

Confidentiality agreements

Confidentiality agreements, also called Non-Disclosure Agreements (NDAs), are used to protect confidential information. They can be one-way (where only one side is giving out information) or mutual (where both are).

Practical concerns

- a confidentiality agreement shouldn't mean you trust someone you otherwise wouldn't
- confidentiality agreements can be difficult to enforce
- you should still consider labelling information as confidential and/or using technical measures to prevent unauthorised use or copying
- disclosure of confidential information can be limited or staggered depending on how close the relationship is
- the best way to protect confidential information is not to disclose at all in the first place.

What is confidential information?

- the definition should be broad enough to cover all relevant types of information
- is there any specific information (or intellectual property) that you wish to protect?
- consider what isn't included (public information for example).

Permitted purpose

- describes what the information may be used for
- must be accurate and unambiguous
- doesn't need to include all the details of the intended relationship
- use of the confidential information should be restricted to the permitted purpose.

Other recipients

- disclosure of information should be restricted to employees and advisors necessarily involved in the permitted purpose
- they should be subject to confidentiality obligations in their own right
- recipient should be responsible for any breach of the confidentiality obligations by them.

Security

- specific security obligations may be required depending on:
 - how sensitive the information being disclosed is
 - how much information is disclosed
 - what format it's in
 - what the permitted purpose is.

Other restrictions

- what are you actually looking to protect? Would other restrictions be more appropriate?
- non-solicitation of employees
- non-circumvention clauses to stop dealings with your suppliers or clients
- provisions in relation to ownership and protection of IP.

Duration

- depends on how time-sensitive the information is
- many agreements will have indefinite obligations.



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