

KU RESEARCH & GRADUATE STUDIES
The University of Kansas

Research Administration 101
Session 3.1
Contractual Issues
Non-monetary Agreements

Research and Graduate Studies
Fall 2007

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SPONSORED RESEARCH AGREEMENTS

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KU or KUCR?

- KUCR or KU may be the contracting entity in a sponsored project agreement
- Because the research is conducted by University employees and on University property the same policies apply for contractual purposes

3

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DEFINITION

- Agreement between two or more entities to do (or not do) a particular thing.
 - » Competent parties
 - » Subject matter
 - » Legal consideration
 - » Mutuality of agreement and obligation
- Subcontract - a contract subordinate to another contract
 - » Also referred to as Subaward or Subrecipient Award

4

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CONTRACTING PRINCIPLE

- Do unto others as you would have them do unto you.
 - » If KU would not accept term or condition, will not request other party to do so
 - » Onerous terms or a prolonged negotiation may forecast a difficult working relationship
 - » Reflect goals of each party
- Incorporation of prime funding agency terms and conditions

5

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WHAT, HOW MUCH, WHEN?

- Scope of Work
- Duration of agreement
- Payment terms

6

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SCOPE OF WORK

- **What is the intended purpose of the contract?**
 - » Concurrence of expectation for each party
 - » Course of activity to be followed
 - » Deadlines, reports
- **Attachment of proposal**
- **Description set forth in contract itself**

7

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DURATION

- **Start Date**
- **End Date**

8

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PAYMENT TERMS

- **Fixed price**
 - Payment schedule
- **Cost-reimbursable**
 - Following receipt of certified invoices
- **Principal Investigator approves invoices**

9

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OTHER COMMON CLAUSES

- **Publication rights**
- **Intellectual Property rights**
- **Publicity**
- **Acknowledgement**
- **Liability**
- **Warranties**
- **Governing Law**
- **Termination**

10

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PUBLICATION RIGHTS

- » **Results of the project conducted under the agreement may be published jointly by the Other Party and KUCR or by either of these parties separately, always giving due credit to the other.**
 - Statement reflects general principle of open dissemination
 - May require submission prior to publication for coordination of release of research.

11

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PATENTS AND INVENTIONS

- **General:**
 - » If patentable discoveries result from research sponsored by this agreement, patent rights will be vested proportionately as determined by subsequent negotiations and mutual agreement and in accordance with the policies of the funding agency.
 - » Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

12

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13

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PUBLICITY

- **No use by Sponsor of the name of The University of Kansas or the name of any employee of the University for any endorsement, publicity or advertising**
 - » unless copy is submitted and written approval of the University of Kansas is obtained prior to such use
- **Acknowledgement of funding or sponsorship in a factual statement is not prohibited.**

14

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ACKNOWLEDGEMENT

- Any publication by University resulting from work under this Agreement shall include an acknowledgement disclaimer, as appropriate, such as : "This (publication, journal, article, etc.) was supported by the Sponsor or Agency Name under Grant No. 123. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the Sponsor or Agency Name.

15

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WARRANTIES

- KUCR agrees that the information provided to Sponsor under this agreement will be reasonably accurate in accordance with scientifically accepted standards. KUCR disclaims all warranties including all implied warranties of merchantability and fitness for a particular purpose.

16

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LIABILITY

- **KUCR language:**

KUCR shall be responsible solely for claims or damage resulting from its negligent and wrongful acts or omissions arising out of the performance of this agreement. KUCR further agrees that the Other Party shall not be liable for damages resulting from the negligent performance or omission by KUCR under this agreement.

17

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GOVERNING LAW

- **Do not agree to be governed by laws of another state.**
 - » **Kansas law, or**
 - » **Remain silent.**
 - Application of which state's law to the contract would be an issue to be litigated in the event of a dispute

18

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TERMINATION

- Either party may terminate this agreement provided written notification is received by the other party 60 days prior to the proposed termination date. KUCR shall be reimbursed for all actual and allowable expenses including all uncancelable obligations properly incurred prior to the date of termination.
 - » Specific concerns in a given project may warrant more particular language for termination in the event of certain contingencies.

19

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FDP & FAR



20

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FDP

Mission: Reduce the administrative burdens associated with research grants and cooperative agreements.

