

Confidentiality agreements

Confidentiality agreements are also called Non-Disclosure Agreements (NDAs) and their purpose is to define and 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 and can be difficult to enforce.
- You may wish to label confidential information or use technical measures to prevent unauthorised use or copying
- Disclosure can be limited or staggered depending on how close the relationship is.
- Best way to protect confidential information is not to disclose at all in the first place

What is confidential information?

- 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 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 also be subject to confidentiality obligations (in relation to the recipient)
- Recipient should be responsible for their actions

Duration

- Depends on how time-sensitive the information is
- Many agreements will have indefinite obligations

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