

ORSO Guideline 26

Non-Disclosure and Confidentiality Agreements

WASHINGTON STATE UNIVERSITY

Office of Research Support and Operations (ORSO)

April 2021

Process and Approval:

If the purpose of the confidentiality or non-disclosure agreement (NDA) relates to teaching, research, or scholarly service, then the NDA should be routed to ORSO for review, negotiation, and approval. This process is initiated by the researcher sending an information sheet to ORSO@wsu.edu with basic details about the requested NDA (a copy of the information sheet is available at: <https://orso.wsu.edu/documents/2018/06/nda-info-sheet.docx>). If the other party has already provided a copy of their NDA template, please include it with the information sheet in a single email to ORSO@wsu.edu.

ORSO will: 1) review the proposed NDA for compliance with Washington State University (WSU) policies; 2) negotiate (or arrange the negotiation of) changes when necessary; and 3) arrange for proper approvals and signatures when appropriate.

Please note that confidentiality or non-disclosure agreements related to technology transfer or industry funded research may be processed through the Office of Commercialization (OC). If you are unsure of the correct office to contact, please reach out to ORSO@wsu.edu for assistance.

Background and Policy:

Sponsored or non-sponsored research and scholarly activities may require access to information that is proprietary or otherwise considered by the provider to be privileged and confidential. Such information must be specifically identified by the provider prior to disclosure.

Maintaining the confidentiality of such information to the extent allowed by law is primarily the responsibility of the Principal Investigator or Project Director. However, faculty and staff with access to the confidential information also undertake this obligation as part of their employment responsibilities.

Providers of confidential/proprietary information usually require formal agreements prior to the exchange of confidential information. These formal agreements often taken the form of confidentiality or non-disclosure agreements, but other agreement forms may also contain provisions on confidentiality. Such agreements, which involve WSU personnel acting within the scope of their employment, must be signed by an authorized WSU official.

Notably, WSU may not be bound by an agreement that is signed by an individual without properly delegated authority. In such a case, the individual signing (such as the PI, PD, or other researcher) may be the only one bound by the agreement. If the provider wants WSU and its employees and agents to be bound, the researcher should ensure that an authorized WSU representative signs the agreement. For the researcher's own protection, the researcher is strongly encouraged to contact ORSO when presented with a contract or agreement related in any way to the researcher's work at WSU.

Should law or legal process require disclosure of proprietary information, WSU's Public Records Officer (PRO) will determine, if able, whether an exemption to disclosure applies. If the PRO determines an exemption does not apply or is unable to determine whether an exemption applies, WSU will notify the provider of the request and the date that such records will be released unless the provider obtains a court order enjoining that disclosure. If the provider fails to obtain a court order enjoining disclosure, WSU will release the requested information on the date specified.

Important Areas of Concern in a Confidential Relationship:

In most instances, an NDA will require some negotiation of one or more of the following issues to obtain terms that appropriately protect the rights of WSU and the researcher:

- a) Publication
- b) Definition of confidentiality
- c) Washington Public Records Act and other laws that may affect disclosure requirements
- d) Washington State document retention schedules
- e) Exclusions to confidentiality
- f) Retention rights for appropriate recordkeeping
- g) Governing law
- h) Indemnification
- i) Term of non-disclosure period
- j) Identification of bound parties

As a public institution and state agency, WSU is restricted by law in what it can and cannot agree to. Where reasonable, a request for an NDA should be submitted as far in advance as possible of the date the protected information is required to allow the parties time to reach a successful agreement.