**THE TECH CONTRACTS HANDBOOK**

**Cloud Computing Agreements, Software Licenses, and Other IT Contracts for Lawyers and Businesspeople**

Second Edition

**by David W. Tollen**

(ABA Publishing - Intellectual Property Law Section of the American Bar Association)

[http//TechContracts.com](http://www.TechContractsHandbook.com)

***Form Contract***

**Mutual Nondisclosure Agreement**

***Easily Transformed into 1-Way NDA; Addresses Defend Trade Secrets Act of 2016***

*You may use the form contract below subject to the “Terms of Use” posted at* [*http://techcontracts.com/privacy/*](http://techcontracts.com/privacy/)*. In addition to the Terms of Use, PLEASE READ THE FOLLOWING DISCLAIMER BEFORE USING THE FORM CONTRACT:*

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*Note that this document uses Microsoft Word multi-level bullets/numbering for section numbers and cross-referencing features for section references.*

*Please delete all text above the following dotted line, as well as the line itself and the page-break following it, before using this form.*

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 **MUTUAL NONDISCLOSURE AGREEMENT**

This Mutual Nondisclosure Agreement (this “Agreement”) is entered into as of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (the “Effective Date”) by and between \_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_.

RECITALS

The parties intend to exchange sensitive and confidential information in order to facilitate \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Purpose”). Therefore, in consideration of each party’s opportunity to review the other’s confidential information, in consideration of the mutual covenants, terms, and conditions set forth below, and for other valuable consideration, the adequacy of which is hereby accepted and acknowledged, the parties agree as set forth below.

TERMS AND CONDITIONS

1. **CONFIDENTIAL INFORMATION.** “Confidential Information” refers to the following items one party to this Agreement (“Discloser”) discloses to the other (“Recipient”): (a) any document Discloser marks “Confidential”; (b) any information Discloser orally designates as “Confidential” at the time of disclosure, provided Discloser confirms such designation in writing within \_\_ business days; (c) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; and (d) any other nonpublic, sensitive information Recipient should reasonably consider a trade secret or otherwise confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in Recipient’s possession at the time of disclosure; (ii) is independently developed by Recipient without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of Recipient’s improper action or inaction; or (iv) is approved for release in writing by Discloser. Recipient is on notice that the Confidential Information may include Discloser’s valuable trade secrets.
2. **NONDISCLOSURE*.***Recipient shall not use Confidential Information for any purpose other than to facilitate the Purpose. Recipient: (a) shall not disclose Confidential Information to any employee or contractor of Recipient unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with Recipient with terms no less restrictive than those of this Agreement; and (b) shall not disclose Confidential Information to any other third party without Discloser’s prior written consent. Without limiting the generality of the foregoing, Recipient shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. Recipient shall promptly notify Discloser of any misuse or misappropriation of Confidential Information that comes to Recipient’s attention. Notwithstanding the foregoing, Recipient may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Recipient shall give Discloser prompt notice of any such legal or governmental demand and reasonably cooperate with Discloser in any effort to seek a protective order or otherwise to contest such required disclosure, at Discloser’s expense.
3. **INJUNCTION.** Recipient agrees that breach of this Agreement would cause Discloser irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, Discloser will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.
4. **TERMINATION & RETURN.** The obligations of Section 2 above (*Nondisclosure*) will terminate \_\_\_\_\_\_\_\_\_\_\_ after the Effective Date; provided that such obligations related to Confidential Information constituting Discloser’s trade secrets shall continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, Recipient shall return all copies of Confidential Information to Discloser or certify, in writing, the destruction thereof.
5. **RETENTION OF RIGHTS.** This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Discloser will retain all right, title, and interest in and to all Confidential Information.
6. **EXCEPTION & IMMUNITY**. Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), Recipient is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this Agreement:
	1. Immunity. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that- (A) is made- (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
	2. Use of Trade Secret Information in Anti-Retaliation Lawsuit. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual- (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.
7. **MISCELLANEOUS.**
	1. Independent Contractors. The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other’s behalf.
	2. Notices. Notices pursuant to this Agreement shall be sent to the addresses below, or to such others as either party may provide in writing. Such notices will be deemed received at such addresses upon the earlier of (a) actual receipt or (b) delivery in person, by fax with written confirmation of receipt, or by certified mail return receipt requested. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
	3. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
	4. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
	5. Choice of Law & Jurisdiction: This Agreement will be governed solely by the internal laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_, including applicable U.S. federal law, without reference to any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties’ rights or duties. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of \_\_\_\_\_\_\_\_\_\_ [city or county], \_\_\_\_\_\_\_\_\_ [state]. This Section 7.5 governs all claims arising out of or related to this Agreement, including without limitation tort claims.
	6. Construction. The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.
	7. Entire Agreement. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications. This Agreement does not commit either party to enter into any business relationship or execute any additional contract, including without limitation related to the Purpose.
	8. Execution in Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.
	9. Amendment. This Agreement may not be amended except through a written agreement by authorized representatives of each party.

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

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|  |  |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (signature) | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (signature) |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (print) | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (print) |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |