



Nondisclosure Agreement Teardown

Overview:

NDA's are among the most common contracts startups encounter — used when sharing information with potential investors, partners, contractors, or customers. They seem simple, but the details matter. Here's a breakdown of the key provisions you'll see in most NDAs, and what to watch out for.

1. Definition of “Disclosing Party” and “Receiving Party”

- **What it says:** The “Disclosing Party” (aka “Discloser”) is the one sharing confidential information, and the “Receiving Party” (aka “Recipient”) is the one getting it. In a **mutual NDA**, both sides can be both.
- **Why it matters:** This determines whose information is being protected. If you're only the Disclosing Party, make sure the NDA isn't one-sided and leaves you exposed when the roles reverse. A mutual NDA is usually best for partnerships, contractors, and negotiations. *Additionally, look at the NDA to make sure the provisions really are mutual — just because mutual terms like “Receiving Party” and “Disclosing Party” are used, doesn't mean that the NDA is truly “mutual.”*

2. Definition of Confidential Information

- **What it says:** Lists what qualifies as “confidential,” often including business plans, technical data, customer lists, and more.
- **Why it matters:** A broad definition protects the disclosing party, but beware of NDAs that include everything (including information already public). Narrow, reasonable definitions are easier to enforce. If you're the “Receiving Party,” make sure that the provisions aren't overly broad in such a way that could restrict your ability to carry on your business.

3. Exclusions from Confidentiality

- **What it says:** Information that isn't covered — usually info that's already public, already known, or independently developed.
- **Why it matters:** These carve-outs are standard and should be included, especially if you're the “Receiving Party.” These provisions are often (and, perhaps, most appropriately) included in the definition of Confidential Information section, which *excludes* them from the definition itself. Some NDAs will instead have exclusion to the *obligations* of confidentiality.



4. Obligations of the Receiving Party

- **What it says:** The party receiving confidential info must use it only for an agreed purpose and take steps to protect it.
- **Why it matters:** Look for clear language about *what the receiving party can and cannot do*. Watch for vague terms that give them wiggle room, such as “commercially reasonable efforts,” without specific details. If you’re the receiving party and intend to share confidential information with your employees, contractors, and advisors, make sure that the NDA permits this type of disclosure before sharing confidential information.

5. Term / Duration

- **What it says:** This often includes two different terms: (1) How long the confidentiality obligations last (often 2–5 years), and (2) how long the NDA will be effective.
- **Why it matters:** The term of the NDA covers the term during which any confidential information that is shared is subject to the obligations of the NDA. The length of the confidentiality obligations usually extends beyond the term of the NDA for several years or, in the case of confidential information that constitutes a “trade secret” under applicable law, may extend into perpetuity (or at least until it no longer constitutes a “trade secret”).

Note: “Trade secrets” have specific definitions under applicable state laws, and not any confidential information meets that definition. So, all trade secrets are “Confidential Information,” but not all confidential information is a “trade secret.”

6. Remedies / Enforcement

- **What it says:** What happens if the NDA is breached — often including injunctive relief (a court order to stop disclosure).
- **Why it matters:** These clauses give the disclosing party a way to enforce its rights quickly. Without them, the only option may be suing for money damages after the harm is already done.

7. Miscellaneous Terms

- **What it says:** Boilerplate like governing law, dispute resolution, and assignment restrictions.
- **Why it matters:** Don’t skip these. If the NDA is governed by a state you’re not familiar with, or allows assignment without consent, it can work against you.



Red Flags in NDAs

- ✗ One-way NDA that only protects the other party
- ✗ Overly broad definitions of “Confidential Information”
- ✗ Unlimited carve-outs that make confidentiality meaningless
- ✗ Terms that allow disclosure to “affiliates” without limits
- ✗ Extremely short confidentiality periods (e.g., 6 months)
- ✗ Inclusion of “restrictive covenants,” like non-solicitation and non-competition provisions

Founder Tips

- ✓ Use a **mutual NDA** whenever possible — both sides share protection. This is true even if you’re the primary disclosing party as it gives you a potential defense if they claim that you breached the NDA.
- ✓ Tailor duration to the type of info being shared. Specifically, if you’re sharing information that constitutes a “trade secret,” then ensure that the other party is required to keep it confidential in perpetuity.
- ✓ Pair NDAs with clear contracts (like MSAs or SOWs) for ongoing work. Often, the terms of the NDA will state whether the NDA will be *replaced* by a follow-on agreement or that it will *integrate* into and form a part of the more complete contract.
- ✓ Remember: NDAs build trust, but they’re not a substitute for good contracts. If you’re disclosing confidential information, it’s a lot easier to limit what you share in the first place than it is to sue the receiving party for breach of the NDA.