

# Confidentiality Agreement: General (Unilateral, Pro-Discloser)

by Practical Law Commercial Transactions  
Maintained • USA (National/Federal)

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*A standard form of unilateral confidentiality agreement to be used in connection with commercial transactions, drafted with terms favorable to the party disclosing confidential information. This Standard Document has integrated notes with important explanatory drafting and negotiating tips.*

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## Confidentiality Agreement

This Confidentiality Agreement (the “**Agreement**”), effective as of [DATE] (the “**Effective Date**”), is entered into by and between [NAME OF DISCLOSING PARTY], a [DISCLOSING PARTY STATE OF ORGANIZATION] [ENTITY TYPE] having its principal place of business at [DISCLOSING PARTY BUSINESS ADDRESS] (the “**Disclosing Party**”) and [NAME OF RECIPIENT], a [RECIPIENT STATE OF ORGANIZATION] [ENTITY TYPE] having its principal place of business at [RECIPIENT BUSINESS ADDRESS] (the “**Recipient**”, and together with the Disclosing Party, the “**Parties**”, and each, a “**Party**”).

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WHEREAS, in connection with [DESCRIPTION OF PURPOSE] (the “**Purpose**”), the Recipient desires to receive certain information from the Disclosing Party that is non-public, confidential, or proprietary in nature; and

WHEREAS, the Disclosing Party desires to disclose such information to the Recipient, subject to the terms and conditions of this Agreement.

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NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, the Parties agree as follows:

1. **Confidential Information.** Except as set forth in Section 2 below, “**Confidential Information**” means all non-public, confidential, or proprietary information disclosed before, on, or after the Effective Date, by the Disclosing Party to the Recipient or its affiliates, or to any of such Recipient’s or its affiliates’ employees, officers, directors, partners, shareholders, agents, attorneys, accountants, or advisors (collectively, “**Representatives**”), whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as “confidential,” including, without limitation:

(a) information concerning the Disclosing Party’s [and its affiliates’,] and [its/their] customers’, suppliers’, and other third parties’, past, present, and future business affairs including, without limitation, finances, customer information, supplier information, products, services, organizational structure and internal practices, forecasts, sales and other financial results, records and budgets, and business, marketing, development, sales, and other commercial strategies;

(b) unpatented inventions, ideas, methods, and discoveries, trade secrets, know-how, unpublished patent applications, and other confidential intellectual property;

(c) designs, specifications, documentation, components, source code, object code, images, icons, audiovisual components, and objects, schematics, drawings, protocols, processes, and other visual depictions, in whole or in part, of any of the foregoing;

(d) third-party confidential information (including, without limitation, any Personal Information as defined in Section [5] below) included with, or incorporated in, any information provided by the Disclosing Party to the Recipient or its Representatives;

(e) other information that would reasonably be considered non-public, confidential, or proprietary given the nature of the information and the Parties' businesses; and

(f) notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations, and other materials (the "Notes") prepared by or for the Recipient or its Representatives that contain, are based on, or otherwise reflect or are derived, in whole or in part, from any of the foregoing.

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2. Exclusions from Confidential Information. Except as required by applicable federal, state, or local law or regulation, the term "**Confidential Information**" as used in this Agreement shall not include information that:

(a) at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any [breach of this Agreement][,] [act or omission] by the Recipient or any of its Representatives;

(b) at the time of disclosure is, or thereafter becomes, available to the Recipient on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information to the Recipient by any [legal, fiduciary, or] contractual obligation;

(c) was known by or in the possession of the Recipient, as established by documentary evidence, prior to being disclosed by or on behalf of the Disclosing Party pursuant to this Agreement; or

(d) was or is independently developed by the Recipient, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information.

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3. Recipient Obligations. The Recipient shall:

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(a) [protect and safeguard the confidentiality of all such Confidential Information with at least the same degree of care as the Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care]/[use its best efforts to protect and safeguard the confidentiality of all such Confidential

Information];

(b) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than the Purpose [or any related transactions between the Parties], or otherwise in any manner to the Disclosing Party's detriment[, including without limitation, to reverse engineer, disassemble, decompile, or design around the Disclosing Party's proprietary services, products, and/or confidential intellectual property];

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(c) not disclose any such Confidential Information to any person or entity, except to the Recipient's Representatives who:

(i) need to know the Confidential Information to assist the Recipient, or act on its behalf, in relation to the Purpose;

(ii) are informed in writing by the Recipient of the confidential nature of the Confidential Information; and

(iii) are subject to confidentiality duties or obligations to the Recipient that are no less restrictive than the terms and conditions of this Agreement;

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(d) comply with all applicable on-site access, remote access, and related security rules and procedures of the Disclosing Party;

(e) [immediately]/[promptly] notify the Disclosing Party of any unauthorized disclosure of Confidential Information or other breaches of this Agreement by the Recipient or its Representatives of which the Recipient has knowledge;

(f) fully cooperate with the Disclosing Party in any effort undertaken by the Disclosing Party to enforce its rights related to any such unauthorized disclosure; and

(g) be responsible for any breach of this Agreement caused by any of its Representatives.

