



Excerpted from
FastTrac® TechVenture™



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A program of the Kauffman Foundation

Protecting Your Intellectual Property from Within

Your employees have access to confidential and proprietary information about your business. You should take steps to ensure that they don't intentionally or inadvertently reveal your secrets to competitors.

Employee Agreements

Creating written agreements is the first step in protecting your company's intellectual property. Legal documents can't prevent an employee from doing your company harm, but they do demonstrate that you are serious about protecting your intellectual property and that you are willing to prosecute those who betray your trust. Consult your attorney about creating appropriate legal documents for your employees and your industry.

Your employee agreements may include all or some of the following provisions:

Non-disclosure agreements (NDA) – You should require all employees to sign a non-disclosure agreement. The best time to obtain such agreements is at hiring, although they can be enforceable if required at a later time. As part of the NDA, the employee should agree to not improperly use information of your company, prior employers, or third parties. When an employee leaves, require the return of all company documents containing trade secrets, such as customer lists and manuals. At such time, the employee should also be reminded not to violate the confidentiality obligations in his or her non-disclosure agreement.

Non-compete agreements – A non-compete agreement limits a former employee's right to work for someone who is a direct competitor of your business. Be selective about the employees who sign non-compete agreements; only those employees who truly possess inside information should be asked to sign them. A non-compete agreement cannot severely limit an employee's right to work. It cannot last too long, cover too wide a geographic area, or prohibit a former employee from engaging in too many types of businesses.

Non-solicitation agreements – A non-solicitation agreement prohibits employees, for a certain time period following employment, from soliciting other employees to leave the company and work elsewhere.

Assignment of rights – Your employment agreements should include a statement that all employees' work product and all intellectual property rights in that work are owned by the company and are not to be used by them personally outside work or by their future employers. If your employees are likely to develop ideas or inventions in the course of their employment, your agreement can obligate them to assign their patent rights to the company and to assist with the patent application process.

TIP Make sure that your agreements with independent contractors have a provision not to disclose or misuse confidential information. You should also include a provision stating that the company owns all intellectual property rights in the work product produced.



Non-compete agreements are not enforceable in every state.



Limiting Access to Proprietary Information

Your employees may unwittingly reveal your proprietary information to competitors. It's wise to institute a clear and thorough security policy at the earliest stages of your company's development to protect against these inadvertent leaks. Employees should get in the habit of taking all necessary precautions to safeguard your intellectual property.

Here are some actions you can take to limit access to your proprietary information:

Identify and label confidential information – Have your company's managers and engineers identify which internal company documents may be of value. Documents containing sensitive information may be designated by a "Company Confidential" stamp. Instruct personnel to display "[Company Name] Confidential" in headers or footers on electronic documents, slides, or other visual presentations of newly generated material. This will provide notice to anyone who comes into contact with the information.

Secure information – Instruct employees to store all confidential information securely. Prepare a list of documents containing trade secrets and keep both the list and the documents in locked cabinets with access limited to authorized personnel. Limit the photocopying or other copying of proprietary information. Make it a policy to shred documents before discarding them. Maintain a clean desk policy, in which employees have to remove from public view proprietary information, personal information (for example, rolodexes or PDAs), and computer access information (for example, passwords or networks).

Restrict visitors' access – Follow and observe visitor sign-in procedures, and ensure that visitors are restricted, escorted, or both.

Limit the information that goes in the public domain – To protect against inadvertent disclosure to outsiders, require employees to obtain approval from their supervisors before publishing articles or giving speeches that might include unintended disclosure of trade secrets.