

Mutual TSC Multi-party Non-disclosure Agreement (NDA) Explainer



This guide gives a brief overview of how the Mutual TSC Multi-party NDA works and what it covers.

What is a multi-party NDA?

NDA's can be either one-way or multi-party.

A one-way NDA allows a disclosing party to disclose information to a receiving party.

A multi-party NDA allows each party to the NDA to be both a disclosing and receiving party. This ensures that information exchanged between parties is kept confidential. A multi-party NDA is appropriate for the TSC's working groups since different parties will be collaborating with one another to solve problems set by the TSC.

Why are you being asked to sign an NDA?

When joining a working group, you will be required to sign a multi-party NDA to ensure that information exchanged between parties is kept confidential. The NDA defines what should be considered as confidential information so that it is clear to all parties throughout their relationship what is considered confidential and what subsequently cannot be disclosed. The purpose of the NDA is to ensure participants are clear what information of **theirs** is protected, and what information of the other parties cannot be disclosed. This means that all participants are comfortable to have open discussions with other parties for the purpose of developing a standard. It also means that if participants are generating IP during the working group process, they will have some re-assurance that they can protect that IP themselves, if they want to.

What information is treated as confidential under the NDA?

NDA's are purpose specific and limited to the specific problem that a given working group has been tasked with solving. For example, if the purpose reads: "to define a Merkle Proof Standard" then any discussions relating to that purpose would be treated as confidential and subject to the NDA. Any discussions not relating to that purpose would require a new NDA to be treated as confidential.

This means that any information relating to the participants own business and technology is also treated as confidential where the other participants would reasonably understand that the disclosing party intended it to be confidential. If a member of the working group comes up with a new idea relating to the problem set by the problem stated in the proposal, then this also should be generally understood by the other working group participants as information to be treated as confidential.

What information is NOT treated as confidential under the NDA?

The NDA will give a complete list of examples and can include:

- Information that a disclosing party already had in their possession prior to signing the NDA.
- information that can be shown as already being in the public domain prior to signing the NDA.
- information that was received by a third party before or after signing the NDA, etc.

It should be noted that any information independently developed by a signing party can be disclosed without breaching the NDA. In other words, so long as there is no disclosure of information received from a disclosing party, there is no breach of the NDA.

Why should I sign an NDA if developing a standard already in the public domain?

An NDA will still be in place to keep the outcome of the review of the published standard private at least up until it is published in the public domain. This will also make sure any potential IP relating to the improvements can be protected by the individuals involved, if that's what they wanted to do.

Confidentiality period

The confidentiality period determines the length of time that anything discussed under the NDA is to remain confidential. For the current NDA, the term is determined by:

- Any information related to the Purpose of the NDA, that is not put into the public domain via publication of the standard document will remain protected under NDA for 5 years from the effective date.
- Information included in the standard document (e.g. in draft versions) is protected by the NDA up until the standard has been published for public review. Generally, the standard document will be published much sooner than the 5-year time limit.
- The NDA will not apply to any information that ceases to be confidential before expiry of the 5-year period, e.g. a third party independently discloses the same information.
- The parties to the NDA can decide to disclose confidential information earlier than the five-year limit and will need to agree in writing before doing so.
- Information disclosed during the workgroup discussion that is not directly related to the purpose defined in the NDA is not treated as confidential information under the NDA.

If, for whatever reason, a technical standard is abandoned and the working group disbanded, IP owners can still pursue protection for their IP. Publication of such IP will not violate the NDA provided there is no publication of information received from another party, where that party has not consented to its disclosure.

Can I terminate the NDA?

If, for whatever reason, you no longer wish to be a party to the NDA, you will need to submit written notice in accordance with section 9 of the NDA. It should be noted that terminating the NDA does not terminate your obligation to keep any of the information received by you, confidential. Termination of the NDA simply means that neither you nor the other signatories are obliged to keep any subsequently disclosed information confidential.

What if work on the standard is terminated early?

If a technical standard is abandoned and the working group disbanded, IP owners can still pursue protection for their IP. Publication of such IP will not violate the NDA provided there is no publication of information received from another party without that party having consented to its disclosure.

Signing the Mutual TSC multi-party NDA

Who should sign the NDA?

