

Position on Confidentiality Provisions in Research Contracts

UNM, as a state institution of higher education, practices research in an open environment, with the primary purpose of advancing knowledge. We accept proprietary information from industry only in carefully delimited situations. We insist that the results of our research be freely publishable, except for the rare occasions in which we engage in classified research.

For federally sponsored research, UNM supports the position of National Security Decision Directive of September 21, 1985 [NSDD 189], that the products of fundamental research, both basic and applied, should remain unrestricted, and that where the national security requires control, the mechanism for control of information should be classification. As NSDD 189 says, “no restrictions may be placed upon the conduct or reporting of federally-funded fundamental research that has not received national security classification, except as provided in applicable US statutes.”

Accepting Proprietary Information

UNM accepts confidential proprietary information in certain circumstances. Those circumstances are as follows:

- UNM has reviewed the context and determined that it has the ability to maintain the confidentiality of the proprietary information. The person initiating any contract allowing for acceptance of proprietary information has primary responsibility for making this determination, but the UNM official signing any contract allowing for acceptance of proprietary information will also ensure that this determination has been made at the appropriate level of the institution.
- The confidentiality obligation should be limited to information that is documented by the provider and clearly labeled as confidential.
- The research should be structured such that restrictions on releasing proprietary information will not prevent publication of the results of the research. Special attention will be paid to this requirement when student research is involved. All doctoral student dissertations must be made publicly available, and restrictions in research contracts do not exempt a student from this requirement.
- UNM considers export control compliance to be the obligation of the provider of the information or material. UNM research frequently involves the participation of foreign nationals, and the sharing of information internationally, and UNM will

therefore assume that information provided is not export controlled with the following exception: Proprietary export controlled information or material may only be accepted under careful procedures arranged and approved by the Vice Provost for Research. Such transfer will generally take a significant amount of prior negotiation and planning.

- Any contract providing for UNM to accept confidential or proprietary information will normally include standard clauses providing for certain exceptions, similar to those set forth in Attachment A, which may be revised from time to time by the University Counsel Office.
- The contract does not permit an outside party to prohibit publication by UNM or its employees or students. The contract may, however, permit an outside party to require the removal of its proprietary information from any such publication.

When UNM accepts confidential proprietary information pursuant to this policy, UNM employees shall adhere to the terms and conditions of the governing contract. In particular, UNM employees may not publish anything that would reveal such confidential information, unless the publication is allowable under the terms and conditions of a governing contract.

Restrictions on Generated Research

When the information is generated by UNM research, UNM does not agree to any restrictions on the information other than:

- Classified Research: Faculty members may conduct off-campus classified research subject to the UNM's Classified Research Policy, <http://www.unm.edu/~brpm/r511.htm>. Note in particular that the UNM students participating in the research may not use classified data for course credit, theses or dissertations. The research must contribute to the professional development of the faculty and students involved. Any establishment of a classified site under UNM auspices would require the approval of the Vice Provost for Research.
- publication restrictions within the permissible range of the fundamental research exemption of the Export Administration Regulations: temporary delay for purposes of filing patents, and review for purposes of identifying and removing external proprietary information; and
- restrictions otherwise required by law.

Note: This Position Statement does not apply to faculty outside consulting conducted pursuant to UNM's Policy Concerning Outside Employment.

Adopted on an interim basis
by the Research and Intellectual Property Legal Services Office
with the approval of the Research Policy Committee
and the Office of the Vice Provost for Research

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**Attachment A to
Policy on Confidentiality Clauses
in Research Contracts**

Exemptions to confidentiality provisions:

- i. information which is or becomes publicly known through no fault of the receiving party;
- ii. information learned from a third party entitled to disclose it;
- iii. information already known to or developed by the receiving party before receipt from the disclosing party, as shown by the receiving party's prior written records;
- iv. information reasonably necessary to protect UNM's interests in a lawsuit, alternative dispute resolution process, or government investigation;
- v. information reasonably necessary to process insurance claims;
- vi. to the extent required by law.

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