

STANDARD CONFIDENTIALITY AGREEMENTS (CDAs)

(AKA Confidentiality Disclosure Agreements, Non-Disclosure Agreements)

The Use of Standard Agreements

In Research and Enterprise Services, we are moving to a number of standard terms of contract for a variety of circumstances. In this way, many more individuals within the Service will be able to respond effectively, allowing the Legal and Contracts teams to focus on the more complex agreements. Through this process it is hoped that more of the RES team will be empowered to place standard confidentiality agreements with clients quickly and provide an effective service to the academic community.

However, although we have developed standard terms and conditions, they need to be used carefully and with consideration for each project to avoid shoddy practice and inappropriate use. For confidentiality agreements there are three key steps which all must follow.

Key Step One

First, we must understand the activity or purpose of the confidential discussion clearly, to ensure that the terms are suitable. Key questions are:

- What information is to be disclosed?
- Is there a two way or one way or multi way disclosure?
- Who is the other party?
- Who owns the information?
- What is the purpose?
- Over what time period will confidential information need to be disclosed?
- How long should the obligations of confidentiality last?
- What happens at the end?
- What form will the information take? Will the information be written, spoken, in electronic form etc?
- Has information been disclosed prior to the agreement being entered into?
- Is the other party, or one of the other parties, a non-European entity?

Key Step Two

The correct CDA template needs to be used. For example, should it be a one-way, two-way agreement or multi-way?

Key Step Three

The blank sections need to be completed! These sections allow for specific pieces of information relating to the particular agreement (i.e. the other party's address, purpose,

start-date etc) and need to be completed fully and accurately.

One of the most important blanks is the definition of proper purpose. This needs to be clearly stated, as it limits the scope and use of the information exchanged. The proper purpose in an IP discussion may, for example, state that "the recipient shall only use the information for the purposes of in-house evaluation and to enable discussions between the parties with regard to a negotiation of a licence". In a consultancy or research discussion, the proper use may simply be to receive and consider a confidential proposal.

The proper purpose may be something where a brief discussion with the Legal Team or Contracts Team is all that is required.

How long should it take to agree a CDA?

The terms in confidentiality agreements are fairly standard. Our standards have been crafted to be as fair as possible to all parties. If one of our standards is used, it should take only a few minutes in discussion with the lead academic to complete the missing information and there should be no need to involve the Legal or Contracts teams. If the recipient of the agreement requests amendments to our standard agreement then these amendments need to be referred to the Legal or Contracts teams for agreement. They will endeavour to give a quick response providing sufficient background information is available – see Key Step One.

If the agreement is received from the other party, a quick comparison to our standard terms should be made by the Faculty Research or Faculty Enterprise Team. This should identify any key issues having consulted with the relevant academic staff on the activity. A note of the concerns and recommendation should be made to the Legal or Contracts teams, highlighting any conditions that cause concern. The Legal or Contracts teams will endeavour to review these within three days of receipt if they are provided with all relevant information. As CDAs are separate legal contracts, once executed a copy of the executed agreement should be uploaded onto a new KT CDA project within MyProjects (with an appropriate title, synopsis, project team and a link to the relevant project and company) and the original agreement should be forwarded to the Legal Team referencing the project number. It should take no more than a day or so to complete. Through time, the level of comfort that individuals have with the contractual terms will increase and the process of referrals will be reduced and amended.

CDAs on a fast track

RESEARCH AND ENTERPRISE SERVICES INFORMATION NOTE 2:

CDAs should be fast tracked – they should not sit on desks and they should be dealt with quickly.

These information sheets are designed to provide best practice advice and guidance to staff in Research and Enterprise Services on key issues relating to activities within the Service. They are designed for all staff and through time will build into a compendium of useful hints and induction material.

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