PREPARED BY: Robert Weidenbaum	**APPROVED BY:**
DOCUMENT TITLE: Non-Disclosure Agreement Job Aid	**DEPARTMENT:** Proposals & Negotiations	**EFFECTIVE DATE:** April 1, 2021

Purpose

A Non-Disclosure Agreement (NDA) is a contract between parties to maintain the confidentiality of information that is exchanged between the parties. An NDA may be required by internal or external parties for the purposes of protecting sensitive proprietary information. This job aid serves as a guide for processing of NDAs.

Scope

This document pertains to the GCO's review of Non-disclosure Agreements. These documents may have different names such as Confidentiality Agreements, Proprietary Information Agreements, and the like.

Definitions

The following terms are referenced within this Job Aid:

Confidential Information (CI)	The information that is the subject of the NDA. The term Proprietary Information is often used interchangeably for CI.
Internal Request Form (IRF):	A Form that provides information to the GCO about the requested NDA.
The Office of General Counsel (OGC).	Advises ASU personnel on the legal implications of policy and other decisions under applicable law, regulations, and policies. OGC may need to review non-standard terms in NDAs.
Outside Party or Sponsor (OP):	The terms Outside Party and Sponsor may be used _interchangeably_ throughout this Job Aid.
Point of Contact (POC):	Typically, the Outside Party's contact person who is handling the NDA for the OP.
Skysong Innovations (SI):	ASU's exclusive technology transfer and intellectual property management company. SI will review non-standard intellectual property provisions in NDAs.
Principal Investigator (PI):	The PI could be a researcher, professor, or in some cases other ASU personnel such a member of a department who is requesting the NDA.

Responsibilities

Under the umbrella of Research Operations - Knowledge Enterprise (KE), is the Industry Agreements Group (IAG).

IAG processes NDAs with _Industry partners_ and serves a liaison with SI to provide recommendations and help in the decision-making process on Intellectual Property related matters. Email: Industryagreements@asu.edu.

Requirements / Steps

1. Check to see if the PI and/or Research Administrator (RA) completed an Internal Request Form (IRF). It may be uploaded into the ERA Task or it may be in an e-mail or chain of e-mails.

   a. If not completed, send the IRF to the RA or PI for completion.

   b. Once received, review to ensure it is complete with all relevant fields filled in. Common problems are information is missing, incomplete or unclear such as an abbreviation. In such cases, contact the sender (RA or PI) for additional information.
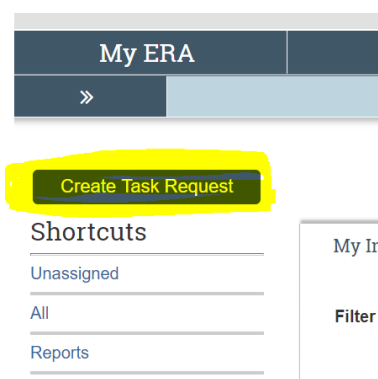
2. Set-up a task in ERA Agreements.

   a. Open Agreements tab by clicking on it.
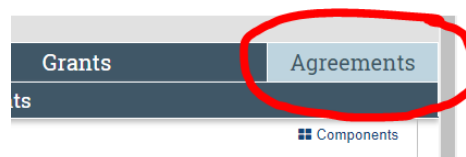
   b. Check to make sure the new task is not a duplicate task. (Also see step d. xii. below regarding a duplicate task warning in ERA.) Be aware that there could be other NDA agreements between the parties and that the new task may indeed be intended to be a new NDA between the parties. If in doubt, contact the RA or PI to ask.

   c. Click Create Task Request tab on left side.

