Information Checklist

Non-Disclosure Agreement for the Protection of Proprietary Technology

This Non-Disclosure Agreement (NDA) Checklist is based on the Non-Disclosure Agreement for the Protection of Proprietary Technology template. It guides legal professionals through gathering the necessary information and obtaining client instructions on negotiable clauses, ensuring that the NDA is both comprehensive and tailored to the client's needs. The checklist highlights key clauses where client input is essential. This checklist serves as a practical companion to the NDA template, ensuring a well-drafted and enforceable agreement.

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| **Number** | **Information Required** | **Answer** |
| **Part 1: Information Required to Complete the NDA** |
|  | **Effective Date** |  |
|  | Date the agreement will begin |  |
|  | **Parties Involved** |  |
|  | Name of the Discloser (Company providing the proprietary technology) |  |
|  | Discloser's registered office address |  |
|  | Name of the Recipient (Company receiving the proprietary technology) |  |
|  | Recipient’s registered office address |  |
|  | **Corporate Information** |  |
|  | Discloser’s legal incorporation details (Companies Act 1913/1956/2013) |  |
|  | Recipient’s legal incorporation details (Companies Act 1913/1956/2013) |  |
|  | **Proprietary Technology** |  |
|  | Type of proprietary technology (e.g., software, product, or process) that the NDA covers |  |
|  | Brief description of the proprietary technology, e.g. a cloud security solution may be described as “an advanced encryption software designed to secure cloud storage solutions”. |  |
|  | Name of the proprietary technology |  |
|  | **Confidentiality Period** |  |
|  | Term of confidentiality obligations (e.g., number of years from the Effective Date) |  |
|  | Specific handling of Trade Secrets |  |
|  | **Disclosure Mechanism** |  |
|  | Timeframe for documenting oral or visual disclosure (e.g., within [number of days] Business Days) |  |
|  | **Return of Confidential Information** |  |
|  | Deadline for return/destruction of confidential information after request (number of days) |  |
|  | **Audit Rights** |  |
|  | Duration for which the Recipient must maintain records for potential audit (e.g., [number of days/weeks/months/years]) |  |
|  | Advance notice period for audits (e.g., [number of days/hours]) |  |
|  | **Notices** |  |
|  | Discloser’s contact for notices (Name, email, address) |  |
|  | Recipient’s contact for notices (Name, email, address) |  |
|  | **Governing Law and Jurisdiction** |  |
|  | Place of jurisdiction (City and country in India) |  |
|  | Arbitration venue and number of arbitrators (One/Three) |  |
|  | Rate of interest on arbitral awards |  |
| **Part 2: Client Instructions on Negotiable Clauses (with Explanatory Notes)** |
|  | **Confidentiality Term** |  |
|  | **Question:** How long should the Parties be obligated to maintain confidentiality after the agreement expires? Would you like an indefinite obligation for Trade Secrets, or a fixed term?**Explanation:** Confidentiality periods are often fixed for general information, but Trade Secrets can be protected indefinitely. Confirm if you prefer to set a time limit for both, or protect Trade Secrets until they no longer hold commercial value. |  |
|  | **Sharing Confidential Information with Representatives** |  |
|  | **Question:** Should additional protections or approvals be required before the Recipient shares confidential information with its Representatives (e.g., written consent from the Discloser)?**Explanation:** While the NDA permits sharing with Representatives on a "need-to-know" basis, you can opt to impose extra layers of approval, especially for highly sensitive technology. |  |
|  | **Compelled Disclosure** |  |
|  | **Question:** Should there be an immediate notification requirement if the Recipient is legally compelled to disclose any confidential information (e.g., within [number of hours/days])? Should limits be placed on the scope of disclosure?**Explanation:** Courts or regulatory bodies may require the Recipient to disclose certain information. It is important to ensure that notification to the Discloser happens quickly and that the scope of such disclosures is kept to a minimum. |  |
|  | **Remedies** |  |
|  | **Question:** Would you prefer to limit remedies to specific actions (e.g., injunctions, audits) in the case of breach, or allow a broader range of legal remedies?**Explanation:** Legal remedies for breach of confidentiality can include injunctive relief, damages, and the right to audit. Decide whether to narrow or expand these options. |  |
|  | **Indemnity** |  |
|  | **Question:** Should the Recipient be fully responsible for all legal costs, damages, and other expenses arising from a breach of confidentiality, or would you prefer to limit liability to direct damages?**Explanation:** When proprietary technology is shared, the damages to the Discloser can be significant. The indemnity clause may hold the Recipient liable for all damages, including legal fees. Limiting liability to direct damages could reduce the Recipient’s exposure.  |  |
|  | **Audit Rights** |  |
|  | **Question:** Should the Discloser be allowed to audit the Recipient’s systems without prior notice if there is a suspected breach of confidentiality, or would you prefer to set a fixed notice period for all audits?**Explanation:** Audits help ensure compliance with the NDA. You may wish to allow for surprise audits in case of suspected breaches or set a fixed advance notice period for transparency. |  |
|  | **Governing Law and Arbitration** |  |
|  | **Question:** Is arbitration in [city] acceptable, or would another jurisdiction or method of dispute resolution be preferred?**Explanation:** Arbitration can be more private and cost-effective than litigation. Discuss whether the chosen arbitration venue and setup are convenient, or if another location or method is preferred. |  |

**Disclaimer**

This checklist is intended as an indicative guide for the information necessary to complete the associated template document and facilitate discussions between a legal professional and their client. TLL does not guarantee the accuracy, completeness, or interpretation of this checklist. Users are strongly encouraged to review the template document for which the information is being collected before relying on this checklist in legal practice.

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