Confidential Disclosure Agreement Checklist
For Sponsor-Faculty/PI CDAs covering Clinical Trial Evaluations

This CDA Checklist outlines the circumstances when an NYULMC faculty member/principal investigator may sign a Confidential Disclosure Agreement related to a clinical trial evaluation without the prior review of the Office of Clinical Trials (OCT). **Please remember that you can always refer your CDAs to the OCT: Susan.Shin.Andersen@nyumc.org

OK TO SIGN CDA without an OCT review if ALL of the following are true:

- You are signing the CDA only on behalf of yourself
- The CDA does NOT require a signatory for NYU School of Medicine or any other unit or division of New York University or the Medical Center (NYU). Please remember that you are NOT authorized to sign agreements for NYU.
- You review the CDA and confirm that:
  1. You understand and are able to perform the obligations outlined in the CDA
  2. You understand and are willing to accept the risks imposed by the CDA
  3. You have reviewed the CDA against the Important CDA Issues section below and have addressed these issues to your satisfaction.
  4. The CDA does NOT directly impose obligations on NYU.
  5. The CDA does NOT require the assignment of new inventions or other intellectual property.
  6. The CDA places confidentiality obligations on information, data or results generated by you or NYU.
- You advise everyone at NYU with whom you share the confidential information provided to you of the confidential nature of the information and your obligations under the CDA.
- You provide a final copy of the signed CDA to Susan.Shin.Andersen@nyumc.org.

NOT OK TO SIGN CDA without an OCT review and negotiation if ANY of the above are not true
Please forward the CDA to Susan.Shin.Andersen@nyumc.org

Important CDA issues

- **Overly Broad Definition of Confidential Information:** A CDA should cover only disclosures to you regarding the specific matter (e.g., trial protocol or investigational drug or device) you are seeking to evaluate. It should not cover all disclosures to you regardless of subject matter. It should not cover information, data or results generated by you or NYU.
  - A CDA’s confidentiality obligations should not cover information that is already public, later becomes public, is received from a third party without obligations of confidentiality, or is independently developed.
- **No Defined Contract Term:** A CDA should have a defined start date, a defined end date a few months, or at most, a couple of years later, and the right for you to “terminate without cause.” Without a defined term, the CDA could impose obligations on you for anything you ever receive from the other party.
- **“Evergreen” Survival:** Your obligations of confidentiality should end at some point. A CDA should provide that its obligations survive no longer than 5 to 7 years from date of disclosure of the confidential information.
- **Requirements for “best efforts”:** You should not agree to use greater efforts of confidentiality than what you normally do for your own confidential information. “Best efforts”, for example, might require that you do more than you normally would.
- **No Permissible Disclosures:** You should have the right to disclose confidential information when legally required to (e.g., pursuant to a subpoena) and to disclose confidential information as needed to other employees within NYU.
- **Having to Return/Destroy Everything:** A CDA should not require you to return or destroy all confidential information. If something goes wrong, you will need a copy of what you received to defend a sponsor’s claim. You should have the right to retain one copy of confidential information for your legal records and to maintain copies on your backed-up electronic files.
- **Invention Assignments:** The assignment of new inventions or other intellectual property in CDA is NOT permitted under NYU policy. ALWAYS send CDAs with these terms to Susan.Shin.Andersen@nyumc.org.
- **Indemnification:** You should not have to indemnify in a CDA. Doing so could expose you to substantial financial risk.
- **Mandatory Relief:** You should be wary of agreeing to provisions that entitle the sponsor to injunctive relief or specific performance upon a contract breach. This means that the sponsor could obtain a court order restricting your activities based on its allegation of your contract breach without proving it. For instance, this term could help a sponsor temporarily block your making a scientific publication if the sponsor alleges that the paper includes its confidential information. NYU will agree that a disclosing party may seek injunctive relief, but will not agree that the sponsor is entitled to it.
- **Non-NY Governing Law/Jurisdiction:** You should be wary of agreeing to a governing law other than New York or a jurisdiction outside of New York City. These provisions could result in having to defend a claim brought by the sponsor in another country or state under an unfamiliar law.