

## NONDISCLOSURE AGREEMENT (NDA) (MUTUAL BUSINESS ARRANGEMENT)

This document is a nondisclosure agreement for businesses or people that

- Will mutually share confidential information with each other. (e.g. businesses looking to do a merger, they would both need to know each other's confidential information to determine if a deal made sense).
  - If only one party is sharing confidential information, see our Nondisclosure Agreement (One-Way Business Arrangement). (e.g. a business is seeking investment and the investor needs to see confidential information about the business; in this scenario, the business will not need confidential information from the investor, so it's a one-way business arrangement.).

This contract template is part of the many resources we provide to Legal GPS users. Using this resource does not create an attorney-client relationship. While this template and the corresponding information cover basic and common terms that apply to most businesses, it is impossible to address every situation that can arise -- some attorneys can do that. But, we can't guarantee this template is exactly what you need for your business.

By downloading and using this template, you acknowledge that you have read and agree to our [Terms of Use](#).

## MUTUAL NONDISCLOSURE AGREEMENT

This mutual nondisclosure agreement (this “**Agreement**”) is dated \_\_\_\_\_ (the “**Effective Date**”) and is between \_\_\_\_\_ and \_\_\_\_\_.

The parties therefore agree as follows:

1. **Definitions.** The following terms, as used in this Agreement, have the following meanings:

“**Confidential Information**” means any information that is proprietary or unique to one party and that is disclosed by that party to the other party during the term of this Agreement, including the following: trade secret information; matters of a technical nature such as processes, devices, techniques, data and formulas, research subjects and results; marketing methods; plans and strategies; information about operations, products, services, revenues, expenses, profits, sales, key personnel, customers, suppliers, and pricing policies; and any information concerning the marketing and other business affairs and methods of the Disclosing Party which is not readily available to the public. “Confidential Information” also includes information of others that (1) is disclosed under this Agreement, (2) the Disclosing Party is obligated to protect from disclosure or restricted from using or both, and (3) that would constitute “Confidential Information” if the information belonged to the Disclosing Party.

“**Disclosing Party**” means, with respect to particular Confidential Information, the party whose information is disclosed under this Agreement.

“**Purpose**” means evaluating the parties’ capabilities in anticipation of pursuing one or more business opportunities.

“**Receiving Party**” means, with respect to particular Confidential Information, the party that receives Confidential Information under this Agreement.

2. **Use of Confidential Information.** The Receiving Party shall use Confidential Information only for the Purpose. Unless otherwise agreed in writing, neither party shall disclose to a third party the fact that discussions or negotiations are taking place concerning the Purpose or any of the terms or other facts relating to the Purpose, including the status of negotiations between the parties.

3. **Confidentiality; Standard of Care; Limited Access.** The Receiving Party shall protect the Confidential Information from unauthorized use and disclosure using the same

degree of care that it uses with respect to its own information of like importance, but no less than a reasonable degree of care. The Receiving Party shall retain the Confidential Information in confidence and shall not disclose Confidential Information to any third party without the Disclosing Party's prior written consent. However, the Receiving Party may disclose the Confidential Information to employees, contractors, consultants, and authorized representatives of the Receiving Party who (1) require access to the information for the Purpose, (2) are informed by the Receiving Party of the Receiving Party's obligations under this Agreement, and (3) are bound by contract or fiduciary duty to obligations of confidentiality and use restrictions with substantially similar function, purpose, scope, and effect to those of this Agreement and that are at least as protective of the Confidential Information as this Agreement.

#### 4. **Exclusions**

(a) This Agreement imposes no obligations upon the Receiving Party with respect to Confidential Information that: (1) was known to the Receiving Party before disclosure by the Disclosing Party as evidenced by contemporaneous records; (2) has become publicly available through no fault of the Receiving Party; (3) is disclosed to the Receiving Party by a third party that has the right to make the disclosure to the Receiving Party and that does not have any obligation of confidentiality with respect to the Confidential Information; or (4) is disclosed by the Receiving Party with the Disclosing Party's prior written consent.

