National Aeronautics and
Space Administration

John C. Stennis Space Center
Stennis Space Center, MS 39529-6000

SPD 5150.5 Rev E
August 2013

COMPLIANCE IS MANDATORY

John C. Stennis Space Center Industry Presentations and Related Nondisclosure Agreements

Document History Log

Status/Change/ Revision	Change Date	Originator/Phone	Description
Revision A	12/11/96	Rebecca Dubuisson/ 8-1636	Revision
Revision B	05/10/02	David Keith/ 8-3562	Reviewed at expiration and revised for reissuance. Added new paragraph 5b. Changed titles from Division Chiefs/Office Managers to Division Directors/Office Managers and Chief/Manager to Director/Manager. Attachments 1 and 2 changed to A and B.
Revision C	10/18/2004	Acquisition Management Office	Revalidated per NASA rules review.
Revision D	April – September 2008	Office of Procurement	Reviewed after expiration and revised for reissuance. Revisions throughout document. Changed AMO to Office of Procurement. Revised/Replaced Attachments.
Revision E	July 2013	David Keith/8-3562	Reviewed at expiration and revised for reissuance. Updated reference from EO12958 to EO 13526. Changed 6. Measurement/Verification to be real-time monitoring as events occur.

1. POLICY

This directive establishes the SSC policy governing contact with industry representatives (including university representatives) and responsibilities applicable to nondisclosure agreements associated with briefings and presentations by those representatives. SSC policy is outlined below.

a. Fair and uniform treatment will be given to industry representatives visiting SSC sites or otherwise contacting SSC employees. If a meeting is granted to a representative of an industrial firm in a specific field, equal opportunity will be given to other representatives in the same field, as requested, within the Government's ability to do so. All communication will be conducted in accordance with "Standards of Ethical Conduct for Employees of the Executive Branch" (5 C.F.R. Part 2635).

b. SSC personnel engaged in technical discussions with industry representatives will not participate in any discussion that may lead to an assumption on the part of the industry representative that a commitment or obligation on behalf of the Government has been made. Neither will advance information (such as specifications) be disseminated to industry representatives, except as released through official channels, i.e., Contracting Officer. Contracting Officer should consult with the Office of Chief Counsel as needed.

c. When the disclosure of confidential or trade secret information is involved, the industrial organization normally requests that SSC execute a "Nondisclosure Agreement." It is the general policy of NASA that Government employees <u>not</u> enter into Nondisclosure Agreements. It is SSC policy that such an agreement will be entered into only after a determination has been made by the cognizant Division Directors/Office Managers that a programmatic need and benefit is to be derived from the contemplated disclosure of confidential or trade secret information in accordance with 51 U.S.C. 20113(e), "Trade Secrets Act." When a nondisclosure agreement is required, the Director/Manager will forward to the Office of Chief Counsel a copy of his/her "Determination to Enter into a Nondisclosure Agreement," in the format shown by Attachment A, for concurrence. Office of Chief Counsel concurrence must be obtained <u>before</u> signature by the Director/Manager.

d. Only those personnel having delegated authority (i.e., contracting officers) will execute nondisclosure agreements such as the format provided by Attachment B or Attachment C for inventions.

e. It is recognized that numerous meetings are required in the conduct of normal business relative to specific established contracts, and that meetings will be required concerning proposed contracts (specifically meetings scheduled by the Government that are open to industry, such as site visits, conferences, etc.). Such meetings do not require application of provisions of this directive. However, should a contractor representative attempt to expand such meetings beyond

that realm, the SSC personnel who are present must advise the contractor representative of the coordination required by this directive.

2. APPLICABILITY

This directive is applicable to NASA/SSC personnel.

3. AUTHORITY

51 U.S.C. 20113(e), Section 203(c)(1), of the National Aeronautics and Space Act of 1958, as amended.

4. APPLICABLE DOCUMENTS

a. 18 U.S.C. 1905, "Trade Secrets Act."

b. "Standards of Ethical Conduct for Employees of the Executive Branch." (NOTE: Includes guidance for relationships with industry representatives both on and off duty, 5C.F.R. Part 2645).

5. RESPONSIBILITY

The SSC Office of Procurement, Procurement Management Support Division, will function as the central point of coordination within SSC for industry representatives desiring to acquaint SSC scientific, technical, engineering, and other personnel with their specific capabilities, facilities, products, or services.

6. MEASUREMENT/VERIFICATION

Compliance will be reviewed by monitoring known events.

7. CANCELLATION

SPD 5150.5D, dated September 9, 2008.

R. Gilbrech

Richard J. Gilbrech, Ph.D.
Director

Attachments:
A. Format for Determination to Enter Into a Nondisclosure Agreement.
B. Format for Nondisclosure Agreement.
C. Format for Nondisclosure Agreement – Inventions.

DISTRIBUTION

Approved for public release via NODIS and Techdoc; distribution is unlimited.

ATTACHMENT A

DETERMINATION TO ENTER INTO A NONDISCLOSURE AGREEMENT

TITLE FOR SUBJECT MATTER TO BE DISCLOSED:_____

DISCLOSING PARTY (COMPANY):_____

The possession by NASA of industry confidential or trade secret information imposes a practical burden on the Government to properly safeguard such information and a potential legal liability for claims of misuse. SSC has a policy of limiting the acquisition of such information only to those instances where a programmatic need is established.

Acknowledging the Center's responsibilities with respect to such information, I have nevertheless determined that there is a programmatic need for, and benefit to be derived from, the contemplated disclosure. Accordingly, it is determined that an appropriate Nondisclosure Agreement be entered into.

A brief description of the subject matter and SSC's intended use of the information is as follows:

SIGNATURE:

_____
Director/Manager

CONCUR:

_____
Office of Chief Counsel

ATTACHMENT B

NONDISCLOSURE AGREEMENT

In accordance with the National Aeronautics and Space Act of 1958 (i.e., 51 U.S.C. 20113(e)), this Nondisclosure Agreement (AGREEMENT) is entered into between the National Aeronautics and Space Administration (NASA) [*insert name of NASA Center*] located at [*insert address of NASA Center*] (hereinafter referred to as "NASA") and [*insert name of the other party*] located at [*insert address of other party*] (hereinafter referred to as "[*insert abbreviated name of other party*]").

To the extent NASA and [*insert abbreviated name of other party*] possess information that is not available to the public and a disclosing party desires to share such nonpublic information with a receiving party, and the disclosing party desires to withhold such disclosed nonpublic information from public disclosure, NASA and [*insert abbreviated name of other party*] agree as follows:

1. "RELATED ENTITY" as used herein, means a contractor, subcontractor, grantee, or other entity having a legal relationship with NASA or [*insert abbreviated name of other party*] that is assigned, tasked, or contracted with to perform activities contemplated by this AGREEMENT.

2. "DATA," as used herein, means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, data of a scientific or technical nature, computer software and documentation thereof, and data comprising commercial and financial information.

3. "PROPRIETARY DATA," as used herein, means DATA embodying trade secrets or comprising commercial or financial information that is privileged or confidential, or DATA determined by a party to be sensitive, such as U.S. Government Sensitive but Unclassified information as defined in NASA Procedural Requirement (NPR) 1600.1.

4. Any DATA considered by NASA or [*insert abbreviated name of other party*] to be PROPRIETARY DATA that is provided to a receiving party under this AGREEMENT shall be identified by the disclosing party with a suitable restrictive notice.

5. If information that NASA or [*insert abbreviated name of other party*] considers to be PROPRIETARY DATA is orally or visually disclosed, the receiving party will have no duty to limit or restrict, and will not incur any liability for, any use, disclosure, or reproduction of such information unless (a) the disclosing party orally informs the receiving party before initial disclosure that such information is considered to be PROPRIETARY DATA, and (b) the disclosing party reduces such information to tangible, recorded form that is identified and

marked with a suitable restrictive notice and furnishes the resulting DATA to the receiving party within 10 days after such oral or visual disclosure.

6. For PROPRIETARY DATA provided under this AGREEMENT, the receiving party will only use, disclose, or reproduce the PROPRIETARY DATA for the following purposes:

[*insert purposes (e.g., evaluation)*]

7. With respect to DATA specifically identified as PROPRIETARY DATA and marked with a suitable restrictive notice, the receiving party will use reasonable efforts to:

a. Use, disclose, or reproduce such DATA only to the extent necessary to perform the activities contemplated by this AGREEMENT;
b. Safeguard such DATA from unauthorized use, disclosure, or reproduction;
c. Allow access to such DATA only to its employees and any RELATED ENTITY that require access for activities contemplated by this AGREEMENT;
d. Except as otherwise indicated herein, preclude access and disclosure of such DATA outside the receiving party's organization;
e. Notify its employees who may require access to such DATA about the obligations under this clause, obtain written affirmation from all such employees that they have received such notification, administer a monitoring process to ensure that such employees comply with such obligations, and ensure that any RELATED ENTITY performs the same functions with respect to its employees; and
f. Return or dispose of such DATA, as the disclosing party may direct, when the DATA is no longer needed for activities contemplated by this AGREEMENT or [*insert a specific time period e.g.,* "three (3) years after the Effective Date as established in paragraph 15" *or a specific date, e.g.,* "on December 31, 2007"], whichever comes first.

