September 15, 2020

RE: Explanation of Montana State University Non-Disclosure Agreement

Montana State University (MSU) enters into hundreds of non-disclosure agreements with potential partners and vendors per year. These agreements generally address the disclosure of confidential information as part of preliminary discussions prior to entering a formal collaboration agreement. In order to expedite the review and approval of non-disclosure agreements, the MSU Office of Legal Counsel has developed a standard non-disclosure agreement (NDA) with terms that meet MSU’s public contracting requirements as an agency of the State of Montana. The MSU template is the preferred method of entering into a non-disclosure or confidentiality agreement with the university.

Please note that as an agency of the State of Montana, MSU’s public contracting requirements include, but are not limited to, the following:

- **Governing Law and Jurisdiction:**
  - MSU has no legal authority to bind the State of Montana to the laws of another state by contract and is prohibited under state law from agreeing to the jurisdiction or venue of another state or country. See 18-1-401 and 18-1-403, MCA. MSU requires Montana governing law and jurisdiction unless MSU is contracting with another public agency, in which case the agreement may remain silent on governing law and jurisdiction.

- **Confidentiality of Records:**
  - MSU is subject to the Montana Public Records Act and must evaluate requests for public records based upon Montana law. Generally, the mere existence and terms of public contracts are not confidential and cannot be designated as such.

- **Indemnification:**
  - MSU has no legal authority to bind the treasury of the State of Montana to future expenditures in the form of indemnification and may not enter into an agreement to hold a party harmless or to indemnify a party from prospective damages. MSU’s state self-insurance program covers only the tort liability of MSU officers, agents, and employees, and MSU may not contractually expand the limited waiver and coverage of the state self-insurance plan to include third parties.
• Export Control:
  o Each party is obligated to comply with all applicable U.S. export laws and regulations, including the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR).

• Reporting Requirements for Federally Funded Projects:
  o For non-disclosure agreements regarding projects supported by U.S. federal funds, the agreements must be consistent with and not supersede, conflict with, or otherwise alter any obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection.

MSU recognizes some discussions of confidential information and potential partnerships may require non-disclosure agreements with additional terms beyond those included in MSU’s standard agreement. In these instances, MSU encourages other parties to add redline edits to the MSU template for further review. MSU may be willing to accept another party’s non-disclosure agreement template; however, note that all such agreements must include the public contracting requirements described above and must be approved by MSU’s Office of Legal Counsel. If you request use of a non-MSU template, please ensure compliance with the requirements listed above prior to submitting for MSU review.

Should you have questions or wish to discuss in further detail, please contact the Compliance Specialist in MSU’s Office of Research Compliance.