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The Secret Sauce: What are Non-Disclosure Agreements & Why Use Them?

DISCLAIMER: This outline is a general guide. Be sure to contact an attorney if you have questions or specific issues that need to be addressed.

What's your business's secret sauce? Have you taken steps to protect it? Businesses and individuals must do all they can to protect their confidential information/work, especially with the ever-changing realities we encounter in today's marketplace: remote work, collaborative work, and cloud sharing. Here's where the Non-Disclosure Agreement (NDA) comes in!

- 1. What is an NDA?** An NDA (also referred to as a "Confidentiality Agreement") is a legal contract between at least two parties that outlines and protects the confidential or proprietary information, material, or knowledge of at least one of the parties in the Agreement.
- 2. What information can be protected by an NDA?** NDAs can be used to keep private business information from becoming public, including trade secrets, manufacturing processes, sales contact lists, non-public company accounting information, internal business strategies, blueprints, and patent applications. NDA's are applicable to more businesses than you think.

Examples:

- Maybe you've found the perfect job candidate, and you want to begin the onboarding process as soon as possible, but you also want to protect your proprietary processes, so they don't end up in a competitor's hands.
- Maybe you're a business working with another freelancer, and you want to make sure that any protectable information that they may learn from you doesn't end up as public knowledge.

- 3. What information cannot be protected by an NDA?** You cannot use an NDA to protect information that is readily available to the public.

Examples:

- a list of products that can easily be found on the internet (*but* if you are giving someone or another business access to private information about *how* those products are made then that *could* be protected by an NDA).
- information that the non-disclosing party already knew before the NDA was signed
- information that a court orders to be disclosed.

4. **When should an NDA be used?** NDAs should be used by companies and individuals whenever their confidential information could possibly be disclosed to third-parties or the public. Companies often use NDAs when they bring on new employees in order to protect information like private client lists, proprietary software, and internal business procedures. NDAs are also often used by companies when they collaborate with other businesses or individuals to create new products, explore working together, or engage in a joint venture together.
5. **What do NDAs look like? What are some common provisions?** NDAs resemble other contracts in your day-to-day business affairs. They often include common contract provisions like preambles, definitions (in this case, to summarize what's considered confidential information under the Agreement), and remedies for breach of contract. They also include terms outlining:
 - What constitutes the disclosure of confidential information
 - The permitted uses of the confidential information
 - Circumstances in which any confidential information should be returned
6. **Next steps.** Protecting confidential information, including your intellectual property, should be of paramount importance to you and your business. You've worked hard to distinguish your business from your competitors. Do everything you can to defend your business's interests by requiring incoming employees and business collaborators to sign NDAs so your proprietary information doesn't fall into the wrong hands. Plus, they are easy to use and you can use your NDA template over and over again.

Trellis Legal offers a variety of templates for NDAs in our Trellis Template Library™:

- [Non-Disclosure/Assignment/Non-Solicitation Agreement for Employees](#) (\$160)
- [Non-Disclosure Agreement for a Business Collaboration/Relationship](#) (\$160)
- [Non-Disclosure Agreement \(NDA\) Bundle](#) (\$300), which includes both the NDA for Employees and the NDA for a business collaboration

Trellis Perks:

To value our loyal Resource List Subscribers, **use code NOV2020 to get 20% of your Template Library order!** AND if you purchase one of our templates and want us to review it for you, we offer a 30% discount off our contract review services! Here's to your continued success!

As always, please feel free to consult with us here at Trellis Legal if you have any NDA-related concerns that you'd like to discuss.