

# Confidentiality Agreements

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# Confidentiality Agreement vs. **↑** Disclosure Agreement

Both agreements protect the **same subject matter** (i.e. a company's confidential information).

Then what's the difference?

The title "NDA" is used in reference to a **free-standing** agreement.

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# What do NDAs do?



Contractually obligates a party receiving confidential information in a confidential setting from **using disclosing** the information except as expressly permitted by the disclosing party.

- i.e. a legal document that keeps sensitive information

# Why use a NDA?

Your startup has important information it must **protect** in order to maintain its value:

- Trade secrets
- Patents
- Commercial advantage



# Trade Secrets

Confidential information may also be subject to protection as trade secrets under state federal law, if certain criteria are met.

## Examples of trade secrets:

- Client lists
- Marketing plans
- Pricing and discount structures
- Business methods
- Production processes
- Software algorithms and source code
- Recipes and chemical formulas



# Unpublished Patents

Patents require **novelty**. If crucial information becomes public before you file, your invention may no longer be eligible for a patent.



Example: You develop a product to help a camera to a person's arm and you want a partner with GoPro. If you do not have a sign a NDA before showing them your product they could develop it themselves and block patent certification.

# Commercial Advantage

To maintain a competitive advantage, companies and startups must new projects, innovative ideas, or new products **secret** so they do not into the hands of a competitor.

- Sharing information is crucial when looking for investments, potential partnerships, or key employees. NI keep individuals from running away your commercial advantage.



# Which form is best for you?

## Unilateral Agreement

- Only one of the parties discloses confidential information and the other party solely receives.
- Example: A consultant has access to a client's business information.

## Mutual Agreement

- Each party discloses and receives confidential information.
- Example: A strategic commercial alliance





# NDA Drafting Considerations:

Do you **need** a NDA?

Will either party be disclosing confidential information?

If not, you can avoid the burdens of a NDA.

Identify the **parties** involved

Will the information be shared with parents, subsidiaries, or subcontractors?

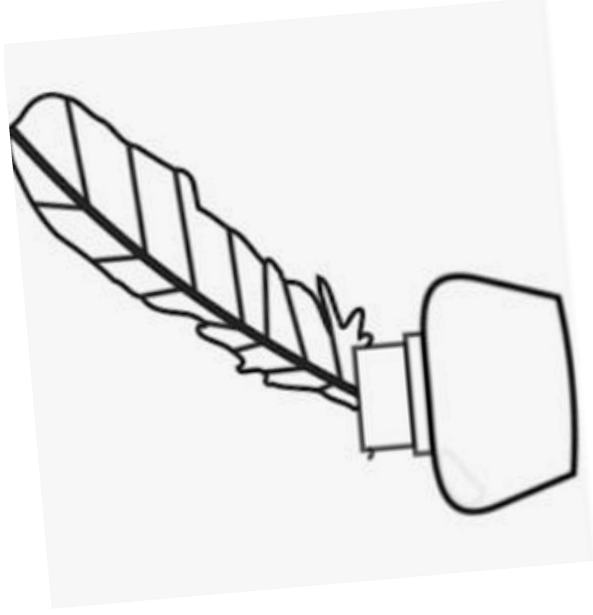
Identify the **business purpose**

What is the contemplated transaction for which you are disclosing confidential information?

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# NDA Drafting Considerations:



## “Mutual” or “unilateral” agreement?

Who is disclosing confidential information, one or both?

## Define confidential information

What information are you protecting? Try to keep the definition broad.

## Identify term of agreement

How long are the parties obligated to protect the confidential information? Could be indefinite (as long as the information remains confidential), or a specified time period.

# NDA Drafting Considerations:

## Identify **how** to protect

Is a “reasonable” standard of care enough, or do you want more stringent requirements to protect your information?

## Restrict **use**

How is the other party allowed to use your information? Allowed to reverse-engineer? Use for business purpose only?

## Identify **remedies**

If the agreement is breached, what steps should each party take to minimize damages?

## Identify **termination** requirements

What happens with the confidential information when the parties terminate their relationship? (ex: return information to disclosing party and destroy any copies made)

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Thank you!



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