

# Non-Disclosure & Non-Circumvention Agreement

- 🔊 Let's not fool around here with the very thing (your intellectual property) that is the foundation of your business. This will not fit on one page.
- 🔊 You can easily edit this agreement any way you like, using Word.
- 🔊 These comments won't print, and we recommend leaving the text in 11-point type – let the discussion over the details reveal who you are dealing with. If they sign too quickly, do you think they are a little cavalier with their word? Let this sample contract bring out the nature of the person with whom you are building a relationship.
- 🔊 This is a more formal non-disclosure contract which includes a provision that the recipient may not reveal your secrets to others, plus they may not use it themselves and use whatever confidential information you share with them to create a competitive product or service and go into a competitive business!

🔊 The first part of the cover page should be completed and added to the Non-Disclosure and Non-Circumvention Agreement. Replace our logo with your own.

Date: **[Date]**

To: **[Recipient]**

From: **[Owner/Founder]**  
**[Company]**

Subject: **Non-Disclosure & Non-Circumvention Agreement**

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Thank you very much for your interest in working with [Company] and for your cooperation with us regarding our confidential information.

Attached is a formal “Non-Disclosure / Non-Circumvention” Agreement.

The purpose of this Agreement is to establish a formal setting for our business discussion where we must reveal certain proprietary information to enable us to work together more effectively and to fully explore the benefits of our business relationship.

I am looking forward to a productive and profitable relationship.

Please sign and return a copy to me at your earliest convenience.

Thank you very much.

[Owner/Founder]

Owner/Founder/CEO

[Company]

## NOTICE:

We wish we could provide an agreement that was tailored *exactly* to your business. While this is not always possible, we feel that we've come very close and that this document provides you with the head-start that you need to get your deal moving. Nevertheless, we must make this disclaimer:

- 🔊 **Do Not Use This Agreement 'As-Is.'**
- 🔊 **This Agreement Is Not Legal Advice.**
- 🔊 **Read it thoroughly and Make All Appropriate Changes to Fit Your Requirements.**
- 🔊 **You Should Have this Agreement Reviewed and Approved by a Qualified Attorney at Law Before Using It.**
- 🔊 **JIAN Accepts No Liability for the Effectiveness of This Document For Your Purposes.**

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We're building a network of business experts who are eager to help you when you need it. They can review your work, make suggestions, handle unique situations and introduce you to influential people. On our website you can search by expertise and location, then e-mail or jump straight to their website. Although they are professionals and charge for their services, most offer an initial consultation free of charge. They're in your area and you can contact them directly.

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- Please visit our website under [Updates](#).


Remember to bookmark our website:

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## Editing Your Sample Contract

Since this entire agreement is formatted in Word, you can edit it like any other Word document. You can jump from variable to variable by clicking the above  green arrows (JIAN Menu) which will take you forward / backward and highlight the entire sample text identified within the “[ ]” brackets – simply edit / type-over with your information.

To make sure you have filled in all the variables, use Word's 'FIND' function to locate any “[ ]” which may contain an unedited variable.

- Click the  icon in the JIAN menu above to turn the expert comments on/off.
- Upon completion, delete any unnecessary blank lines that remain.
- You may format this document any way you like.
- Delete this page.

# Non-Disclosure & Non-Circumvention Agreement

- 🔊 This agreement presumes that your company is the party in possession of the Confidential Information
- 🔊 This is a standard introductory paragraph that lists the date and the parties to the Agreement.
- 🔊 Hint: If you do not know whether the Recipient is a corporation, or partnership, and / or its state of incorporation, or partnership, leave this area blank and fill it in when the Agreement is signed.

