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TO OUR CLIENTS:

STRATEGIES FOR PROTECTING YOUR COMPANY'S CONFIDENTIAL INFORMATION

What is a Company's Confidential Information?

A Company's confidential information includes, but is not limited to, trade secrets, pre-application patents and any proprietary business information or methods such as client lists and other know how that the company wishes to keep confidential from competitors and others.

Trade Secrets: Include information or methods that are not protectable by patents, or information that a company never wants to be available in the public domain. Protection of trade secrets is indefinite in time if they are properly kept secret. Examples include KFC's recipes or the formula for Coca-Cola.

Patents: Include almost every kind of invention as long as it is novel and non-obvious. Inventions may include designs, processes, machines, manufactures, and compositions of matter. Protection of utility patents is limited to 20 years from filing. Design patents are protected 14 years from issuance.

Other: Anything that does not qualify as either of the above or that the company cannot or does not want to protect as either a patent or a trade secret, but that the company still wishes to keep confidential.

How is a Company's Confidential Information Protected?

Trade Secrets: Protection is under state law. Under New York State law, a cause of action for misappropriation of trade secrets requires among other things, a concerted effort by the company to keep the information secret and takes into account measures taken by the company to guard its secrets. In some instances, companies may prefer not to litigate for misappropriation of trade secrets because these secrets may be divulged during the course of proceedings. Trade secrets are difficult and expensive to protect, and can be carelessly divulged by an indiscreet employee or an inadvertent disclosure.

Patents: Protection is under Federal law and the patent must be issued before a suit can be filed. In order to preserve the right to patent an invention, the inventor generally has one year from the first public disclosure to file for patent protection. The intricacies of the actual invention should be kept confidential in order to avoid setting off the one year clock.

Other: Things that may not qualify as patentable or simply information that a company prefers to keep confidential but not necessarily protect as a trade secret. These forms of confidential information are best protected by contracts.

Educating employees and clients

Under New York common law, employees have a duty of good faith and loyalty to their employer in the performance of their duties. New York common law affords some protection to employers of their confidential information which has been misappropriated during and after the course of employment. Nonetheless, it is in the employer's best interest to have a written agreement in place that clearly outlines the employee's duty to protect and not disclose or use confidential information. This is best

done at the outset of employment. This agreement should include any matters that the potential employee considers his material including a legitimate trade secret.

Care must be taken to ensure that any agreements signed by employees do not violate the employee's right to work wherever they wish, but sufficiently protect the company's trade secrets, pre-application patents and any other confidential information, without being at risk of the agreement being overturned by a court.

Prior to doing business where confidential information will likely be divulged, it is advisable to have any potential clients or business partners sign a non-disclosure agreement (NDA) to protect any such information at the outset of the relationship.

Best Practices for Protecting Confidential Information

- Formulate a policy on the creation, distribution and storage of confidential information to educate employees and independent contractors working with your organization.
- Have employees (including independent contractors) sign confidentiality agreements at the outset of employment covering the treatment of confidential information during and post employment.
- Have a non-disclosure agreement ready to use when divulging confidential information to any potential clients or business partners.
- Mark confidential information as 'Confidential' and limit access to this information to a need to know basis: make sensitive electronic files password protected and keep physical files in a secure area.
- Discuss information security strategies with your IT Department on how to properly secure networks and any computers and laptops in the company.
- Dispose of confidential information in a secure manner by securely shredding paper and securely deleting computer files.
- Seek advice from a patent attorney on the disclosure of confidential information of patentable inventions.

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