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No-Shop and Exclusivity Clauses in Letters of Intent

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What an exclusivity period or no-shop actually restricts

An exclusivity period is the window after a letter of intent is signed during which the seller agrees not to deal with anyone else. The "no-shop" clause defines what "deal with" means, and its text, not the label, decides what is restricted.

A typical no-shop has three limbs. The NeOnc Technologies Holdings LOI filed with the SEC in 2025 is a clean example. For 30 days from execution, the sellers agree they will not, directly or indirectly, "(i) take any action to solicit or initiate any 'Acquisition Proposal' ..., or (ii) continue to engage in discussions or negotiations with any potential acquiror or investor, or (iii) disclose any non-public information, other than in the ordinary course of business, relating to the Company, to any other person or entity" except the buyer (NeOnc LOI, Exhibit 10.1).

Each limb is a separate promise:

Limb	What it stops	What it usually does not stop
Solicit or initiate	Seller or its banker calling other buyers, sending teasers, re-opening a process	Unsolicited inbound interest arriving
Negotiate or discuss	Continuing talks with a buyer already in the room	A short reply saying the seller is under LOI (if the clause permits it)
Disclose information	Data-room access or management meetings for others	Ordinary-course disclosures to customers, lenders, auditors

Two supporting mechanics matter as much. **The definition of the restricted transaction.** NeOnc defines "Acquisition Proposal" as any offer, proposal or indication of interest, "whether written or oral", in the acquisition of any assets of the company, a merger or business combination, or the acquisition of any equity security of the company (NeOnc LOI). A narrower definition (for example, "a sale of a majority of the equity") leaves room for a minority recapitalization or a divisional asset sale.

Notice of inbound proposals. The same clause requires the sellers to "promptly notify" the buyer of any Acquisition Proposal received, "including the identity of the person making such Acquisition Proposal and all economic terms" (NeOnc LOI). For a buyer this is often the most useful limb: it turns a leak into information.

This article describes contract mechanics and case law; it is not legal advice, and LOI drafting belongs with counsel.

Three real clauses, side by side

Public companies file material letters of intent as exhibits, so EDGAR is one of the few places to read real exclusivity language. The three below are a small, mostly microcap sample and say nothing about what is typical in private-equity or search-fund deals.

	NeOnc Technologies Holdings (2025)	Cuentas Inc. and Sekur Private Data (2024)	Macrovision and Globetrotter (2000)
Who is bound	Sellers ("Holders"), and they must cause the company and its officers, directors, employees and agents to comply	Both parties, each on behalf of its affiliates, directors, officers, advisers and representatives	Target; the buyer also agreed not to negotiate acquisitions in a defined line of business
Term	30 days from execution	30 days from signing	Earlier of a definitive agreement or 45 days from the Effective Date
Extension	Automatic additional 30 days if the parties "are working constructively" toward closing	None stated in the clause	None stated in the clause
Inbound offers	Must notify buyer with identity and economic terms	May reply only to say a letter of intent has been signed	Not addressed
Carve-outs	Ordinary-course disclosure	Sekur may still issue equity in financings, public offerings and option grants	Ordinary-course operations
Remedy written in	Expense reimbursement if sellers breach the No Shop paragraph	None specific to exclusivity	5% termination fee if a qualifying transaction above $1 billion follows within three months of a target termination

Sources for the table: NeOnc LOI; Cuentas LOI dated April 30, 2024, which states that "This exclusivity will be for a period of 30 days from signing the letter of intent"; Macrovision Form 8-K filed March 31, 2000, which defines the "Period of Exclusivity" as ending on "the earlier of: (a) the date on which a definitive agreement is executed ...; or (b) forty-five (45) days from the Effective Date."

Three things stand out.

1. **Extension mechanics differ sharply.** An automatic extension tied to a soft standard ("working constructively") favors the buyer, because the seller must argue the standard was not met to get out. A fixed term forces a written amendment, which hands the seller leverage at day 29.
2. **Exclusivity is not always one-way.** Cuentas made the restriction mutual; Macrovision accepted a restriction on its own acquisitions in a defined business.
3. **The remedy is where the clause gets teeth.** NeOnc and Macrovision both wrote a money consequence into the LOI. Cuentas did not, leaving any remedy to general contract law.

Binding or not: why the heading does not decide

LOIs called "non-binding" usually carve out paragraphs that do bind. The documents above show three architectures.

- **Binding throughout.** NeOnc calls the document a "binding Letter of Intent" in its first paragraph, then provides that if the Holders breach the "No Shop" paragraph or decline to close on substantially similar terms, they "will reimburse NeOnc for all of its reasonable out-of-pocket expenses (including fees to its

advisors)" incurred from the LOI date (NeOnc LOI).

