

## MEMORANDUM

### Non-Disclosure Agreements

NDA's are common contracts used in a variety of settings to legally bind individuals and organizations to secrecy and confidentiality regarding certain shared information. NDA's are either unilateral/nonmutual/one-way or reciprocal/mutual/two-way, meaning they either bind one or both parties to secrecy. The NDA template provided by Stop TB for CAD implementers is **unilateral**, for the manufacturer to protect the confidentiality of implementer data. Implementers may also be asked to sign an NDA from the manufacturer, protecting the confidentiality of manufacturer data.

The key elements of Stop TB's NDA template include:

- ⇒ *Identification of the Parties to the NDA*
  - Disclosing party, receiving part or recipient
- ⇒ *Purpose of the NDA*
  - Established the purpose for the NDA by explaining the services the Receiving Party will perform for the Disclosing Party, i.e., the reason the confidential information will be shared.
- ⇒ *Confidential Information Definition*
  - Define the information must be kept confidential
- ⇒ *Scope and Duty of Confidentiality Obligation*
  - Ensure the recipient (1) keeps the information confidential/secret and (2) does not use the confidential information itself except as permitted according to this NDA
    - "Recipient shall hold in trust and confidence, and not disclose to others or use except as permitted in this Agreement..."
    - "The Recipient agrees that it may only access and use the Disclosing Party's Confidential Information made available to it to the extent necessary for it to perform the Services."
- ⇒ *Protection of Confidential Information / Receiving Party Obligations*
  - Establish the obligations of the party receiving the confidential information
    - Including providing detailed instructions and oblige manufacturers to protect implementer data with the same level of protections they provide their own confidential information.
  - Can mention no copying or modifying of the information without written consent of the Disclosing Party
  - No disclosure to employees:
    - "Recipient shall not disclose any Confidential Information to any employees of Recipient, except those employees who are required to have the Confidential Information in order to perform their job duties in

connection with the limited purposes of this Agreement. Each permitted employee to whom Confidential Information is disclosed will sign a nondisclosure agreement that provides at least as much protection as this Agreement following the request of Owner.”

⇒ *Exclusions from Confidentiality and Required Disclosures*

- Exclusions from the obligations of the receiving party, intended to address situations where it would be unfair or too burdensome for the recipient to keep the information confidential.
- This may include information that is:
  - Already known to the recipient
  - Already publicly known (providing the recipient didn't wrongfully release it to the public)
  - Independently developed by the recipient without reference to or use of the confidential information of the disclosing party
  - Disclosed to the recipient by some other party who has no duty of the confidentiality to the disclosing party
  - Legally required disclosures stemming from a court order, with advance notice by the recipient about the legal process.

⇒ *Return or Destruction of the Information/Data*

- At the end of the agreement, the confidential information typically needs to be returned or destroyed by the Recipient Party. The NDA should contain a clause stipulating exactly how and when this should occur.

⇒ *Term of the Agreement / Survival*

- How long the agreement is in effect for:
  - “This Agreement and the obligations herein shall survive for as long as the Recipient possesses the Disclosing Party's Confidential information, regardless of whether or not the Recipient is still providing Services to the Disclosing Party.”

⇒ *Severability*

- “If any provision of this Agreement is invalid or unenforceable, then such provision shall be construed and limited to the extent necessary, or severed if necessary, in order to eliminate such invalidity or unenforceability, and the other provisions of this Agreement shall not be affected thereby.”

⇒ *Jurisdiction for Disputes*

- Establish a local jurisdiction for the adjudication of a breach or dispute of the agreement

⇒ *Remedies and Injunctions*

- Specify acceptable remedies, including the right to injunctive relief to stop the other side from breaching the agreement. This clause simply says that you can get a court order stopping the other party from doing the breaching act (as opposed to just getting money damages after it's too late).
  - “The Recipient acknowledges that the unauthorized use or disclosure of the Disclosing Party's Confidential Information or any

breach of this Agreement by the Recipient may cause the Disclosing Party to suffer irreparable injury not compensable by monetary damages and for which the Disclosing Party may not have an adequate remedy at law. In seeking enforcement of any of these obligations, the Disclosing Party will be entitled (in addition to other remedies) to preliminary and permanent injunctive and other equitable relief to prevent, discontinue, and/or restrain any breach of this Agreement.”

⇒ *Entire Agreement*

- Establishes that the NDA constitutes the entire agreement regarding the confidentiality of information and supersedes all other agreements regarding the agreement’s subject matter.
  - “This NDA contains the final and entire agreement and understanding between the Parties concerning the subject matter of this NDA and is the complete and exclusive statement of its terms. This NDA supersedes all prior agreement and understandings, whether oral or written, regarding its subject matter. There are no other agreements, contracts, promises, representations, guarantees, or other dealings affecting or altering this NDA.”
  - “This NDA may not be amended except in a writing signed by both parties.”

⇒ *Legal and Attorney Fees*

- “The prevailing party in the event of a dispute shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorney’s fees incurred in enforcing this NDA.”

⇒ *No Obligations/Commitments Clause*

- Neither this NDA nor the supply of any confidential information under this NDA obligates the Disclosing Party to proceed with any transaction or other agreement for services with the Receiving Party.