

Checklist for confidentiality agreement

(A) Key Terms and Clauses	Notes
Parties	
Parties {ensure who are the parties to the contract. Who is responsible for the disclosure of the confidential information and to which party shall that information be passed on to. In case, if any party is not disclosing any sort of confidential information, that is if it is not a mutual confidentiality agreement, ensure that the agreement has some form of consideration present. }	
Authorised persons {confirm whether any third parties, such as lawyers, employees or accountants etc, have access to the information and if they do, make sure these parties are identified prior to signing the contract. Also make sure that there is some mechanism in place to ensure that the parties keep the received information confidential. }	
Use of Confidential information {Make sure that the purposes for which the confidential information may be used is defined and documented, Otherwise it could potentially give rise to disputes if disclosed information is used for more purposes than what was originally intended by the party disclosing the information }	
Duration and commencement	
Commencement {confirm the proposed commencement or effective date of the agreement, so as to be clear when the agreement begins and when it will expire, unless terminated earlier. }	
Duration {confirm whether the proposed agreement will be a fixed term or rolling contract. Identify notice periods. In particular, confirm for how long (eg one, three, five or more years) after disclosure confidentiality obligations will continue, making clear that these obligations will survive earlier expiry or termination of the agreement. It is important that confidentiality obligations do not last so long as to constitute an unreasonable restraint on trade. }	
Termination rights {confirm the nature of any early termination rights, eg termination for cause only or rights to terminate for convenience, contract break points, etc. }	
Confidential information	

(A) Key Terms and Clauses	Notes
<p>Format {clarify in what media confidential information may be disclosed, whether all information disclosed in confidence will be deemed to be ‘confidential’, or whether it needs to be expressly marked as such. }</p>	
<p>Timing {confirm when information will be provided. }</p>	
<p>Warranties {Unless warranties are being provided as to the accuracy and/or suitability or fitness for purpose of disclosed information, make clear that no warranties as to accuracy or completeness or otherwise in relation to information disclosed are being provided. }</p>	
<p><i>Intellectual property rights (IPRs)</i></p>	
<p>Ownership {If proprietary intellectual property is also being provided as part of the disclosed confidential information (eg software source code), identify the relevant IPRs and who owns them. Make clear that no rights are transferred unless expressly agreed in writing. }</p>	
<p>Licences {confirm rights (if any) to use relevant IPRs under licence and clarify any restrictions on business activities for which licensed IPR may be used, or state that no such licences are granted. }</p>	
<p>Pricing, fees and expenses</p>	
<p>Fees {confirm relevant fees payable under the agreement or, if no fees are being paid for access to confidential information (as is often the case), confirm what the parties’ respective consideration is, to ensure this is a binding agreement. Consideration may take the form of a nominal payment and/or derive from the parties’ ‘mutual obligations of confidentiality under this Agreement’. In the absence of mutual obligations of confidentiality for valuable consideration, consider executing the agreement as a deed. }</p>	
<p>(B) Other standard legal terms and conditions</p>	
<p>Liability {identify exclusions and limitations on liability and liability caps and any types of loss for which a party has unlimited liability. Often, in confidentiality agreements, liability for breach of confidence and intellectual property infringement is unlimited, to reflect the potentially open-ended nature of these risks. But capping liability is something the parties may wish to consider where the potential benefits of the agreement are quite low in value. }</p>	

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Termination {on notice, breach, insolvency, change of control?}	
Obligations on termination {confirm what each party must do on termination. This might include returning or destroying confidential information on request or certifying that this has been done. Make clear that ongoing obligations of confidentiality survive termination if this is the intention. }	
Warranties and indemnities {confirm general warranties and indemnities (eg for IPR infringement or breach of confidence and whether subject to limitations). }	
Governing law and jurisdiction {agreement governed by laws of England and Wales; Courts of England and Wales have exclusive jurisdiction. }	
Other 'boilerplate' {other boilerplate provisions to consider include: Non-solicitation; Rights of third parties; Incorporation of information security, data protection and other similar policies by reference; Entire Agreement; Data Protection; Freedom of Information; Publicity; Notice; Severability; Compliance with law; Assignment and subcontracting; Variation; Change control; Reporting; Audits and investigations; Waiver; Set-off. }	
Completion {how will agreement be signed or executed? Consider counterparts, execution clauses, electronic conclusion and further assurance clause. }	