



RATIONALE FOR MUTUAL NON-DISCLOSURE AGREEMENT (MNDA)

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This document is intended to explain, in plain language, how the referenced agreement works, why each section exists, and how the agreement is designed to be fair and practical for both parties.

It is not part of the agreement itself. It does not modify the agreement, create obligations, or grant rights. The agreement itself is the binding legal document.

This document is also not legal advice. It reflects Alescent's intent and rationale in using this agreement and is provided for informational and explanatory purposes only. Parties should rely on the agreement itself and may seek independent legal advice if they wish.

What this document is and why it exists

A Mutual Non-Disclosure Agreement (MNDA) is a legal agreement used when two parties want to have open, candid discussions but need confidence that sensitive information will not be misused, shared inappropriately, or repurposed outside the context of those discussions.

Unlike a one-way NDA, a mutual NDA applies equally to both parties. Either party may disclose confidential information, and either party may receive it. The obligations and protections flow in both directions.

In practical terms, an MNDA allows both parties to:

- share information earlier than they otherwise would,
- be more transparent about constraints, risks, and opportunities, and
- evaluate whether a deeper relationship makes sense, without forcing a commitment to proceed.

Why an MNDA is important to both Parties

For both parties, an MNDA:

- establishes clear boundaries around how shared information may be used,
- reduces the risk of accidental or inappropriate disclosure, and
- creates a predictable framework for early-stage conversations.

For the Disclosing Party, it provides confidence that sensitive information will not be exploited. For the Receiving Party, it provides clarity about what can and cannot be done with the information received, reducing uncertainty and unintended risk.

Why this MNDA is important to Alescent

Alescent's work often requires sharing insights, analytical approaches, economic logic, and engagement models early in a conversation in order to demonstrate value and assess fit. Much of this information is intangible, interpretive, and easy to reuse if not clearly protected.

This MNDA exists to make those early conversations possible without turning them into an uncontrolled transfer of Alescent's intellectual and commercial differentiation.



How to read the MNDA

- **Mutual by design.** The MNDA applies equally to both Parties. Either Party may be the Disclosing Party and either Party may be the Receiving Party.
- **Early-stage by intent.** This MNDA is meant to be used before a deeper commercial, employment, advisory, or services agreement is executed.
- **Practical for modern work.** The MNDA assumes information is shared verbally, visually, electronically, and through normal collaboration and IT systems.

Preamble and Parties

What it does

Identifies the Parties, establishes their legal identities, and frames the context in which the agreement is being entered. It makes clear that the Parties are exploring an “Opportunity” and that information may be exchanged during that exploration.

Why it benefits both Parties

- Creates certainty about who is bound by the agreement and who is not.
- Removes ambiguity about whether informal conversations, exploratory meetings, or early materials are covered.
- Signals that confidentiality applies before any commercial commitment exists.

Why it is necessary for Alescent

Alescent frequently engages in exploratory discussions with executives, partners, and prospective team members where value is demonstrated early. This section ensures those discussions are protected from the outset, rather than relying on later arguments about intent or timing.

Purpose

What it does

Defines the “Opportunity” and the “Purpose” of the MNDA: to enable evaluation and, if appropriate, pursuit of the Opportunity.

Why it benefits both Parties

- Limits use of information to a defined, legitimate business purpose.
- Prevents misuse of information for unrelated reasons, including competitive use.

Why it is necessary for Alescent

Alescent’s early-stage discussions often involve economic framing, analytical direction, and delivery approaches. The “Purpose” definition prevents those discussions from becoming a free transfer of valuable know-how.

Definition of Confidential Information

What it does

Defines “Confidential Information” broadly enough to reflect how information is actually shared in modern organizations. It covers written documents, verbal discussions, demonstrations, electronic materials, and derived or interpretive work product.

Why it benefits both Parties

- Uses a familiar “reasonable person” standard rather than rigid labeling requirements.
- Avoids technical loopholes such as information losing protection because it was discussed verbally or not stamped.
- Creates predictability about what must be handled carefully.