Partnership among 10 federal agencies and 98 institutional recipients of federal funds

21

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FDP

- Federal agencies:
 - » 1. National Science Foundation (NSF)
 - » 2. National Institutes of Health (NIH)
 - » 3. Office of Naval Research (ONR)
 - » 4. Department of Energy (DOE)
 - » 5. Department of Agriculture (USDA)
 - » 6. Air Force Office of Scientific Research (AFOSR)
 - » 7. Army Research Office (ARO)
 - » 8. Army Medical Research and Materiel Command (AMRMC)
 - » 9. National Aeronautics & Space Administration (NASA)
 - » 10. Environmental Protection Agency (EPA)

22

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Federal Demonstration Partnership

- 1986 -- Florida Demonstration Project
- Initial demonstration tested
 - » automatic carryover of unexpended funds
 - » institutional authorized 90-day pre-award
 - » no-cost time extensions
- Currently in FDP Phase IV
 - » KU joined in 1996 at beginning of Phase III

23

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FDP

- http://www.nsf.gov/awards/managing/fed_dem_part.jsp?org=NSF
 - » FDP terms and conditions
 - » Agency specific terms and conditions
- Subawards
- Research Terms and Conditions will replace FDP Terms and Conditions

24

Federal Acquisition Regulation

FAR and away the most regulatory of awards

Code of Federal Regulations

- The Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government.
- The CFR is divided into 50 **titles** that represent broad areas subject to Federal regulation.
- **CFR Title 48** is the Federal Acquisition Regulations System

Federal Acquisition Regulation

- Established to codify uniform policies for the acquisition of supplies and services by executive agencies
- Applicable to all federal procurements
- Only see FARs in contracts

Executive Agencies

- **Executive Agencies:**
 - » Dept of: Agriculture, Defense, Education, Energy, Health and Human Services, Transportation
- **Independent Establishments and Government Corporations:** Central Intelligence Agency, Environmental Protection Agency, National Aeronautics and Space Administration

Citation of FARs

25.108-2

Part
Subpart
Section
Subsection

- **Title 48--Federal Acquisition Regulations System**
- **CHAPTER 1--Federal Acquisition Regulation**
- **99 PARTS**
 - » Part 52: Solicitation Provisions And Contract Clauses
 - Subpart 52.2--Text Of Provisions And Clauses
 - » 52.227-14 Rights in Data—General.
 - » *Alternate IV* (JUN 1987). As prescribed in 27.409(e), substitute the following subparagraph (c)(1) in the clause:

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An example

- **FAR 52.227-14 (Alt. IV) Rights in Data – General**
 - » Part 52 (a Part being a separate aspect of acquisition)
 - » Subpart 2
 - » Section 27
 - » Subsection 14
 - Alternative IV: for basic or applied research at a university; provides university right to claim copyright without limitation in any data – including technical data and software.

31

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Agency Specific FARs

- Dept of Defense FARs (DFARS) 252.101
- Dept of the Air Force FARs (AFFARS) 5352.201
- NASA FARs (NASA) 1852.000
- Dept of Energy FARs (DEARS) 952.000
- Environmental Protection Agency FARs (EPAARS) 1552.203
- Dept of Health & Human Services FARs (HHSARS) 352.224
- and on and on and on

32

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FAR on the Web

- <http://ecfr.gpoaccess.gov>
- <http://www.gpoaccess.gov/cfr/index.html>
- <http://www.arnet.gov/far>

33

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OTHER RESEARCH RELATED AGREEMENTS

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MATERIAL TRANSFER AGREEMENT


“MTA”

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Material Transfer Agreement


- Actual biological or chemical substance
- Stand alone agreement or connected to sponsored research project
- Receiving or sending material from KU
- May or may not be of a proprietary nature
- Limits and defines use by receiving party
- Protects supplier from liability
- May include confidentiality provision

36



CONFIDENTIAL DISCLOSURE AGREEMENT


“CDA”
Nondisclosure Agreement “NDA”



Confidential Disclosure Agreement


- Usually mutual - receiving party keeps proprietary information of disclosing party confidential
- Defines what is confidential and limits use of the confidential information – oral disclosures reduced to writing
- Stand alone document – often precedes decision to sponsor research
- Sets the period for confidentiality – 3 to 5 years

38



MEMORANDUM OF UNDERSTANDING

“MOU”



Memorandum of Understanding

- Written document formalizing a relationship between two or more parties
- General expression of goals or intent
- Commonly sets the stage for future interactions
- Usually long term or open in duration
- Often signed by Chancellor or Vice Provost for Research and Graduate Studies

40



DATA USE AGREEMENT AND BUSINESS ASSOCIATE AGREEMENT

“DUA” “BAA”



DATA USE AGREEMENT

- Varied in uses and purpose
- Access to preexisting database, library
- Generally contain strong requirements for protecting data and preventing access by unauthorized users
- Each person accessing may have to sign document regarding security measures
- Publications and acknowledgment of use

42

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BUSINESS ASSOCIATE AGREEMENT

- Related to projects in which HIPAA (Health Insurance Portability and Accountability Act of 1996) information is obtained or created.
- Applies only if business associate relationship is established
- Usually signed on behalf of an agency – e.g. KS SRS or KS Department on Aging

43

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Questions and Contacts



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44