Different types of research contracts

Transcript of video

By Jannicke Persen, UiT The Arctic University of Norway

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The university uses a range of different contracts in relation to research. In this part we will look at the most commonly used contracts. We often enter into certain types of agreements before the research project commences.

In some cases the parties may wish to sign a letter of intent. Similar types of agreements are memorandums of understanding, heads of agreement, letters of understanding or agreements in principle.

These are agreements between the parties before the final collaboration agreement is finalised. The purpose of these types of agreement is to ensure that the parties agree preliminarily on basic terms of the research collaboration, before spending time and money on drafting a full collaboration agreement. The letter of intent should reflect the parties expectations on further collaboration. If you are not able to agree on the terms in the letter of intent, it is not likely that you will be able to agree on the terms in a later collaboration agreement. Therefore, it could be a good idea to use a letter of intent to discover any deal-breakers for further collaboration. In this way, it will save you both time and money.

A letter of intent is usually not binding in its entirety. Many do, however, contain provisions that are binding such as non-disclosure provisions, covenants to negotiate in good faith and exclusivity, to mention a few. Although such agreements are not normally binding, you may find that the agreement sets terms for later binding agreements which may be challenging to amend at later negotiations.

It is important to have a reasonably short expiry date on the letter of intent to avoid ‘sleeping agreements’, where the parties do not know whether the collaboration is proceeding or if they should investigate other options.

In research, it could be wise to negotiate a letter of intent in cases where you have applied for funds for the research project or ethical approvals, but you are unsure whether the research project will receive the necessary funds or approvals to go ahead. By entering into a detailed letter of intent, there will be less terms to be negotiated in a later final agreement. However, there is also a risk for premature contractual obligation, where you will be bound to terms that you may not have

planned to be. Therefore, you should clearly state whether you intend the letter of intent to be binding or non-binding, or if only some provisions should bind the parties.
If you want the letter of intent to be non-binding, avoid binding terminology like 'agree', 'agreement', 'will' and 'shall'. Instead use terminology like 'would', 'our mutual understanding' and 'subject to further negotiations and execution of a final agreement'.
Let's look at an example. This is a typical clause in a letter of intent:

"Notwithstanding anything contained in this letter, nothing other than the confidentiality and non-disclosure provisions of Paragraph X constitute a binding agreement between the parties."

By writing this into the letter of intent we ensure that the letter of intent is not binding as a whole. However some provisions, here confidentiality and non-disclosure provisions, are binding.
Confidentiality or non-disclosure agreements are important when you are disclosing sensitive, non-public and confidential information to another party.
Dissemination of information is a vital part of academic research and it may be necessary to disclose information when the parties are discussing the possibility of a later collaboration. When disclosing information to the other party, you would want the other party to keep that information confidential – and not use it for any other purposes then specified in the agreement.
The agreement should also define the confidential information to be protected, whether the information should be returned to the provider or destroyed upon request, the duration of time that the duty of confidentiality applies, and what would happen if the duty is breached.
A confidentiality agreement should be entered into before you exchange confidential information. Therefore, it may be necessary to enter into a confidentiality agreement or non-disclosure agreement before a final collaboration agreement is concluded. However, it is also normal to just have a provision of confidentiality in the collaboration agreement. This will be sufficient if you don't exchange any information before the collaboration agreement is in place. If you disclose information without having such an agreement in place, it could result in failure of patents or loss of value in a potential license, which in turn impacts your ability to exploit the research further. It could also compromise potential publications, if such information is made publicly available.
Please note that the confidentiality agreement is normally signed by the university or the company, and not the individual who is providing or receiving the confidential information. You may, however, consider also letting the individuals sign a statement that they are familiar with the content of the confidentiality agreement and will therefore obey their duties according to the agreement.
The sharing of scientific material is vital for the progress of research. Most universities will not share any materials unless there is a Material Transfer Agreement in place between the provider and the

recipient.

An MTA will govern the transfer of material between two organisations, where the recipient intends to use the material for their own research. MTAs are most frequently used for transfer of biological materials, but may also be used for other types of materials, such as chemical compounds and mouse models.

