

Office of Sponsored Programs

Procedure Statement

Non-Disclosure Agreements and Confidentiality Terms of Sponsored 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 – A stand-alone agreement that identifies the responsibilities of the University 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.

Confidentiality/Non-Disclosure/Secrecy Language – Language found in a Sponsored Agreement that identifies the responsibilities of the University in receiving proprietary information necessary to conduct a research or scholarly project related thereto.

Background:

Through research and scholarly activities, the 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

confidential projects. This procedure statement was developed to formalize a system of assigning responsibility for the receipt, disposition and management of confidential information.

Procedure:

Confidentiality Agreements and Non-Disclosure Agreements separate from a Sponsored Agreement:

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) The office of Sponsored Programs must be notified to commence a review or preparation of a non-disclosure agreement. If the external source of confidential information initiates the agreement, forward the original document to Sponsored Programs for review and negotiation.
- 2) Upon receipt of a non-disclosure agreement, Sponsored Programs will send a copy of the agreement to the Principal Investigator. The Principal Investigator and Sponsored Programs 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.
- 3) When the terms and conditions of a non-disclosure agreement require significant negotiation, Sponsored Programs staff will contact the Principal Investigator regarding the noted concerns. The Principal Investigator will work in concert with Sponsored Programs staff in establishing a dialogue with the external source organization. The employee is responsible for sharing the concerns of Sponsored Programs with their leadership to assure that once negotiations are finalized there will be no further concerns.
- 4) Once negotiations are finalized and before signing the subject non-disclosure agreement, Sponsored Programs will forward an Internal Confidentiality Agreement (for completion by the Principal Investigator) accompanied by the final version of the subject non-disclosure agreement to the Principal Investigator. The Principal Investigator shall meet and review the terms and conditions of the confidentiality language found in the sponsored agreement with all members of the research or scholarly activity and their appropriate leadership (Department Head, Director and/or Dean).
- 5) All members of the research or scholarly activity team and the cognizant Department Head, Director and/or Dean shall sign the Internal Confidentiality Agreement accompanying the non-disclosure agreement from the external source. Once all personnel have agreed to the terms and conditions of the Internal Confidentiality Agreement and attached non-disclosure agreement from the external source, a fully signed copy shall be returned to the Office of Sponsored Programs (return by fax is acceptable). The Principal Investigator is responsible for disseminating copies of the Internal Confidentiality Agreement and related non-disclosure agreement from the external source to all individuals involved in any aspect of the project subject to the terms of the non-disclosure agreement.

- 6) Upon receipt of the signed Internal Confidentiality Agreement and accompanying confidentiality language, Sponsored Programs will finalize any other negotiations, in concert with the Principal Investigator and other administrative units (e.g. University Counsel) as necessary.
- 7) The Office of Sponsored Programs will coordinate formal acceptance (signature) of the non-disclosure agreement from the external source.
- 8) The Office of Sponsored Programs shall maintain the Internal Confidentiality Agreement and the non-disclosure agreement from the external source as a “back-up” measure only. Ultimately, the Principal Investigator must properly disseminate and maintain a copy of the Internal Confidentiality Agreement and related non-disclosure agreement as that individual is primarily responsible for compliance therewith.
- 9) 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.

Confidentiality or non-disclosure language in a sponsored agreement:

Where a sponsored agreement (grant, contract or cooperative agreement) contains language discussing restrictions imposed by the sponsor as to disposition or use of confidential information the following procedures will be followed:

- 1) Prior to accepting a sponsored agreement containing confidentiality language, the Office of Sponsored Programs will review the language of the agreement and determine the propriety of the terms and conditions found therein.
- 2) The Office of Sponsored Programs will send agreements containing confidentiality language to the Principal Investigator for review. The Principal Investigator is expected to comprehensively review all of the terms and conditions of the sponsored agreement prior to advising Sponsored Programs that they agree to abide by those conditions. Once the Principal Investigator has reviewed the agreement, he or she must complete and sign the Internal Confidentiality Agreement and return to the Office of Sponsored Programs (fax is acceptable).
- 3) Once the Principal Investigator acknowledges that the terms and conditions are acceptable (by returning the signed Internal Confidentiality Agreement), the Office of Sponsored Programs will commence any necessary negotiations, in concert with the Principal Investigator, to finalize an acceptable agreement.
- 4) Once an acceptable agreement is achieved, the Office of Sponsored Programs will coordinate formal acceptance of the agreement on behalf of the University.
- 5) 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. This procedure in no way reduces the Principal Investigator’s managerial responsibility for the entire sponsored agreement, rather, it highlights

their responsibilities pertaining to confidential, proprietary or trade secrets present in the conduct of a sponsored project.