The multi-party NDA can be signed as **a company** or as **an individual**. Please ensure which category you represent and provide the correct details to be included in the NDA to the TSC project coordinator.

Company representative

If you are representing a company in the working group or if you are employed by a company and intend to disclose information that might belong to your company (for example, information relating to your company's research or goals) you will need to get the NDA signed by the person(s) duly authorized to represent the company (e.g. company Director).

Most of our working group participants are in this category. This means that it is usually entities which are the parties to the working group, although they are represented there by particular individuals.

The reason why we want every company to sign the NDA (through its legal representatives), is also because we want that company to undertake not to disclose the information which are shared by other members of the working group as well as what is in general being discussed within the group.

Individual

If you are acting as an individual, (for example, not on behalf of your company), you may sign the NDA yourself. By signing the NDA as an individual, you undertake not to disclose any information other than working group participants shared during the works as well as any other information from the works. If you want to share something with your company director or any other colleagues, it would constitute a breach of the NDA.

If you think it would indeed be the case, that some information should be shared with your colleagues or a boss, then maybe it makes more sense that the company join the working group and you act as representative.

In such a situation, the company signs the NDA and is bounded, and its every employee should be allowed to have access to that info (the company bears the liability for any breach or unauthorized disclosure).

How do I sign the NDA?

You will receive an email asking you to 'Review Document'. Click the link and you will be presented with the NDA for signing. You should not need to download any new software to access the document. You will need to select 'Continue' at the top right-hand corner, and then 'Start' in the top left. You will then be guided to the part of the NDA requiring your signature. Once you have filled in the details and provided your signature, the NDA will be saved to SharePoint. You can view the signed NDA at any time.

Mutual TSC multi-party NDA

<p>"Effective Date"</p> <p>Explanation: The Effective Date is the date from which the Term and Confidentiality Period are triggered. Each time the NDA is signed by a new party, the effective date is updated to the date on which that party signed.</p>	<p>Unless stated otherwise below, from the latest date of signature of this NDA.</p>
<p>"Term"</p> <p>Explanation: The Term of the NDA is the time-period in which parties can disclose confidential information to one another. The Term runs from the Effective Date and can be extended by written agreement between the parties.</p>	<p>1 (one) YEAR from the Effective Date, extendable only by written agreement of the parties.</p>
<p>"Confidentiality Period"</p> <p>Explanation: The Confidentiality Period determines the length of time that anything discussed under the NDA is to remain confidential. For the current NDA, this term is 5 years after the last disclosure of the confidential information made during the Term. See the Confidentiality period section of the explainer for more details.</p>	<p>Ends 5 (Five) YEARS after the last disclosure of Confidential Information made during the Term, or such longer period as required by law to be maintained in confidence or so long as the Confidential Information remains confidential.</p>
<p>"Purpose"</p> <p>Explanation: The Purpose of the NDA defines the scope of discussion that is protected under the NDA. For example, if the purpose reads: "to define a Merkle Proof Standard" then any discussions relating to that purpose would be treated as confidential and subject to the NDA. Any discussions not relating to that purpose would require a new NDA to be treated as confidential.</p>	<p>To participate in [standard name] Working Group of BitcoinSV Technical Standards Committee ("Working Group") for the purpose of discussing with participating companies and partners and providing solutions to a Technical Problem set by the Technical Standards Committee, with the ultimate aim of producing a Technical Standards Document outlining one or more solutions to the Technical Problem. The Technical Problem for [standard name] Working Group is [description of the problem]</p>

confidential by someone who is generally familiar with each Disclosing Party's type of business. Confidential Information includes without limitation the fact that Confidential Information has been exchanged or any status of the Purpose.

Explanation: Any information relating to the business and technology of a disclosing party is treated as confidential where the receiving party would reasonably understand that the disclosing party intended it to be confidential. If a member of the working group comes up with a new idea relating to the problem set by the TSC, it should generally be understood by the receiving parties that this information is to be treated as confidential.

