



UT RESEARCH MANAGEMENT SUITE

Agreements Module Frequently Asked Questions

Non-Disclosure Agreements (NDA)

1. What is a Non-Disclosure Agreement?

A non-disclosure agreement (NDA) is a legal contract between at least two parties which outlines confidential materials or knowledge the parties wish to share with one another for certain purposes, but wish to restrict from generalized use. Non-Disclosure Agreements have many different names – Confidentiality Agreement, Proprietary Information Agreement, etc. The purpose of these agreements is the same – to guard against disclosure of confidential or proprietary information of one or both of the parties to the agreement.

In other words, it is a contract by which the parties agree not to disclose information covered by the agreement. As such, an NDA can protect non-public information of various types. NDAs can be “mutual”, meaning both parties are planning to exchange confidential information with the other, or they can be one-way, meaning that only one party will be disclosing confidential information.

In the United States, potentially valuable intellectual property rights may be forfeited if key research information about a potential UT invention is disclosed prematurely. In advance of meeting with others to discuss collaboration on particular research topics, or to discuss the commercial aspects of UT inventions, UT researchers should make sure that the parties have an NDA in place stating that the parties will not disclose/use designated confidential information.

2. May I sign a Non-Disclosure Agreement on behalf of the University?

All finalized research-related NDAs at UT Austin – whether we are the initiating or receiving party - must be signed by designated authorized officials of each institution or organization. **Principal Investigators may not sign on behalf of UT Austin for NDAs or any other research-related agreement.** However, they will be required to sign such agreements acknowledging their responsibilities and affirming their agreement to the terms and conditions of the contract. Authorized university contracts signatories are on staff in the Offices of Sponsored Projects and Industry Engagement (OIE/OSP).

In the event that a UT-employed researcher or staff member is either required by an external organization or individual to sign an NDA or requires an external party to sign an NDA, the process begins by creating an agreement in [UT Research Management Suite - Agreements](#) and selecting Non-Disclosure Agreement as the agreement type.

3. When do I need to request a Non-Disclosure agreement?

As it relates to research, NDAs are commonly used to protect confidential and proprietary information that can be considered commercial trade secrets or non-public research and development information, or information related to unpublished patent applications, organizational financial status, client data, vendor affiliations, commercialization strategies, unpublished research findings, national security, study population data, etc.

In the event that a UT-employed researcher or staff member is either required by an external organization or individual to sign an NDA or requires an external party to sign an NDA, the process begins by creating an agreement in [UT Research Management Suite – Agreements](#) and selecting Non-Disclosure Agreement as the agreement type.

4. Can Non-Disclosure Agreements have more than two parties represented?

Yes, a Non-Disclosure Agreement can have several parties. Note that a Non-Disclosure Agreement with several parties may take more time to negotiate because each party may have concerns or requirements for protecting confidential information. In addition, the signature process for each party differs and the amount of time needed to obtain signatures may delay the exchange of information.

5. Are my students covered by NDAs on which I am the PI signatory?

At UT Austin, NDAs only cover UT Austin-employed individuals who have consented to the terms of confidentiality and signed the contract. All university staff, faculty, and employed students with whom you intend to share the confidential information should be included as signatories to the NDA acknowledging that they have read and understand their obligations under the terms and conditions of the contract. Copies of the finalized agreement should be given to your students for their own records.

Non-UT employed undergraduate students are NOT covered by UT-negotiated NDAs. If you intend to share the confidential information with non-university individuals or entities then those individuals or entities should a) have a separate NDA in place with UT which extends to the subject confidential information, or b) be named as a party to the same NDA covering the subject confidential information.

6. How long does it take to negotiate an NDA?

Typically, it should not take long to negotiate an NDA; most agreements can be signed by the University in less than a week. However, if the NDA contains terms and conditions that are not acceptable, negotiation must occur. Clauses that may require negotiation and potentially create a delay in signature include:

- governing law (if not Texas)
- indemnification (if the Constitution and the laws of the State of Texas are not referenced)
- intellectual property (should not be in an NDA since the purpose of the agreement is to protect confidential information of a party)
- overly broad definition of confidential information
- requirement to label confidential information not included, especially if exchanged verbally or visually

7. I am attending a meeting off campus. When I got here, I found out that one of the requirements of the meeting is to sign an NDA before any information will be provided to me. What should I do?

UT Research Management Suite is a web-based platform and will allow you to log in and create new agreement requests from any desktop, laptop, or mobile device. If the parties to the NDA include the University, you should create the NDA request and submit to OSP/OIE immediately for review. Once you have created and submitted the request, call OSP at 512-471-6424 to let the office know you have submitted an NDA request for emergency review. Leave a phone number where we can reach you. OSP/OIE will give the agreement top priority and will sign it as soon as possible if the terms are acceptable.

8. I have to exchange confidential, export-controlled information with a third party. Do I need to do anything special?

Yes, both University-owned and third-party owned export-controlled technology require additional steps:

University-owned export-controlled technology: If you are exchanging University-owned, confidential, export-controlled information or technology with a third party, you should provide a description of the information or technology in Question 3 of the NDA Information page of the SmartForm where it asks you to provide a brief description of the confidential technology or information to be disclosed by UT. The University's Export Control Officer, David Ivey, at 512-475-7963 or ivey@austin.utexas.edu will help you determine which export regulation controls the information/technology. OSP will then reference the export

control information in the NDA and ask the other party to review the proposed export controls for acceptance.

Third Party-owned export-controlled technology: If a third party wants to share their export-controlled information with you, the party should provide a description of the information or technology. You will most likely be able to receive the information from the third party if you are a US citizen or permanent resident. However, if you are not a US citizen or permanent resident and/or you intend to share the confidential information with foreign persons, such as foreign graduate students, you must provide the following information about the foreign person(s) who will have access to the export-controlled technology to the University's Export Control Officer (see contact info above):

- Name
- Birth date
- Place of birth
- Country of citizenship
- Country of origin

OSP/OIE may be required to submit a deemed export license application to the U.S. Department of Commerce or to the U.S. Department of State to be able to provide access to the export-controlled technology to the foreign person(s). The need for a license will be dependent upon the export control status of the technology and the country of citizenship of the foreign person requiring access to the information. Note it can take months to obtain licenses for deemed exports to foreign persons.

9. Am I required to include the name, email address, and phone number for third-party duly authorized representatives who will execute my NDA?

The second page of the NDA SmartForm allows you to include the contracting party contact name, email, and phone contact information. This information is not required for you to submit the agreement request so OSP/OIE can begin their review. However, in the course of their review, OSP/OIE will need to obtain that information in order to properly negotiate and finalize the agreement. If you know this information at the time you submit your agreement request, please include it in your submission.

10. Can I later add additional UT personnel to the list of persons having access to the confidential information?

Yes, with approval of OSP depending on whether the Confidential Information is export-controlled.

To add additional individuals to the signature page of an executed NDA, you must use the Create Amendment activity in the Record Workspace of the active agreement to launch the review process with OSP/OIE. This action will allow you to provide comments detailing your request and to upload any supporting documents that might assist the central office staff with their review.

If the confidential information is export-controlled, and the additional personnel *are not* US citizens or permanent US residents, you must launch the Create Amendment activity workflow and should confer with the University's Export Control Officer *prior* to allowing any access to confidential information.