#).  
[Download it here.](#)

THIS AGREEMENT is made and entered into as of [DATED SIGNED] (the “Effective Date”) between [YOUR COMPANY] (“Discloser”) and [OTHER PERSON/COMPANY] (“Recipient”) (each a “Party” and together the “Parties”).

## **BACKGROUND**

In order to facilitate discussions, meetings and the conduct of business between the Parties with respect to the Purpose (as hereinafter defined) it may be necessary for the Discloser to disclose Confidential Information (as hereinafter defined) to the Recipient. The Parties have entered into this Agreement to ensure that the Confidential Information remains strictly confidential so long as this Agreement survives in accordance with its terms. Any Party receiving Confidential Information shall receive it on a confidential basis and for a limited purpose.

In consideration of the disclosure and receipt of such information, and the covenants contained herein, the Parties hereby agree as follows:

## **AGREEMENT**

### **1. DEFINITIONS**

“Affiliate” means an affiliate of, or person affiliated with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, that person specified.

“Agreement” means this agreement, as amended.

“Business Day” means a day other than a Saturday or Sunday or statutory holiday in [YOUR STATE/PROVINCE].

“Confidential Information” means any and all information, including Technology or Intellectual Property Rights, whether printed, in machine readable form or otherwise, that is proprietary or confidential to the Discloser and disclosed to the Recipient, including, without limitation, specifications, design plans, drawings, software, hardware, data, research, prototypes, customer information, marketing plans, or other business or technical information, and which is disclosed by the Discloser and is identified as confidential at the time of disclosure. Without limiting the foregoing, the Confidential Information does not include information that:

**(a)** is generally known or in the public domain at the time of disclosure;

**(b)** was in the Recipient’s possession or was previously known to the

Recipient without obligation of confidentiality;

© becomes lawfully and generally available to the public other than as a result of a breach hereof by the Recipient;

**(d)** is rightfully received by the Recipient without obligations of confidence from a third party who is free to disclose the information;

**(e)** is disclosed by the Disclosing Party to a third party without a duty of confidentiality on the third party;

**(f)** is independently developed by the Recipient without use of, or reference to, the Confidential Information;

**(g)** is required to be disclosed by law or administrative or judicial action; and

**(h)** is approved for release by written authorization of Disclosing Party.

“Intellectual Property Rights” means all intellectual and industrial property rights including all rights to copyrights, trademarks, patents, inventions, discoveries, industrial designs, design rights, trade secrets and information of a confidential nature.

“Purpose” means the consideration and evaluation of the possibility of the Recipient entering into a business relationship with the Discloser.

“Representatives” means each Parties’ directors, officers, employees, contractors, legal representatives and financial advisors that (A) have a need to know the Confidential Information for the Purpose, (B) have been informed of Recipient’s obligations hereunder, and © have entered into a confidentiality agreement, or are bound by confidentiality obligations, with the Recipient that contain confidentiality and restricted use obligations that are consistent with the terms of this Agreement and which are reasonably calculated to protect the confidential or proprietary nature of the Confidential Information and prohibit its unauthorized use and disclosure.

“Technology” means any technology, discovery, invention, design, process, practice, procedure, know-how, trade secret, work or other intellectual property including any computer program, computer hardware, mask work, or integrated circuit topography.

## **2. DISCLOSURE OF CONFIDENTIAL INFORMATION**

The Discloser will, at its discretion, disclose to the Recipient Confidential Information as is reasonably required for the Purpose. Nothing in this Agreement obligates the Discloser to disclose any particular Confidential Information.

### **3. USE OF CONFIDENTIAL INFORMATION**

**(a)** The Recipient shall: (i) use the Confidential Information only in connection with the Purpose; (ii) hold all Confidential Information in confidence and only provide access to its Representatives; and (iii) not disclose Confidential Information to any other third party without prior written approval of the Discloser;

**(b)** The Recipient shall not record, make notes of, copy or reproduce the Confidential Information by any means, except to the extent required for the Purpose. All copies, records, notes or reproductions, in whole or in part, shall contain notices identifying them as containing the Confidential Information of the Discloser and shall be protected from unauthorized disclosure and access. The Recipient agrees to segregate all Confidential Information from the Recipient's confidential materials in order to prevent commingling; and

© Recipient shall not alter, modify, breakdown or disassemble any materials or compositions containing or constituting Confidential Information of the Discloser.

