

ICO Newsletter

CONFIDENTIALITY AND RESEARCH

While industrial partners often have research interests in common with faculty, they don't generally have the same attitude toward disclosure of information. For a company, maintaining information in confidence can provide a competitive advantage, and is essential when claiming a trade secret. For a university researcher, the fundamental principle is openness in research. Agreeing to confidentiality obligations may offer access to useful information, but complying with such restrictions can create conflicts with research objectives and publication interests.

A Nondisclosure/Confidentiality Agreement ("NDA" or "CDA") is the basic contract mechanism for maintaining information in confidence, and is often proposed in conjunction with advance discussions related to a research project or release of materials. Essentially, the CDA requires a recipient to keep properly identified information in confidence for a period of time, subject to standard exceptions.

For more information on NDAs, please visit <http://export.stanford.edu/nda1.html>.

Negotiating confidentiality obligations

In support of Stanford's policies promoting openness, publication and freedom of research, Stanford doesn't include confidentiality terms in its employment agreement. For this and other reasons, Stanford generally doesn't sign stand-alone CDAs. Faculty engaging with industrial partners may personally agree to confidentiality terms, but may not create obligations that restrict or redirect research. Such agreements can also limit interactions with other industrial partners. In the most extreme cases, the terms of a CDA may conflict with publication. Although Stanford is not the signatory in these situations, ICO can advise a researcher on university policy and the suitability of proposed terms.

Research agreements often include confidentiality terms; provided they are consistent with the researcher's interests and university policy and practice, Stanford accepts such terms. A primary concern of ICO is to assure that the researcher retains the right to publish results. Generally, the company will have a time-limited right to review drafts before publication and request that its confidential information (not research results) is removed. The company will often require that the terms of the agreement are also confidential, which Stanford accepts under certain conditions.

TIDBIT TERRITORY

Beware the Purchase Order. As an administrative safeguard, some research sponsors require that a purchase order ("PO") is referenced on invoices. Since the sponsor often generates the PO after the agreement is executed, this can delay invoicing. When possible, ICO asks that a sponsor requiring a PO issue it in advance.

Speaking of Invoices. The OSR accounts receivable team is responsible for sending invoices, as instructed in the research agreement. ICO assures that payment terms are clear, and are consistent with the reports or other deliverables due in a research project description. Researchers are always welcome to discuss best practices for specifying payment timing and conditions with the ICO team!

Just the ICO Facts. During FY 12, ICO negotiated nearly 140 new industry sponsored research agreements, and another 105 amendments. ICO also handled nearly 500 new MTAs for incoming materials, not counting an additional 300 MTAs for research plasmids received through the nonprofit Addgene.



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