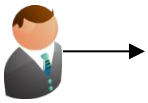
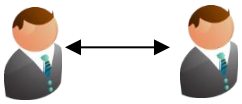
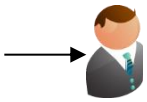
Confidentiality Agreement Analysis

	Pro-Discloser 	Mutual 	Pro-Disclosee 
Parties		• Is entity corporation or individual? • Should entity include affiliates or subsidiaries?	
Purpose		• Define purpose of NDA ("Purpose")	
Confidential Information	• Broad as possible; should include oral and written information • No marking requirement • Covers past and future disclosure		• Narrow as possible; require it to be marked or reduced to writing • Provide right to refuse acceptance of conf. info • Covers only future disclosure
Use and Disclosure Restrictions		• Conf. info to be used only for "Purpose" • No disclosure to third parties	
Exclusions		• Public domain • Becomes known to recipient without breach of the NDA • Disclosed with approval of discloser • Independently developed by recipient • Required by law	
Residuals	• No exclusion for residuals (ideas retained in unaided memory or recipient)		• Use of residuals not subject to confidentiality obligations
Term		• Window of disclosure (time) • Term of confidentiality obligation	
Return of Conf. Info.	• Must be returned		• May be destroyed or certified for destruction
Remedies	• Breach shall cause irreparable harm • Indemnification		• Breach may cause irreparable harm
General Provisions	• No publicity • Restriction on export • No reverse engineering; modification	• Governing law / jurisdiction • No intellectual property licenses granted	