

# THE TECH CONTRACTS HANDBOOK

## Software Licenses and Technology Services Agreements for Lawyers and Businesspeople

by David W. Tollen

(ABA Publishing 2010)

[www.TechContractsHandbook.com](http://www.TechContractsHandbook.com)

### *Form Contract*

### **Mutual Nondisclosure Agreement (NDA)**

You may use the form contract below, subject to the "Terms of Use" found at <http://www.techcontractshandbook.com/html/disclaimer.html>. In addition to the Terms of Use, PLEASE READ THE FOLLOWING DISCLAIMER BEFORE USING THE FORM CONTRACT:

*The form contract below is general in nature and may not be sufficient for a specific contractual, technological, or legal problem or dispute. THE FORM IS NOT PROVIDED WITH ANY GUARANTY, WARRANTY, OR REPRESENTATION AS TO QUALITY OR SUITABILITY FOR ANY PARTICULAR PURPOSE. Publication of the form does not constitute the practice of law and is not legal counsel or advice. Neither the author nor the publisher of The Tech Contracts Handbook, nor anyone affiliated with the book's Website, is rendering a legal or other professional service. The form should not be relied upon as a substitute for consultation with an experienced attorney.*

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### **MUTUAL NONDISCLOSURE AGREEMENT**

This Nondisclosure Agreement (this "Agreement") is entered into as of \_\_\_\_\_, 20\_\_ (the "Effective Date") by and between \_\_\_\_\_, a \_\_\_\_\_, and \_\_\_\_\_, a \_\_\_\_\_.

- 1. Confidential Information.** "Confidential Information" refers to the following items one party to this Agreement (the "Disclosing Party") discloses to the other (the "Receiving Party"): (a) any document the Disclosing Party marks "Confidential"; and (b) any information the Disclosing Party orally designates as "Confidential" at the

time of disclosure, provided the Disclosing Party confirms such designation in writing within \_\_\_ business days. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in the Receiving Party's possession at the time of disclosure; (ii) is independently developed by the Receiving Party without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of the Receiving Party's improper action or inaction; or (iii) is approved for release in writing by the Disclosing Party.

2. **Nondisclosure Obligations.** The Receiving Party will not use Confidential Information for any purpose other than \_\_\_\_\_ (the "**Purpose**"). The Receiving Party: (a) will not disclose Confidential Information to any employee or contractor of the Receiving Party unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with the Receiving Party, with terms no less restrictive than those of this Agreement; and (b) will not disclose Confidential Information to any other third party without the Disclosing Party's prior written consent. Without limiting the generality of the foregoing, the Receiving Party will protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance but with no less than reasonable care. The Receiving Party will promptly notify the Disclosing Party of any misuse or misappropriation of Confidential Information that comes to the Receiving Party's attention. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. The Receiving Party will give the Disclosing Party prompt notice of any such legal or governmental demand and reasonably cooperate with the Disclosing Party in any effort to seek a protective order or otherwise to contest such required disclosure, at the Disclosing Party's expense.
3. **Injunction.** The Receiving Party agrees that breach of this Agreement would\* cause the Disclosing Party irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, the Disclosing Party will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.
4. **Termination & Return.** The obligations of Section 2 above will terminate \_\_\_\_\_ after the Effective Date. Upon termination of this Agreement or upon the Disclosing Party's written request, the Receiving Party will return all copies of Confidential Information to the Disclosing Party or certify, in writing, the destruction thereof.
5. **Retention of Rights.** This Agreement does not transfer ownership of Confidential Information or grant a license thereto. The Disclosing Party will retain all right, title, and interest in and to all Confidential Information.

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\* *The Tech Contracts Handbook*, on page 82, erroneously uses the word "might" where this form uses "would."

**6. Miscellaneous.**

(a) *Notices.* Notices pursuant to this Agreement will be sent to the addresses below, or to such others as either party may provide in writing. Such notices will be deemed received at such addresses upon the earlier of (i) actual receipt or (ii) delivery in person, by fax with written confirmation of receipt, or by certified mail return receipt requested.

(A) \_\_\_\_\_.

(B) \_\_\_\_\_.

(b) *Independent Contractors.* The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other and neither may bind the other in any way.

(c) *No Waiver.* Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than (i) by an Authorized Representative (as defined below) and (ii) in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any prior or subsequent breach of this Agreement. (An “**Authorized Representative**” is \_\_\_\_\_.)

(d) *Choice of Law & Jurisdiction.* This Agreement will be governed solely by the internal laws of the State of \_\_\_\_\_, without reference to any principal of conflicts of law that would apply the law of any other jurisdiction to the rights and duties of the parties. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of \_\_\_\_\_, \_\_\_\_\_.

(e) *Severability.* To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

(f) *Execution in Counterparts.* This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.

(g) *Construction.* The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.

(h) *Entire Agreement.* This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to the subject matter hereof. Neither party has relied upon any such prior or contemporaneous communications.

(i) *Amendment.* This Agreement may not be modified except (i) by Authorized Representatives (as defined in Subsection 6(c) above) of each party and (ii) in a written contract signed by both parties.

IN WITNESS THEREOF, the parties have executed this Agreement as of the Effective Date.

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By:

By:

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(signature)

(signature)

Name:

Name:

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(print)

(print)

Title:

Title:

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