



CUI Notice 2019-0X: Non-Disclosure Agreement Template for Controlled Unclassified Information (CUI)

Month DD, 2019

Purpose

1. This Notice serves to offer guidance on the use of a standardized Non-Disclosure Agreement (NDA) template for Controlled Unclassified Information (CUI).

Authorities

2. Executive Order 13556, *Controlled Unclassified Information* (“the Order”), November 10, 2010; and
3. 32 Code of Federal Regulation Part 2002, *Controlled Unclassified Information* (“the Directive”), September 14, 2016.

Background

4. The Director of the Information Security Oversight Office (ISOO) exercises Executive Agent (EA) responsibilities for the CUI Program. The Directive implements the Order and establishes the CUI Program requirements for designating, safeguarding, disseminating, marking, decontrolling, and disposing CUI.
5. The CUI Program represents an unprecedented initiative to standardize practices across more than 100 separate executive branch departments and agencies; state, local, tribal, and private sector entities; academia; and industry. The Program’s goals are to enable timely and consistent information sharing and to increase transparency throughout the executive branch and with non-executive branch stakeholders. Sharing CUI is authorized for any lawful government purpose, defined as any activity, mission, function, operation, or endeavor that the U.S. Government authorizes or recognizes within the scope of its legal authorities or the legal authorities of non-executive branch entities (such as state and local law enforcement).

Non-Disclosure Agreement Template

6. In order to continue the goal of standardizing practices across executive branch agencies, the CUI EA is continuing to develop processes and forms.
7. The attachment serves as a template that departments and agencies can use when they determine that an NDA is appropriate. The attached template is optional and can be modified by agencies as needed.

Any questions may be submitted to Mark Riddle, Principal for CUI Program Oversight, at (202) 357-6864 or at Mark.Riddle@nara.gov.

MARK A. BRADLY
Director

DRAFT

[AGENCY NAME]
NON-DISCLOSURE AGREEMENT

I, _____, an individual official, employee, consultant, or subcontractor of or to _____ (the authorized entity), intending to be legally bound, consent to the terms in this agreement in consideration of me being granted conditional access to Controlled Unclassified Information, specified below, that is owned by, produced by, or in the possession of the United States Government.

(Signer will acknowledge the category or categories of information that he or she may have access to, and the signer's willingness to comply with the standards for protection by placing his or her initials in front of the applicable category or categories.)

Initials:

Controlled Unclassified Information (CUI) Categories:
[List all applicable CUI Categories by Category Name]

As used in this agreement, Controlled Unclassified Information (CUI) is information the government creates or possesses, or that an entity creates or possesses for or on behalf of the government, that a law, regulation, or government-wide policy (LRGWP) requires or permits an agency to handle using safeguarding or dissemination controls. However, CUI does not include classified information [Information that Executive Order 13526, *Classified National Security Information*, December 29, 2009 (3 CFR §2010 Comp., p. 298), any predecessor or successor order, or the Atomic Energy Act of 1954, as amended, requires agencies to mark with classified markings and protect against unauthorized disclosure] or information a non-executive branch entity possesses and maintains in its own systems that did not come from, or was not created or possessed by or for, an executive branch agency or an entity acting for an agency. The LRGWP may require or permit safeguarding or dissemination controls in three ways: 1. Requiring or permitting agencies to control or protect the information but providing no specific controls, which makes the information CUI Basic, 2. Requiring or permitting agencies to control or protect the information and providing specific controls for doing so, which makes the information CUI Specified, or 3. Requiring or permitting agencies to control the information and specifying only some of those controls, which makes the information CUI Specified, but with CUI Basic controls where the authority does not specify. This includes information currently categorized by government agencies, but will be replaced by CUI once the CUI Program is implemented, as: For Official Use Only (FOUO); Official Use Only (OUO); Sensitive Homeland Security Information (SHSI); Limited Official Use (LOU); Law Enforcement Sensitive (LES); Safeguarding Information (SGI); Unclassified Controlled Nuclear Information (UCNI); and any other identifier used by other government agencies to categorize information as Sensitive But Unclassified (SBU).

I attest that I am familiar with, and will comply with the standards for access, dissemination, handling, and safeguarding of the information to which I am granted access as cited in this agreement and in accordance with the guidance provided to me relative to the specific category of information.

I understand and agree to the following conditions of my access to the information indicated above:

1. I acknowledge that I have received a security briefing or undergone training concerning the nature and protection of the CUI to which I have been provided conditional access, including the

procedures to follow in ascertaining whether other persons to whom I contemplate disclosing this information are approved to access it, and that I understand these procedures.

