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-NON-DISCLOSURE AGREEMENTS-

A non-disclosure agreement (NDA) is a contract that contains a promise by a party (a) to avoid unauthorized use or disclosure of a company's trade secrets and (b) to use care to prevent unauthorized use and disclosure from occurring. This agreement may be alone or incorporated into a more detailed employment agreement. The agreement is often required for engineers, managers, technical employees, clerks, and others with access to trade secrets, even if only incidentally.

QUESTION

How long is a non-disclosure agreement valid?

ANSWER

Typically, most confidentiality agreements expire at some point in time as the value of the secret diminishes or as changes in personnel result in accidental dissemination. A 3-5 year agreement will likely be beneficial for an entrepreneur.

QUESTION

What are some key terms to look for in an NDA?

ANSWER

- Purpose of the NDA
Does the NDA specifically state what the purpose for exchanging information is? It should be clear because all use of the confidential information is strictly limited to that particular purpose.
- Definition and Scope
Is the definition so broad that it covers all information you might disclose? If you are receiving information, you may want to require that all confidential information be marked as such, or confirmed in writing, so you can keep a clear list of what has been received that is considered confidential. Otherwise, it will be difficult to defend yourself if you are accused of breaching the NDA.
- Is there a residuals clause that says the recipient can use "residuals" from the information (where residuals means confidential information that is stored in the recipient's head?) Be aware that this is risky if you are the discloser. You generally do not want to agree that someone can use the information they have

retained after working with your confidential information.

- Is there a warranty clause? If so, there should not be. You do not want to give a warranty of any kind with respect to confidential information that you disclose.
- Is an NDA appropriate? NDAs are ONLY for disclosing information for the purpose of evaluating that information to decide whether to enter into a further agreement. NDAs do not cover joint development, or brainstorming, or any creation of IP. If two parties are going to work together on a project, or one party is going to work on a project for another party, an NDA is not enough. There needs to be an actual agreement in place that provides for IP ownership and other protections.
- What happens when the NDA expires? There should be a clause requiring the return or destruction of confidential information.

QUESTION

Is the NDA unilateral (one way) or mutual (both ways)?

ANSWER

It can be both. In a unilateral agreement one party is bound and obligated to keep the secret. In a mutual NDA both parties have an obligation to keep the secret.

QUESTION

Is a mutual or one-way NDA appropriate?

ANSWER

If you are only disclosing and not receiving information, it may be best to choose a one-way NDA. Then, you can eliminate the risk that you could be accused of breaching the NDA by disclosing or misusing the other party's information. It's always a good idea to sign a one-way NDA if you are not expecting to receive information from the other party.

QUESTION

Are NDAs and confidentiality agreements the same?

ANSWER

Yes they are. Also, if there is a confidentiality clause in a separate agreement, signed by both parties, then a separate NDA may not be needed.

QUESTION

Must the agreement be in writing?

ANSWER

Yes. It is beneficial to have a signed contract as it provides proof of the confidentiality terms. This will assist in preventing future misunderstandings and will clearly articulate the consequences in the event of a breach.

HELPFUL RESOURCES

<http://www.carrferrell.com/what-is-a-non-disclosure-agreement/>

<http://www.ndasforfree.com/>