Nondisclosure Agreements

**Brief**

<table>
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**BRIEF**

**Policy Summary**

A written Nondisclosure Agreement (NDA) must be approved and signed by Technology Transfer and Intellectual Property Management (TTIPM) before Berkeley Lab's nonpublic technical and scientific information (e.g., unpublished material that has not completed publication review) is shared, in any form, with third parties other than the University of California and DOE.

All obligations to keep confidential information from a for-profit company must be in a written agreement, and Berkeley Lab staff must comply with the terms of that agreement. If Berkeley Lab receives proprietary information from a nonprofit (including a university) or a government provider under implied conditions of confidentiality (i.e., without a written agreement), Berkeley Lab staff should take appropriate steps to safeguard the information.

**Who Should Read This Policy**

- All employees
- Affiliates

**To Read the Full Policy, Go To:**

The POLICY tab on this wiki page

**Contact Information**

Licensing
Technology Transfer and Intellectual Property Management
ttd@lbl.gov

**Policy**

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**POLICY**

**A. Purpose**
At times, Lawrence Berkeley National Laboratory (Berkeley Lab) needs to, or finds it useful to, disclose information relating to technical and scientific developments not yet published or approved for public disclosure through pre-publication review (see the *Patents – Publication Clearance Policy*, document number 10.04.002.000).

Similarly, at times Berkeley Lab needs to obtain proprietary information from third parties to meet Berkeley Lab's programmatic research objectives. The procedures of this policy enable Berkeley Lab to comply with its obligation to protect proprietary information that it receives from an external source and to avoid the possibility of liability for disclosure or misuse of such information. The procedures also protect Berkeley Lab researchers from inappropriately restrictive terms on publications or inventions of their own creation.

**B. Persons Affected**

This policy applies to employees and affiliates who wish to obtain proprietary information from third parties or who wish to disclose Berkeley Lab technical and scientific developments that are not public.

**C. Exceptions**

Berkeley Lab staff, in administrative positions or elsewhere, who routinely receive proprietary information in the course of their employment (e.g., purchasing agents, human resources specialists) must follow departmental guidelines for the management of proprietary information. Those guidelines generally incorporate the procedures, below, but see also the *Use of Privileged Information* policy.

**D. Policy Statement**

Berkeley Lab will enter into nondisclosure agreements (NDAs) to protect Berkeley Lab's and DOE's interest in intellectual property, foster successful technology transfer, and avoid liability for others' use or misuse of Berkeley Lab information or material.

1. **Transfer to Third Parties**
   a. **NDA Signed by TTIPM.** A Berkeley Lab researcher (employee or affiliate) wishing to transfer nonpublic technical or scientific information to third parties (other than University of California staff or DOE) must contact Technology Transfer and Intellectual Property Management (TTIPM), which will prepare an NDA. TTIPM may also prepare an agreement for mutual disclosure of proprietary information or an agreement that also includes the transfer of tangible research material. The researcher may not transfer Berkeley Lab information before the agreement is signed by both TTIPM and the recipient.
   b. **Disclosure of Information.** At a minimum, any information Berkeley Lab discloses under an NDA should be prominently marked as "proprietary" or "confidential." If the Berkeley Lab researcher transferring nonpublic information wishes to disclose the information orally, he or she must first inform his or her audience that the forthcoming information is confidential. Some NDAs also require that confidential oral presentations be summarized, marked as confidential, and transmitted to the recipient within 15 to 30 days. The researcher must comply with any additional requirements contained in the NDA.
   c. **Transfer of Information to Berkeley Lab Subcontractors.** Under certain subcontracts, Berkeley Lab's full rights to intellectual property may be impaired if confidential information is transferred to a subcontractor under the subcontract without appropriate restrictive markings. If a Berkeley Lab researcher anticipates transferring nonpublic information to a Berkeley Lab subcontractor, the researcher must inform the Procurement and Property Management Department about this intention and take steps necessary under the subcontract to mark the information.

