

Scope of NDA

“Confidential Information” should be broadly defined so all information disclosed is covered by the NDA.

“Confidential Information” should **mean any and all information and material disclosed** by Disclosing Party to Receiving Party.

Confidential Information includes, without limitation, information regarding a party’s technology, designs, techniques, research, know-how, trade secrets, specifications, recipes, product plans, pricing, customer information, user data, current or future strategic information, current or future business plans, policies or practices, employee information, and other confidential or proprietary business and technical information.

Confidential Information shall include (i) the fact that discussions or negotiations are taking place, (ii) the proposed terms and conditions of the Proposed Transaction, and (iii) the existence, context, and scope of this NDA.

NDA – Exclusions

Confidential Information should not include information that:

- (i) is or becomes publicly available through no act or omission by the Receiving Party;
- (ii) was already in the Receiving Party's possession before receipt from the Disclosing Party and was not subject to restrictions regarding use or disclosure;
- (iii) is disclosed to the Receiving Party by a third party who is not subject to confidentiality restrictions; or
- (iv) the Receiving Party independently developed without use of Confidential Information.

NDA – Nondisclosure Restrictions

General Restriction

Receiving Party should keep all Confidential Information confidential and shall not disclose any Confidential Information to any person.

Receiving Party may use the Confidential Information solely for the purpose of evaluating the Proposed Transaction.

Receiving Party should not decompile, disassemble, or otherwise reverse engineer any Confidential Information.

Exceptions

Representatives who are actively and directly participating in the Proposed Transaction.

Each party shall be responsible for any breach of the terms of this Agreement by it or its Representatives.

NDA – Degree of Care

General Rule

Receiving Party shall take the same degree of care that it uses to protect its own confidential information.

Exception

The degree of care must not be less than reasonable care.

NDA – Compelled Disclosure

If Receiving Party is required by law, regulation, or by legal process to disclose any Confidential Information, then Receiving Party should provide Disclosing Party with prompt notice.

Disclosing Party may

- (a) seek an appropriate protective order or other remedy; or
- (b) attempt to resist or narrow the scope of such disclosure.

Receiving Party should use commercially reasonable efforts to disclose only that portion of the Confidential Information which Receiving Party is advised by legal counsel is legally required to be disclosed.

NDA – No Representations & Warranties

Disclosing Party should not make any express or implied representation or warranty as to the completeness of the Confidential Information.

Disclosing Party should expressly disclaim all such warranties, including any implied warranties of merchantability and fitness for a particular purpose, non-infringement and accuracy, and any warranties arising out of course of performance, course of dealing or usage of trade.

NDA – Ownership

All Confidential Information is and should remain the sole property of Disclosing Party.

Receiving Party should not acquire (by license or otherwise, whether express or implied) any intellectual property rights or other rights under this NDA or any disclosure.

NDA – Remedies

Disclosing Company should have the right to seek an immediate injunction for any breach or threatened breach of the NDA.

Receiving Party should notify Disclosing Party immediately if Receiving Party has reason to believe that any person has violated or intends to violate the terms of the NDA.

NDA – Return of Confidential Information

Receiving Party should return all Confidential Information to Disclosing Party or destroy all Confidential Information if the Proposed Transaction does not close or the NDA is terminated.

NDA – Term and Survival

The Term of the NDA varies depending on the industry.

Receiving Party's obligations with respect to use and disclosure of Confidential Information should survive any termination of the NDA.

Receiving Party's obligation to protect and not disclose Confidential Information that constitutes Disclosing Party's trade secret should continue for as long as any such Confidential Information is protected as a trade secret.