3. Exclusions from Confidential Information. Confidential Information does not include, and each Receiving Party will be under no obligation under this NDA to preserve the confidentiality of, information that each Receiving Party can show, by documentary evidence: (1) was in each Receiving Party's possession before it was disclosed by each Disclosing Party, or (2) was independently developed by each Receiving Party or a person within each Receiving Party's Group without the benefit of each Disclosing Party's Confidential Information, or (3) was publicly disclosed in an issued patent or printed publication or on the Internet, or otherwise became available to the public, without breach of each Receiving Party's obligations to maintain confidentiality thereof or (4) was disclosed to each Receiving Party by a third party, either before or after disclosure by each Disclosing Party, unless such third-party disclosure was in breach of an obligation of confidence owed by the third party to each Disclosing Party, or (5) .was approved for publication as the Technical Standards Document as described in Section 4 below.

Explanation: This section of the NDA gives a complete list of examples of what information is not treated as confidential under the NDA. These include information that a disclosing party already had in their possession prior to signing the NDA, information that can be shown as already being in the public domain prior to signing the NDA, information that was received by a third party before or after signing the NDA, etc.

It should be noted that any information independently developed by a signing party can be disclosed without breaching the NDA. In other words, so long as there is no disclosure of information received from a disclosing party, there is no breach of the NDA.

4. Protection of Confidential Information. Unless each Disclosing Party otherwise gives its prior written consent, during the Confidentiality Period each Receiving Party will take reasonable steps to ensure the confidentiality of the Confidential Information of each Disclosing Party, including but not limited to at least the same measure of protection that each Receiving Party applies to its own Confidential Information of similar nature. If prior written consent is obtained from each signing Party, each signing Party may disclose the Confidential Information earlier than the Confidentiality Period. Approval of the Technical Standards Document for publication by each signing party will be treated as equivalent to prior written consent and in such case, the Confidentiality Period, insofar as it relates to the information contained in the Technical Standards Document, will terminate on the Publication Date. For the purposes of this NDA, the Publication Date is the date on which, as agreed between the parties, the Technical Standards Document is published for review by external parties on the Bitcoin Association website. During the Confidentiality Period, each Receiving Party will not use each Disclosing Party's Confidential Information except in furtherance of the Purpose. For so long as particular Confidential Information of each Disclosing Party does not come within one of the exclusions of Section 3, each Receiving Party will not disclose such Confidential Information except to those of each Receiving Party's officers, directors, and employees and consultants (i) who have entered into agreements with any Receiving Party that contain restrictions at least as protective of confidential information as those of this NDA, or who are obligated as a matter of law to abide by such restrictions, and (ii) who have been informed by any Receiving Party of the confidential nature of the Confidential Information. Each Receiving Party shall notify each Disclosing Party in writing of any breach of this Agreement.

Explanation: The confidentiality period determines the length of time that anything discussed under the NDA is to remain confidential. See the **Confidentiality period** section of the explainer for more details.

1. Introduction. This Multi-party Non-disclosure Agreement ("NDA") is made as of the Effective Date defined above between the signing parties listed at the end of this NDA and any third party that executes this NDA after the Effective Date for discussion, exploration and/or examination of the Purpose described above. As used in this NDA, a party that discloses Confidential Information is a "Disclosing Party". A party who receives information is a "Receiving Party". Reference to a Party is deemed to include its Group companies. "Group" means, in relation to either party, any company or legal entity which controls, is controlled by, or is under common control with such party, but any such company or other legal entity shall be deemed to be a Group company only as long as such control exists and for the purposes of this definition, "control" means direct or indirect ownership of at least fifty percent (50%) of the voting power of the shares or other securities for election of directors (or other managing authority) of the controlled or commonly controlled entity. Each party hereby confirms its authority to bind its Group to this NDA. A breach of this NDA by a Group company of one party shall also be regarded as a breach by the party concerned.

2. Definition of Confidential Information. For purposes of this NDA, "Confidential Information" means, except to the extent excluded by Section 3, all information in any medium and format relating to the Purpose and shared between the Parties during the works of the Working Group as well as all information in any medium and format relating to the business and technology of each Disclosing Party that Disclosing Party or any member of its Group identifies as confidential or which under the circumstances, should reasonably be recognized as

5. Return of Information. Upon request by each Disclosing Party, each Receiving Party will (1) return to each Disclosing Party all tangible copies of documents containing Confidential Information that were provided by each Disclosing Party, and (2) at the option of each Receiving Party, either give to each Disclosing Party or destroy all other copies containing such Confidential Information and then certify such destruction in writing to each Disclosing Party. Electronic copies of Confidential Information stored in system backup media (e.g., mail backup tapes) may be destroyed in accordance with each Receiving Party's regular business processes for destruction of such media. Pending destruction, all such copies must be given the protection required for Confidential Information.