- **Non-binding with listed binding sections.** Cuentas says the letter is "intended solely as an outline of certain material terms, except with respect to the provisions of Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 which are intended to be binding" (Cuentas LOI). Exclusivity is Section 6, so it binds.
- **Non-binding except named clauses that survive termination.** Macrovision states the LOI "is not intended to be binding unless and until the Acquisition Agreement has been executed", except the good-faith negotiation and non-solicitation paragraph, confidentiality and the termination fee, which "shall be binding ... and shall survive any termination" (Macrovision 8-K).

The Macrovision paragraph does something the other two do not: it pairs exclusivity with an express obligation to "enter into good faith negotiations" during the period, and allocates "the burden of proving that the other party did not negotiate in good faith" in a dispute. That is the kind of language Delaware's leading case on preliminary agreements turned on.

What Delaware courts have said about preliminary agreements

The leading case on whether a preliminary deal document can create liability is *SIGA Technologies, Inc. v. PharmAthene, Inc.* It did not involve an LOI no-shop, so treat it as authority on obligations to negotiate, not on exclusivity periods.

The facts in one paragraph. SIGA and PharmAthene negotiated a license agreement term sheet (the "LATS") that "was not signed," with a footer on both pages reading "Non Binding Terms." A later bridge loan agreement and merger agreement between them each provided that, if the merger was terminated, the parties would negotiate in good faith a definitive license agreement in accordance with the LATS's terms. When the merger failed, SIGA proposed materially different terms (SIGA I opinion).

The 2013 holding. In *SIGA Technologies, Inc. v. PharmAthene, Inc.*, 67 A.3d 330 (Del. 2013) (No. 314, 2012), the Delaware Supreme Court wrote: "We reaffirm that where parties agree to negotiate in good faith in accordance with a term sheet, that obligation to negotiate in good faith is enforceable." Where the trial judge finds "that the parties would have reached an agreement but for the defendant's bad faith negotiation," the judge "may award expectation damages." The court reversed the promissory estoppel holding "because a promise expressed in a fully enforceable contract cannot give rise to a promissory estoppel claim," reversed the equitable damages award, and remanded (SIGA I opinion).

The 2015 sequel. On remand the Court of Chancery awarded PharmAthene $113 million in lump-sum expectation damages (January 15, 2015). In *SIGA Technologies, Inc. v. PharmAthene, Inc.*, 132 A.3d 1108 (Del. 2015) (No. 20, 2015), decided December 23 and corrected December 28, 2015, the Supreme Court, sitting en banc, affirmed. Justice Seitz wrote for the majority; Justice Valihura, concurring in part and dissenting in part, would have limited PharmAthene to reliance damages. The majority held that the law of the case did not bar the Court of Chancery from revisiting its earlier finding that expectation damages were too speculative, and that "expectation damages can be established as long as the plaintiff can prove the fact of damages with reasonable certainty. The amount of damages can be an estimate" (SIGA II opinion).

What deal teams take from it:

- A label ("non-binding") does not end the analysis: the obligation came from signed agreements that pointed back to an unsigned, non-binding term sheet. Fried Frank's commentary notes that a term sheet "should be explicit as to the extent to which it is or is not intended to be binding" (Harvard Law School Forum).
- A good-faith negotiation covenant tied to specific terms can expose a party that walks away to benefit-of-the-bargain damages, not just wasted costs.
- Parties can address remedies directly. The commentary suggests negotiating the damages available, including a provision that "expressly excludes the possibility of expectation damages" (Harvard Law School Forum).

The lesson is symmetrical: a seller who breaches exclusivity is exposed under whatever binding language exists, and so is a buyer who signs a good-faith negotiation covenant and then re-trades without a basis.

Buyer-side risks and costs

Dead exclusivity. The buyer spends on quality-of-earnings work, legal diligence and lenders during the window. If it lapses with financing open, the buyer pays in leverage for an extension or works unprotected. Map the diligence calendar to the term before signing: if a QoE provider quotes four weeks to fieldwork completion, a 30-day term is already tight.

Extension mechanics. A fixed term, as in Macrovision, leaves no slack. If you cannot get an automatic extension like NeOnc's, negotiate an objective trigger: for example, extension by 15 days if a financing commitment letter is delivered or if the seller has not yet delivered agreed data-room items.

Leakage you cannot see. The seller may already be talking to others, or its banker may keep a backup buyer warm. A clause requiring termination of existing discussions helps: NeOnc's sellers agreed "any discussions with other potential acquirors will be formally terminated upon execution of this LOI" (NeOnc LOI). Pair it with notice of inbound proposals.

Scope gaps. If "Acquisition Proposal" covers only equity, a seller can negotiate an asset sale. If it covers only the company, a parent or affiliate that owns a key asset may be outside it.

Remedy without teeth. A no-shop with no specified remedy leaves the buyer with a damages claim to prove. Expense reimbursement (NeOnc) is simpler but caps the upside.

Public-company fiduciary outs and deal-protection case law are out of scope here.

