

**Confidentiality Agreements:
What, When, Why and How to
Stay out of Trouble**

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**Different Approaches – Intellectual
Property vs. Academia**

- » Academia exists to create and disseminate knowledge

- » Property Systems Exist to Limit Access to and Use of Property

- » How do we resolve these conflicting goals?

Confidentiality Agreements

- Legal agreements (contracts) governing the exchange and use of confidential information
- Should be in writing
- Often essential in laying the groundwork for how a company and a university interact

What Are They?

- Can be “stand alone” agreements or part of other agreement
- Material Transfer Agreement s
- Consortium Agreements
- Service Agreements
- Consulting Agreements
- Licenses

Can govern “one-way” or “two-way”
transfer of information

When Do You Need Them?

- Whenever you receive confidential information
- When you want to share information
- When you want to share someone else’s information

- Best done before disclosure or receipt

Why are they useful?

- To protect against disclosures inadvertent "public" disclosures
- To provide notice and agreement about parties right and proprietary status
- To allow for agreement about how information will be used

What Should It Include

- Description of what is covered
- Statement of why the information is being shared
- Marking provisions (and provisions for disclosing orally or visually)
- Two time periods
 - Period during which information will be shared
 - Period of confidentiality

- Identify who is covered by the agreement
 - Employees? Consultants? Students?
 - Does everyone who receives information have to sign an agreement?
 - Does the agreement cover everyone who needs to know the information?
 - How data should be dealt with
 - Whether further agreements are required
 - What will happen to the data when the agreement is over

Exceptions for:

- Information already known
 - Information that becomes commonly known
 - Information that is later given to you by a third party NOT under confidentiality obligations
 - Information that must be disclosed according to a court order or other governmental regulation
 - Information already in recipient's possession

Q. Rights and Obligations

- Agreements to cooperate in enforcement against breaches
- Liquidated damages
- Agreement to injunctive Relief