

# Legal.io

# NDA Kit

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**Created on {time}**

## With help from Legal.io

Please be aware that Legal.io is not a law firm and does not provide any legal advice.

The Legal.io NDA Kit is not a substitute for the advice of an attorney and if you need legal advice for your specific situation or if there are complicated legal issues surrounding your final wishes, you should consult with a licensed attorney.

### Foreword



At Legal.io, we believe every individual and company deserves access to the legal documents that can protect them.

We’ve put together this NDA Kit to guide you through the process of effectively using a mutual NDA.

Note that we’re not a law firm and this is not legal advice.

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Checklist



A step-by-step guide to completing your NDA and making it into a legally binding document.

**Checklist**

**Print a hard copy of this NDA.**

Make sure you keep both a digital and a physical copy of the NDA.

### Both parties must read and sign the NDA.

Make sure that both parties have read and understood the provisions within this NDA. After that, both parties need to sign and date the NDA for it to become effective.

### Keep the NDA in a safe place.

Keep this signed NDA in a secure place, preferably somewhere that is locked.

### Consider whether you should consult an attorney.

DIY legal documents can be quick, easy, and helpful. With that said, there are many instances in which businesses and individuals should consult an attorney when drafting or agreeing to an NDA.

If you need to consult with an attorney, feel free to visit our website or consult your local Bar Association Lawyer Referral Service.





# The NDA



**MUTUAL NON-DISCLOSURE AGREEMENT**

**This Mutual Non-Disclosure Agreement** (this “***Agreement***”) is entered into between **{company\_name}**, (“***Company***”) and the other party named on the signature page hereto (“***Other Signatory***”) as of **{time}** (the “***Effective Date***”), to protect the confidentiality of certain confidential information of Company or of Other Signatory to be disclosed under this Agreement solely for use in evaluating or pursuing a business relationship between the parties (the “***Permitted Use***”). Company and Other Signatory may be referred to herein individually as a “***Party***” and collectively as the “***Parties***.”

