

NON-DISCLOSURE AGREEMENT CHECKLIST



(6 often overlooked and ignored terms critical for any NDA)



Disclosing Party? Broad definition of "Confidential Information."

As the Disclosing Party, you want a broad definition of "Confidential Information." This prevents the Recipient from claiming information you disclosed was not confidential (even though you disagree).



Recipient? Narrow definition of "Confidential Information."

As the Recipient, you want a narrow definition of "Confidential Information." This prevents the Disclosing Party from claiming you disclosed information in violation of the NDA (even though you thought it was common knowledge).



Is a specific purpose identified for use of Confidential Information?

This might simply be "evaluation of a potential business arrangement." Identifying a specific purpose helps restrict use of your Confidential Information for purposes not intended (i.e. to duplication of your proprietary process).



Have you included Affiliates?

If you have a holding company or subsidiary companies, then you should consider identifying those companies in the NDA. Oftentimes, information owned by an affiliate is disclosed (without being named a party to the NDA). This ensures any affiliate information is also protected.



Is your most valuable IP assets specifically identified in the definition of "Confidential Information."

To improve enforceability, you should identify specific intellectual property that gives you a competitive advantage in the definition of "Confidential Information." This might be your secret recipe for a signature dish, if a restaurant (the "Chef's White Pizza Recipe"), or a special tech algorithm.



Are disputes required to be resolved in a court convenient for you?

Having to enforce your rights under an NDA in an out-of-state court can be prohibitively expensive and inconvenient. By selecting the forum in the NDA, you can ensure you'll the home field advantage.