

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

XCZONE.TV considers the details of its facilities, production techniques and methods proprietary and trade secrets. Furthermore, knowledge of in-house projects, business or marketing plans constitute confidential information. Any viewing of not publically released works or footage is subject to this non-disclosure agreement.

WHEREAS, XCZONE.TV agrees to furnish _____ certain confidential information relating to ideas, inventions, services, techniques or products for the purposes of determining an interest in supplying, developing, manufacturing, selling or joint venturing;

WHEREAS, _____ agrees to review, examine, inspect or obtain such confidential information only for the purposes described above, and to otherwise hold such information confidential pursuant to the terms of this Agreement.

1. _____ agrees to hold confidential or proprietary information or trade secrets ("confidential information") in trust and confidence and agrees that it shall be used only for the contemplated purposes, shall not be used for any other purpose, or disclosed to any third party.

2. No copies will be made or retained of any written information or prototypes supplied without the permission of XCZONE.TV.

3. At the conclusion of any discussions, or upon demand by XCZONE.TV, all confidential information, including prototypes, written notes, photographs, sketches, models, memoranda or notes taken shall be returned to XCZONE.TV.

4. Confidential information shall not be disclosed to any employee, consultant or third party unless they agree to execute and be bound by the terms of this Agreement, and have been approved by XCZONE.TV.

5. This Agreement and its validity, construction and effect shall be governed by the laws of Canada.

AGREED AND ACCEPTED BY:

Date: _____

By _____ Witness: _____

Title: _____

By _____

Title _____

WHAT IS A NONDISCLOSURE AGREEMENT?

A Nondisclosure Agreement, sometimes called a confidentiality agreement, is a contract whereby one or both of the parties agree that information, ideas, etc. exchanged between them will not be shared with outsiders. Essentially, the information will be treated as confidential.

WHY USE A NONDISCLOSURE AGREEMENT?

Nondisclosure agreements ("NDAs") are generally used when a company or individual has a story idea, or a new process, invention, product or even a business plan, that it wants the recipient to evaluate. Generally, this is done with an eye toward eventually selling or licensing the material to the recipient. Most of the time the NDA restricts the recipient's use of the information to evaluation purposes only, requiring a license or purchase before the recipient can use the information in its business.

NDAs can serve several purposes. They are used to protect sensitive creative, technical or commercial information from theft. If the information is revealed to a third party the injured party, or used by the recipient without permission, the disclosing party has cause to claim a breach of contract and can seek injunctive and monetary damages.

An NDA can also help a discloser avoid forfeiture of patent rights. Under Patent law, once a novel invention is publicly available (i.e., "in the public domain") it is no longer eligible for patent protection.

Finally, an NDA can be used to articulate the specifics of which information can and cannot be disclosed. Typically as a result of negotiation to identify and classify the nondisclosable information as confidential or proprietary. Disclosing parties seek the broadest definition, while recipients generally prefer the narrowest definition. By carefully negotiating the NDA, a recipient of new ideas and information can protect itself against later claims of unfair competition or misappropriation.

WHAT SHOULD AN NDA COVER?

It is important for the recipient to carefully identify the kinds of material that are NOT covered by the NDA. For example, information already known to the recipient, or known to the public should not be subject to treatment as confidential. Likewise, information which becomes known to recipient from a third party, and by no fault of the recipient should be excluded. Finally, many NDAs exclude information independently created by the recipient.

An NDA is only as good as the procedures it articulates for the handling of confidential material. Typically, the NDA requires that the parties will treat each other's confidential information as though it were its own. This assumes, however, that the recipient has established protocols for handling confidential material. Obviously where no such protocols already exist, it is prudent to more specifically lay out provisions governing access to the confidential information. In many cases, this involves labeling the information as "confidential" and defining where it is to be kept, who within the organization may view it, etc.

Although almost any kind of information can be considered confidential (ideas, stories, character descriptions, data, know-how, prototypes, engineering drawings, computer software, test results, tools, systems, and specifications are but a few illustrations) NDAs are only infrequently used in the entertainment industry. More commonly, recipients of literary material, pitches, etc., insist on a comprehensive submission release. (More about these in a future article)

CONCLUSION

There are any number of situations that call for the use of a Nondisclosure agreement. Knowing the basic purpose and structure of such agreements is an important first step toward protecting one's intellectual property assets. The assistance of an experienced attorney can help avoid oversights, ambiguities and other costly mistakes.