### **4. STANDARD OF CARE**

The Recipient shall protect the disclosed Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as the Recipient uses to protect its own confidential information of a like nature. The Parties agree to notify the other immediately upon the discovery of any unauthorized use or disclosure of Confidential Information of the other, and to reasonably cooperate with the Discloser to regain possession of the Confidential Information and prevent its further unauthorized use.

### **5. TERM AND TERMINATION**

The term for the disclosure of Confidential Information hereunder shall be from the Effective Date and five years thereafter. Either party may terminate this Agreement for any reason whatsoever by giving thirty (30) days advance written notice to the other party. The obligations contained in Sections 2, 3, 4, 6, 9 and 16 hereof with respect to Confidential Information received prior to the date of termination or expiration of this Agreement shall survive the expiration or termination of this Agreement.

## **6. INJUNCTIVE RELIEF**

Recipient acknowledges and agrees that its compliance with its obligations under this Agreement is necessary to protect the business, goodwill and proprietary interests of the Discloser, and that the Recipient's breach of any of these obligations may give rise to irreparable injury to the Discloser that cannot be adequately compensated with monetary damages. Accordingly, the Recipient agrees that the Discloser will be entitled to seek injunctive relief against the breach, or threatened breach of this Agreement, and specific performance of its obligations hereunder, without being required to post a bond. The injunctive relief contemplated hereunder is in addition to any other legal or equitable remedies available.

## **7. RETURN OF CONFIDENTIAL INFORMATION**

On receipt of a written demand from the Discloser, or in any event upon the termination of this Agreement, Recipient shall return all Confidential Information, including any copies thereof, and any memoranda, notes or other documents relating to the Confidential information, or at the Discloser's option, shall certify in writing its return or destruction and, in the case of Confidential Information stored electronically, its deletion and removal from all computer systems. Any Confidential Information incapable of being returned or destroyed as required by this Agreement will remain subject to the confidentiality restrictions contained in this Agreement in perpetuity.

## **8. LIST OF INDIVIDUALS WITH ACCESS**

When requested by the Discloser, the Recipient shall as promptly deliver a list containing the full name, title, location and function of each person having access to, or copies of, the Confidential Information.

## **9. RIGHTS IN THE CONFIDENTIAL INFORMATION**

**a.** All right, title and interest in and to the Confidential Information and all media upon which Confidential Information is stored or recorded shall remain the property of the Discloser and the Confidential Information shall be held in trust by the Recipient for the Discloser. No license of any patent right, copyright or other rights in the Confidential Information, other than the licenses necessary to enable the recipient to use the Confidential Information for the Purpose, is granted hereby. Nothing contained in this Agreement shall limit or restrict the rights of the Discloser to assert claims for patent or copyright infringement against the Recipient.

**b.** This Agreement does not constitute any warranty, representation or guarantee with respect to the completeness or accuracy of any Confidential Information or whether the Confidential Information infringes any rights of third parties. The Discloser will not be held liable for any errors or omissions

in the Confidential Information or for the use, or the results of the use of, the Confidential Information.

## **10. LEGALLY REQUIRED DISCLOSURE**

**a.** If the Recipient or any of its Representatives is required by a court order, applicable law or legal process to disclose any Confidential Information (“Compelled Disclosure”), the Recipient may make such disclosure pursuant to Section 10(b) below.

**b.** If the Recipient or any of its Representatives is required to make a disclosure pursuant to Section 10(a), it shall provide the Discloser with prompt written notice of such request of the Compelled Disclosure and cooperate with the Discloser, at the Discloser’s expense, in seeking a protective order or any other remedies available to limit the disclosure of the Confidential Information.

**c.** The Recipient shall not oppose any action by the Discloser to seek a protective order or other remedy. If the Discloser is unable to obtain a protective order or other protective remedy, the Recipient shall use reasonable efforts to ensure that disclosure of the Confidential Information is limited to only what is required by law.

## **11. CONFIDENTIALITY PERIOD**

The duty of the Recipient and the Recipient’s Representatives to protect Confidential Information disclosed under this Agreement and the restrictions contained in Section 4 hereof shall continue for a period of five (5) years from the date of this Agreement.

## **12. SOLICITATION OF DISCLOSER EMPLOYEES**

Without the Discloser’s prior written consent, the Recipient agrees to not solicit or hire any of the Discloser’s employees prior to the expiration of two years from the date of this Agreement.

## **13. NO IMPAIRMENT**

This Agreement shall not be construed to limit either Party’s right to independently use, develop, or market products without the use of the other Party’s Confidential Information, so long as such use, development, or marketing does not infringe or violate any of the Intellectual Property Rights of the other.