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d. Fill in "Agreement Task Request" page with information taken from IRF or possibly an e-mail from a PI or OP.

    i. If NDA is related to a proposal, enter Funding Proposal (FP) Reference Number in 1.0. This will automatically populate other fields including 2.0, 4.0, 6.0 (except Sponsor POC) and 8.0. Complete other sections per instructions below.

    ii. If NDA is not related to a FP (more common), complete all fields.

    iii. 2.0: List the name of the Principal Investigator (PI). Start to type the name of the PI and possible PIs names will come up for selection. Click on correct PI and "Organization". The Organization may be an ASU unit, school or department.

    iv. 3.0 and 4.0: Start to type names for Requesting Party and RA. Sections will auto-fill with potential choices. Select correct choice.

    v. 5.0: Select the "Agreement type" Non-Disclosure Agreement from the pull-down menu.

    vi. 6.0: Select "Sponsor/Outside Party". Begin to type the name of the party. Previously entered parties will appear as auto-filled selections. If sponsor or outside party does not appear, try various variations of the name. If still no result, manually enter the name from the IRF in the line below the auto-filled line.

Fill in the "Sponsor Point of Contact" information provided on the IRF or possibly an e-mail.

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     vii.   8.0: Describe the task. Use a protocol such as PI's Name_Outside Party's Name_NDA. Add other brief information if it helps to distinguish tasks.

     viii.   7.0, 9.0 and 10.0: Complete as applicable.

     ix.   11.0: Attach any documents, e-mails from outside party or sponsor that may be relevant. Attach the IRF here.

     x.   12.0: Write any applicable notes or comments. For example, if Skysong Innovations has a Tech ID No., it should be noted here, i.e., "SI Tech ID No. M20-112L".

     xi.   When all information is entered, click on "Continue" button in lower or upper right corner.

Agreement - NDA00002301
Continue »
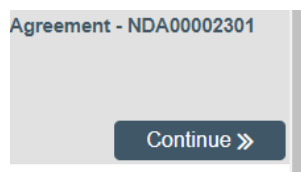
     xii.   If there is a Potential Duplicate Task Request Warning, after determining if this is a duplicate task as opposed to a new task, check the "Disable Duplicate Checking" box to proceed with a new NDA.

Could not update the Click Agreement due to one or more errors:
Validation Failed: **Potential Duplicate Task Request Warning:**

Agreement Task Request

Potential Duplicate Task Request Warning: Based on data you input on the Task Request page there is a Potential Duplicate Task on the database based in these detection rules:
(1) Same Agreement Type, PI, or FP as what you entered in Task Request page
(2) State of the Task Entry already on the database is equal to Unassigned, Verification, Negotiation, With Internal Parties, With External Parties or Suspended.
To continue, select *Disable Duplicate Checking* below to create the agreement or modify the parameters of the task agreement and press continue.

Disable Duplicate Checking: ☐

e.   Fill in "NDA Additional Information" page with information taken from completed IRF or possibly an e-mail.

     i.   1.0: Complete "Type of Disclosure". Check the Type of Disclosure.

NDA Additional Information
1.0 * Type of Disclosure:
○ One Way (ASU to Outside Party)
● One Way (Outside Party to ASU)
○ Mutual
○ Multi-Party
Clear

Provide description of information to be disclosed by outside party:

     ii.   Then fill in whichever description box(es) are appropriate. Boxes will appear based upon the selection of the Type of Disclosure.
- If One Way (when ASU is disclosing confidential to the Outside Party), provide description of information to be disclosed by ASU in the box.
- If One Way (when Outside Party is disclosing confidential to ASU), provide description of information to be disclosed by outside party in the box.

- If Mutual (meaning both parties are disclosing confidential information to each other), provide description of information to be disclosed both by ASU as well as a description of information to be disclosed by OP in the appropriate box as labelled.
- If Multi-Party (meaning ASU and multiple other parties are disclosing confidential information to each other), provide description of information to be disclosed by ASU and provide description of information to be disclosed by the various multiple parties and additional sponsor/outside party in the appropriately labelled boxes.

iii.   2.0: Complete the "Purpose of agreement" boxes with information taken from completed IRF or possibly an e-mail with all information that applies.

iv.   3.0: Complete "Anticipated Term of Agreement". Use the calendar icon to enter the a. Start Date of the Agreement. Click on pull down menus b. and c. to select the Length of Information Exchange and the Preferred Confidentiality Obligation Period.

v.   4.0: Attach any documents, e-mails from outside party or sponsor that may be relevant.

vi.   5.0: Write any Additional notes or comments.

vii.   When all information is entered, click on "Continue" button in lower or upper right corner.