6. Disclosure Through Legal Process. (a) If a third party (including without limitation a judicial or government entity) seeks disclosure of any Disclosing Party's Confidential Information from any Receiving Party through legal process (including without limitation a subpoena), then each Receiving Party will immediately notify each Disclosing Party. **(b)** If any Disclosing Party elects to seek a protective order or a similar remedy, each Receiving Party will cooperate fully with any Disclosing Party in that regard at each Disclosing Party's expense. Each Receiving Party will furnish, in response to such legal process, only such information as each Receiving Party is legally required to disclose and will use reasonable efforts to obtain assurance that confidential treatment will be accorded to any Confidential Information which it so discloses. **(c)** Any Receiving Party's disclosure of Confidential Information disclosed in response to such a legal process in accordance with this Section 6 will not be deemed a violation of this NDA.

7. Export Controls. Each Receiving Party will not export or re-export any Disclosing Party's Confidential Information, directly or indirectly (including via remote access), nor permit the same, to any location to which such export is prohibited or to any location for which a license is required under applicable export laws, without first obtaining the required license.

8. No Ownership or License Rights; No Warranty. (a) This NDA does not grant any Receiving Party any ownership right in, nor any license to use (except as expressly set forth herein), any Confidential Information of any Disclosing Party. **(b)** Under this NDA none of the parties sells, transfers, licenses or otherwise conveys any rights it has or may have with respect to any patent, copyright, trademark, trade secret or other

intellectual property right. **(c)** All Confidential Information is provided by each Disclosing Party **AS IS WITH ALL FAULTS**, and with no warranty of any kind, express or implied. **(d)** None of the parties shall have any right to reverse engineer or disassemble any software, code or product provided hereunder.

9. Notices. (a) All notices under this NDA must be in writing and are deemed provided upon receipt. For the purpose of this NDA, duly executed electronic signatures should be treated equivalent to handwritten signatures and therefore a document bearing them shall meet the requirement of a written form. Notices of breach or termination must (i) be sent by certified mail return receipt requested, or by recognized overnight courier with traceable delivery, or by email and (ii) have a copy sent separately to the attention of any of the notified party's general legal counsel or the specified contact person.

10. Miscellaneous. (a) This NDA: (i) is intended to be binding on each party and to benefit its respective successors and permitted assigns; (ii) contains the entire agreement between the parties with respect to the subject matter hereof; and (iii) may not be amended, except by a writing executed by all the parties that expressly refers to this NDA and sets forth explicitly the nature of the amendment. **(b)** Each Receiving Party may not assign this NDA nor delegate its obligations hereunder in respect of any Disclosing Party's Confidential Information, except with the prior written consent of the Disclosing Party. An assignment attempted in violation of this provision is void and of no force or effect. **(c)** Any waiver of an obligation under this NDA: (i) must be in writing, be signed by the waiving party; and (ii) is not to be deemed a waiver of any other breach by the other party. **(d)** If the parties have a business agreement containing confidentiality provisions covering the scope of this NDA, such agreement shall take precedence. **(e)** This NDA will be governed in accordance with the laws of Switzerland. **(f)** Any Dispute arising under this NDA will be resolved exclusively by submission to the courts of Zug, Switzerland and all the parties waive any objection to such forum on the basis of lack of jurisdiction or inconvenient forum. **(g)** All the parties recognize that breach of this Agreement may cause each non-breaching party to suffer irreparable damages, and hereby agree that each non-breaching party will be entitled to seek injunctive relief and other legal remedies under this Agreement, as may be granted by a court of competent jurisdiction wherever situated in order to protect their proprietary rights and Confidential Information. **(h)** Each party shall execute a copy of this NDA, each of which shall be deemed an original and all of which together shall constitute one instrument. A list shall be maintained of all parties that have executed this NDA and shall be made available to all parties.