**Nondisclosure Agreement (NDA)**

**FAQs**

***What is a nondisclosure agreement (NDA)?***

A **non-disclosure agreement** (**NDA**), also known as a **confidentiality agreement** (**CA**), **confidential disclosure agreement** (**CDA**), **proprietary information agreement** (**PIA**), or **secrecy agreement** (**SA**), is a legal contract between at least two parties that outlines confidential material, knowledge, or information that the parties wish to share with one another for certain purposes, but wish to restrict access to or by third parties. It is a contract through which the parties agree not to disclose information covered by the agreement. An NDA creates a confidential relationship between the parties to protect any type of confidential and proprietary information or trade secrets. As such, an NDA protects nonpublic business information.

***When do I need to use an NDA?***

NDAs are commonly signed when two companies, individuals, or other entities (such as partnerships, societies, etc.) are considering doing business and need to understand the processes used in each other's business for the purpose of evaluating the potential business relationship. NDAs can be "mutual", meaning both parties are restricted in their use of the materials provided, or they can restrict the use of material by a single party.

***How do I get an NDA negotiated and executed?***

Contact UMass Lowell’s Office of Technology Commercialization (OTC). Professional staff trained to negotiate these contracts will manage the process on your behalf and that of the University.

***Why shouldn’t a faculty member sign an NDA themselves?***

A faculty member should not sign an NDA themselves because those who do could be personally liable under the agreement for any breach of contract.

***Who can sign an NDA binding the University on my behalf?***

Only approved OTC professional staffs are authorized to execute NDAs on behalf of the University.

***What are the key terms typically found in an NDA?***

* The **Effective Date** of the agreement
* The **Term of the Exchange** of Confidential/Proprietary Information under the agreement
* The **Parties** to the agreement
* The **Technology** to be discussed, either specifically or more broadly
* The **Purpose** of the agreement
* What constitutes **Confidential Information** (and what does not) under the agreement
* The **Term of the Obligation** of confidentiality under the agreement

***How do I know what is considered Confidential Information under an NDA?***

Confidential Information under an NDA will be defined in the agreement itself. It is usually broadly defined to mean any technical and/or business information furnished by one party to the other pursuant to the agreement that is specifically designated as confidential. The disclosing party must mark written Confidential Information indicating its confidential status. Orally or visually disclosed Confidential Information is generally required to be reduced to written form within a specified period (e.g. 15 days) following the disclosure by the disclosing party and delivered in a notice to the receiving party with reference made to the time and place of disclosure. Only that information which is proprietary and has been properly identified will be considered Confidential Information under the agreement. Providing specificity as to what information is considered by each party to be proprietary information ensures that both parties understand what does (and does not) constitute Confidential Information under the agreement.

***How does an NDA protect my interests?***

Obtaining an NDA precludes the release of confidential/proprietary information into the public domain. By legally binding contract, the Parties to the agreement promise to keep non-public business information in confidence. An effective NDA prevents the creation of prior art for the purposes of obtaining a patent, provided the Parties adhere to the terms of the agreement. Naming the University as a Party to the agreement rather than a Principal Investigator protects the PI from personal liability under the contract as an employee of the University.

***How does an NDA protect the University’s interests?***

Obtaining an NDA establishes a professional business and legally binding contractual relationship between the University and a company. The agreement provides assurance to both Parties that sensitive information, i.e. Confidential/Proprietary Information, of the Parties will be treated as such by the other, enabling the exchange of information for the purpose of furthering collaboration between the Parties.

***Do I need to confirm that a new exchange of confidential information will be protected?***

Yes. An NDA can be broad or narrow in scope, e.g. a broad general description of technology to be discussed vs. a technology specifically identified by a docket number. An NDA can also be for a relatively short duration, e.g. 2 days for a board of directors meeting, or for an extended period of time such as one year to enable a series of conversations/meetings on a given topic between the parties. **The terms of the NDA define the scope and duration of the protection afforded.** Having an NDA in place with a company directed to a given technology does not provide protection beyond the topic or time period specified in that agreement. Therefore, it may be necessary to have more than one NDA in place with a single company, or to extend the Term of an existing NDA. It is advisable to confirm that adequate contractual protection is in place prior to engaging in exchange of confidential information with third parties.

***Who can exchange Confidential Information under an NDA?***

Only those parties who are named Parties to the agreement may disseminate and/or receive Confidential Information. If either Party disseminates the other Party’s Confidential Information to an unauthorized third party without prior written permission they are in breach of the NDA. The obligation extends to individuals and entities identified under the agreement as being included in the definition of a Party. For example, an affiliate of a multinational corporation as the named party to the agreement would be an acceptable recipient of the University’s Confidential Information under an NDA if permitted under the terms of the agreement. Likewise, a student of a Principle Investigator who has a need to know the Confidential Information and is informed of and agrees to abide by his/her obligations under the agreement would also be an acceptable recipient of the Company’s Confidential Information under an NDA.

**Please contact the Office of Technology Commercialization (OTC) for assistance with Nondisclosure/Confidential Disclosure Agreements.**