2. **Obtaining Proprietary Information from Third Parties**
   a. **Written NDA**
      i. If a third party provides a written NDA, the Berkeley Lab employee must have that agreement approved by TTIPM. For quicker approval, the researcher may send the proposed agreement electronically to TTIPM (ttd@lbl.gov) for review and send the original to TTIPM for signature. In urgent cases, TTIPM may authorize the researcher to sign the agreement on behalf of Berkeley Lab, after approval of the agreement on content. If the agreement from the originator contains unacceptable terms, TTIPM will contact the originator to modify the agreement appropriately.
      ii. All obligations to keep confidential information from a for-profit company must be memorialized in a written agreement. If a for-profit company orally requests confidentiality, the Berkeley Lab researcher must contact TTIPM to obtain a written agreement.
   b. **Implied Conditions of Confidentiality.** If a Berkeley Lab employee receives proprietary information from a nonprofit (including a university) or government originator under implied conditions of confidentiality (i.e., without a written agreement), he or she must take steps to protect the information set forth in Sections D.2.c, *Maintenance of Proprietary Information*, to D.2.f, *Return to Source*, below. Berkeley Lab does not accept implied obligations of confidentiality or restrictions on use for proprietary information from private entities. The Berkeley Lab employee must have an approved agreement to obtain proprietary information from a for-profit entity.
   c. **Maintenance of Proprietary Information.** The Berkeley Lab recipient of proprietary information is responsible for physically
securing the proprietary information at Berkeley Lab or associated campus facilities. The proprietary information must be kept under lock, must not be left where inadvertent disclosure may occur, and must not be removed from Berkeley Lab or associated campus facilities. Such information may not be photocopied or duplicated in any manner. It must be clearly marked as confidential and proprietary data. Computer source code containing proprietary information must not be stored in permanent files or open tape libraries. Object code containing proprietary information must not be stored in permanent files unless access to such files is controlled by the person responsible for the information.

d. **Internal Information Sharing.** As necessary for the conduct of the project and only on a need-to-know basis, proprietary information generally may be shared with other Berkeley Lab staff and University employees. No approvals are required for this, but the Berkeley Lab researcher must exercise his or her best judgment to minimize the exposure of such information. Copies must not be made for internal information sharing. Occasionally, the NDA may restrict internal sharing of proprietary information to a single recipient or specified group; TTIPM will inform the researcher of this restriction, and the researcher must abide by that restriction.

e. **Disclosure Outside Berkeley Lab**

i. If disclosure of proprietary information to any individual other than Berkeley Lab staff and appropriate University employees appears necessary, the Berkeley Lab employee who wishes to disclose the information must obtain prior written approval from the entity who supplied the proprietary information. That approval must be signed by an authorized representative of that entity and clearly specify what proprietary information may be disclosed and to whom it may be disclosed. Unless the approval letter otherwise specifies, the disclosure of the information will be made only on the Berkeley Lab site. No copies of the proprietary information may be made. Contact TTIPM to obtain assistance in securing appropriate approval from the proprietary information supplier.

ii. If Berkeley Lab independently develops, derives, or obtains information similar to proprietary property (other than from a source that Berkeley Lab would have reason to believe has a confidentiality obligation to the third party entity that signed an NDA with Berkeley Lab), Berkeley Lab may use or divulge that proprietary information without restriction. Berkeley Lab must, however, have documentary evidence (e.g., properly witnessed laboratory notebooks or publications) to prove the independence of the source.

f. **Return to Source.** When proprietary information or material is no longer needed, it must be returned promptly to the entity who signed the NDA by registered mail or a recognized courier service such as Federal Express or DHL, or otherwise disposed of (e.g., destroyed) as required in any written agreement. Copies of the proprietary information must not be retained.