Seller-side risks

Lost competitive tension. Once exclusivity starts, the seller's alternatives cool, and a buyer can re-trade late in the window. A seller in an intermediated process usually signs exclusivity only after a competitive round; a seller approached directly may be asked for exclusivity at the first LOI.

Expense tails. NeOnc's reimbursement covers all reasonable out-of-pocket expenses, including advisers' fees. Sellers should cap any reimbursement in dollars and limit it to breach of the no-shop, not to any decision not to close.

Over-broad definitions. A definition covering "any offer, proposal or indication of interest, whether written or oral" catches nearly every conversation. Sellers commonly ask for carve-outs: ordinary-course financings (as Cuentas reserved for Sekur), customer and supplier conversations, and the right to say "we are under LOI" without breaching (as the Cuentas clause allows).

Tails after termination. Macrovision's three-month fee tail turned a short exclusivity period into a longer practical restriction.

Clause-by-clause checklist for reviewing an exclusivity provision

Use this worksheet on any draft LOI. Copy clause text verbatim; do not paraphrase.

#	Element	Question to answer	Clause text (verbatim)	Buyer view	Seller view
1	Parties bound	Are owners, the company, affiliates and advisers all bound?		Wider is safer	Limit to signatories
2	Limbs	Solicit, negotiate, disclose: are all three present?		All three	Solicit only
3	Transaction scope	Equity, assets, merger, financing, minority stake?		Broad	Exclude financings and ordinary course
4	Start trigger	Signing, countersignature, or another "Effective Date"?		Buyer signature	Mutual execution
5	End trigger	Fixed days, earlier of signing or days, or a calendar date?		Days plus extension	Fixed date
6	Extension	Automatic, objective trigger, or written amendment only?		Automatic	Written only
7	Existing talks	Must existing discussions be terminated?		Yes	Not required
8	Inbound notice	Identity and terms of any approach disclosed?		Yes, promptly	Existence only
9	Permitted reply	May the seller say it is under LOI?		Narrow	Yes
10	Remedy	Expense reimbursement, fee, or silence?		Specified	Capped or none
11	Tail	Does any obligation survive termination?		Yes	No
12	Binding status	Is the exclusivity paragraph expressly listed as binding?		Yes	Yes, but negotiation covenant excluded

Illustrative example (fictional parties, not drafting advice).

> *Exclusivity.* From the date both parties have signed this letter until the earlier of (a) execution of a definitive purchase agreement or (b) 5:00 p.m. Eastern on the 45th day after that date (the "Exclusivity Period"), Harrow Valve Company, Inc. and each of its shareholders will not, and will cause their representatives not to, directly or indirectly (i) solicit, initiate or knowingly encourage any Acquisition Proposal, (ii) negotiate or hold discussions regarding any Acquisition Proposal, or (iii) furnish non-public information to any person in connection with an Acquisition Proposal. "Acquisition Proposal" means any proposal for the acquisition of 20% or more of the equity or consolidated assets of the Company, or any merger or recapitalization, other than with Northfield Acquisition Partners LLC. The Company will notify Northfield within two business days of receipt of any Acquisition Proposal, including its material terms. The Exclusivity Period will extend by 15 days if, on its last day, Northfield has delivered a draft purchase agreement and a debt commitment letter. This paragraph is binding; no other paragraph of this letter creates any obligation to negotiate or to consummate a transaction.

Against the checklist, items 7 (existing talks), 9 (permitted reply) and 10 (remedy) are unanswered.

How origination research fits before the LOI

Exclusivity only protects a buyer if it binds the party that can actually sell. Three checks come first:

1. **The legal entity.** Brands and websites often differ from the entity that owns the assets. Confirm the registered legal name, state of formation and status, and whether assets sit in an affiliate (see resolving the legal entity behind a brand). An LOI signed by the wrong entity can leave the asset outside the no-shop.
2. **Who can bind.** Identify the owners who must sign or cause compliance. NeOnc's holders must cause the company and its personnel to comply; mirror that where ownership is split.
3. **Who else is in the room.** Even without a banker there may be an earlier buyer conversation; ask, and use the "terminate existing discussions" limb.

Docket's Triage agent resolves target identity and asks disqualifying questions before research is paid for, which is the evidence an LOI's party block depends on.

Source links

Links cited in this article, in order of first appearance. Full addresses are provided for readers using extracted text.

1. https://www.sec.gov/Archives/edgar/data/1979414/000182912625005605/neonctechnologies_ex10-1.htm
2. https://www.sec.gov/Archives/edgar/data/1424657/000121390024040251/ea020539601ex10-1_cuentas.htm
3. https://www.sec.gov/Archives/edgar/data/1027443/000090690300000028/0000906903-00-000028.txt
4. https://cases.justia.com/delaware/supreme-court/314-2012.pdf?ts=1462313822
5. https://cases.justia.com/delaware/supreme-court/2015-20-2015-0.pdf?ts=1451912740
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