

Checklist: essential elements of a basic confidentiality agreement

QUESTIONS TO CONSIDER AND SPECIFY IN THE AGREEMENT

- ◆ What information is to be considered “confidential information”?
 - ◆ For what specific purpose will the information be supplied?
 - ◆ Are there to be any exceptions to the definition of “confidential information”?
 - ◆ Are there to be any disclosures of confidential information that will be specifically permitted or allowed?
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POSITIVE STATEMENTS TO BE MADE BY THE DISCLOSER OF CONFIDENTIAL INFORMATION (IF APPLICABLE, AND DEPENDING UPON THE PARTICULAR CIRCUMSTANCES)

That:

- ◆ disclosure is not intended to transfer any rights in such information;
 - ◆ there is no exclusivity to the Recipient in the confidential information;
 - ◆ there is no obligation upon the Discloser to provide confidential information;
 - ◆ the supply of confidential information does not constitute an offer;
and
 - ◆ no warranty is given about the accuracy or completeness of the information.
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STATEMENTS OF THE OBLIGATIONS OF A RECIPIENT OF CONFIDENTIAL INFORMATION

The Recipient of any confidential information:

- ◆ shall use all reasonable measures to keep the information confidential;
 - ◆ shall be responsible for any unauthorised disclosure;
 - ◆ indemnifies the Discloser for loss arising from Recipient's breach of the agreement (*this is optional requirement and can often be the subject of lively debate*);
 - ◆ acknowledges that breach of the agreement may cause loss to the Discloser;
 - ◆ shall return all confidential information on demand; and
 - ◆ agrees not to solicit or approach employees, customers or suppliers.
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BOILERPLATE ITEMS

(COMMON CONTRACTUAL TERMS)

- ◆ **Term of the agreement.**
 - For how long is the agreement to be in force?
 - When does it start?
 - When does it end?
 - ◆ **Governing law and jurisdiction.**
 - Under what state or country's law will the agreement be enforced?
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