3. **Consequence of Failure to Safeguard Information.** Failure to reasonably safeguard Berkeley Lab proprietary information and/or follow the procedures listed above may constitute a serious violation of professional responsibility that may result in disciplinary action, including termination.

### E. Roles and Responsibilities

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<th>Role</th>
<th>Responsibility</th>
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| Licensing staff       | • Negotiates and approves NDA  
                        | • Keeps records of NDAs |
| Employee/Affiliate    | • Submits a request for approval of an NDA before revealing non-public Berkeley Lab information to an outside entity, upon receiving an NDA from a third party, or if a for-profit company wants to provide information under an obligation of confidentiality  
                        | • Complies with the obligations of the NDA |

### F. Definitions/Acronyms

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<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Affiliates</td>
<td>Non-Laboratory employees engaged in on-site Laboratory activities. Affiliates are subject to training in safety and other subjects. They are also issued a Berkeley Lab identification badge. Affiliates may receive system accounts, research access to facilities, and a per diem allowance for housing and living expenses. Examples: Facility users, scientific collaborators, students.</td>
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Intellectual Property

Intellectual property (IP) refers to creations of the mind: inventions, creative, literary and artistic works, and symbols, names, images, and designs used in commerce. The means to protect IP include patents, trademarks, copyright and trade secrets. Patents protect inventions. Trademarks protect words, names, symbols, sounds, or colors that distinguish goods and services. Copyrights protect works of authorship, such as writings, software, music, and works of art that have been tangibly expressed. Trade secrets are information that companies keep secret to give them an advantage over their competitors. While Berkeley Lab has discretion to secure and license patents, trademarks and copyrights, it is prohibited by DOE policy from licensing trade secrets.

Nondisclosure Agreement (NDA)

A legal contract between at least two parties that outlines confidential material, knowledge, or information that the parties wish to share with one another for certain purposes, but wish to restrict access to or by third parties. The recipient is typically prohibited from disclosing the confidential information except to those within the recipient organization with a "need to know," subject to certain common exceptions or time limits. A nondisclosure agreement is often also called a confidentiality agreement or a proprietary information agreement or a similar name.

Policy

Statements or directives from the federal, state, or local government; the University of California; or Berkeley Lab senior management that set a course of action, define acceptable conduct, or implement governing principles. Example: Berkeley Lab Site Access.

Proprietary Information

Proprietary information is any information or material (including, but not restricted to, ideas, concepts, proposals, inventions, data, instruments, chemical samples, cost estimates, customer information, and computer programs) that (a) originates outside Berkeley Lab, (b) is disclosed to Berkeley Lab on expressed or implied conditions that limit Berkeley Lab's right to use or disclose the information, (c) is identified by the originator as proprietary or confidential either generally in a nondisclosure agreement or specifically with respect to particular information or material, and (d) is not generally known publicly. This includes the documents or electronic media that contain such information.

TTIPM

Technology Transfer and Intellectual Property Management

G. Recordkeeping Requirements

Technology Transfer and Intellectual Property Management keeps records of all NDAs.

H. Implementing Documents

None

I. Contact Information

Licensing
Technology Transfer and Intellectual Property Management
ttd@lbl.gov

J. Revision History

<table>
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<tr>
<th>Date</th>
<th>Revision</th>
<th>By whom</th>
<th>Revision Description</th>
<th>Section(s) affected</th>
<th>Change Type</th>
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<td>1/2/2012</td>
<td>0</td>
<td>H. Clark</td>
<td>Re-write for wiki (brief)</td>
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<td>Minor</td>
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<tr>
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<td>1</td>
<td>V. Wolinsky</td>
<td>Re-write for wiki (policy)</td>
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Document Information

Lawrence Berkeley National Laboratory. The official or current version is located in the online LBNL Requirements and Policies Manual. Printed or exported versions are not official. Users are responsible for working with the latest approved revision.
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<td>Section 5.06(C)(1); 5.06(F)</td>
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**Source Requirements Documents**


**Implementing Documents**

None