

What is a research contract?

Transcript of video

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Research contracts are legally binding agreements that govern collaborative research between the university and external organisation, whether those organisations are funding the research or are participating in the research project themselves.

The university will enter into research contracts with several different parties, like the European Commission, other universities, industrial partners, sponsors and governmental departments.

The expectation of the parties when entering into such a collaboration is that scientific understanding will be furthered, or that new ideas and inventions will be created. One thing that characterises research contracts is that exchange of knowledge between the parties is central, and the outcome of the collaboration is often not known in advance. This can again create challenges when drafting a research contract when it comes to provisions regarding intellectual property rights and how these should be split between the parties.

The research contract will allow both the individuals and the organisations to understand and manage their responsibilities, opportunities and risks in the project.

The contract regulates both the scientific and administrative activity in the project, and should set out the work to be undertaken, the financial contribution and payment terms, define the risk of the parties and publication rights, AND establish who will own the results of the work and who has the right to use them.

The university is generally considered to be the contracting party and not the individual researcher. This means that the contract must be reviewed, accepted and signed by the university and not the individual researcher. This will mean that the researcher will not be personally liable for any breach of the agreement.

Research contracts come in a variety of sizes and shapes, from familiar standard agreements to more complex agreements drafted for your specific project.

Contracts may be called by a variety of names – agreement, purchase order, sub-award, memorandum of understanding, to mention some. The terms “Contract” and “Agreement” are used interchangeably and will be further on this course.

An important aspect is to negotiate appropriate terms on behalf of the University, ensuring that

everyone's rights and responsibilities are clear and protecting the interests of all parties.

Although the negotiation should cover all key aspects in the research collaboration, it tends to focus on a few key areas like intellectual property rights and publication rights.

Length of negotiations depends on the type of research contract. A standard agreement provided by the University will take shorter time to negotiate than a research contract which substantially differs from your university's standard agreement. The more tailoring a contract needs, the longer time it will take to finalise.

A good research contract should be mutually beneficial for all parties. A well drafted contract can help the parties work towards the same goal. On the other hand, a poorly drafted agreement can ruin an otherwise well-working relationship.

Understand your own position and limits when negotiating the research contract. Understand the other party's position in the market. Whom are you collaborating with and what do they wish to get out of the project. What is the nature of your relationship? Have you been collaborating on other projects in the past? In that case, what worked and did not work last time? Should you make some changes in the contract to reflect this?

If you are negotiating with a new partner, what's the party's position in the market? Is it a very desired and necessary party in completing your research? Identify any risk to the University in collaborating with the party, including any reputational risk.

When negotiating intellectual property, you need to consider what the likelihood is for intellectual property to be generated in the project. You also need to consider existing research results in your research group and how these should be used in the project. Are there any restrictions in using your existing research?

In some universities, there might be dedicated research officers or administration that will participate in the negotiations or negotiate the research contract on your behalf. In other universities, it may be YOU that negotiates the terms in the contract.

In any event, you are the one that knows what work is to be done and who you want to collaborate with. You also probably know the other party the best, and know what the other party hopes to get out of the collaboration.

Early on, be prepared and reflect on whom you are meeting in negotiations. Is it an aggressive counterpart with economic muscles or a monopoly in the area of interest? How will you be in negotiations with such a party?

When negotiating with a party with research results IN-DEMAND or monopoly, you might have to accept terms you wouldn't otherwise.

When negotiating with an aggressive counterpart, try to identify dirty tricks or manipulation and stay in control of the situation. If there are no solutions in sight, postpone or terminate the negotiations.

On the other hand, be equally prepared when negotiating with someone you have a good existing relationship with. It is easy to forget your mission in negotiating terms in the best interests of your university, or omit provisions that take care of a potential fall-out or contract breach.

Another element to think about is where the negotiations take place. Not all terms are discussed in boardrooms. Some might also take place in completely different settings, on excursions or conferences where the terms are discussed as you go.

You might not even think much about these conversations as they take place, but it will often be difficult to change opinion on important terms that have been agreed upon orally. In some countries, you will also be bound by agreed terms even if they are not agreed in writing, as oral agreements can be equally binding (although more difficult to prove).