

CHECKLIST FOR MAINTAINING THE CONFIDENTIALITY OF TRADE SECRETS AND OTHER PROPRIETARY INFORMATION

General Protective Measures

- Nondisclosure and invention agreements should be executed with employees upon hire, and with co-venturers, licensees and customers when first doing business with them. Such agreements are essential to demonstrate the employer's reasonable efforts to safeguard confidential information, processes, or devices.
- Noncompetition agreements should be executed by employees precluding them from working directly or indirectly with any competitor of the company for a reasonable scope and duration.
- Employment agreements should include provisions whereby the employee assigns to the company ownership in all inventions, proprietary information and/or work product that the employee may create, develop or enhance pursuant to his or her employment with the company.
- Employees should receive specific written reminders that certain data, projects or processes to which they are privy or have access are confidential and are covered by an obligation of nondisclosure.
- Documents containing confidential information should be designated as "confidential" and kept in locked files.
- Burn boxes should be used to destroy confidential records.
- Access to areas in which trade secrets or other confidential information could be visually revealed should be restricted through the use of:
 - Lobby monitoring;
 - Visitor sign-ins, badges, and escort requirements;
 - Limitations on plant tours; and
 - Nondisclosure agreements for persons on plant tours or other persons entering such areas.
- Areas in which trade secrets or other confidential information could be visually revealed should be designated as such.
- Publications and speeches by employees should be reviewed and edited, where necessary, to prevent disclosure and personal use of confidential information.

- Confidential documents should be circulated only on a carefully considered "need-to-know" basis and the recipients should be subject to a confidentiality agreement or confidentiality obligations sufficient to protect the disclosed information.
- Require third parties who are provided confidential information to immediately notify the company in the event of any unauthorized disclosure or dissemination of confidential information and to take all available measures to stop any further breaches and to recapture the unauthorized disclosures.
- Exit interviews should be conducted with employees to review what trade secrets and other confidential information may be within the employee's possession and to admonish against their unauthorized use and disclosure. Employees should also be required to return all confidential records before they leave the company.
- When an employee covered by a confidentiality obligation leaves the company for a new job, a letter should be sent to the new employer, informing it of the employee's continuing obligation not to use or disclose trade secrets or other proprietary information. When appropriate, this letter should also inform the new employer that if the new employer utilizes or allows the employee to utilize any confidential information it will be joined as a defendant in litigation aimed at preventing disclosure or use of the confidential information, as well potential claims for interference with its contractual relationship with the former employee and misappropriation of the company's proprietary information. (Obviously, the decision to join the new employer in any enforcement action depends on a variety of factors including the nature of the former employee's obligation, whether the employee has engaged in any prohibited activities since leaving the company, and the likelihood that the obligation has been or will be violated by the new employment.)
- As a matter of policy, bring legal actions against former employees and others who engage in the unauthorized use or disclosure of trade secrets.

Special Measures Designed to Protect Computer Software

- License (rather than sell) software;
- Require customers to execute nondisclosure agreements for all materials issued and to establish and follow procedures for maintaining the confidentiality of the materials;
- Require customers to maintain adequate security systems that will sufficiently protect the software programs.
- Furnish customers with object programs geared to their particular use;
- Restrict access to databases through the use of passwords, and guard against the indiscriminate circulation of passwords;

- Feed fictitious compilations of data into databases, so that misappropriation may be readily identified;
- Place notices on software programs and data displays as well as on accompanying documentation and manuals warning against disclosure, copying and other misuse;
- Require the employees of customers to keep work inventories, inventor's notebooks, or similar records, as appropriate.

Special Measures Designed to Protect Research and Development or Manufacturing Activities

- Use unnamed or coded ingredients in manufacturing processes;
- Divide secret processes into steps and segregate the various departments that work on each step;
- Destroy old lab samples and prototypes.

Miscellaneous Protections

- Caution employees about the extent to which they may discuss their work with prospective and future employers;
- Require consultants to sign nondisclosure agreements and advise them not to discuss their work with others;
- Caution customers not to disclose their account with the company's competitors;
- Require vendors to sign nondisclosure agreements and advise them not to discuss the company's account with others;
- Be wary of phony bid requests and other unwarranted or suspicious attempts to gain access to company information or premises;
- Monitor advertisements and other publications in trade journals to avoid disclosure of the company's customers, marketing *plans* and research and development activities;
- Scrutinize government filings and indicate, where appropriate, that the information furnished contains trade secrets or confidential data. Become familiar and fully comply with the agency's procedures for protecting confidential information from disclosure under the Freedom of Information Act;
- Caution the company's trade show representatives not to disclose confidential information.