This Non-Disclosure and Non-Circumvention Agreement is entered into as of:

Effective Date: **[Date]**  
between **[Company Legal Name]**, (“[Company]”),  
A **[State]** **[Corporation/Partnership/Sole Proprietorship]**  
  
and **[Recipient]**, (“Recipient”)  
a **[State]** **[Corporation/Partnership/Sole Proprietorship]**.  
**[Recipient Address]**

## Summary

- 🔊 In Section 1 of this Recital, [Company] is stating that the information he is about to impart is unique and commercially valuable.
- [Company] has developed certain Confidential Information (as defined in Section 1 of the Agreement below) that is proprietary to [Company] and that [Company] believes has substantial value for commercial exploitation.
- 🔊 Section 2 of this Recital states that [Company] will share the information but subject to the terms, conditions, and limitations of this Agreement. By agreeing to the terms, conditions and limitations that follow, the party receiving the information must be careful to comply with all of [Company]'s demands.
- [Company] is willing to disclose the Confidential Information to the Recipient for the limited purpose, and subject to the terms and conditions, set forth in this Agreement.

## Agreement

- 🔊 Section 1 of this Agreement defines both the nature of the confidential information and the scope of the information covered. You should delineate the requested information as thoroughly as possible so as to avoid any confusion or ambiguity.
- 🔊 The first insert should include a broad description of the information you seek to protect such as "the proposed business concepts and plans of [Company]." The second insert should be fairly inclusive and include as much information as possible. (i.e., Inventions, discoveries, processes, and know-how; computer software code, designs, routines, algorithms, and structures; product information; research and development information; information related to actual and potential customers; financial data and information; business plans; marketing materials and strategies; and any information regarding the foregoing [Company] discloses to the Recipient.)

## 1. Definition of Confidential Information

For purposes of this Agreement, the term “Confidential Information” means all information disclosed to the Recipient by or on behalf of [Company] either directly or indirectly and either in writing or orally, relating to: [Insert appropriate language]. Confidential Information shall include, without limitation: [Insert appropriate language]. Despite the foregoing, Confidential Information does not include: (1) information already in possession of the Recipient at the time of [Company]’s disclosure; (2) information that is now or later becomes part of the public domain, unless such information becomes part of the public domain as a result of any action or inaction on the part of the Recipient; or (3) information received by the Recipient from a third party, unless such third party has been directed by [Company] to retain such information on a confidential basis.

- ☞ Section 2 describes the permissible uses the Recipient may make of the confidential information and states that the Recipient may not disclose the information to third parties. In the brackets in Section 2, describe exactly what the reasons are that you are providing (information to the Recipient).

## 2. Use of Confidential Information

The Recipient shall use the Confidential Information exclusively for the purpose of: [evaluating potential business relationships and opportunities with [Company] / preparing sales and marketing materials for [Company] / advising [Company]]. Except as required by law, the Recipient shall not disclose any Confidential Information to any third party excepting employees of the Recipient who have expressly agreed in writing to be bound by the terms of this Agreement or make use of any Confidential Information in any manner without [Company]’s prior written consent, that may be given or withheld by [Company] in his sole discretion.

- ☞ Where the previous section prohibits the Recipient from disclosing the information to third parties, Section 3 prohibits the Recipient from using the information in any manner not agreed upon by the parties. For the first insert, enter the time frame that should be made for as long as you anticipate the information remaining non-public. Try not to go overboard and set a ten or fifteen year period unless the circumstances require it.

## 3. Non-Circumvention

In consideration of [Company]’s disclosure of the Confidential Information, the Recipient shall not at any time prior to the date immediately preceding the [first / second / third / fourth / fifth] anniversary date of this Agreement, attempt in any manner to commercially exploit [the proposed business concepts and plans of [Company] / [Company]’s business concepts, including x, y, and z] or any of the Confidential Information without [Company]’s prior written consent, that may be given or withheld by [Company] in his sole discretion.

- ☞ Section 4 merely acknowledges that [Company], not the Recipient, owns the information, and that [Company] may request the return of the information at any time.

## 4. Ownership & Return of Confidential Information

The Recipient acknowledges that the Recipient has no Ownership or proprietary rights in the Confidential Information. Upon [Company]’s request, the Recipient shall immediately return to [Company] all Confidential Information provided to it, and shall retain no materials relating thereto, including copies of, notes on, or abstracts of, any Confidential Information.