Why it is necessary for Alescent

Much of Alescent’s value does not appear as static documents. It often takes the form of insights, interpretations, analytical conclusions, and economic framing that emerge through discussion or demonstration. This section ensures those forms of information receive the same protection as traditional documents.

Regarding Confidential Information disclosed through third parties

What it does

Confirms that information disclosed through third parties at a Party’s direction is still treated as Confidential Information.

Why it benefits both Parties

Reflects real-world collaboration and avoids technical loopholes about how information was transmitted.

Why it is necessary for Alescent

Alescent often works in partner ecosystems and facilitates demonstrations or advisory participation. This clause prevents arguments that confidentiality is lost because information came through an indirect channel.

Exclusions

What it does

Identifies information that is not treated as Confidential Information, including public information, information already lawfully possessed, independently developed information, and explicit exclusions listed in Schedule A.

Why it benefits both Parties

Protects legitimate freedom to operate and avoids overreach by ensuring confidentiality does not swallow information a Party already knows or independently creates.



Why it is necessary for Alescent

Balanced exclusions support enforceability and credibility. Courts are more likely to enforce confidentiality obligations that are reasonable and well-scoped.

Non-Use and Non-Disclosure

What it does

Requires the Receiving Party to use Confidential Information only to evaluate and pursue the Opportunity and to disclose it only to representatives who need to know and are bound by confidentiality obligations.

Why it benefits both Parties

Aligns expectations on internal sharing and reduces the risk of downstream leakage through advisors, contractors, or affiliates.

Why it is necessary for Alescent

This is the primary safeguard against appropriation, repackaging, or competitive misuse of Alescent's methods, models, and analytical approaches.

Responsibility for representatives

What it does

Makes each Party responsible for breaches by its representatives.

Why it benefits both Parties

Encourages proper internal controls and avoids finger-pointing if a contractor or advisor mishandles information.

Why it is necessary for Alescent

Information leakage often occurs through well-intended internal sharing. This clause ensures accountability remains with the Party that controls access.

Protection of Confidential Information

What it does

Requires reasonable care in handling Confidential Information and prohibits reverse engineering, decompiling, or disassembling materials embodying Confidential Information.

Why it benefits both Parties

Establishes a familiar and defensible security standard while protecting both tangible and digital assets.



Why it is necessary for Alescent

Alescent may demonstrate analytical tools or configurations. Reverse engineering prohibitions reduce the risk of extracting methods from demonstrations.

Notification of Unauthorized Use or Disclosure

What it does

Requires prompt written notice and reasonable cooperation if unauthorized use or disclosure occurs.

Why it benefits both Parties

Enables early containment and remediation and reduces the likelihood that a small issue escalates.

Why it is necessary for Alescent

If Alescent's methods or strategy leak, the damage can be immediate. Prompt notification preserves the ability to act.

Copies and Record Retention

What it does

Allows copies reasonably necessary for evaluation while permitting routine archival, backup, and compliance retention.

Why it benefits both Parties

Prevents technical breach under normal IT practices and sets realistic expectations for document handling.

Why it is necessary for Alescent

Clauses that cannot be followed in practice undermine enforceability. This provision keeps obligations realistic.

Return or Destruction

What it does

Requires return or destruction of Confidential Information upon request, while recognizing limits imposed by backups or legal holds.

Why it benefits both Parties

Provides a clean end state if discussions stop and reduces future misuse risk.

Why it is necessary for Alescent

Supports controlled disengagement when materials remain valuable even if no engagement proceeds.



Certification of Compliance

What it does

Allows written confirmation that return or destruction obligations were satisfied.

Why it benefits both Parties

Creates a clear record and reduces later disputes.

Why it is necessary for Alescent

Contemporaneous certification is often more persuasive than retroactive claims.

Compelled Disclosure

What it does

Permits disclosure when legally required while requiring notice, cooperation, and minimization.

Why it benefits both Parties

Prevents a Party from choosing between legal compliance and contractual breach.

Why it is necessary for Alescent

Preserves procedural protections in regulated or litigated contexts.