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    viii.   If one of the red asterisk items is not complete, you will get a notice of the item that needs correction at the top left corner of the page.

    ix.   On the Task Confirmation page, click on "Finish" in lower or upper right corner.
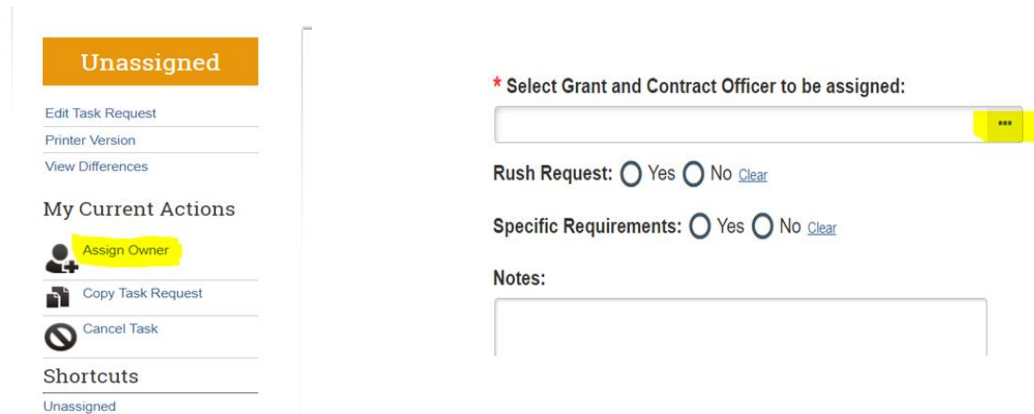
    x.   This will put the NDA in an "Unassigned" state.

    xi.   If you are the Grant and Contract Officer (GCO) handling the NDA task or you know the person who this is to be assigned to, click on Assign Owner and begin to type the last name of the GCO who will handle the task. The name will auto-fill and then click on the GCO name to select the GCO. Or click on the three dots and fill in the last name of the GCO.

    xii.   If you do not know who will handle the rest of the task and/or are not the GCO, do not enter a name. Stop at this point as the Proposal and Negotiations Team (PNT) will review the task and assign the task to an owner.

3. Determine which NDA agreement will be used.

    a.   If the Outside Party or Sponsor is providing the confidential information, they most often will provide an agreement for discussion and/or negotiation purposes. The GCO will then need to review, redline and negotiate the provided NDA.

    b.   If it is ASU proprietary information or if the Outside Party does not provide an agreement, the GCO will need to generate an agreement using the Generate Agreement tab. The *preference* is to use ASU's standard generated NDA template.

i.   Click on the Generate Agreement tab under My Current Actions.
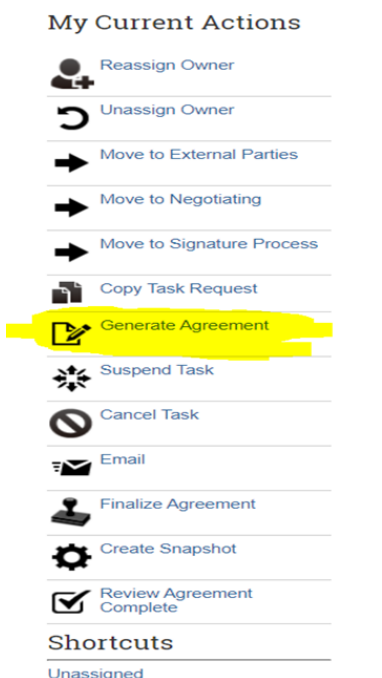
ii. When generating an ASU NDA template agreement, use the pull-down menu to select the type of NDA to generate.
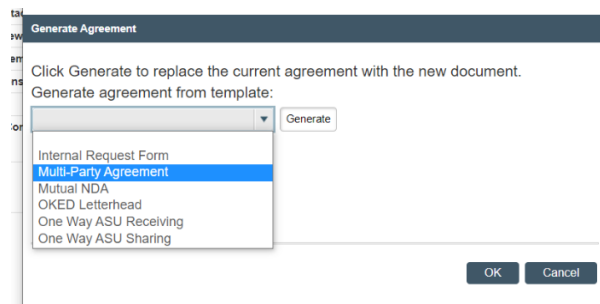
iii. Click Generate and the draft agreement template will appear just below the now closed pull-down menu.