8. In the event the receiving party needs to further disclose PROPRIETARY DATA to a RELATED ENTITY, such further disclosure shall be made under suitable protective conditions equivalent to those expressed in this AGREEMENT.

9. Notwithstanding any restriction on use, disclosure, or reproduction of DATA provided in this AGREEMENT, the parties will not be restricted in the use, disclosure, or reproduction of DATA provided under this AGREEMENT that: (a) is publicly available at the time of disclosure or thereafter becomes publicly available without breach of this AGREEMENT; (b) is known to, in the possession of, or developed by the receiving party independent of carrying out the receiving party's responsibilities under this AGREEMENT and independent of any disclosure of, or without reference to, PROPRIETARY DATA; (c) is received from a third party having the right to disclose such information without restriction; or (d) is required to be produced or released by the receiving party pursuant to a court order or other legal requirement.

10. If either NASA or [*insert abbreviated name of other party*] believes that any of the events or conditions that remove restrictions on the use, disclosure, or reproduction of the DATA apply, NASA or [*insert abbreviated name of other party*] will promptly notify the other party of such belief prior to acting on such belief, and, in any event, will notify the other party prior to an unrestricted use, disclosure, or reproduction of such DATA.

11. Notwithstanding any restriction on use, disclosure, or reproduction of DATA provided in this AGREEMENT, the receiving party will not be restricted in, nor incur any liability for, the use, disclosure, or reproduction of any DATA not identified with a suitable restrictive notice or of any DATA included in DATA which the disclosing party has furnished, or is required to furnish, to the other party without restriction on use, disclosure, or reproduction.

12. Nothing in this AGREEMENT shall be construed as granting or conferring any rights by license or otherwise in any PROPRIETARY DATA provided pursuant to this AGREEMENT.

13. This AGREEMENT shall be governed by United States Federal Law.

14. This AGREEMENT is consistent with and does not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 13526; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code, 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 U.S.C. 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 sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive order and listed statutes are incorporated into this agreement and are controlling.

15. This Agreement shall be effective from the period commencing with the date of the last signature below (Effective Date).

Each party has caused this AGREEMENT to be executed by its duly authorized representatives:

National Aeronautics and
Space Administration

By: _____

_____
Printed Name

_____
Title

_____
Date

[insert name of the other party]

By: _____

_____
Printed Name

_____
Title

_____
Date

ATTACHMENT C

NONDISCLOSURE AGREEMENT - INVENTIONS

As an authorized representative of [*insert company name*], I understand that technical data related to [*insert description of technical data, title and case number of NASA new technology disclosure, or title and serial number of patent application*] is not public information and is being withheld from public disclosure under 35 U.S.C. §205. As a result, [*insert company name*] agrees to use, disclose, or reproduce the technical data only for the purpose of [*insert permitted uses, disclosures, or reproductions, e.g., disclosure to company employees for evaluation of market potential*] and further agrees to protect the technical data from any other use, disclosure, or reproduction. In protecting the technical data from unauthorized use, disclosure, or reproduction, [*insert company name*] will exercise the same degree of care as a reasonably prudent owner of similar data would employ to prevent unauthorized use, disclosure, or reproduction.

Notwithstanding any restriction on use, disclosure, or reproduction of the technical data provided above, [*insert company name*] will not be restricted in the use, disclosure, or reproduction of the technical data provided under this Agreement that: (i) is publicly available at the time of disclosure or thereafter becomes publicly available without breach of this Agreement; (ii) is known to, in the possession of, or developed by [*insert company name*] independent of carrying out the [*insert company name*]'s responsibilities under this Agreement and independent of any disclosure of, or without reference to, the technical data protectable hereunder; (iii) is received from a third party having the right to disclose such information without restriction; or (iv) is required to be produced or released by the receiving party pursuant to a court order or other legal requirement.

_____ _____

Signature Date

[*insert Printed Name*
Title
Company Name
Address
Phone
Email]