## **14. NO OBLIGATION**

Neither Party has an obligation under this Agreement to purchase any service or item from the other Party or to enter into any further agreement with the other with respect to the subject matter hereof or otherwise. Neither party has an obligation under this Agreement to offer for sale products using or incorporating the Confidential Information. The Discloser may, at its sole discretion, offer such products for sale and may modify them or discontinue sale at any time.

## **15. PUBLIC ANNOUNCEMENTS**

Other than pursuant to the requirements of an administrative or judicial action, the Recipient shall not, without Discloser's prior written consent, disclose to any person, or make a public announcement of, the existence of discussions or negotiations or any of the terms relating to the matter of mutual interest described above or any Confidential Information.

## **16. GENERAL**

**a. RELATIONSHIP OF THE PARTIES.** Nothing in this Agreement will be deemed to create any partnership, joint venture or relationship of principal and agent between the Parties. Further, the Agreement shall not provide either party with the right, power, or authority, whether express or implied, to create any duty or obligation on behalf of the other Party.

**b. FURTHER ASSURANCES.** The Recipient shall, from time to time, execute and deliver all documents and instruments, and perform all acts, that the Discloser may reasonably require so as to effectively carry out the full intent and meaning of this Agreement.

**c. BENEFIT OF THE AGREEMENT.** This Agreement will continue to the benefit of, and be binding upon, the respective successors and permitted assigns of the Parties.

**d. ENTIRE AGREEMENT.** This agreement sets forth the entire agreement with respect to the Confidential Information disclosed hereunder and supersedes all prior or contemporaneous agreements relating to such Confidential Information, whether written or oral.

**e. AMENDMENTS AND WAIVERS.** No amendment to this Agreement will be valid or binding unless set-out in writing and duly executed by both Parties. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the Party purporting to give the waiver and such waiver will be limited to the specific breach waived

**f. ASSIGNMENT.** This Agreement may not be assigned by the Recipient without the Discloser's prior written consent.

**g. AMBIGUITIES.** Each of the Parties has participated in the drafting of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply to the interpretation of this Agreement.

**h. INDEMNITY.** The Recipient shall indemnify and save harmless the Discloser and its Representatives from and against all losses, damages, expenses, liabilities, claims and demands whatsoever including all legal fees and costs from legal counsel resulting from any breach of this Agreement by the Recipient or any of the Recipient's Representatives.

**i. SEVERABILITY.** Each of the provisions contained in this Agreement are distinct and severable and a declaration of invalidity, illegality or unenforceability of any provision or part by a court of competent jurisdiction shall not affect the validity or enforceability of any other section of this Agreement.

## **17. NOTICES**

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and will be given by personal delivery or by electronic means of communication addressed to the recipient as follows:

**TO:** [YOUR EMAIL ADDRESS]

**TO:** [OTHER PERSON/COMPANY EMAIL ADDRESS]

or to any other address, individual or communication number designated by notice delivered by either Party to the other. Any demand, notice or other communication given by personal delivery will be deemed to have been received on the day of actual delivery thereof. If delivery is given by electronic communication, receipt shall be deemed to be on the day of transmission if given during the ordinary business hours of the recipient. If such delivery is given by electronic communications outside of the ordinary business hours of the recipient, then receipt shall be deemed to occur on the next Business Day in which such ordinary business hours occur.

## **18. GOVERNING LAW**

This Agreement is governed by and will be construed in accordance with the

laws of the [YOUR STATE/PROVINCE] and the laws the federal laws applicable therein.

#### **19. ATTORNMENT**

The Recipient hereby attorns to the jurisdiction of the courts of [YOUR STATE/PROVINCE]. The performance of this Agreement shall be deemed to have taken place exclusively in [YOUR STATE/PROVINCE].

#### **20. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which will be deemed to be an original and both of which taken together will be deemed to constitute one and the same instrument.

#### **21. NO TERMINATION**

This Agreement and all rights and obligations hereunder shall continue indefinitely unless both Parties consent in writing to terminate or modify the Agreement or certain provisions hereunder.

#### **22. ELECTRONIC EXECUTION**

Delivery of an executed signature page to this Agreement by either Party by electronic transmission containing a signature made using electronic means shall and will be as effective as delivery of a manually executed copy of the Agreement by such party.

IN WITNESS WHEREOF the parties have executed this Agreement as of the Effective Date.

[YOUR COMPANY]  
[YOUR NAME]

[OTHER COMPANY]  
[THEIR NAME]