(b) If the Receiving Party is required by any governmental agency, court, or other judicial or regulatory body to provide any Confidential Information received under this Agreement, then the Receiving Party will not be deemed to be in violation of this Agreement for the disclosure if the Receiving Party promptly gives written notice to the Disclosing Party of the requirement to provide the Confidential Information and cooperates with the Disclosing Party so that the Disclosing Party may contest the requirement to provide the Confidential Information. The Receiving Party may disclose only that portion of the Confidential Information that it is legally required to furnish.

5. **No Grant or License.** The disclosure of Confidential Information under this Agreement will not constitute the grant of a license to or an interest in the Confidential Information or any other intellectual property of the Disclosing Party.

6. **Disclosure at Each Company's Discretion.** Nothing contained in this Agreement will be construed as requiring a party to disclose any particular information to the other party.

7. **“As Is” Disclosure.** All information that the Disclosing Party provides under this Agreement is provided “as is.” The Disclosing Party makes no representations as to the information’s accuracy, completeness, or noninfringement.

8. **Relationship of the Parties.** This Agreement does not create an agency, joint venture, partnership, employment, or other formal business relationship or association between the parties, or obligate either party to enter into any subsequent agreement or business arrangement or to purchase or provide any goods or services.

9. **Term and Obligations of Confidentiality Period.** This Agreement will continue for a period of one year from the Effective Date unless: (1) terminated earlier by either party upon written notice to the other; (2) extended by the mutual written agreement of the parties; or (3) superseded by a subsequent written agreement that explicitly sets forth the obligations of the parties with respect to Confidential Information. With respect to business information, the Receiving Party’s obligations of confidentiality and non-use under this Agreement will expire three years from the termination of this Agreement. With respect to all information that constitutes a trade secret, the Receiving Party’s obligations of confidentiality and non-use under this Agreement will survive the termination of this Agreement for as long as such information remains a trade secret under applicable law.

10. **Return of Confidential Information.** Upon the Disclosing Party’s request or upon the termination of this Agreement, the Receiving Party shall return to the Disclosing Party, delete, or destroy all written and electronic documentation and data containing Confidential Information and any other written, recorded, or machine-readable material containing or reflecting any Confidential Information. Upon the Disclosing Party’s request, the Receiving Party shall provide written certification of the destruction or deletion of Confidential Information under this section.

11. **Remedies.** If the Receiving Party violates or threatens to violate any of its obligations contained in this Agreement, then, in addition to any other remedy available at law or in equity, the Disclosing Party will have (1) the right and remedy of specific enforcement, including injunctive relief, it being acknowledged that any such violation or threatened violation will cause irreparable injury to the Disclosing Party and that monetary damages will not provide an adequate remedy, and (2) the right to any and all damages available as a matter of law, and costs and expenses incurred by the Disclosing Party in pursuing its rights under this Agreement, including reasonable attorney fees, court costs, and other litigation expenses.

12. **Severability.** If a court of competent jurisdiction declares any provision of this Agreement invalid or unenforceable, then the parties request that the court judicially modify

that provision consistent with the intent of this Agreement so that it will be enforceable to the fullest extent possible.

13. **Assignment.** Neither party may (1) assign or transfer any of its rights under this Agreement, either voluntarily or involuntarily, whether by operation of law, or any other manner, or (2) delegate any performance under this Agreement, except with the prior written consent of the other party. However, no such consent is needed in the event of a party's assignment or transfer of the majority of its stock or all or substantially all of its assets to which the Purpose relates, as part of a merger, acquisition or asset sale. Any purported assignment of rights or delegation of performance in violation of this section is void.

14. **Governing Law and Designation of Forum.** All questions concerning the construction, validity, and interpretation of this Agreement, and performance under this Agreement, will be governed by the laws of [State], without giving effect to the conflicts of laws principles of that state. Any dispute arising out of, or concerning, this Agreement, or performance under this Agreement, will be resolved exclusively in a federal or state court of competent jurisdiction located in [State]. To the extent necessary, the parties hereby submit to, and agree not to contest, the jurisdiction of such courts.

15. **Misc.** This Agreement may not be modified or amended except by a writing signed by the parties. This Agreement may be signed in any number of counterparts, each of which will be an original with the same effect as if the signatures were upon the same instrument, and it may be signed electronically. The captions in this Agreement are included for convenience of reference only and will be ignored in the construction or interpretation hereof. The parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises regarding this Agreement, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

[signature page follows]

The parties are signing this Agreement as of the Effective Date.

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_