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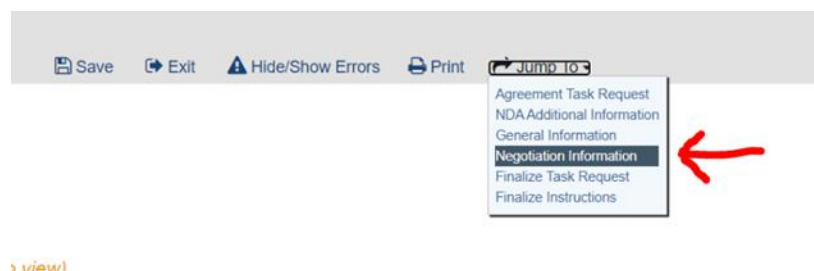
iv.   Click on the "Agreement_for_NDA00000----.doc" file. The Word Doc file can then be opened at the bottom left of your open web page just above the Windows task bar.
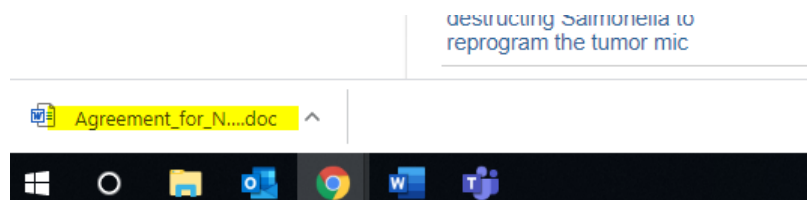
v.   Click OK button on the Generate pop-up window when the Word Doc file for the NDA template appears.
vi.   When the Word doc. file is open, it will have information entered in the earlier steps highlighted in yellow.
vii.   Edit the Word Doc as appropriate.

c. The GCO will then send either the ASU template or the NDA provided by the OP that is now marked up (redlined) to the OP's POC.

4.   Update the status of the task in the ERA system in two areas.

a. First, click on Edit the Task Request.
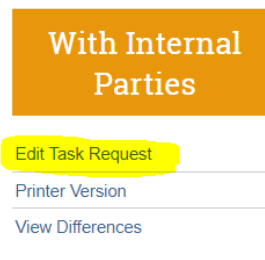
i. Update the information for the task on the Smart Forms.
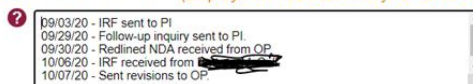ii. Click on Jump To in the grey area at the top of the new page and click on Negotiation Information.

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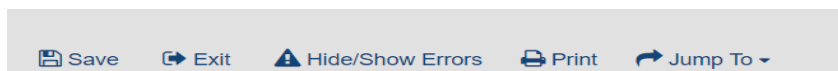iii. In 2.0, make notes as to the status of the NDA such as in the following example.

iv. Edit and then Save any information added to the Negotiation Information Page. Then click on Exit on the grey bar at the top of the page.

v. This will take you to the NDA task Smart Form's main page.

b. Second, update the status such as by clicking on the Move to External Parties tab indicating that the agreement has been sent to the OP.

