

NDA REVIEW CHECKLIST

What to check before you sign a non-disclosure agreement

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NDA's look simple. They are not. A poorly reviewed NDA can lock you into confidentiality obligations for years, expose your business to claims, or give the other side rights over information you thought you were protecting. Use this checklist before you sign — whichever side of the table you are on.

First question: Are you disclosing information, receiving it, or both? Every clause below reads differently depending on your answer.

The 12 Clauses to Check

#	Clause	What to check	Red flag	Notes
1	Type of NDA	Is this one-way (only you are disclosing, or only you are receiving) or mutual (both sides share confidential information)? The obligations are very different.	▶ It is not clear which party owes what, or the label does not match the actual arrangement.	Notes:
2	Definition of Confidential Information	How broadly is confidential information defined? A broad definition (anything disclosed) protects you as the disclosing party. A narrow one (only information marked "Confidential") creates gaps.	▶ Vague or circular drafting — "information that is confidential in nature" — with no practical boundary.	Notes:
3	Carve-Outs	The standard carve-outs that should be listed: information already in the public domain, information you already knew before disclosure, information you developed independently, information received from a third party with no restrictions.	▶ Carve-outs are missing entirely, or so narrow that the receiving party has almost no safe harbour.	Notes:
4	Permitted Disclosures	Can you share information with employees, affiliated companies, advisers, and regulators who need to know? Are there conditions — such as requiring them to sign their own NDAs?	▶ No mention of who else can receive the information. Or too restrictive — allowing only named individuals.	Notes:
5	Term	How long does the NDA itself last? This is different from the survival period (below). A two-year NDA and a five-year NDA are very different commitments.	▶ The duration is not stated. Or it auto-renews without a clear exit.	Notes:
6	Survival of Obligations	After the NDA ends, how long do confidentiality obligations continue? This can be per-disclosure (each piece of information has its own clock) or a blanket period after termination.	▶ "Perpetual" or no time limit on survival — acceptable only for trade secrets, not general commercial information.	Notes:
7	Return or Destruction of Information	On termination, must confidential information be returned or destroyed? Is written confirmation required?	▶ No obligation to return or destroy. Or no carve-out for legally required retention (compliance copies, archived records).	Notes:
8	Compelled Disclosure	If a regulator, court, or law enforcement requires you to disclose confidential information, the NDA should	▶ No mention of what happens if you are legally required to disclose. This leaves you in	Notes:

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		allow this — with a requirement to notify the disclosing party first (where legally possible) so they can seek to protect it.	breach if you comply with a court order.	
9	Injunctive Relief	Most NDAs include an acknowledgment that breach would cause irreparable harm and that the disclosing party is entitled to seek an injunction without needing to prove financial loss. Check that this is mutual if the NDA is mutual.	► One-sided — only one party can seek injunctive relief in a mutual NDA. Or no requirement to waive a bond, which can delay enforcement.	Notes:
10	Non-Solicitation or Non-Compete Riders	Check whether the NDA includes restrictions on hiring each other's staff or competing in the same market. These are significant obligations that are often bundled in without much attention.	► Non-compete or non-solicitation obligations that go beyond what is reasonable given the purpose of the NDA.	Notes:
11	Governing Law and Disputes	Which country's law applies? Where would disputes be resolved? This matters if the parties are in different jurisdictions — you want the law and forum to be practical for you to use.	► Governing law and jurisdiction chosen purely to favour the other side. Or no governing law at all.	Notes:
12	Assignment	Can either party transfer the NDA — and the obligations under it — to another company, such as in a merger or acquisition? Typically, consent should be required.	► Free assignability with no consent required. This means your information could end up with a company you have never dealt with.	Notes:

Two Things to Do Before You Sign

- ◆ Read it once for substance — work through the 12 clauses above and check each one. Then read it again for language. Do not try to do both at the same time. The first read tells you what the contract does. The second read tells you whether it does it clearly.
- ◆ On every clause, ask: "If I were on the other side, what would worry me here?" That question catches the issues a single-sided review misses.

⚠ Stop and Get Advice If You See Any of These

- Confidentiality obligations that are perpetual with no time limit (unless the information is genuinely a trade secret)
- No carve-out for compelled disclosure — you could be in breach just for complying with a court order
- Non-compete or non-solicitation obligations buried inside an NDA without clear scope or duration
- Free assignment — the NDA (and your information) can be transferred to any third party without your consent
- Governing law in an unfamiliar jurisdiction with no practical way for you to enforce your rights
- No obligation on the other side to return or destroy your information at the end of the NDA

This checklist is a practical guide for reviewing NDAs. It is not exhaustive and does not constitute legal advice. NDAs that involve trade secrets, cross-border disclosures, or significant commercial relationships warrant a full legal review.

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