1. As used herein, the “***Confidential Information***” of a Party will mean any and all technical and non-technical information disclosed by such Party (the “***Disclosing Party***”) to the other Party (the “***Receiving Party***”), which may include without limitation: (a) patent and patent applications; (b) trade secrets; (c) proprietary and confidential information, ideas, techniques, sketches, drawings, works of authorship, models, inventions, know-how, processes, apparatuses, equipment, algorithms, software programs, software source documents, and formulae related to the current, future, and proposed products and services of each of the Parties, such as information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, and marketing plans; and (d) all other information that the Receiving Party knew, or reasonably should have known, was the Confidential Information of the Disclosing Party.
2. Subject to Section 3, the Receiving Party agrees that at all times and notwithstanding any termination or expiration of this Agreement it will hold in strict confidence and not disclose to any third party any Confidential Information of the Disclosing Party, except as approved in writing by the Disclosing Party, and will use the Confidential Information of the Disclosing Party for no purpose other than the Permitted Use. The Receiving Party will also protect such Confidential Information with at least the same degree of care that the Receiving Party uses to protect its own Confidential Information, but in no case, less than reasonable care. The Receiving Party will limit access to the Confidential Information of the Disclosing Party to only those of the Receiving Party’s employees or authorized representatives having a need to know and who have signed confidentiality agreements containing, or are otherwise bound by, confidentiality obligations at least as restrictive as those contained herein.
3. The Receiving Party will not have any obligations under this Agreement with respect to a specific portion of the Confidential Information of the Disclosing Party if such Receiving Party can demonstrate with competent evidence that such portion of Confidential Information:
   1. was in the public domain at the time it was disclosed to the Receiving Party;
   2. entered the public domain subsequent to the time it was disclosed to the Receiving Party, through no fault of the Receiving Party;
   3. was in the Receiving Party’s possession free of any obligation of confidence at the time it was disclosed to the Receiving Party;
   4. was rightfully communicated to the Receiving Party free of any obligation of confidence subsequent to the time it was disclosed to the Receiving Party; or
   5. was developed by employees or agents of the Receiving Party who had no access to any Confidential Information.
4. Notwithstanding the above, the Receiving Party may disclose certain Confidential Information of the Disclosing Party, without violating the obligations of this Agreement, to the extent such disclosure is required by a valid order of a court or other governmental body having jurisdiction, *provided that* the Receiving Party provides the Disclosing Party with reasonable prior written notice of such disclosure and makes a reasonable effort to obtain, or to assist the Disclosing Party in obtaining, a protective order preventing or limiting the disclosure and/or requiring that the Confidential Information so disclosed be used only for the purposes for which the law or regulation required, or for which the order was issued.
5. The Receiving Party will immediately notify the Disclosing Party upon discovery of any loss or unauthorized disclosure of the Confidential Information of the Disclosing Party.
6. Upon termination or expiration of this Agreement, or upon written request of either Party, each Party will promptly return to the Disclosing Party or destroy all documents and other tangible materials representing the Disclosing Party’s Confidential Information and all copies thereof.
7. Confidential Information is and shall remain the sole property of the Disclosing Party. The Receiving Party recognizes and agrees that nothing contained in this Agreement will be construed as granting any property rights, by license or otherwise, to any Confidential Information of the Disclosing Party, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on such Confidential Information. Neither Receiving Party will make, have made, use or sell for any purpose any product or other item using, incorporating or derived from any Confidential Information of the Disclosing Party. Neither this Agreement nor the disclosure of any Confidential Information hereunder shall result in any obligation on the part of either Party to enter into any further agreement with the other, license any products or services to the other, or to require either Party to disclose any particular Confidential Information. Nothing in this Agreement creates or shall be deemed to create any employment, joint venture, or agency between the Parties.
8. The Receiving Party will not reproduce the Confidential Information of the Disclosing Party in any form except as required to accomplish the intent of this Agreement. Any reproduction by a Receiving Party of any Confidential Information of the Disclosing Party will remain the property of the Disclosing Party and will contain any and all confidential or proprietary notices or legends that appear on the original, unless otherwise authorized in writing by the Disclosing Party.
9. This Agreement will terminate five (5) year(s) after the Effective Date, or may be terminated by either Party at any time upon thirty (30) days written notice to the other Party. Each Party’s obligations under this Agreement will survive termination of this Agreement and will be binding upon such Party’s heirs, successors, and assigns. Each Party’s obligations with respect to all Confidential Information of the other Party will terminate only pursuant to Section 3.
10. The DISCLOSING PARTY is providing Confidential Information on an “AS IS” basis for use by the RECEIVING PARTY at its own risk. The DISCLOSING PARTY disclaims all WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.
11. This Agreement and any action related thereto will be governed, controlled, interpreted, and defined by and under the laws of the State of Delaware, without giving effect to any conflicts of laws principles that require the application of the law of a different state. Any disputes under this Agreement may be brought in the state courts and the Federal courts for the county in which Company’s principal place of business is located, and the parties hereby consent to the personal jurisdiction and exclusive venue of these courts. This Agreement may not be amended except by a writing signed by both parties.
12. Each Party acknowledges that its breach of this Agreement may cause irreparable damage to the other Party and hereby agrees that the other Party will be entitled to seek injunctive relief under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction.
13. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid, such unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole and, in such event, such provision will be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
14. Neither Party will communicate any information to the other Party in violation of the proprietary rights of any third party.
15. Neither Party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other Party and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void, except that a Party may assign this Agreement without such consent to its successor in interest by way of merger, acquisition or sale of all or substantially all of its assets. The terms of this Agreement shall be binding upon assignees.
16. The Receiving Party will not export, directly or indirectly, any U.S. technical data acquired pursuant to this Agreement, or any products utilizing such data, in violation of the United States export laws or regulations.
17. All notices or reports permitted or required under this Agreement will be in writing and will be delivered by personal delivery, electronic mail, facsimile transmission or by certified or registered mail, return receipt requested, and will be deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Notices will be sent to the addresses set forth at the end of this Agreement or such other address as either Party may specify in writing.
18. Each Party agrees that the software programs of the other Party contain valuable confidential information and each Party agrees that it will not modify, reverse engineer, decompile, create other works from, or disassemble any software programs contained in the Confidential Information of the other Party without the prior written consent of the other Party.
19. This Agreement is the final, complete and exclusive agreement of the Parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the Parties with respect to such matters. No modification of or amendment to this Agreement will be effective unless in writing and signed by the Party to be charged.

***[Remainder of page intentionally left blank]***

The parties have executed this Non-Disclosure Agreement as of the Effective Date.

|  |  |  |  |
| --- | --- | --- | --- |
|  | **COMPANY:** | | |
|  |  | | |
|  | **{company\_name}** | | |
|  |  | | |
|  | By: |  | |
|  |  |  | |
|  |  | Name: |  |
|  |  | Title: |  |
|  |  | | |
|  | Address: | | {address} |
|  |  | |  |
|  |  | |  |

|  |  |  |
| --- | --- | --- |
|  | **RECIPIENT:** | |
|  |  | |
|  |  | |
|  | Name of Recipient (Please Print) | |
|  |  | |
|  |  | |
|  | Signature | |
|  |  | |
|  |  | |
|  | Title (if applicable) | |
|  |  | |
|  | Address: |  |
|  |  |  |
|  |  |  |



# FAQ



## Frequently Asked Questions

### FAQs



**1. Is the agreement unilateral or bilateral, and is this choice appropriate?**

Consider who is providing information to whom. If both parties are providing information to the other party, a bilateral (“mutual”) nondisclosure agreement is appropriate. Consider a unilateral agreement when the provision of information is unidirectional.

**2. Is it clear who the parties to the agreement are?**

Between what entities is the contract being concluded?

 Are the names, entity types, addresses and jurisdictions complete and correct?

**3. Is the start date of the agreement set?**

Verify whether the start date of the agreement is equal to or earlier than the date on which the parties started to exchange information.

**4. Is the purpose and context of the agreement explained?**

Does the agreement sufficiently describe its purpose? Is it clear in what context information will be exchanged?

**5. Is “confidential information” defined?**

Is confidential information defined accurately? Does it include a mention of trade secrets? Are the carveouts mentioned in the document present?

**6. Are there clear procedures to mark information as confidential?**

Is there a requirement to identify in writing whether information is confidential?

Is it clear when information that was conveyed verbally should be considered confidential?

**7. Are the necessary exceptions to what encompasses confidential information present?**

Ensure that the following are excluded from the definition of confidential information:

* Publicly available information;
* Already in possession of the recipient at the time of the disclosure;
* Rightfully received by the recipient from a third party without confidentiality obligations;
* Independently developed by the recipient without use of the confidential information;
* Disclosure required by law or regulation

**8. Does the agreement sufficiently restrict what can be done with confidential information?**

Does the agreement sufficiently prohibit the *disclosure* of confidential information?

Does the agreement prohibit the *use* of confidential information for any other purpose than the purpose stated in the agreement?

**9. Is there a need­‐to­‐know restriction?**

Does the agreement state that recipient personnel and contractors will get access on a need-to-­know basis only?

**10. Does the agreement have a clearly defined term during which information is kept confidential?**

Typically, confidentiality agreements are concluded for a duration of 5 years. However, you should consider whether the length of the confidentiality period is appropriate for the type of information that is to be kept confidential.

**11. Can we terminate the non­‐disclosure agreement?**

Does the agreement allow for termination for convenience? If yes, does termination only affect the right to receive and use confidential information, while leaving the confidentiality obligations themselves intact?

**12. Does the agreement describe what is expected from the parties in case a breach occurs?**

**13. Is there a requirement to return or destroy confidential information at the end of the agreement?**

Does the agreement describe what needs to be done with confidential information of the other party in case of termination?

Should there be a provision allowing the recipient to retain a copy of the discloser’s confidential information for regulatory or evidentiary purposes?

**14. Are intellectual property rights issues sufficiently covered?**

Does the agreement mention that each of the parties retain control over their intellectual property rights?

Is there an arrangement for cases in which a party creates derivative works based on the other party’s confidential information?

Should there be a clause prohibiting reverse engineering?

**15. Is our liability limited?**

Are warranties, disclaimers and limitation of liability addressed? Are indirect damages excluded?

**16. Are the following common clauses present in the agreement?**

* Entire agreement (clause stating that the agreement forms the entire agreement between the parties). Is this correct?
* Export compliance. Is this required?
* Notifications (clause describing how notifications are given). Can notifications be made other than in writing?
* Applicable law and jurisdiction. In case of a dispute, is it clear where to go?\
* Severability (clause stating that in case part of the agreement is found invalid, other parts will still be valid)
* Survival (clause enumerating the clauses that will still be in force when the agreement expires)