5. Negotiation Stage.

a. Once the outside party responds, there are items that must be updated on the Negotiation Information Page depending on the ongoing negotiations between the GCO and the OP. For example, the outside party may request changes to our standard NDA template. In that case, the GCO will review their redline and, if necessary, negotiate the proposed redlines with the outside party. While negotiating, the GCO will update the 2.0 Brief Task Status and 3.0 Internal Review/Negotiation Comments fields with any relevant comments and pertinent information.

b. If outside party sends their NDA template, GCO reviews agreement and makes redline changes including comments, if applicable. GCO will update the 2.0 Brief Task Status and 3.0 Internal Review/Negotiation Comments fields with any relevant comments and pertinent information.

c. Attach the latest version of the agreement being negotiated to Section 5.0 so that, if necessary, others will be able to find information on the status of the current redlines to the NDA.

d. If negotiations are not necessary, go to step 7 below to finalize the NDA task.

6.   NDA Negotiation Guidance:

a. Make sure that the following required elements are included in the NDA:

- Legal Name - Arizona Board of Regents for and on behalf of Arizona State University is most commonly used.
- PI Name - This will help to limit the scope of the NDA.
- Disclosure Period - The Disclosure Period captures the length of time the PI and the Outside Party will be exchanging information. Try to limit it to one year.
- Confidentiality Period - The Confidentiality Period captures the length of time the receiving party will be responsible for protecting the disclosed information. Try to limit to 3 years.
- Purpose - The Purpose defines the reason(s) for the exchange of information. This should be included as it will help to limit the scope of the NDA.
- Description of Information to be Disclosed - Try to be as descriptive as possible. This will help to limit the scope of the NDA.
- Marking Requirement – For the OP to benefit from the public records request exemption, Confidential Information (CI) must be marked as "confidential" of "proprietary".
- No Transfer of Rights/Use of Service Marks – This helps to convey ASU's intentions to retain all previously held rights in CI.
- Exceptions - Exceptions that describe when the confidentiality obligations will not apply, i.e., if the CI is already known, received, if CI is in the public domain, or perhaps if CI was independently developed.

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- Disclosures Required by Law – Exception to disclosure which are included for example when a court order or government regulation requires disclosure.
- Public Records – An ASU required notice that the OP understands that ASU is subject to Arizona public records statutes.

b. ASU and the OP may negotiate about other non-required (by ASU) elements such as:

- Remedy/Relief - Change the language around so that ASU is not agreeing to any specific awards up front.
- Trade Secrets - Remove any references to ASU acceptance of trade secrets.
- Governing Law - Prefer to use Arizona law or remain silent on the subject.
- Existence of Agreement – Because of Arizona public record disclosure laws, ASU cannot agree to keep the existence of the NDA itself a secret.
- Intellectual Property – Ownership of intellectual property or rights should not be transferred/exchanged under an NDA.
- Destruction or return of Information or copies of the confidential information – Request to keep a copy for both dispute resolution purposes and because the information is part of a system-wide backup.

c. For further information on these and other potential NDA issues that may arise during negotiation, GCO should refer to SharePoint/Tools at Contract Negotiation Guidance. Additional guidance is available through the Office of General Counsel including at OGC's Background, Definition & Basic Principles page.

d. When non-standard terms remain in the NDA, or there is an impasse, determine if a business decision is required using the Contract Negotiation Guidance on SharePoint and selecting the subject matter of the non-standard term, or see if there is a current Business Decision Matrix document available.

e. If there are non-standard terms accepted after negotiation, GCO will note those terms in Section 6.0 by checking the appropriate box(es).

6.0 Non-standard Negotiated Terms: *(select all that apply based on negotiation)*

- ☐ a. Arbitration
- ☐ b. Confidentiality
- ☐ c. Data/IT Security
- ☐ d. Exclusivity
- ☐ e. Export
- ☐ f. Federal Flow Downs
- ☐ g. Governing Law & Venue
- ☐ h. Indemnity/Liability
- ☐ i. Insurance
- ☐ j. Intellectual Property
- ☐ k. Non-standard Payment
- ☐ l. Invoicing/Penalties
- ☐ m. Publication Restrictions
- ☐ n. Termination
- ☐ o. Security Requirements
- ☐ p. Classified Info (DD254)

