

# Non-Disclosure Agreement - Template

This Non-Disclosure Agreement (the "Agreement") is made and entered into on the \_\_\_\_ day of \_\_\_\_ (the "Effective Date"), by and between \_\_\_\_ (the "1st Party") and \_\_\_\_ (the "2nd Party"), collectively referred to as the "Parties".

WHEREAS, the Parties wish to protect the confidential and proprietary information related to the development of \_\_\_\_ [Name of App] for the purpose of \_\_\_\_ [Purpose of App], hereinafter referred to as the "Software".

**The Parties agree as follows:**

## TYPE OF AGREEMENT ( Mark any one )

**Mutual** – This Agreement shall be Mutual, where, the Parties shall be prohibited from disclosing confidential and proprietary information that is to be shared between one another in an effort to develop the Software.

**Unilateral** – This Agreement shall be Unilateral, where, the 1st Party shall have sole ownership of the Software with the 2nd Party being prohibited from disclosing confidential and proprietary information that is to be released by the 1st Party in an effort to develop the Software

**Purpose** : The 1st and 2nd Party wish to explore a business possibility in connection with which each may disclose its Confidential Information (as defined below) to the other ("The Relationship")

## 1. Definition of Confidential Information :

The term "Confidential Information" shall mean any and all information or material that has or could have commercial value or other utility in the Disclosing Party's business. Such information includes, but is not limited to: unpublished computer code, design definitions and specifications, flow diagrams and flowcharts, formulas and algorithms, system and user documentation, data structures and data compilations, marketing and

sales data, and pending patent applications. If Confidential Information is in written form, the Disclosing Party shall label or stamp the materials with the word "Confidential" or a similar warning. If Confidential Information is disclosed orally, the Disclosing Party shall promptly provide a writing indicating all the information discussed orally.

**Confidential Information does not include:**

- A. Generally available information;
- B. Information, technical data or know-how which is in the possession of the receiving party at the time of disclosure as shown by the receiving party's files and records immediately prior to the time of disclosure;
- C. Widely and usually used programming practices or algorithms;
- D. Information independently developed without using any of the provided Confidential Information;
- E. Information rightfully in the Parties' possession before signing this Agreement

**2. NON-DISCLOSURE OF CONFIDENTIAL INFORMATION**

Each party agrees not to use any Confidential Information disclosed to it by the other party for its own use or for any purpose other than to carry out discussions concerning, and the undertaking of, the Relationship. Neither party will disclose any Confidential Information of the other party to third parties or to employees of the party receiving Confidential Information, other than its employees or agents under the appropriate burden of confidentiality and who are required to have the information in order to carry out the discussions regarding the Relationship. Each party agrees that it will take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the other party in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information. Such measures shall include the highest degree of care that the receiving party utilizes to protect its own confidential information of a similar nature. Each party agrees to notify the other in writing of any misuse or misappropriation of confidential Information of the disclosing party which may come to the receiving party's attention.

### **3. Obligations of the Receiving Party**

The Receiving Party shall hold and maintain the Confidential Information in strict confidence for the sole and exclusive benefit of the Disclosing Party. The Receiving Party shall carefully restrict access to the Confidential Information to employees, contractors, and third parties as is reasonably required, and shall require those persons to sign nondisclosure agreements at least as protective as those in this Agreement. The Receiving Party shall not, without the prior written approval of the Disclosing Party, use the Confidential Information for its own benefit, publish, copy, disclose to others, or permit the use by others for their benefit or to the detriment of the Disclosing Party, any Confidential Information. Upon request by the Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to the Confidential Information.

### **4. PATENT OR COPYRIGHT INFRINGEMENT**

Nothing in this Agreement is intended to grant any rights under any patent or copyright of either party, nor shall this Agreement grant either party any rights in or to the other party's confidential Information other than the limited right to review such Confidential Information in connection with the proposed Relationship between the parties.

### **5. Time Periods**

The non-disclosure provisions of this Agreement shall survive the termination of this Agreement and Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as a trade secret or until Disclosing Party sends Receiving Party written notice releasing Receiving Party from this Agreement, whichever occurs first.

### **6. Relationship**

Nothing in this Agreement shall be construed as creating a partnership, joint venture, or employer-employee relationship between the Parties.

### **7. SUCCESSORS AND ASSIGNS :**

This Agreement shall be binding upon and for the benefit of the undersigned parties, their successors and assigns, provided that confidential Information of the disclosing party may not be assigned without the prior written consent of the disclosing party unless the assignee shall be the successor entity to the assignor upon the dissolution of the assignor in its present form. Failure to enforce any provision of this Agreement by a party shall not constitute a waiver of any term hereof by such party.

## **8. Severability**

If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to affect the intent of the parties.

## **9. REMEDIES**

Each party agrees that its obligations provided in this Agreement are necessary and reasonable in order to protect the disclosing party and its business, and each party expressly agrees that monetary damages would be inadequate to compensate the disclosing party for any breach by the receiving party of its covenants and agreements set forth in this Agreement. Accordingly, each party agrees and acknowledges that any such violation or threatened violation will cause irreparable injury to the disclosing party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the disclosing party shall be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by the receiving party, without the necessity of proving actual damages.

## **10. Indemnity**

Receiving Party agrees to indemnify Disclosing Party against any and all losses, damages, claims or expenses incurred or suffered by Disclosing Party as a result of Receiving Party's breach of this Agreement

## **11. GOVERNING LAW**

This Agreement shall be governed by and construed and enforced in accordance with the laws of \_\_\_\_ [Name the State/Country], and shall be binding upon the parties to this Agreement worldwide.

