

**Mississippi State University
Sponsored Programs Administration
Office of Technology Management**

Procedure Statement

Non-Disclosure Agreements

Purpose:

The purpose of this procedure statement is to identify the responsibilities of administrative units, principal investigators and other administrators in monitoring and complying with the receipt of confidential information or proprietary material from external sources.

Definitions:

Sponsored Agreement – A grant, contract or cooperative agreement containing terms and conditions that govern the fiscal, administrative and programmatic aspects of a research or scholarly project.

Non-Disclosure Agreement (NDA) – A stand-alone agreement that identifies the responsibilities of the parties in receiving proprietary information necessary to conduct a research or scholarly project. This term is used synonymously with Confidentiality Agreement. Usually, a Non-Disclosure Agreement is executed independent of a Sponsored Agreement but may be referenced in a future Sponsored Agreement.

Background:

Through research and scholarly activities, employees of the University are often asked to participate in the utilization of confidential, proprietary or otherwise secret information. In so doing, external sources of such information usually require that the recipient of confidential information execute a Non-Disclosure agreement. A non-disclosure agreement formalizes the relationship between the source of the confidential information and the recipient and details the terms under which both parties are to treat this information.

Non-disclosure agreements should be written between the source of the confidential information and the intended individual or individuals intended as the recipient. However, sources often desire the University to execute such an agreement or accept confidentiality language in a sponsored agreement in order to provide assurance that an administrative system exists to protect the information from improper disclosure.

It is, however, impossible for the University to control the activities of each employee. Hence, the ultimate responsibility must rest with the individual faculty or staff engaging the university in responsibility for the receipt, disposition and management of confidential information.

Procedure:

Where Mississippi State University is required to execute a Non-Disclosure or Confidentiality Agreement on behalf of an employee or group of employees, the following procedures must be followed:

1. Requesting employee completes the Request for Non-Disclosure Agreement form (attachment A).
 - a. If the NDA is related to an existing research agreement, or if the intent is that it will lead to one in the future, the Request for NDA form should be completed and forwarded to Sponsored Programs Administration (SPA) for review.
 - b. If the NDA is not related to an existing or potential research agreement, the Request for NDA form should be completed and forwarded to the Office of Technology Management (OTM) at OTM@msstate.edu for review.
2. MSU prefers to use the standard NDA template (attachment B) when initiating the agreement as this language has already been reviewed and found acceptable to MSU. Using this template can shorten the MSU review and signature process significantly. If the external source of confidential information initiates the agreement using another template, the original document should be forwarded to SPA or OTM (as determined in Step 1, above) for review and negotiation.
3. The Principal Investigator and SPA/OTM will collectively review the terms and conditions of the agreement for compliance with university policy, state law or other rules, regulations or guidelines appropriate to the situation.
4. When the terms and conditions of the NDA require significant negotiation, SPA/OTM staff will contact the Principal Investigator regarding the noted concerns. The Principal Investigator will work in concert with SPA/OTM staff in establishing a dialogue with the external source organization. The employee is responsible for sharing the concerns of SPA/OTM with his/her leadership to assure that once negotiations are finalized there will be no further concerns.
5. SPA or OTM (depending on which office reviewed and negotiated the NDA) will coordinate formal acceptance (signature) of the non-disclosure agreement from the external source.
6. The Principal Investigator is primarily responsible for the receipt, maintenance, proper disposition and overall management of proprietary or confidential information pertaining to any and all projects under their direct supervision.



UNIVERSITY

COMPANY

MSU Employee Name:
MSU ID#:
MSU ORG Name:
MSU ORG #:
Mailstop:
Phone:
Email:

Company Name:
Address:
City/State/Zip:
Contractual POC:
Email (required):
Technical POC:
Email:

EXCHANGE OF INFORMATION

What is the purpose of this exchange? (Please be specific):

Who will be disclosing this information?

Please provide a description of the following:

MSU's Confidential Technology/Information to be disclosed (if applicable):

Company's Confidential Technology/Information anticipated to be received (if applicable):

GENERAL INFORMATION

YES NO

- Is it mandatory to receive or disclose confidential information in order to accomplish the purpose stated above?
- Is there a deadline to have the agreement signed? Deadline Date:
- Have you been involved with any other agreement with the Company? If yes, please specify:
- Is this NDA related to an existing research agreement, or is the intent that it will lead to one in the future?
- Is there any possibility that Company's confidential information may co-mingle with similar work or information in your possession?
- Will the Company's confidential information be used by students as part of a class project? If yes, please indicate the type of students involved (i.e.undergrad, MBA):
- Are you a U.S. Citizen? If no, please indicate your current status:
- Will you be sharing any Company confidential information with foreign students or other foreign nationals?