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f. When there is an impasse in negotiations with the OP and Contract Negotiation Guidance indicates that a Business Decision is needed, the GCO will seek approval for accepting non-standard terms from various ASU internal parties. Depending upon the circumstances, approvals may be sought from the Assistant Director or the Executive Director for Research Operations, OGC, SI, and on occasion the PI, the academic department or unit. In cases where the non-standard terms are not approved, the Assistant or Executive Director will determine if negotiation should be terminated. See the Contract Negotiation Guidance on SharePoint for further guidance as to the appropriate party that will make a business decision.

g. Obtain documentation for approval of acceptance of non-standard terms.

h. If a Business Decision is necessitated, GCO will note it in 7.0. If 7.0 a. is "yes", then in 7.0 b., click on the Business Decision Reason for accepting the non-standard term from the list in the pull down menu.

i. Upload approvals and/or documentation in Negotiation Information Section 8.0.

j. Complete Sections 9.0, 10.0 and 11.0 of the Negotiation Information as appropriate based upon the result of the negotiation process.

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k. If during negotiations, other ASU internal parties have been contacted for support, update Negotiation Information Section 12.0 by checking the ASU groups or units contacted. Multiple groups may be checked as appropriate.

l. Once negotiations are finalized, carefully review the final version of the NDA and verify all changes have been accepted and are included in the final version of the NDA.

m. Go to step 7 to finalize the NDA task.

7. Signature Process & Distribution

a. Circulate the NDA for signatures to the OP and to the appropriate _authorized_ signatory for ASU.

b. Once the partially executed has been returned and signed by an ASU authorized signatory, save the fully executed NDA using the protocol "PILastname_Sponsorname_NDA_Fully Executed" in a .pdf format. Update the 2.0 Brief Task Status and 3.0 Internal Review/Negotiation Comments on the Negotiation Information page accordingly to indicate the status of the NDA.

c. Once the NDA is fully executed, GCO will send email with attached fully executed agreement to OP, PI, RA and any other respective parties. Update the 2.0 Brief Task Status and 3.0 Internal Review/Negotiation Comments.

d. Complete the following fields under Finalize Task Request in ERA:

    i. 1.0 Attach Executed/Awarded document(s) – upload fully executed NDA and distribution emails.

ii.   2.0 Start Date, End Date, and Fully Executed Date of the NDA.

Finalize Task Request
1.0 Attach Executed/Awarded document(s):
+ Add
Name
There are no items to display

2.0 a. Start Date:

b. End Date:

c. Fully Executed Date:

3.0 Sponsor/Outside Party Reference No:

4.0 ASU Reference No:
NDA00002430

iii.   Click **Continue ≫** at bottom or top right of screen.

iv.   On Finalize Instructions page, click 'Save' at bottom or top of screen, then 'Exit' at bottom or top of screen.

💾 Save   ➡ Exit   ⚠ Hide/Show Errors   🖶 Print   ➤ Jump To ▾

v.   Send a copy of the Fully Executed NDA to contracts@exchange.asu.edu. In the e-mail to Contracts, include information as to the type of agreement (NDA), the PI, the OP, a screen shot showing the date information from 2.0 on the Finalize Task Request page, as well as whether or not there is an ASU Tech ID Number related to the NDA.

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d. On the main Task summary page, click 'Finalize Agreement' under My Current Actions on the left-hand side.

i. If there are any incomplete fields, an Error/Warning Message will pop-up. Fix the errors by going to the page or using the 'Jump To' appropriate page feature to complete any missing information.

ii. After correcting errors, click Finalize Agreement tab again.

       iii.   Status will change to Executed/Awarded.

8. The NDA task is now complete, and the task will no longer be in the GCO's Agreements My Inbox.

References / Related Documents

Contract Negotiation Guidance.

Pre Award Business Decision Matrix 10_21_2020

The Office of General Counsel

Background, Definition & Basic Principles

Attachments

NDA Training PowerPoint

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