

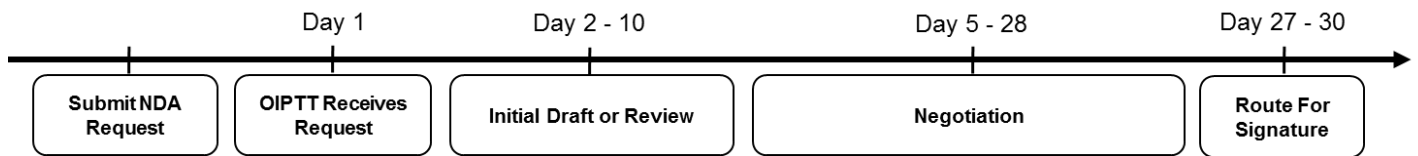


Non-Disclosure Agreement – What To Expect . . .

The purpose of a non-disclosure agreement (NDA) is to facilitate the exchange of confidential or proprietary information between ISU and/or ISURF and another party. An NDA is alternately called a confidentiality agreement (CDA), proprietary information agreement (PIA), secrecy agreement, or other similar term. OIPTT negotiates ISU and ISURF NDAs for research and licensing purposes with all external entities (e.g. company, university, government). Primarily, the OIPTT negotiator defines each party's obligations, while ensuring that ISU complies with federal and Iowa laws and ISU policies. Differences of opinion on agreement terms are expected; the role of the OIPTT negotiator is to reach consensus on how to proceed.

While each NDA is different, OIPTT completes about one-third of the negotiations within 15 days and about two-thirds within 30 days of receipt of the request form. If you have a deadline (e.g. upcoming meeting or proposal deadline), please submit the NDA request form as soon as possible.

The following describes the process for negotiations completed within 30 days and provides information on factors that may lengthen the timeline.



Timeline (Days)



Pre OIPTT: Complete the Request Form

Before OIPTT will negotiate an NDA, a request form must be submitted. If an inquiry is received outside of the request system (e.g. email or phone call), the requestor will be directed to the website to complete the request form. This form is located at <http://www.techtransfer.iastate.edu/for-isu/non-disclosure-agreements-and-material-transfer-agreements/>. This form collects important information needed to draft the agreement and address compliance considerations. Comprehensive and complete responses facilitate the timely execution of the NDA.



Day 1 : OIPTT Receives Request Form

Once OIPTT receives a request form, a tracking number and negotiator are assigned. OIPTT will consult with ISURF for intellectual property matters, ORI for export control review, and ORR for other compliance questions.



Day 2 - 10: Initial Draft Preparation or Agreement Review

After the NDA has been assigned, the negotiator will send, via email, a draft or redline agreement to the contact at the other entity and ISU PI. When OIPTT's NDA template is used, it will take up to five (5) days to send a draft. When the other party provides a draft NDA, it will take up to ten (10) days to review and return a redline draft for consideration.



Day 5 – 28: Negotiation

After a draft NDA is provided, negotiations begin. Initially, negotiations take place via email, using track changes to provide a redline version of the NDA. Generally, after sending a redline back and forth, the negotiator will know if the NDA can be completed in a timely manner or if there are issues that require additional time. Often a phone call is used if any issues remain after the NDA has been exchanged twice. If a phone call does not resolve remaining issues, the NDA will likely take more than 30 days, and up to several months, to complete. During negotiations, PIs are notified if questions or issues arise.



Day 27 – 30: Route for Signatures

Once the NDA is final, the document is routed for signatures. The PI does not have signature authority for NDAs, but signs in a “read and understood” capacity. If the other entity allows electronic signatures, the signature process usually takes 1 – 3 days. If original signatures are required, this could take 14 days or longer. The PI will receive a fully executed copy of the NDA. OIPTT will record the fully signed NDA in Quali Coeus (KC); however, the document is not accessible through KC at this time.



Factors that Affect the Negotiation Timeline

- Agreement – Two-way (mutual) confidentiality versus one-way. For most agreements, two-way confidentiality is appropriate.
- Other Party – Long delays in negotiations on the other party’s side may occur for the following reasons:
 - International. International entities have different laws, procedures, expectations, and languages.
 - Experience. Working with a university is different from working with another type of entity. For an entity with limited experience working with a university, it takes time to understand the differences.
 - Negotiator Turnover. Working with a new negotiator is similar to working with an inexperienced other party (above).
 - Organization. Some entities require multiple layers of approval. Negotiators at large entities may have to get approval for changes to an NDA. Some entities also require original signatures.
 - Workload. OIPTT sends reminders approximately every two weeks if we have not heard from the other party.
- ISU – Delays can occur at ISU for the following reasons:
 - Negotiator Workload. The beginning of the academic year (August), the end of the academic semester (December, May), and government fiscal year-end (September) are peak times for OIPTT. Peak time requests may take longer.
 - PI Availability. OIPTT may have questions that require the PI’s input to proceed.
 - Pre-Negotiations. The PI is responsible for defining the purpose of the discussion. All other negotiations are OIPTT’s responsibility.

The most frequent agreement terms that may require additional time to resolve are:

- Indemnification/Liability – determining who is responsible if things go wrong. ISU prefers to remove this in an NDA.
- Jurisdiction – what law governs the agreement.
- Compliance – addressing export control, IT security, etc.
- Confidentiality – including the definition of confidential information and the length of confidentiality obligations.

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