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4. Additional Confidentiality Obligations. Except as required by applicable federal, state, or local law or regulation[, or otherwise as mutually agreed in writing by the Parties], the Recipient shall not, and shall not permit its Representatives to, disclose to any person:

(a) that the Confidential Information has been made available to the Recipient or its Representatives, or that it has inspected any portion of the Confidential Information;

(b) that discussions or negotiations may be or are underway between the Parties regarding the Confidential Information or the Purpose, including the status thereof; or

(c) any terms, conditions, or other arrangements that are being discussed or negotiated in relation to the Confidential Information or the Purpose.

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5. Recipient Representations and Warranties. The Recipient represents and warrants that:

(a) it will comply and will require its Representatives to comply, with all applicable federal, state, and local data protection laws and regulations in the maintenance, disclosure, and use of all Personal Information contained in any Confidential Information that is disclosed to the Recipient or its Representatives hereunder. For purposes of this Agreement, “**Personal Information**” means information that:

(i) relates to an individual person; and

(ii) identifies or can be used to identify, locate, or contact that individual alone or when combined with other personal or identifying information that is or can be associated with that specific individual;

(b) the performance of its obligations herein does not and will not violate any other contract or obligation to which the Recipient is a party, including covenants not to compete and confidentiality agreements;

(c) it is not legally or contractually prohibited from:

(i) discussing a potential relationship with the Disclosing Party;

(ii) receiving information about a potential relationship with the Disclosing Party; or

(iii) entering into a principal agreement with the Disclosing Party; and

(d) it has implemented and will continue to maintain sufficient information security protocols to secure and protect the confidentiality of all Confidential Information in the Recipient’s or its Representatives’ possession or control.

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6. Required Disclosure. Any Disclosure by the Recipient or its Representatives of any of the Disclosing Party’s Confidential Information pursuant to [applicable federal, state, or local law, regulation or] a valid order issued by a court or governmental agency of competent jurisdiction (a “**Legal Order**”) shall be subject to the terms of this Section. Prior to making any such disclosure, the Recipient shall [make commercially reasonable efforts to] provide the Disclosing Party with:

(a) prompt written notice of such requirement so that the Disclosing Party may seek a protective order or other remedy; and

(b) reasonable assistance in opposing such disclosure or seeking a protective order or other limitations on disclosure.

If, after providing such notice and assistance as required herein, the Recipient remains subject to a Legal Order to disclose any Confidential Information, the Recipient shall disclose, and, if applicable, shall require its Representatives or other persons to whom such Legal Order is directed to disclose, no more than that portion of the Confidential Information which, on the advice of the Recipient's legal counsel, such Legal Order specifically requires and shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

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7. Return or Destruction of Confidential Information. Upon the expiration [or termination] of this Agreement, or at the Disclosing Party's request at any time during the term of this Agreement, the Recipient and its Representatives shall promptly return to the Disclosing Party all copies, whether in written, electronic or other form or media, of the Disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed. In addition, the Recipient shall also destroy all copies of any Notes created by the Recipient or its Representatives and certify in writing to the Disclosing Party that such copies have been destroyed.

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8. Term and Termination. The term of this Agreement shall commence on the Effective Date and shall expire [NUMBER] year[s] from the Effective Date[, provided that either Party may terminate this Agreement at any time by providing written notice to the other Party.] Notwithstanding anything to the contrary herein, each Party's rights and obligations under this Agreement shall survive the expiration [or termination] of this Agreement for a period of [NUMBER] year[s] from the date of such expiration[ or termination], even after the return or destruction of Confidential Information by the Recipient[ (the "**Survival Period**")], provided that for any and all:

(a) Personal Information disclosed by Disclosing Party hereunder, the Survival Period shall last for the period of time required under applicable federal, state, and/or local law; and

(b) trade secrets of the Disclosing Party, the Survival Period shall last for as long as such Confidential Information qualifies as a trade secret under applicable federal, state and/or local law].

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9. Audit Right. At any time during the term of this Agreement and for a period of [NUMBER] year[s] from the date of expiration [or termination] of this Agreement, at the Disclosing Party's [[NUMBER] day's prior written] request, the Recipient shall provide to the Disclosing Party or its designated agents full access to the Recipient's premises to inspect and audit the relevant books, records, procedures, and practices of the Recipient to verify the Recipient's compliance with the terms and conditions of this Agreement. [The Disclosing Party shall conduct an audit only during the Recipient's normal business hours and in a manner that does not unreasonably interfere with the Recipient's business operations.]

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10. Indemnification. The Recipient shall defend, indemnify, and hold harmless the Disclosing Party, its affiliates, and their respective shareholders, officers, directors, employees, agents, successors, and permitted assigns from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, in connection with any third party claim, suit, action, or proceeding arising out of or resulting from a [material] breach of [any representation, warranty, or obligation set forth in] this Agreement by the Recipient or any of its Representatives.

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11. No Disclosing Party Representations or Warranties. Neither the Disclosing Party nor any of its Representatives make any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information disclosed to the Recipient hereunder. Neither the Disclosing Party nor any of its Representatives shall be liable to the Recipient or any of its Representatives relating to or resulting from the Recipient's use of any of the Confidential Information or any errors therein or omissions therefrom.

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12. No Transfer of Rights, Title, or Interest. The Disclosing Party hereby retains its entire right, title, and interest, including all intellectual property rights, in and to all Confidential Information. Any disclosure of such Confidential Information hereunder shall not be construed as an assignment, grant, option, license, or other transfer of any such right, title, or interest whatsoever to the Recipient or any of its Representatives.

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13. No Other Obligation. The Parties agree that:

(a) this Agreement does not require or compel the Disclosing Party to disclose any Confidential Information to the Recipient;

(b) neither Party shall be under any legal obligation of any kind whatsoever, or otherwise be obligated to enter into any business or contractual relationship, investment, or transaction, by virtue of this Agreement, except for the matters specifically agreed to herein; and

(c) either Party may at any time, at its sole discretion with or without cause, terminate discussions and negotiations with the other Party, in connection with the Purpose or otherwise.

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14. Remedies. The Recipient acknowledges that money damages might not be a sufficient remedy for any breach or threatened breach of this Agreement by the Recipient or its Representatives. Therefore, in addition to all other remedies available at law (which the Disclosing Party does not waive by the exercise of any rights hereunder), the Disclosing Party shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and the Recipient hereby waives any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim. [In the event that either Party institutes any legal suit, action, or proceeding against the other Party arising out of or relating to this Agreement, the prevailing Party in the suit, action, or proceeding shall be entitled to receive in addition to all other damages to which it may be entitled, the costs incurred by such Party in conducting the suit, action, or proceeding, including reasonable attorneys' fees and expenses and court costs.]

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15. Governing Law, Jurisdiction, and Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of [RELEVANT STATE] without giving effect to any choice or conflict of law provision or rule (whether of the State of [RELEVANT STATE] or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of [RELEVANT STATE]. Any legal suit, action, or proceeding arising out of [or related to] this Agreement or the matters contemplated hereunder [shall] be instituted [exclusively] in the federal courts of the

United States or the courts of the State of [RELEVANT STATE] in each case located in the city of [RELEVANT CITY] and County of [RELEVANT COUNTY], and each Party irrevocably submits to the [exclusive] jurisdiction of such courts in any such suit, action, or proceeding and waives any objection based on improper venue or *forum non conveniens*. Service of process, summons, notice, or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

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16. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile [or email of a PDF document] (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the [third] day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by a Party from time to time in accordance with this Section).

17. Entire Agreement. This Agreement constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Party hereto.

18. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

19. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile[, email or other means of electronic transmission] shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

20. Assignment. Neither Party may assign any of its rights [or delegate any of its obligations] hereunder without the prior written consent of the other Party[, provided that the Disclosing Party may assign any of its rights [and delegate any of its obligations] hereunder to any person or entity that acquires substantially all of the Disclosing Party's assets]. Any purported assignment [or delegation] in violation of this Section shall be null and void. No assignment [or delegation] shall relieve the assigning [or delegating] Party of any of its obligations hereunder. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

21. Waivers. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial

exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

[DISCLOSING PARTY NAME]

By \_\_\_\_\_

Name:

Title:

[RECIPIENT NAME]

By \_\_\_\_\_

Name:

Title: