

# Confidentiality & Proprietary Information Policy and Agreement



*HR managers in any part of the country can adapt this Model Agreement for use at their own workplace.*

## **Confidentiality Agreement**

This Confidentiality ("Agreement") is entered into between ABC Company ("Employee") and \_\_\_\_\_ ("Employer").

### **RECITALS:**

### **WHEREAS:**

- The success of Employer's business depends on Employer's possession of confidential, proprietary information not generally known to others, including specialized information about research, development, production, marketing, sales and management.
- Employer wishes to protect its confidential proprietary information and secure the promise of all employees to maintain its confidentiality.
- Employee acknowledges that Employer desires to protect its confidential proprietary information, that his/her employment creates a duty of trust and confidentiality to Employer with respect to its confidential proprietary information and, as a condition of employment or continued employment with Employer, Employee agrees to be bound by the terms of this Agreement.

### **AGREEMENT:**

WHEREFORE, Employer and Employee agree as follows:

- 1. DEFINITION & GENERAL DUTIES RESPECTING CONFIDENTIAL INFORMATION & PROPRIETARY DATA**
2. "Confidential Information" and "Proprietary Data" mean information and data not generally known outside the company concerning Employer or its businesses and the Employer's business and technical information, including but not limited to, patent applications, information relating to inventions, discoveries, products, plans, calculations, concepts, design sheets, design data, system design, blueprints, computer programs, algorithms, software, firmware, hardware, manuals, drawings, photographs, devices, samples, models, processes, specifications, instructions, research, test procedures and results, equipment,

identity and description of computerized records, customer lists, supplier identity, marketing and sales plans, financial information, business plans, costs, pricing information, and all other concepts or ideas involving or reasonably related to the business or prospective business of Employer, or information received by the Employer as to which there is a bona fide obligation, contractual or otherwise, on Employer's part, not to disclose same.

3. Employee understands and agrees that the Confidential Information and Proprietary Data constitute trade secrets of Employer and that at all times material to this Agreement, Employer has taken all reasonable steps to protect the confidentiality of this information.
4. Employee agrees not to use Confidential Information and/or Proprietary Data for the benefit of himself/herself or any other person, corporation or entity, other than the Employer, during the term of employee's employment with Employer, or any time thereafter, including any time during which Employee is retained as a consultant by Employer.
5. Employee agrees that the Confidential Information and Proprietary Data shall be and remain the exclusive property of Employer and shall not be removed from the premises of Employer under any circumstances whatsoever without Employer's prior written consent, and if removed, shall be immediately returned to Employer upon any termination of Employee's employment, and no copies thereof may be kept by Employee.
6. All notes, notebooks, memorandums, computer disks and other similar repositories of information containing or relating in any way to Confidential Information and/or Proprietary Data shall be the property of Employer. All such items made or compiled by Employee or made available to Employee during the period of employment, including all copies thereof, shall be held by Employee in trust and solely for the benefit of Employer and shall be delivered to the Employer by Employee upon termination of employment with Employer, or at any other time upon the request of the Employer.
7. Employee agrees that Employee shall not disclose to any other person or entity, either directly or indirectly, the Confidential Information and/or Proprietary Data. Employee understands that the use or disclosure of any of the Confidential Information and/or Proprietary Data may be cause for an action at law or in equity in an appropriate court of the Province of

[Province] or of any jurisdiction in Canada, and that without waiving the right to collect damages from Employee, Employer shall be entitled to an injunction prohibiting the use or disclosure of the Confidential Information and Proprietary Data.

## 2. DUTIES RESPECTING INVENTIONS

3. Employee shall promptly disclose to Employer, in writing, all inventions, ideas, discoveries, and improvements whether or not patentable or registrable under Copyright or similar statutes, made or conceived or reduced to practice or learned by Employee, either alone or jointly with others, during the period of employment with Employer. Employee agrees that all such inventions (intellectual, visual or material) are the sole property of Employer.
4. Employee assigns to Employer all right, title and interest in and to any and all inventions, ideas, discoveries, and improvements, with the exception of inventions, ideas, discoveries, and improvements that qualify for protection under Section C below.
5. This Agreement does not require assignment of an invention that is fully qualified for protection under relevant provincial, territorial or federal employment or labour codes, which may provide as follows:

Any provision in an employment agreement which provides that an employee shall assign or offer to assign any of his or her rights in an invention to his or her employer shall not apply to an invention for which no equipment, supplies, facility or trade secret information of the employer was used and which was developed entirely on the employee's time, and (a) which does not relate (1) to the business of the employer or (2) to the employer's actual or demonstrably anticipated research or development, or (b) which does not result from any work performed by the employee for the employer.

1. Any inventions, ideas, discoveries, and improvements conceived or made by Employee prior to the execution of this Agreement and not intended to be included within its provisions are listed or described on Exhibit "A" attached to this Agreement, and the absence of any such list or description indicates that there are no such inventions, ideas, discoveries, or improvements not covered by this Agreement.
  
3. **EMPLOYEE COVENANT NOT TO COMPETE**
4. During Employee's employment with Employer, Employee agrees not to engage in any business competitive with any business of Employer without Employer's prior written consent.
5. After termination of employment with Employer, Employee agrees that if he/she engages in employment or other activities independently or in association with others in any business competitive with any business of Employer or any business which may reasonably be expected to compete with any business of Employer, Employee is required to inform the prospective employer or association that Employee cannot divulge any secrets or Confidential or Proprietary Information that Employee may have learned during Employee's employment with Employer. "In association with others" shall include accepting any employment with, or rendering, directly or indirectly, advice or assistance of any kind to any person, partnership, corporation, association, or other organization.

#### 4. NATURE OF RELATIONSHIP

It is expressly understood and agreed that this Agreement does not create or define the terms of any contract of employment, whether expressed or implied, nor does this Agreement create any guarantee of continuing employment between Employer and Employee.

#### 5. MISCELLANEOUS PROVISIONS

6. This Agreement shall inure to the benefit of the successors and assigns of the Employer, and shall be binding upon the Employee's heirs, assigns, administrators and representatives.
7. All provisions of this Agreement shall be severable for purposes of enforcement. If any provision or clause of this Agreement is unenforceable at law or in equity, such clause or provision shall be severed from the remainder of this Agreement, and the remainder of this Agreement shall continue to be enforceable, according to its terms.
8. This Agreement shall be interpreted under and governed by the laws of the Province of \_\_\_\_\_ as applied to an agreement made and wholly performed within said Province.
9. This Agreement sets forth the entire Agreement as to its subject matter. No modification, amendment, termination or waiver of this Agreement shall be

binding unless in writing and signed by a duly authorized officer of Employer. Failure of Employer to insist upon strict compliance with any of the terms, covenants or conditions of this Agreement shall not be deemed a waiver of such terms, covenants or conditions.

10. This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof and supersedes any previous agreements between the parties relating to inventions and confidentiality.
11. In the event of any dispute related to this Agreement, the prevailing party in that dispute shall recover its legal fees.

This Agreement shall be effective on the date last written below.

---

Employee

---

Employer

---

Signature of Employee  
Representative

---

Signature of Employer

---

Title

---

Date

---

Date