INVENTION DISCLOSURE

YES NO

- Has an invention disclosure been submitted by you related to the information that will be received or disclosed? If yes, please indicate disclosure number(s):
- Do you plan to submit an invention disclosure prior to receipt or disclosure of confidential information? If yes, when?

APPROVALS

Employee Signature	Date	Dept Head/Director Signature	Date	Dean/Director Signature	Date

Attachment B

Non-Disclosure Agreement
between _____
and
Mississippi State University on behalf of its
Office of Technology Management

This Agreement is entered into by _____, having its office at _____, (hereinafter "COMPANY") and Mississippi State University on behalf of its, Office of Technology Management, having its main office at, P.O. Box 5282, Mississippi State, Mississippi 39762 (hereinafter "OTM") effective as of the date of execution by both parties.

1. **PURPOSE OF AGREEMENT.** For a limited time ending on _____, the parties agree that it is desirable to exchange Confidential Information (defined below) relating to the _____.

2. **CONFIDENTIAL INFORMATION.** "Confidential Information" means information consistent with the purpose stated in Paragraph 1 which is disclosed in any tangible form and is clearly labeled or marked as confidential, proprietary or its equivalent, or information which is disclosed orally or visually, is designated confidential, proprietary or its equivalent at the time of its disclosure and is reduced to writing and clearly marked or labeled as confidential, proprietary or its equivalent within thirty days of disclosure. To be protected under this Agreement, Confidential Information disclosed to COMPANY shall be disclosed to authorized employee of COMPANY and Confidential Information shall be disclosed to authorized employee of OTM or its authorized representative(s), _____.

3. **USE AND HANDLING OF CONFIDENTIAL INFORMATION.** From the effective date hereof, each party may use Confidential Information received from the other. The party receiving Confidential Information shall restrict the use of the Confidential Information to the purpose set forth in Paragraph 1 and shall safeguard against disclosure of the Confidential Information to third parties using the same degree of care to prevent disclosure as it uses to protect its own information of like importance, but at least reasonable care. A party may make only the minimum number of copies of any Confidential Information required to carry out the purpose of this Agreement. All proprietary and copyright notices in the original must be affixed to copies or partial copies.

4. **LIMITATIONS ON THE OBLIGATION WITH RESPECT TO CONFIDENTIAL INFORMATION.** Neither party shall be obligated to maintain any information in confidence or refrain from use if:

- a. The information was in the receiving party's possession or was known to it prior to its receipt from the disclosing party;
- b. The information is independently developed by the receiving party without the utilization of Confidential Information of the disclosing party;
- c. The information is or becomes public knowledge without fault of the receiving party.
- d. The information becomes available on an unrestricted basis to a third party from the disclosing party or from someone acting under its control; or
- e. The information is publicly disclosed (i.e., not under adequate protective order) by the receiving party under an order of a court or government agency, provided that the receiving party provides prior written notification to the disclosing party of such obligation and the opportunity to oppose such order.

f. Ordered to release by a court of competent jurisdiction or otherwise required to release by law.

5. **INTELLECTUAL PROPERTY RIGHTS.** No rights or obligations other than these expressly recited herein are to be implied from this agreement. No license is hereby granted, directly or indirectly, under any patent, trade secret, copyright, mask work right or other intellectual property right now held by, or which may be obtained by, or which are or may be licensable by either party.

6. **ASSIGNMENT.** Neither party may assign any of its rights or obligations under this agreement without the prior written consent of the other party.

7. **RETURN OF MATERIALS.** Upon completion of the purpose contemplated for the release of Confidential Information, or upon request by either party, whichever occurs first, each party shall immediately return to the other all Confidential Information received under this Agreement and all copies thereof or, if a party so requests, shall immediately destroy all Confidential Information and copies.

8. **TERM.** The obligations of the parties to refrain from disclosure of any of the Confidential Information received under this Agreement shall terminate three years (3) from the effective date of this Agreement unless written permission is obtained from disclosing party.

9. **EXPORT CONTROL.** The parties acknowledge that the Confidential Information received hereunder may be subject to U. S. export control regulations and hereby agree to comply with such applicable regulations.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth below.

MISSISSIPPI STATE UNIVERSITY

COMPANY: _____

Kristin L. McCandless

Authorized Signatory

Director, Office of Technology Management

Print Name: _____

Title: _____

Date: _____

Date: _____