Standard Confidentiality Language for use in Sponsored Agreements

Anything in the Agreement to the contrary notwithstanding, any and all knowledge, know-how, practices, processes, or other information (hereinafter referred to as “Confidential Information”) disclosed or submitted in writing or in other tangible form which is designated as Confidential Information shall be received and maintained by Mississippi State University and Company in strict confidence and shall not be disclosed to any third party except as required by law or court order. Furthermore, said Confidential Information shall not be used for any purpose other than those purposes specified in this Agreement. Company and Mississippi State University may disclose Confidential Information to employees requiring access thereto for the purposes of this Agreement provided, however, that prior to making any such disclosures each such employee shall be apprised of the duty and obligation to maintain Confidential Information in confidence and not to use such information for any purpose other than in accordance with the terms and conditions of this Agreement. Mississippi State University and Company agree to use their reasonable efforts not to disclose any Confidential Information.

Attachment B
Standard Non-Disclosure Agreement

This Agreement is entered into by _____, a _____ corporation having its corporate office at _____, on behalf of itself and its subsidiaries (hereinafter collectively _____) and Mississippi State University having its main office at _____, P.O. Box 6156, Mississippi State, Mississippi 39762 (hereinafter "University") effective _____.

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 attached Statement of Purpose.

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 _____ shall be disclosed to _____ or other authorized employee of _____ and Confidential Information disclosed to MSU shall be disclosed to _____ or other authorized employee of University.

3. **USE AND HANDLING OF CONFIDENTIAL INFORMATION.** From the effective date hereof, each party may use Confidential Information received from the other. To the extent allowed by law, 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 is or becomes available on an unrestricted basis to the receiving party from a source other than the disclosing party;
- e. The information becomes available on an unrestricted basis to a third party from the disclosing party or from someone acting under its control; or
- f. 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.
- g. 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 restrain from disclosure of any of the Confidential Information received under this Agreement shall terminate five years (5) from the effective date of this Agreement between University and _____ or until 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.

MISSISSIPPI STATE UNIVERSITY

COMPANY

Authorized Signatory

Authorized Signatory

Date

Date

Attachment C
Internal Confidentiality Agreement

I (we), the undersigned, as a condition of working on the project described in an agreement by and between Mississippi State University and [], (hereinafter referred to as Source) agree as follows:

- 1) I (we) acknowledge that I (we) have read the terms and conditions pertaining to confidentiality which are appended as Attachment A and agree that I (we) will use my (our) best effort to prevent disclosure of any information that Source provides to Mississippi State University which is stated in writing to be confidential to Source’s business.
- 2) I (we) agree to use my (our) best efforts to prevent disclosure of any portion of the content of the project to anyone not employed or working on the project. I (we) understand that the contents of the project can only be divulged after Source has provided written authorization to divulge portions of the project. I (we) will only divulge those portions of the project which are authorized by Source in writing.
- 3) I (we) understand and agree that if I (we) wish to publish any results of the project, I (we) will provide Source an opportunity to review or approve (depending on requirements of Source) the publication prior to submission. A copy of any such request and approval shall be forwarded to the Office of Sponsored Programs.
- 4) I (we) understand that confidential or proprietary information with regard to items 1, 2 and 3 above pertain to all project related information including but not limited to: specifications, drawings, blueprints, reproductions, reports, information stated by Source to be confidential, data and other information of any kind resulting from the project.
- 5) I (we) understand that if any graduate student thesis is contemplated as a result of this project, I (we) will immediately inform the department head, the Office of Sponsored Programs, and the Graduate School. Such thesis work will not begin until Source has authorized, in writing, that the thesis can be published.
- 6) I (we) understand that any and all employees or students assigned to a project where confidential information from Source must be disclosed to parties other than those attesting below, that the Principal Investigator is solely responsible to inform said parties by providing a copy of this document and requiring acknowledgement by way of a signature hereto.

Agreed:

Principal Investigator Date

Co-Principal Investigator Date

Department Head Date

Department Head Date