An MTA defines the right of the parties, primarily in respect of use of the material, confidentiality, publication and ownership of intellectual property. Normally these agreements do not include payment for the material except for transport costs that might be required. The agreement should also include a provision that forbids commercial exploitation of any human biological material.

When negotiating an MTA with private industry, the industry may want to assert ownership of any inventions made with those materials or restrict publication of unfavourable results. When negotiating on behalf of the university, you would want to ensure that the MTA permits full dissemination of research results and does not conflict with other university policies. With regards to publications, it is generally only the recipient who would be publishing results.

MTAs can be divided into incoming MTAs, where the university is receiving research materials from other parties, and outgoing MTAs, where the university is providing the research materials to other parties.

An MTA is not directly linked to a specific research collaboration, as transfer of material is normal outside collaboration projects. An MTA can therefore also happen at any stage during the research process.

A Data Transfer Agreement is very much similar to an MTA, although a DTA defines the right to use human subject data that has been transferred between the parties for research purposes. A DTA is designed to be used in cases where there is no other collaboration between the parties. Another similar agreement is a Data Sharing Agreement.

Like MTAs, a DTA also includes provisions about use of the data, confidentiality, publication and ownership of intellectual property. An important element in these agreements is to ensure that the agreement complies with obligations in the EU General Data Protection Regulation, whose aim is to protect the personal information of individuals.

When the research project starts, you will need to have an agreement that governs the relationship between you and the partners in the project.

EU, sponsors and most universities have a set of model and template agreements that can be used for research collaborations. These templates contain the organisations' preferred terms for specific types of research collaborations. If the standard agreement is developed by an industry or commercial party, the terms and condition will be in favour of that party. When negotiating such agreements, you often have little or no ability to negotiate the provisions and are left in a 'take or

leave it' position.

Standard agreements developed by the EU or other sponsors of the research tend to focus on the commitments the party has to the sponsor. When receiving funding, you might be obliged to use the sponsors' standard agreement.

Universities' standard agreements are often voluntary to use, more flexible and give room for negotiation of specific terms.

A collaboration agreement sets out responsibilities, roles and rights of the parties working on a specific research project. The agreement is often drawn up following a joint award or funding, and the terms of the award will often be reflected in the collaboration agreement. The collaboration agreement should regulate all aspects of the relationship, including intellectual property rights and publication.

Any kind of research collaboration may require a contract to be put in place before the collaboration begins.

Be aware of who sets up the first draft of the agreement. Collaborators and sponsors sometimes supply their own contract, which will contain those terms most beneficial to them, but may also contain terms that are detrimental to you or omit terms that are necessary for the university. Therefore, if the other side gives you the opportunity to draft the contract, take it! This will give you a strategic advantage if you control the drafting process.

Often the universities have secured rights to their employee's research through the employment contract. Therefore, it is not always necessary to enter into agreements with the employees to secure universities' interests. This is however not the case for visitors and students, where it is necessary to enter into agreements in order to secure rights to results.

A visitors' agreement sets out the terms for a visiting researcher's activities and length of residency at the university, and for the visitor's and his employer's obligations to the university.

A studentship agreement governs terms of the student's project. It is important to note that in a default position where no agreement has been signed with the student, the student will often have all the rights to the collected data, material and results. It is therefore important to ensure that universities' interests are taken care of, so that the university is free to use the collected material and results for further research.

Let's look at an example. This is from a contract entered into by a student and three professors. The agreement was drafted by the student.

'The work leading up to the candidate's PhD dissertation will consist of data collection, including scoring of raw data and punching, analyses, interpretation and written presentation of results. As the candidate will mainly be responsible for the data collection, the project's collected data will consequently belong to her.'

The problem occurred when one of the professors wanted to a do a follow-up study on the student's collected data. The student did not want to give the university access to the data, and it was not possible for the professor to do further research on the material.

If the ownership and user rights are not fully regulated in the collaboration agreement, it might be necessary to enter into an agreement after the results are clear to decide upon ownership and further use of the research results.

A licensing agreement is a contract between two parties in which the licensor grants the licensee the right to use research results, while the licensee agrees to make payments known as royalties.