

## NON-DISCLOSURE AGREEMENT GUIDELINES

### 1.0 PURPOSE.

This document provides an overview of the automated process that will be used by all \_\_\_\_\_ (“Company”) users when obtaining a non-disclosure agreement (NDA). This document also provides guidelines in the use and interpretation of an NDA and the various clauses contained within.

### 2.0 COMPANY STANDARD NDA FORMS.

2.1 The types of NDAs that can be generated include:

#### *NDA Form for Sales Opportunities:*

- Sales Umbrella Master NDA - The Sales Umbrella Master NDA should be used when Company anticipates that there will be multiple instances over time where the parties will be exchanging Confidential Information in support of the sale of Company Products and Services. This NDA covers all instances of sales-related disclosures and does not require further supplements or renewals.

#### *NDA Form for Technology-related disclosures (non-Sales):*

- Master Mutual NDA - The Master NDA should be used when Company anticipates that there will be multiple instances where the parties will be exchanging Confidential Information. This NDA provides for master legal terms with supplements being filled out for the specific instances of disclosures. This form should be used when Confidential Information is to be disclosed to and received by both parties to the NDA. Note that a Master NDA, standing alone, is insufficient and requires at least one supplement to identify the confidential information being disclosed and the permitted uses of that information.
- Supplement to Master Mutual NDA – This document should be used when there is a Master NDA which requires the use of supplements for each confidential information disclosure. Note that a Supplement, standing alone, is not sufficient and MUST incorporate the terms of an existing Master NDA. A new Supplement will be needed for each separate disclosure opportunity.
- One-Way NDA - This Agreement should be used when only one party is disclosing Confidential Information to the other party. This NDA is primarily used with engineering groups or in product development negotiations.
- Multiple-Party NDA - This Agreement should be used when Confidential Information is being disclosed to and/or received from three or more parties to the NDA. Supplements may also be used with the Multi-Party NDA.

- 2.2 **NOTE:** The NDA forms should **not be used** for the following engagements and types of disclosure:
- Source Code – Requires use of a Source Code Evaluation License.
  - Beta or Early Field Trial Tests – Requires use of a separate Beta or EFT agreement
  - Interoperability Testing projects – requires use of separate agreement

### 3.0 **WHY DO WE USE AN NDA?**

Because of the risks associated with disclosure or receipt of confidential information.

#### 3.1 **Risks in Disclosing Company’s Confidential Information without an NDA.**

- 3.1.1 Risk of having our Confidential Information get into the hands of competitors or other third parties, which could be detrimental to Company’s business;
- 3.1.2 Risk of having our confidential information used in a manner not anticipated; and
- 3.1.3 Losing trade secret protection.

#### 3.2 **Risks of Receiving Confidential Information without an NDA.**

- 3.2.1 We may be accused of “stealing” the information for our own use even if it is independently developed; and
- 3.2.2 A developmental effort currently underway in Company could be “tainted” by our acceptance of another party’s confidential information;

### 4.0 **PROCESS TO OBTAIN APPROVAL OF NDA.**

#### 4.1 **General.**

- 4.1.1 The preferred process for generating an NDA is the automated process which results in an electronically signed NDA. See section 4.2 for details regarding the automated process. If the parties do not want to electronically sign the NDA, then the NDA should be signed by both parties in hard-copy. See section 4.2 for details regarding this manual signature process.
- 4.1.2 In some cases, the nature of information being disclosed may be extremely sensitive, in which case the requestor can have the NDA marked private. This means that the agreement will not be made generally available to Company employees and will only be accessible by a select group of individuals identified by the requestor.

4.1.3 Obtaining signatures – **NOTE: All NDAs and Supplements require the signature of a Company Director or Country Manager level or above on behalf of Company.** The requestor (Company employee generating the NDA) should also obtain the signature of the other party.

4.1.4 *Why can't I sign?* If you attempt to sign a document without authority to do so, you would be falsely representing by your signature that you have the authority to bind Company to the terms and conditions that Company, in turn, will be obligated to fulfill. You would also be representing that the document constitutes an agreement that could be enforced by a court of law. If you do not have the authority to sign a document and you do sign the document, the following consequences may result: (i) you bind Company to terms and conditions that it may be unable to fulfill, (ii) you may cause Company to incur unwarranted and unexpected expenses, (iii) you may cause the customer dissatisfaction with Company, (iv) you may cause Company to be subject to suit, and/or (v) you may be subject to disciplinary action, up to and including termination.

## 4.2 Automated Process.

4.2.1 Each requestor will be prompted to answer a few simple questions which will guide the automated tool in providing the requestor with the appropriate NDA that meets their specific needs.

- The requestor will be asked to enter the company name, address, a description and purpose of the disclosure, determine who will be disclosing information, and assign a signatory for the other party(ies) who will be authorized to e-Sign the NDA on behalf of the other party. The requestor will also be permitted to identify other contacts that should have access to review the NDA. However, only one signatory is required for each party to the NDA.

4.2.2 Once the NDA questionnaire has been completed, the requestor will be permitted to preview the generated NDA and then will be directed to submit the NDA for e-Signature. **NOTE:** in some instances, the NDA will require Legal review and will first be forwarded to Legal before e-Signatures can be obtained; the tool will notify the requestor if this is the case.

4.2.3 Once the NDA is ready to obtain e-Signature and is submitted by the requestor, an email notification will be sent to the identified Company signatory to request their review and approval of the NDA. Once approved and e-Signed by Company, the NDA will be automatically emailed to the other party or parties. If the NDA is approved by all parties, a notice will be sent to the requestor indicating this status. If the NDA is not approved, email notification will be sent to the requestor with comments from the declining party. The requestor will then have the

opportunity to make necessary edits (subject to legal involvement, if necessary) or to cancel the NDA request.

4.2.4 **ALL** Company NDA's and Supplements require Director- or Country Manager-level signature (or above) on behalf of Company.

4.3 Manual Process.

All requests for an NDA should first be initiated within the NDA automation tool. If the other party refuses to e-Sign the agreement (for example, wants hard-copy signed documents or is requesting negotiated changes to the form) then the request should take the following steps:

4.3.1 For any requested changes to the form NDA, or to engage in negotiations as to the provisions of the NDA, the requestor will need to engage the appropriate legal contact, as prompted by the NDA tool.

4.3.2 Once the NDA form is final and agreed between the parties, the requestor (Company employee) should generate at least two (2) copies of the NDA for signature and distribution using the NDA tool (one original for Company's files, one original for each other party, and any other copies desired or requested by the requestor or the other party).

4.3.3 The requestor should retain a copy of the fully signed NDA for his or her records, and send one "original" of the fully signed document to the Legal Department: CMS Records, SJ2/1 for Company's records. The other original should be sent to the other party for their records.

## 5.0 **MOST COMMON PROVISIONS IN AN NDA – INTERPRETATION GUIDANCE.**

5.1 Confidential Information **must be marked.**

The NDA provides for disclosure of confidential information both in writing and orally. When confidential information is disclosed orally, the information must be identified as confidential at the time of disclosure and in a written summary provided to the other party typically within 30 days. The identification of Confidential Information is important because both parties need to have a clear understanding of the documents and information to which their obligations under the NDA will apply.

5.2 Description and Purpose.

These sections identify the confidential information the parties to the NDA are disclosing and the limited purpose(s) for which it can be used. The requestor should be as specific as possible, but not so narrow as to fail to exclude all topics of discussion. The requestors are fully authorized to fill in this information as it pertains to the NDA. For example in Section 2 you would list business/financial

information, products, technology, a particular project or any other information of a technical nature being disclosed by the parties. In Section 3, you would identify what each party is permitted to do with the information being disclosed. Since this is a business decision, the individual requestors are far more knowledgeable as to what should be filled in to these areas. Legal can assist, however, we do not have any standard verbiage for you to use in these open fields on the NDA. **NOTE:** You should not introduce any new legal terms in these sections or attempt to revise other provisions of the form NDA – they should only be used to specify the factual description of information and purpose of use (project- or disclosure-specific statements). If you have any questions, please ask your legal contact.

5.3 Affiliates.

Each party is permitted to disclose the other party's confidential information to affiliates (e.g., Company Technology, Inc., the company which employs most Company engineers) and to contractors (red badge non-employees).

5.4 Exceptions to Confidential Information.

Exceptions are important because they describe what is not confidential information, even if the information is designated as such. These provisions identify generally acceptable and common exceptions within commercial relationships.

5.5 Return of Confidential Information.

Each party will want its confidential information returned or certified as destroyed if the NDA is terminated. Please make sure that any request for return of documents be done in writing.

5.6 Independent Development and Residuals.

Each party needs to protect its right to develop other technology, and there is a possibility that development could already be going on for a similar product at Company without your knowledge. The residuals clause is important because it protects against claims that one party is "stealing" that other party's confidential information. It makes it clear that by virtue of engineers being exposed to information of another party, it is possible that they may learn certain general ideas and concepts that might find their way into other development efforts. Note that the residuals clause does not give the receiving party a patent license.

5.7 Intellectual Property Rights..

While the NDA contemplates sharing certain information, the NDA doesn't grant either party any further rights (ownership, license, or otherwise) in the information that is disclosed.

5.8 Warranty Disclaimer.

The purpose of this section is to make it clear that the information is provided as-is, with no representations or warranties by either party.

5.9 Export.

This provision simply provides notice that some confidential information may be subject to export restrictions. This section does not create any new obligation for any party – those obligations already exist under applicable law.

5.10 Term.

There are two time periods represented in this section. First, there is a “Term” of the agreement – this relates to how long the parties can keep disclosing information to each other under the NDA. Second, there is a period of confidentiality – this relates to how long information that has been disclosed is to be held in confidence (even if the Agreement has already expired).

5.11 General Section.

There are number of provisions that appear in the “General” section, including allowing the parties to seek injunctive relief, a statement as to independence of the parties, no obligation to pursue a transaction, governing law, etc. These provisions relate to generally acceptable and common positions within commercial relationships.

If you have any questions as to the interpretation of any of these provisions, please contact your legal representative.

**6.0 LEGAL CONTACTS.**

“**All**” NDA requests for assistance and questions should be submitted to the NDA Legal alias. A negotiator will respond to your request within 24 hours of receipt.