



CONFIDENTIALITY AGREEMENT: BACKGROUND INFORMATION

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Set out below is a broad indication of the typical uses to which confidentiality agreements may apply.

When to use this document

When conducting business negotiations, there are often circumstances where one party needs to disclose some commercially sensitive information (e.g. insights into its future plans) in order to identify whether a supplier will be able to meet its needs. A relatively short agreement is normally adequate to cover this type of disclosure, and Inngot provides a suitable proforma as a **Non-Disclosure Agreement**.

If entering into discussions that could lead to the development of new products and services, it is sensible to use a more detailed, mutually binding agreement. For instance, it is vital to ensure that you do not compromise your ability to take out a patent (where applicable) by disclosing information which turns out to be protectable without having a signed confidentiality undertaking in place.

Another advantage of a mutual agreement (i.e. one which allows both parties to protect their proprietary information) is that it is usually easier to encourage collaborative partners to sign this form of agreement.

While it is best practice to exchange agreements prior to any disclosure, you may only identify the need for an agreement after some initial discussions have taken place. Accordingly, this template makes reference to previous disclosures, which can be strengthened if desired by adding a Schedule. You can use this to list specific disclosures occurring prior to the date of signature which you wish to be treated as confidential information.

The wording of this agreement does not provide for any automatic assignment because it is intended to be "personal" to the two parties as constituted at the date of signature. If the ownership of the other party were to change, you may well wish to review the appropriateness of the agreement and if necessary exercise one of the remedies provided within it.

The other party to this agreement can be an individual who is not an employee of your company, or another company.

How to use this document

The confidentiality agreement needs to be completed with relevant information prior to use and is provided as a standard word processor file (.doc format). The parts most likely to require modification are highlighted using **red type** or **[red type and square brackets]** on the file. When editing the document please ensure you tailor all these sections to suit the circumstances, without deleting any sections in ordinary round brackets (as shown here).

- a) The date at the top should show the date on which the agreement is intended to come into effect. This does not have to pre-date the first disclosure, but if it does not, you may wish to consider adding a Schedule at the end of the agreement listing any specific disclosures already made.
- b) The information at i) and ii) relating to the parties should provide sufficient detail to identify both of you clearly and unequivocally. In the case of a limited company the address used could be the trading address or the registered office if this is different. It is also helpful to insert the registered company number where applicable.
- c) The general description provided at a) will be sufficient to cater for situations where two parties are wishing to exchange information in order to evaluate whether a business relationship would be

mutually beneficial. If the purpose is known to be more specific than this, it will be important to modify this description to suit, as well as the corresponding definition of the Purpose below.

- d) Section 4 covering the applicable period and term is written with a three-year commitment in mind. This term should be modified to fit the appropriate circumstances. However, it is not usually necessary or advisable to extend a confidentiality undertaking beyond a three to five year period, and to do so may raise concerns in respect of competition legislation.
- e) Section 7 (Remedies) is included because it creates an option to obtain an injunction, which can be used to prevent further breaches should a potentially damaging unauthorised disclosure occur.
- f) For such agreements to have legal effect it is important to ensure that there is an appropriate “authorised signatory” – normally this would be a statutory director of each business.

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