- ☞ Section 5 is a standard paragraph that says the Recipient has no rights other than stated above to the information and that neither party is obligated to further contract with the other.

## 5. Further Agreements

Nothing contained in this Agreement shall be deemed, by implication or otherwise, to convey to the Recipient any rights in any Confidential Information, nor shall this Agreement be deemed a commitment of any kind by either [Company] or the Recipient to enter into any further Agreements with each other with respect to any Confidential Information.

## 6. General Provisions

🔊 The General Provisions that follow are fairly standard. These provisions enhance the balance of the Agreement by explaining issues such as notice, assignment, legal remedies, waiver, and attorney fees.

6.1 **Independent Contractors.** The relationship between both parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to give either party the power to direct and control the day-to-day activities of the other. Neither party is an agent, representative or partner of the other party. Neither party shall have any right, power or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such relationship upon either party.

🔊 You must decide which state governs this Agreement and where any legal action would be taken. Generally, it is your (company's) state of residence.

6.2 **Governing Law & Jurisdiction.** This agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of [State], without reference to conflict of law principles. The parties hereby expressly consent to the jurisdiction and venue of the federal and state courts within the state of [State]. Each party hereby irrevocably consents to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such party at its address set forth in the preamble of this Agreement, such service to become effective thirty (30) days after such mailing.

🔊 This Agreement is intended to be the only Agreement, and that no other documents or communications are binding. Therefore, it is very important to make sure that everything [Company] and [Client] have agreed to be included in this Agreement. Otherwise, it is as if it was not agreed to.

6.3 **Entire Agreement.** This Agreement, including the attached exhibits, constitutes the entire Agreement between both parties concerning this transaction, and replaces all previous communications, representations, understandings, and Agreements, whether verbal or written between the parties to this Agreement or their representatives. No representations or statements of any kind made by either party, which are not expressly stated in this Agreement, shall be binding on such parties.

🔊 Any changes to this Agreement must be in writing and signed by the party against whom that writing is to be used.

6.4 **All Amendments in Writing.** No waiver, amendment or modification of any provisions of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom such waiver, amendment or modification is sought to be enforced. Furthermore, no provisions in either party's purchase orders, or in any other business forms employed by either party will supersede the terms and conditions of this Agreement.

🔊 All notices between the parties must be in writing and either delivered in person or by certified or registered mail, return receipt requested.

6.5 **Notices.** Any notice required or permitted by this Agreement shall be deemed given if sent by registered mail, postage prepaid with return receipt requested, addressed to the other party at the address

set forth in the preamble of this Agreement or at such other address for which such party gives notice hereunder. Delivery shall be deemed effective three (3) days after deposit with postal authorities.

🔊 In the event of a lawsuit or any legal proceeding involving this Agreement, the losing party will have to pay the winning party his or her costs and expenses, including reasonable attorney fees.

6.6 **Costs of Legal Action.** In the event any action is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs of enforcement including, without limitation, attorneys' fees and court costs.

🔊 Legal remedies, i.e., money damages, may not be sufficient; therefore, both parties agree to equitable remedies such as an injunction where the breaching party would be required to do or not to do something.

6.7 **Inadequate Legal Remedy.** Both parties understand and acknowledge that violation of their respective covenants and Agreements may cause the other irreparable harm and damage, that may not be recovered at law, and each agrees that the other's remedies for breach may be in equity by way of injunctive relief, as well as for damages and any other relief available to the non-breaching party, whether in law or in equity.

🔊 Assuming the parties wish to use Arbitration in the event of a dispute, the following section should be included. You take your chances with an arbitrator, but it keeps legal costs down and keeps you out of a drawn out legal process.

6.8. **Arbitration.** Any dispute relating to the interpretation or performance of this Agreement shall be resolved at the request of either party through binding arbitration. Arbitration shall be conducted in [County], [State] in accordance with the then-existing rules of the American Arbitration Association. Judgment upon any award by the arbitrators may be entered by any state or federal court having jurisdiction. Both parties intend that this Agreement to arbitrate be irrevocable.