No Obligation

What it does

Confirms neither Party is obligated to proceed with a transaction or relationship.

Why it benefits both Parties

Preserves optionality and protects exploratory discussions.

Why it is necessary for Alescent

Avoids any suggestion that confidentiality implies commitment.

No Warranty

What it does

Provides information on an as-is basis without warranties.



Why it benefits both Parties

Reflects early-stage reality and limits disputes over reliance.

Why it is necessary for Alescent

Early analyses and hypotheses may evolve. This clause prevents them from being treated as final representations.

No License

What it does

Clarifies that disclosure does not grant intellectual property rights or usage rights beyond the Purpose.

Why it benefits both Parties

Prevents misunderstanding that access equals permission.

Why it is necessary for Alescent

Protects methods, models, and analytical assets from unintended reuse.

No Partnership or Agency

What it does

Confirms the MNDA does not create a partnership, joint venture, or agency relationship.

Why it benefits both Parties

Avoids unintended authority or liability.

Why it is necessary for Alescent

Prevents misunderstanding about representation or authority during early discussions.

Term and Survival

What it does

Establishes a three-year protection period per disclosure and indefinite protection for trade secrets.

Why it benefits both Parties

Provides predictability while avoiding perpetual confidentiality for ordinary information.



Why it is necessary for Alescent

Some methods and analytical assets remain sensitive well beyond a typical sales cycle.

Remedies

What it does

Acknowledges irreparable harm and supports injunctive relief.

Why it benefits both Parties

Clarifies consequences and encourages careful handling of information.

Why it is necessary for Alescent

Injunctive relief is often the only practical remedy for misuse of intangible assets.

Governing Law and Venue

What it does

Specifies applicable law and venue for disputes.

Why it benefits both Parties

Reduces uncertainty and procedural disputes.

Why it is necessary for Alescent

Provides predictable enforcement mechanics.

Assignment

What it does

Restricts assignment while allowing transfer to successors in a merger or asset sale.

Why it benefits both Parties

Ensures confidentiality obligations do not migrate without control.

Why it is necessary for Alescent

Balances control with normal corporate transactions.



Severability

What it does

Preserves the agreement if a provision is held unenforceable.

Why it benefits both Parties

Prevents collapse due to a single defect.

Why it is necessary for Alescent

Standard contract hygiene that preserves protection.

Entire Agreement and Amendment

What it does

Confirms the MNDA is the full confidentiality agreement and may be amended only in writing.

Why it benefits both Parties

Prevents side agreements from creating confusion.

Why it is necessary for Alescent

Avoids accidental, conflicting confidentiality obligations.

Supersession of Prior Confidentiality Agreements

What it does

Supersedes prior NDAs while preserving accrued rights and avoiding conflict with broader agreements.

Why it benefits both Parties

Eliminates ambiguity about which NDA applies.

Why it is necessary for Alescent

Prevents disputes when parties re-engage over time.

Schedule A. Explicitly Excluded Confidential Information

What it does

Provides a controlled mechanism to identify information excluded from confidentiality.



Why it benefits both Parties

Allows pragmatic carve-outs when needed.

Why it is necessary for Alescent

Supports speed and clarity in discussions.

Schedule B. Explicitly Included Confidential Information

What it does

Identifies categories that are unquestionably treated as confidential.

Why it benefits both Parties

Clarifies boundaries and reduces negotiation cycles.

Why it is necessary for Alescent

Protects Alescent's core differentiation, including business models, frameworks, analytical logic, pattern libraries, economic constructs, commercial strategy, engagement mechanics, and pre-commercial materials.

Common Questions

"Is this a one-sided NDA?"

No. The MNDA is fully mutual. Either Party may disclose information and either Party may receive it.

"Does this prevent us from using our own ideas or experience later?"

No. Independently developed information and information already lawfully possessed are excluded.

"Does this NDA force us to move forward?"

No. The MNDA protects discussions only and does not require a deal.

"What happens if something goes wrong?"

The agreement emphasizes notice, cooperation, and injunctive relief to contain harm.