

The Texas A&M University System Health Science Center

Guidelines for the Administration of Non-Disclosure Agreements (NDA's)

1. GENERAL

Non-Disclosure Agreements (NDA's), also known as Confidentiality Agreements, are designed to protect proprietary information that may be exchanged in the course of a collaborative research project. Information that is considered "proprietary" and "confidential" is that which originated within the organization in possession of the information and which is not commonly known by others in a similar field outside the organization. HSC researchers should utilize an NDA to protect confidential and proprietary information when they are providing such information to the sponsor, or when the sponsor and researcher want to mutually exchange confidential and proprietary information. NDAs are also important in protecting intellectual property during preliminary discussions regarding technology commercialization.

NDAs are typically categorized according to how the exchange of information will occur. More specifically, NDAs are defined as either: (i) "Mutual," wherein a researcher and an external party will both send and receive proprietary and confidential information; or (ii) "One-Way," wherein either the researcher will be sending proprietary information to an external party, or an external party will be sending proprietary information to the researcher.

2. MUTUAL EXCHANGE OF PROPRIETARY INFORMATION

When an HSC researcher and an external party (a corporation, a private company, an institution of higher education, an individual, or any other type of entity) each wish to ensure the confidentiality of their proprietary information during research or commercialization discussions, a Mutual Exchange NDA should be utilized. Either party may take the lead in creating the Mutual Exchange NDA.

- 2.1. When the HSC takes the lead in creating the Mutual Exchange NDA document:
 - 2.1.1. The HSC researcher should complete the HSC Mutual Exchange NDA template that has been reviewed and approved by the Office of Technology Commercialization (OTC) and the Office of General Counsel (OGC).
 - 2.1.2. The proposed Mutual Exchange NDA must be routed for approval signatures through the department head and dean (or designee) to the Assistant Vice President for Research Administration, who will review the NDA for compliance with HSC rules and System policies and forward it to the external party for review. Once deemed acceptable by both the external party and HSC, the parties will process the NDA for signatures.
 - 2.1.3. The Office of Research will notify the researcher that the document has been fully executed and discussions may occur. The proprietary information may only be transferred or discussed once both parties sign the Mutual Exchange NDA. A copy of the fully executed NDA will be forwarded to the OTC, the component dean (or designee), and the researcher.

- 2.2. When the external party takes the lead in creating the Mutual Exchange NDA document:
 - 2.2.1. Upon receipt of a Mutual Exchange NDA, the HSC researcher should review the document to ensure the proprietary information description is accurate and appropriate for their research needs. The NDA should also be reviewed to ensure that any restrictions on use, intellectual property language, and any other terms and conditions of the agreement are acceptable. If terms need revision, the researcher or an appropriate member of their component's administration should work directly with the NDA author to resolve unacceptable issues.
 - 2.2.2. Once deemed acceptable by both parties, the NDA should be signed and routed for approval by the department head and dean (or designee) to the Assistant Vice President for Research Administration.
 - 2.2.3. The Assistant Vice President for Research Administration will review the NDA for compliance with HSC rules and System policies.
 - 2.2.4. The NDA may also need to be reviewed by the OTC and the OGC. As a result of those reviews, further negotiations with the external party on terms and conditions may be required.
 - 2.2.5. Once the OTC and OGC approve the NDA, it will be signed by the Vice President for Research (or designee) and transmitted to the external party for signature.
 - 2.2.6. The Office of Research will notify the researcher that the document has been fully executed and discussions may occur. The proprietary information may only be transferred or discussed once both parties sign the Mutual Exchange NDA. A copy of the fully executed NDA will be forwarded to the OTC, the component dean (or designee), and the researcher.

3. NDA PROCESS FOR ONE-WAY EXCHANGE OF PROPRIETARY INFORMATION

When either an HSC researcher or an external party wish to ensure the confidentiality of their proprietary information during research or commercialization discussions, a One-Way Exchange NDA should be utilized. The party in possession of the proprietary information should typically create the One-Way Exchange NDA.

- 3.1. When the HSC initiates the One-Way Exchange NDA document:
 - 3.1.1. HSC researcher (discloser) should complete the HSC One-Way Exchange NDA template that has been reviewed and approved by the OTC and the OGC.
 - 3.1.2. Once prepared, the proposed One-Way Exchange NDA must be routed for approval signatures through the department head and dean (or designee) to the Assistant Vice President for Research Administration, who will review the NDA for compliance with HSC rules and System policies, sign it, and forward it to the other party.
 - 3.1.3. The Office of Research will notify the researcher that the document has been fully executed and discussions may occur. The proprietary information may only be transferred or discussed once both parties sign the One-Way

Exchange NDA. A copy of the fully executed NDA will be forwarded to the OTC, the component dean (or designee), and the researcher.

- 3.2. When the external party initiates the One-Way Exchange NDA document:
 - 3.2.1. Upon receipt of the One-Way Exchange NDA, the researcher should review the document to ensure the proprietary information description is accurate and appropriate for the research needs. The NDA should also be reviewed in order to ensure that any restrictions on use, intellectual property language, and any other terms and conditions of the agreement are acceptable. If terms need revision, the researcher or an appropriate member of their component's administration should work directly with the NDA author to resolve the unacceptable issues.
 - 3.2.2. Once deemed acceptable by the researcher, the NDA should be signed by the researcher and routed for approval by the department head and dean (or designee) to the Assistant Vice President for Research Administration.
 - 3.2.3. The Assistant Vice President for Research Administration will review the One-Way Exchange NDA for compliance with HSC rules and System policies.
 - 3.2.4. The NDA may also need to be reviewed by the OTC and the OGC. As a result of those reviews, further negotiations with the external party on terms and conditions may be required.
 - 3.2.5. Once the OTC and OGC approve the One-Way Exchange NDA, it will be signed by the Vice President for Research (or designee) and transmitted to the other party for final signatures.
 - 3.2.6. The proprietary information may only be transferred or discussed once both parties sign the One-Way Exchange NDA. The Office of Research will notify the researcher that the document has been fully executed and discussions may occur. A copy of the fully executed NDA will be forwarded to the OTC, the component dean (or designee), and the researcher.

4. SUMMARY AND IMPORTANT REMINDERS

Each time that a researcher desires to exchange proprietary or confidential information with an external party, an NDA should be prepared and signed by the parties involved in the proposed exchange **prior to** the actual transfer of information, whether the exchange occurs verbally or in writing. NDA's must be signed by the appropriate HSC administrators to be considered valid; NDA's should never be signed only by the researcher. When initiating a request for an NDA, the researcher should provide as much information as possible in order to facilitate the process.

When the researcher is going to receive proprietary and confidential information from the external party, it is imperative that the researcher take all reasonable precautions in handling the external party's confidential information in order to maintain its confidential nature and remain in compliance with the requirements of the NDA.