

# Confidentiality Agreement Checklist

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Confidentiality Agreement Checklist		
1.	<b>The Parties</b>	<input type="checkbox"/>
	Name, address and corporate status of the Discloser (person disclosing the Confidential Information).	<input type="checkbox"/>
	Name, address and corporate status of the Recipient (person receiving the Confidential Information).	<input type="checkbox"/>
2.	<b>Purpose of the Agreement</b>	<input type="checkbox"/>
	What is the purpose of disclosing the Confidential Information to the Recipient?	<input type="checkbox"/>
3.	<b>Definitions</b>	<input type="checkbox"/>
	Consider and define what is to constitute "Confidential Information".	<input type="checkbox"/>
	Definition can be narrow in scope (e.g., only the information and materials specified in the Agreement) or broad in scope (all information and materials disclosed, directly or indirectly).	<input type="checkbox"/>
	Consider form of disclosed information (oral/human readable written/machine readable/other).	<input type="checkbox"/>
	Consider identification and inclusion of technology specific confidential information such as: software; source code; algorithms; trade secrets; "look and feel"; methodologies; processes; flow charts and diagrams; concepts; inventions; research and development data; test results.	<input type="checkbox"/>
	Consider if the definition should address any Recipient work product that includes disclosed Confidential Information (e.g., in notes made by Recipient personnel).	<input type="checkbox"/>
4.	<b>Consideration</b>	<input type="checkbox"/>
	What is the Recipient to pay or provide to the Discloser in return for the disclosure of the Confidential Information?	<input type="checkbox"/>
5.	<b>Scope of Permitted Use</b>	<input type="checkbox"/>
	Specify permitted use(s) of the disclosed Confidential Information.	<input type="checkbox"/>
	Specify if there are to be any express restrictions on permitted use(s) of the disclosed Confidential Information (e.g., no copies made/ no notes made).	<input type="checkbox"/>
	Specify to whom Recipient may (or may not) be able to share Confidential Information with.	<input type="checkbox"/>
6.	<b>Protection of Confidential Information</b>	<input type="checkbox"/>
	Specify Recipient's obligations with respect to the Confidential Information, including:	
	Obligation to keep the Confidential Information confidential/non-disclosure obligations.	<input type="checkbox"/>
	Obligations and measures to take concerning the protection of Confidential Information in possession of Recipient.	<input type="checkbox"/>
	The standard of care to apply to the Recipient's obligations (strict/efforts based/same measures and efforts as maintained by the Discloser).	<input type="checkbox"/>

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7.	<b>Ownership</b>	<input type="checkbox"/>
	Will the Recipient acknowledge the confidentiality and ownership of the Confidential Information in the Discloser or will the Discloser only agree to keep the information disclosed in confidence without making any admission as to the status of its proprietary nature?	<input type="checkbox"/>
8.	<b>Obligations of the Discloser</b>	<input type="checkbox"/>
	Organize and specify the Confidential Information.	<input type="checkbox"/>
	Consider if the Agreement to obligate Discloser to disclose any specific Confidential Information.	<input type="checkbox"/>
9.	<b>Exceptions to Confidentiality Obligations</b>	<input type="checkbox"/>
	Specify to whom Recipient is entitled to disclose Confidential Information to: within Recipient's organization; its affiliates and related parties; agents (e.g., service providers); professional advisors; other third parties (e.g., in connection with due diligence).	<input type="checkbox"/>
	<b>If Recipient is entitled to disclose to others, consider what Recipient's related obligations, liabilities and responsibilities should be:</b>	
	Obligation to inform such persons of confidential nature of information and/or requirement for such persons to execute an acknowledgement of same.	<input type="checkbox"/>
	Execution of a confidentiality agreement with the third party (by Recipient or Discloser) and if so, on what terms; consider how to deal with professional advisors in the context of existing professional obligations of confidentiality (e.g., Recipient's legal advisors).	<input type="checkbox"/>
	Liability and responsibility of Recipient for third party actions and breaches.	<input type="checkbox"/>
	Obligation to report to Discloser on identity of third party to whom Recipient has disclosed the Confidential Information (or to seek prior approval before disclosing).	<input type="checkbox"/>
	<b>What other exceptions to disclosure will be permitted?</b>	
	Information already in Recipient's possession.	<input type="checkbox"/>
	Information received by Recipient from third parties.	<input type="checkbox"/>
	Information in the public domain.	<input type="checkbox"/>
	To the extent required by or compelled under applicable law or judicial bodies or regulatory authorities having jurisdiction (and if so, under what conditions or further obligations).	<input type="checkbox"/>
10.	<b>Residual Knowledge</b>	<input type="checkbox"/>
	Consider the inclusion of a "residual knowledge" clause to address information that may be retained in the unaided memories of Recipient personnel, and the respective rights of and restrictions on the parties concerning same.	<input type="checkbox"/>
11.	<b>Term and Termination</b>	<input type="checkbox"/>
	What is the effective date of the Agreement? (consider when information was first disclosed to Recipient).	<input type="checkbox"/>
	What is the duration of the obligation of confidentiality to be?	<input type="checkbox"/>
	In what other circumstances does the Agreement terminate? (completion of the purpose/for convenience/bankruptcy, insolvency of a party, etc.)	<input type="checkbox"/>

## Confidentiality Agreement Checklist

<b>12.</b>	<b>Return of Confidential Information</b>	<input type="checkbox"/>
	<b>Specify on what terms Recipient is to return Confidential Information:</b>	
	At the Discloser's request at any time.	<input type="checkbox"/>
	Upon completion of the purpose for which it was disclosed.	<input type="checkbox"/>
	Upon termination.	<input type="checkbox"/>
	What is to be returned and how will the Recipient be permitted to deal with Recipient work product -return or destruction -including Confidential Information that may be maintained or embedded in the electronic systems of the Recipient (e.g., e-mail/internal memorandums, etc.).	<input type="checkbox"/>
	Obligation to certify return or destruction of all Confidential Information.	<input type="checkbox"/>
<b>13.</b>	<b>Remedies for Breach</b>	<input type="checkbox"/>
	What specific remedies should the Agreement provide for in the event of breach by the Recipient, such as the availability of equitable relief, and if so, on what terms.	<input type="checkbox"/>
<b>14.</b>	<b>Other Terms</b>	<input type="checkbox"/>
	<b>Consider inclusion of additional context specific terms, such as:</b>	
	Term specifying what other rights or licenses are/are not granted.	<input type="checkbox"/>
	Term addressing warranty/lack of warranty with respect to Confidential Information disclosed.	<input type="checkbox"/>
	Indemnification -Consider if Recipient is to provide an indemnity in respect of a breach of the Agreement, and if so, if such indemnity is to be limited in any respect (quantum or nature of recoverable damages).	<input type="checkbox"/>
	Term clarifying that disclosure of the Confidential Information will not limit Recipient from conducting its business or from competing with the Discloser	<input type="checkbox"/>
<b>15.</b>	<b>General Provisions</b>	<input type="checkbox"/>
	<b>Include applicable general provisions, including:</b>	
	Entire Agreement.	<input type="checkbox"/>
	Governing Law.	<input type="checkbox"/>
	Amendments to be made in writing.	<input type="checkbox"/>
	Severability of invalid or unenforceable clauses.	<input type="checkbox"/>
	Notice provisions.	<input type="checkbox"/>
	Assignment provision.	<input type="checkbox"/>
	Waiver provision.	<input type="checkbox"/>
	Counterparts and transmission by facsimile.	<input type="checkbox"/>