2. By being granted conditional access to the CUI indicated above, the United States Government has placed special confidence and trust in me and I am obligated to protect this information from unauthorized disclosure, in accordance with the terms of this agreement and the LRGWP applicable to the specific categories of information I am granted access.

3. I attest that I understand my responsibilities, am familiar with, and will comply with the standards for protecting CUI that I may have access to in accordance with the terms of this agreement and the LRGWP applicable to the specific categories of CUI I am granted access. I understand that the United States Government may conduct inspections, at any time or place, for the purpose of ensuring compliance with the conditions for access, dissemination, handling and safeguarding CUI under this agreement.

4. I will not disclose or release any CUI provided to me pursuant to this agreement without proper authority or authorization. Should situations arise that warrant the disclosure or release of such CUI, I will do so only under approved circumstances and in accordance with the LRGWP applicable to the specific categories of CUI. I will honor and comply with any and all dissemination restrictions cited or verbally relayed to me by the proper authority.

6. I agree that I will not alter or remove markings that indicate a category of CUI or require specific handling instructions from any material I may come in contact with, unless such alteration or removal is consistent with the requirements set forth in the LRGWP applicable to the specific category of CUI. I agree that if I use information from a document or other medium, I will carry forward any markings or other required restrictions to derivative products, and will protect them in the same manner as the original.

7. I agree that I shall promptly report to appropriate officials, in accordance with the guidance issued for the applicable category of CUI, any loss, theft, misuse, misplacement, unauthorized disclosure, or other security violation that I have knowledge of and whether or not I am personally involved. I also understand that my anonymity will be kept to the extent possible when reporting security violations.

8. If I violate the terms and conditions of this agreement, such violation may result in the cancellation of my conditional access to the CUI covered by this agreement. This may serve as a basis for denying me conditional access to other types of information, including classified national security information.

9. I assign to the United States Government all royalties, remunerations, and emoluments that have resulted, will result, or may result from any disclosure, publication, or revelation of the information inconsistent with the terms of this agreement.

10. This agreement is made and intended for the benefit of the United States Government and may be enforced by the United States Government or the authorized entity. By granting me conditional access to CUI in this context, the United States Government may seek any remedy available to it to enforce this agreement, including, but not limited to, application for a court order prohibiting disclosure of CUI in breach of this agreement. I understand that if I violate the terms and conditions of this agreement, I could be subjected to administrative, disciplinary, civil, or criminal action, as appropriate, under the LRGWP applicable to the category of CUI involved, and neither the United States Government nor the authorized entity have waived any statutory or common law evidentiary privileges or protections that they may assert in any administrative or court proceeding to protect any CUI to which I have been given conditional access under the terms of this agreement.

11. Unless and until I am released in writing by an authorized representative of the [AGENCY] (if permissible for the particular category of information), I understand that all conditions and

obligations imposed upon me by this agreement apply during the time that I am granted conditional access, and at all times thereafter.

12. Each provision of this agreement is severable. If a court should find any provision of this agreement to be unenforceable, all other provisions shall remain in full force and effect.

13. My execution of this agreement shall not nullify or affect in any manner any other secrecy or Non-disclosure agreement(s) that I have executed or may execute with the United States Government or any of its departments or agencies.

14. These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order (E.O.) No. 12958, as amended; Section 7211 of Title 5, United States Code (5 USC §7211) (governing disclosures to Congress); 10 USC §1034, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); 5 USC §2302(b)(8), as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 USC §421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including 18 USC §§641, 793, 794, 798, 952, and Section 4(b) of the Subversive Activities Act of 1950 (50 USC §783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said E.O. and listed statutes are incorporated into this agreement and are controlling.

15. Signing this agreement does not bar disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law.

16. I represent and warrant that I have the authority to enter into this agreement.

17. I read this agreement carefully and my questions, if any, were answered. I acknowledge that the briefing officer has made available to me any laws, regulations, or directives referenced in this agreement so that I may read them at this time, if I so choose.

[AGENCY]

NON-DISCLOSURE AGREEMENT

Acknowledgement

Typed/Printed Name:	Government/Department/Agency/Business Address	Telephone Number:
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I make this agreement in good faith, without mental reservation or purpose of evasion.

Signature:

WITNESS:

Typed/Printed Name:	Government/Department/Agency/Business Address	Telephone Number:
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Signature: