

UNDERSTANDING CONFIDENTIALITY AGREEMENTS

TABLE OF CONTENTS

III

<i>Preface</i>	v
<i>Acknowledgments</i>	x
<i>About the author</i>	xi
<i>Introduction</i>	1
Chapter 1 Foundation	
What is a confidentiality agreement?	5
Basic terminology	7
“Plain English” or “legalese”?	8
Chapter 2 Why use a confidentiality agreement?	
Use of confidentiality agreements	11
<i>Checklist:</i> essential elements of a basic confidentiality agreement	13
Chapter 3 Initial questions	
Definition of “confidential information”	15
<i>Case study:</i> protection of a new and innovative business process — Smartcorp	20
Difference between “confidential information” and “proprietary information”	23
Purpose of information supplied	24
Exceptions to what constitutes confidential information	27
Privacy considerations	31
Chapter 4 Positive statements	
No transfer of rights	33
No exclusivity to the Recipient	35
No obligation to provide confidential information	37
Supply does not constitute an offer	38
No warranty about the confidential information	39
Warranty from a Discloser	41

Chapter 5 Recipient’s obligations	
Keeping information confidential	43
<i>Case study:</i> hypothetical — _maintaining a secret formula	45
Recipient responsible for unauthorised disclosure	48
Indemnity for loss resulting from unauthorised _disclosure	49
Acknowledgment that breach may cause irreparable _harm	54
<i>Case study:</i> undertaking as to damages	56
Permissible disclosures	63
Return or destruction of confidential information	69
Non-solicitation of employees, customers or suppliers	70
Chapter 6 Boilerplate items	
Governing law and jurisdiction	73
Jurisdiction — “exclusive” or “non-exclusive”?	75
Term of the agreement	77
Chapter 7 Enforcement	
What a Discloser needs to prove	79
Controls on the orderly flow of information	80
Available remedies	82
Be on the look-out for “tyre kickers”	83
Potential problems	84
Chapter 8 Other traps	
Unscrupulous players	87
Security deposit	88
Purporting to include directors personally	90
Surreptitious changes to the agreement	91
Chapter 9 Conclusion	
<i>Index</i>	95