

## Checklist for Non-Disclosure Agreement (“NDA”)

*NOTE: The desirability of some items depends on which side of the equation you are on – discloser vs. recipient*

	Check for:	Comments
<input type="checkbox"/>	1. <b>Effective Date</b>	Is it clear whether obligations commence?
<input type="checkbox"/>	2. <b>Parties</b>	Ensure proper legal names are used. Should affiliates be included?
<input type="checkbox"/>	3. <b>Purpose</b>	Is it clearly defined? This usually delineates the scope of the NDA.
<input type="checkbox"/>	4. <b>Reciprocity</b>	Is the obligation of confidentiality mutual / reciprocal?
<input type="checkbox"/>	5. <b>Use of Confidential Information</b>	Confirm use is for the Purpose only.
<input type="checkbox"/>	6. <b>Definition of Confidential Information</b>	Description of list of what will be “Confidential Information”. Does Confidential Information have to be specifically marked? Are both paper and electronic copies covered? Verbal communication – when does it become Confidential Information? What is excluded from Confidential Information: public information; information independently developed or derived; was already known; was provided by a 3 <sup>rd</sup> party who had the right to do so? Is Confidential Information still protected if it is public in a general form or can be pieced together from multiple sources, none of which shows the whole? FOIP concerns – is the other party a government organization?
<input type="checkbox"/>	7. <b>Degree of Protection / Rules of Control</b>	Standard of care the parties must take – often generalized as being similar to internal practices of looking after its own confidential information. Is an Acknowledgement form for individuals appropriate?
<input type="checkbox"/>	8. <b>Disclosure of and Access to Confidential Information</b>	Which representatives have access to Confidential Information (employees, affiliates, joint venture partners, consultants, etc)? Degree of care (representatives to be bound by a like obligation of confidentiality). Disclosure to only those with a need to know for the Purpose. Obligation to inform representatives that the information is confidential and that there is a NDA. Disclosure to the courts and notification.

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<input type="checkbox"/>	9. <b>No Disclosure of Confidential Information to 3<sup>rd</sup> Parties without prior written consent</b>	
<input type="checkbox"/>	10. <b>No Public Disclosure of Agreement</b>	
<input type="checkbox"/>	11. <b>Can Confidential Information be relied upon or is it used at recipient’s risk?</b>	
<input type="checkbox"/>	12. <b>Return of Confidential Information</b>	Does it include presentations made to senior management or derivative materials? What about Confidential Information in computer back-up systems? Can a copy be kept for legal records only? Is a certificate of destruction required and by whom is it to be completed?
<input type="checkbox"/>	13. <b>Term/Duration</b>	Term of the Purpose or the period of disclosure. Term to maintain general information as Confidential Information. Term for maintaining trade secrets.
<input type="checkbox"/>	14. <b>Termination</b>	May describe the process of notification for either Party to terminate the agreement, but not the term of the Confidential Information.
<input type="checkbox"/>	15. <b>Ownership</b>	Ensure there is no license of Confidential Information. Ensure sharing of Confidential Information is not giving the Confidential Information.
<input type="checkbox"/>	16. <b>No actions against patents or patent applications may be taken</b>	Is it appropriate to specifically state this?
<input type="checkbox"/>	17. <b>Rights to develop Confidential Information or new ideas</b>	May confirm that anything developed that is an advancement on the Confidential Information (particularly for the case of technology) is owned by the owner of the Confidential Information.
<input type="checkbox"/>	18. <b>Governing Law / Jurisdiction</b>	Normally the governing law and exclusive jurisdiction for legal action is Alberta
<input type="checkbox"/>	19. <b>Dispute Resolution</b>	Is there a clause and is it appropriate for the circumstances?
<input type="checkbox"/>	20. <b>Representations and Warranties</b>	Has party providing Confidential Information warranted that it has the right to disclose the Confidential Information / intellectual property?
<input type="checkbox"/>	21. <b>Liabilities / Remedies / Indemnification</b>	Are these areas covered adequately?
<input type="checkbox"/>	22. <b>Injunctive / Equitable Relief</b>	Usually just confirms that an injunction is a reasonable course of action.
<input type="checkbox"/>	23. <b>Permitted Contacts</b>	Are there any restrictions of who can be contacted and by whom?

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<input type="checkbox"/>	24. <b>Notices</b>	Is it clear where and how notice can be served in relation to the agreement?
<input type="checkbox"/>	25. <b>Assignment</b>	Agreement should not be able to be assigned without consent.
<input type="checkbox"/>	26. <b>Amendments</b>	Can only be made with both parties signing the amendments.
<input type="checkbox"/>	27. <b>Entirety of Agreement</b>	Normally deals with other agreements that might exist or confirms that despite anything that might have been said the agreement is the entire agreement relating to the issue.
<input type="checkbox"/>	28. <b>Severable</b>	If the court overturns one article the rest of the agreement is still valid.
<input type="checkbox"/>	29. <b>Waiver</b>	A provision is only waived if it is in writing.
<input type="checkbox"/>	30. <b>Counterparty</b>	Allows for copies of the agreement to be signed separately.
<input type="checkbox"/>	31. <b>Not a deal</b>	Is it appropriate to state that the disclosure of Confidential Information creates no obligation to do a deal?
<input type="checkbox"/>	32. <b>Exclusively or Non-exclusively</b>	Is it appropriate to state that the parties may enter into similar agreements or negotiation with others, or that they are not permitted to do so?