

INSTRUCTIONS FOR USING THE APPROVED OU MUTUAL NON-DISCLOSURE AGREEMENT

The Office of Legal Affairs (“OLA”) has approved the following OU Mutual Non-Disclosure Agreement (“NDA”) to be used solely for the purposes of sharing confidential information with a third party. **The NDA may not be used for any other purpose, and confidential information may not be shared prior to execution of the NDA.** The following conditions apply to use of the NDA:

1. OLA must review and approve any and all modifications to the NDA. Otherwise, an authorized University representative may sign a completed NDA without prior OLA approval.
2. The individual signing the NDA on the University’s behalf¹ is responsible for completing and processing the NDA as set forth in these instructions, and complying with all other applicable University policies and procedures, before signing the NDA and sharing confidential information. Compliance will be the subject of internal audit.
3. All non-disclosure agreements presented by a third party for use must be emailed to legalaffairs@oakland.edu for OLA review and approval.
4. Please contact OLA at legalaffairs@oakland.edu or ext. 3110 if you have any questions regarding these instructions or the NDA.

¹ If you have questions about whether you are authorized to sign the NDA on the University’s behalf, please consult Policy 410 Contracting and Employment Appointment Authority and Exhibit 1 - Signature Authority Chart found at <https://www.oakland.edu/policies/>

Mutual Non-Disclosure NDA (NDA)

Oakland University (University), a Michigan constitutional body corporate and institution of higher education, and _____ (Company) enter into this NDA as of the date of the last signature below (Effective Date) for the purpose(s) described in the attached Exhibit A which is incorporated herein by reference (Purpose). The parties' confidentiality obligations expire **[select one]** 1 3 5 year(s) after termination or expiration of this NDA (Confidentiality Period).

1. This NDA commences on the Effective Date and expires one year from the Effective Date (Term) subject to Section 9.
2. "Confidential Information" means commercial, financial, technical and other information that is clearly marked on each page (if written) as "Confidential Information" when disclosed. If Confidential Information is disclosed in non-tangible form, the discloser will confirm in writing within seven days which portion(s) of the non-tangible information constitutes "Confidential Information." OU, Inc.'s Manager-Client Strategist, Business Manager and Office Manager will treat all information disclosed directly to them by OU, Inc. clients as "Confidential Information" regardless of markings or lack thereof. The University's other faculty, staff, students, contractors and representatives will only treat OU, Inc. client information as "Confidential Information" if it is marked as required by this Section.
3. "Confidential Information" does not include information that: (i) was previously known by the receiver; (ii) is or becomes part of the public domain without breach of this NDA; (iii) is lawfully received from a third party; (iv) is developed independent of information disclosed under this NDA; (v) the discloser agrees in writing to be disclosed; (vi) is required to be disclosed pursuant to applicable law or court order; or (v) is disclosed in response to any inquiry, investigation or subpoena issued by a state or federal government agency; (vi) relates to allegations of sexual assault or sexual harassment/misconduct; and/or (vii) lawfully reports waste, fraud or abuse to a designated enforcement official of state or federal agency authorized to receive such information.
4. During the Confidentiality Period, the receiver will treat the Confidential Information as confidential, protect it using at least the same degree of care as it uses to protect its own confidential information using no less than reasonable care, and use it solely for the Purpose; and not disclose it to any third parties without disclosers prior written consent.
5. Neither party is required to disclose any Confidential Information or enter into any discussions or agreements.
6. Disclosure of Confidential Information does not grant the receiver any right(s) or title(s) to the discloser's Confidential Information.
7. The parties acknowledge and understand that the University has many foreign national students and employees to whom a transfer of Confidential Information and/or export-controlled items, including without limitation, technical information, systems, equipment, components, material or software ("Items"), may violate U.S. export control and sanction regulations. The Company will not transfer to the University any Confidential Information and/or Items with a U.S. Export Control Classification Number other than EAR99 under the Export Administration Regulations without prior written authorization from the University's export compliance representative. The University bears no responsibility for unauthorized exports of non-EAR99 items by the Company to the University's foreign national students or employees without obtaining such prior written authorization.
8. Neither party will be liable for any consequential, punitive, incidental, exemplary, lost profits, lost revenues, indirect or other special damages of any kind even any party had knowledge of the possibility of such losses or damages.
9. Either party may terminate this NDA: (i) immediately upon the other party's failure to comply with the NDA; or (ii) upon thirty days prior notice to the other party for any reason.
10. Within 60 calendar days following termination or expiration of this NDA, the receiver will – as directed by the discloser – return or destroy all of the discloser's Confidential Information in the receiver's possession and certify in writing that the Confidential Information has been returned or destroyed.
11. All notices must be in writing and sent by certified mail, return receipt, or email, to the address(s) shown below.
12. Each party warrants that: (i) it is authorized to disclose the Confidential Information; and (ii) its representative signing below is authorized to execute this NDA on its behalf.
13. This NDA constitutes the parties' entire agreement regarding Confidential Information and supersedes any prior verbal or written agreements or representations. No delay or failure to enforce any provision of this NDA will constitute a waiver or limitation of rights enforceable under this NDA. This NDA may only be amended by a writing signed by the parties' authorized representatives. If a court of competent jurisdiction finds any provision of this NDA invalid and/or unenforceable, the remaining provisions will remain valid and in force. Michigan law will govern this NDA, without resort to any conflict of laws analysis, and Michigan will be the venue for any proceedings relating to this NDA. Neither party will use the other party's name, logo or marks without the other party's prior written approval. Neither party may assign their rights or obligations under this NDA without the other party's prior written consent. This NDA is binding on and shall inure to the benefit of the parties and their successors and assigns. Sections 1, 4, 8, and 13 will survive termination or expiration of this NDA.

OAKLAND UNIVERSITY

By: _____
Title: _____
Date: _____
All Notices to:
Name:
Address:
Email:
With copy to: LegalAffairs@oakland.edu

COMPANY

By: _____
Title: _____
Date: _____
All Notices to:
Name:
Address:
Email:
With copy to:

EXHIBIT A

Purpose(s) for which Confidential Information may be used: