Non-Financial Agreements (NFAs)
Examples

• Material Transfer Agreements (MTAs)
• Non-Disclosure Agreements (NDAs)
• Data Use Agreements (DUAs)
• Other (Collaboration and other agreements with no funding involved)
Requesting an NFA

![Image of NON-FINANCIAL AGREEMENT ROUTING AND APPROVAL FORM]

- **Provider/Sponsor:**
  - Name:
  - Email:

- **Representative of Provider:**
  - Name:
  - Email:

- **Principal Investigator:**
  - Name:
  - Title:
  - Org Code:

- **Material to be transferred:**
  - MTA:
  - DUA:
  - Other:

- **Material Transfer Agreement (MTA):**
  - MTA #:
  - Draft Agreement:

- **Data Use Agreement (DUA):**
  - DUA #:
  - Draft Agreement:

- **Non-Disclosure Agreement (NDA):**
  - NDA #:
  - Draft Agreement:

- **Material OR IPR:**
  - MTA OR DUA:
  - OR IPR:

- **Where will material be used:**
  - Location:

- **Complete if material will be used in conjunction with other material(s) received from a third party:**
  - Provider:
  - Material OR IPR:

- **Please email the completed form to osp_mta@cornell.edu:**

- **Project Title:**
  - Description of Data:

- **Where will the data be secured? (i.e., CRADAC, Office and Room #:**
  - Location of Data Access (i.e., Office / Room #):

- **Complete if data will be used in conjunction with sponsored award:**
  - Sponsor:
  - Title OR OSP#:
BREAKING NEWS

• OSP is revamping the routing and approval process for NFAs

• OSP will no longer required Department Chair/Center Director signatures on the NFA form

• OSP has signed a Master Reception Agreement that allows OSP to pre-approve MTAs originating from the Addgene repository
  – OSP will no longer administer individual MTAs from the Addgene repository
  – OSP will no longer require an NFA form for Addgene MTAs or track Addgene MTAs in the Sponsored Portal. Addgene will inform OSP of each request for material made by Cornell PIs.
  – The PI will acknowledge the applicable terms of use and certify that required protocols are in place on the Addgene website.
  – OSP will have the ability to create monthly reports of all Addgene orders that have been filled.
Material Transfer Agreements

- Govern the transfer of tangible items for research purposes
- Incoming material is handled by OSP
- Outgoing material is handled by CTL
- Includes material repositories such as Addgene (but Addgene will no longer be administered through OSP)
- Uniform Biological Material Transfer Agreement (UBMTA) – Implementing Letter (Public Health Service)
- Simple Letter Agreement for the Transfer of Non-Proprietary Biological Material (Public Health Service)
MTA Terms to Watch For

• Material Definition
  – Should not include modifications or “anything relating to the material”

• Permitted Use of Materials

• Intellectual Property
  – Provider will retain ownership of original material, progeny, unmodified derivatives
  – Cornell will own modifications and any IP resulting from the research (that is solely developed by Cornell)

• Publication
  – Same standard as financial agreements – Cornell must always retain the right to publish

• Disposal of Material
Non-Disclosure Agreements

• Govern the transfer of intangible *proprietary* information for research purposes

• Include information exchanged in meetings, conferences, phone calls, emails, etc.

• Remember that Cornell is a fundamental research institution, so NDAs are often initiated by an outside entity
  - The results of fundamental research are ordinarily broadly disseminated and not proprietary
NDA Terms to Watch For

• Definition of Confidential Information
  – Should not include fundamental research results
  – Watch for “shall include” vs “may include”

• Exclusions from Confidential Information
  – Independently developed

• Acknowledgment by staff working under the NDA

• Trade Secret language

• Export Control language

• Data Use language masquerading as an NDA

• Intellectual Property language
  – Not appropriate in an NDA
Data Use Agreements

• Govern the transfer of restricted data
• Common data providers: BLS, Nielsen (from the U of Chicago), DHHS, US Dept of Education
• Often contain specific storage requirements
• Require a data security plan – approved by IT or CRADC
• Require IRB approval
• Require SOW
• Inappropriate data handling can have severe consequences
• Faculty PI always required
DUA Terms to Watch For

- Intellectual Property
  - Same as other agreements
- Publication
  - Same as other agreements
  - Expect prepublication review to ensure no restricted data is disclosed
- Confidentiality affidavits
- Storage and access requirements
- HIPAA
  - Cornell is not HIPAA compliant
- No personally identifiable information or protected health information (PII/PHI)
  - Data must be de-identified
Other Non-Financial Agreements

- Agreements with no funding involved
  - Collaboration agreements
  - MOUs, MOAs
  - Equipment Loan agreements
  - Teaming agreements
Terms to Watch For

• How are costs being covered if no funding is provided?
• Data security requirements
• Material transfers
  – Outgoing material provisions-contact CTL
  – Equipment-contact risk management
• Watch for provisions allowing collaborator to work from Cornell
  – Generally not permitted and would constitute private use
• International collaborations
  – RPS
  – Export control issues
  – Tax considerations (US tax withholding on patent royalty payments with entities in certain countries)
Agreement Monitoring

• The location of Material, Confidential Information and Data is contractually determined
  – Do not change the location unless you have received permission from your GCO
  – GCO will obtain permission from the Provider if required

• Reporting requirements

• Advance copies of publications

• Adding/removing users
  – Must receive permission from your GCO
  – GCO will obtain permission from the Provider if required
  – Compliances may need to be updated

• Providing Material, Confidential Information or Data to a collaborator
  – Must receive permission from your GCO – even if collaborator is at Cornell
  – GCO will obtain permission from the Provider if required
Agreement Termination

• The Agreement almost always contains a destruction or return provision
  – The majority of providers require that a certification be made. Ex:
    • All material has been destroyed
    • All confidential information has been returned (agreement MAY allow for one backup copy on the server)
    • All data has been returned and no additional data has been copied or retained at any location

• Allow for plenty of time for end date extensions
  – Notify your GCO
  – Consider publication cycles, comment and review periods
Questions?

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