



BULLETIN

> CONFIDENTIALITY AGREEMENTS

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Confidentiality Agreements

What is Confidential Information?

The terms 'confidential information' and 'confidential know-how' (expertise/trade secrets) refer to all information not in the public domain, including interpretations of information that is in the public domain.

The term "public domain" describes the status of an invention, commercial symbol or any other creative work that is not protected by a form of intellectual property law. If a work is in the public domain, that means that another can freely copy a work without permission or attribution to the original creator(s) or inventor(s).

"Confidential information" and "confidential know-how" can include techniques, experimental methods and protocols, technical information, processes, software, formulae, discoveries, prototypes, materials, results, drawings, models, data of all types and calculations. Know-how is only of value as long as it remains secret or confidential. Generally, keeping information confidential is used only where other forms of protection are not possible and the information is judged to be of high commercial value.

What types of disclosure are not confidential?

Once information is put into the public domain, it is not considered confidential. The public domain is not confined to publications. It is very broad and includes:

- ♦ Any written or oral disclosure – even to a single person – unless the recipient agrees that the information was conveyed in confidence
- ♦ Poster sessions, exhibitions, lectures, seminars or conferences where the public is present
- ♦ Abstracts or theses
- ♦ Laboratory visits by company representatives or other researchers
- ♦ Formal business and academic meetings or informal conversations
- ♦ Anything in print or on the web, no matter how innocent it might seem at the time (e.g., many professional associations publish abstracts of papers, presentations and posters on their website prior to national meetings)

If a valid confidentiality agreement or non-disclosure agreement is in place prior to the release of information, information released is not regarded as being in the public domain.

What is a Confidentiality Agreement?

A confidential disclosure agreement ("CDA", aka, non-disclosure agreement, or "NDA") is a document that, when signed, will allow one or both parties to discuss their confidential information (including their work and ideas) with other interested parties. It legally binds those parties to keep the information confidential for a period of time and not to disclose it to third parties. A one-way confidentiality agreement allows one party to disclose to another. A two-way confidentiality agreement allows both parties to disclose confidential information to each other. The Technology Transfer Office will assist in determining which document best suits your specific needs, prepare both types of CDAs and execute them in the name of the University. Only certain designated officers of the University have the delegated authority to execute these agreements.

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TECHNOLOGY TRANSFER OFFICE

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Why do I need a Confidentiality Agreement?

A confidentiality agreement is essential to protecting the value of an invention. Its use can prevent the forfeiture of valuable patent rights. In all countries, including the United States, the public disclosure of an invention can be deemed as a forfeiture of patent rights in that invention. A properly drafted confidentiality agreement can avoid the undesired—and often unintentional—forfeiture of valuable patent rights. If an invention is put into the public domain you give up all ownership rights and the right to control the outcome. In addition, a confidentiality agreement states who has access to certain information and the scope of that access. A confidentiality agreement acts as a tool to protect scientists and their ideas so another party may not replicate those ideas.

When do I need a Confidentiality Agreement?

A confidentiality agreement is needed before you speak to anyone outside the research group, including former colleagues, company representatives and individuals from academic publications and programs.

→ Questions and Answers regarding Confidentiality Agreements

Q: How can I generate a Confidentiality Agreement if an individual or company approaches me?

A: Contact the TTO (see first page) and they will assist you in a very timely fashion. They can help to determine what kind of Confidentiality Agreement would best suit your needs. Copies of CU's standard CDAs can be found at the TTO website <http://www.cu.edu/techtransfer/campus/cda.html>.

Q: What happens once my Confidentiality Agreement is generated?

A: The TTO will forward the appropriate document to you electronically. You will then forward it to the other party. Once their institutional official has signed it, they will send it back to us for the CU institutional official's signature. You will receive a copy of the fully executed document for your records and TTO retains a copy. You will be expected to send a copy to the company.

Q: Should I sign my own CDA for the University?

A: No. You may be asked to sign as an acknowledgement of the terms, but only duly constituted officers of the University have the delegated authority to legally bind the University. The CDA is a legal document between the University and another party – not an individual University of Colorado researcher. Nearly all companies know this and insist on an officer of the University signing. If you sign your own CDA the contract is not legally binding on the University and you will not be properly protected.

Q: Does a CDA really work to protect my rights?

A: Yes. A CDA cannot prevent unscrupulous individuals from disseminating confidential information, however the fact that a CDA gives legal recourse for them doing so deters them from, or at least makes them think twice about, talking.

**If you have any further questions please contact Kathe Zaslow:
303-735-4525, kathe.zaslow@cu.edu.**

To learn more about TTO processes: <http://www.cu.edu/techtransfer/about/bulletins.html>

To download disclosure forms: <http://www.cu.edu/techtransfer/disclose/>

For more info or to submit a disclosure, email ttocontact@cu.edu