🔊 Merely delaying to bring an action that one party has a right to bring does not cause that party to lose or waive his right to pursue that action.

6.9 **Delay is Not a Waiver.** No failure or delay by either party in exercising any right, power or remedy under this Agreement, except as specifically provided in this Agreement, shall operate as a waiver of any such right, power or remedy.

🔊 Neither party will be blamed if there is a problem resulting from something beyond its control, such as an earthquake, flood, war.

6.10 **Force Majeure.** In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of any Act of God, strike, fire, flood, governmental acts, orders or restrictions, Internet system unavailability, system malfunctions or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence of the non-performing party (a "Force Majeure Event"), the party who has been so affected shall give notice immediately to the other party and shall use its reasonable best efforts to resume performance. Failure to meet due dates resulting from a Force Majeure Event shall extend such due dates for a reasonable period. However, if the period of nonperformance exceeds sixty (60) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been affected may, by giving written notice, terminate this Agreement effective immediately upon such notice or at such later date as is therein specified.

🔊 This section limits the ability of either party to transfer any of its rights or delegate any of its duties to third parties.

🔊 You want to make sure that you can sell your business along with all of the relationships you have developed along the way. (Often these relationships can add tremendous value to your business

and you want to make sure that all of your agreements can be transferred to the new owners.) I wouldn't want to seek (let alone pay for) permission to sell my company.

- ☞ Generally, neither party may assign their respective rights to a third party; however, with the possible exception of assignment to a successor corporation or partnership, either party may transfer its rights or obligations under this Agreement without the approval of the other party. This Agreement would be binding on the 3<sup>rd</sup> party.
- ☞ However, you may want to limit each other's ability to pass along this deal to another possibly unknown and possibly unfriendly entity. The second paragraph prevents unauthorized transfer of responsibilities...
- ☞ CHOOSE one or the other of these two following paragraphs.

6.11 **Assignability & Binding Effect.** Except as expressly set forth within this Agreement, neither party may transfer or assign, directly or indirectly, this Agreement or its rights and obligations hereunder without the express written permission of the other party, not to be unreasonably withheld; provided, however, that both parties shall have the right to assign or otherwise transfer this Agreement to any parent, subsidiary, affiliated entity or pursuant to any merger, consolidation or reorganization, provided that all such assignees and transferees agree in writing to be bound by the terms of this Agreement prior to such assignment or transfer. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

- ☞ This paragraph DOES NOT ALLOW either party to transfer its rights to a successor company without prior approval.

6.11 **Non-Assignability & Binding Effect.** Except as otherwise provided for within this Agreement, neither party may assign any of its rights or delegate any of its obligations under this Agreement to any third party without the express written permission of the other. Any such assignment is deemed null and void.

- ☞ If any part of this Agreement is unenforceable or invalid, the balance of the Agreement should still be enforced. Basically, ignore any sections that are invalid.

6.12 **Certain Sections Invalid.** If any provisions of this Agreement are held by a court of competent jurisdiction to be invalid under any applicable statute or rule of law, they are to that extent to be deemed omitted and the remaining provisions of this Agreement shall remain in full force and effect.

- ☞ The headings of the various sections are meant to explain or otherwise give meaning to those sections; they are for convenience only.

6.13 **Headings.** The titles and headings of the various sections and sections in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or place any construction upon or on any of the provisions of this Agreement.

- ☞ Even after the termination of the Agreement, the parties may still have certain responsibilities such as keeping information confidential.

6.14 **Survival of Certain Provisions.** The warranties and the indemnification and confidentiality obligations set forth in this Agreement shall survive the termination of the Agreement by either party for any reason.

## Understood, Agreed & Approved

We have carefully reviewed this contract and agree to and accept all of its terms and conditions. We are executing this Agreement as of the Effective Date above.

[Company]

[Recipient]



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[Owner/Founder], [Title]

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[Recipient] [Title]

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Date

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Date