

CONTRACTS IN LEGISLATIVE CONTEXT

A contract is essentially an agreement on a set of legally binding rights, obligations and responsibilities between two or more parties. There is no universal legislative framework that applies to research contracts for all countries. In some countries, contracts may be governed by specific legal codes; in others, there may be various sources of law that the country derives its legal framework for contracts from. Where a country has legislation pertaining to relevant issues covered in a contract, this will have significant bearing on the enforceability of the terms of that contract. But in some contexts, a partner country may have no clear legislative framework relating to, for example, intellectual property. In these cases, partners will look to the contract terms and conditions that have been agreed upon. When research partners lack legal capacity, both in-house and in the broader national context, to negotiate and evaluate their contracts, they may be limited in applying enforcement and protection mechanisms, especially when disagreements (disputes) arise from contracts. The provisions in a contract are legally binding, so it is important to be clear from the outset what you are agreeing to; an understanding of types of contracts and clauses can facilitate this.

As you think through each of these questions, consider whether and how they can be incorporated explicitly into the research contract.

What types of contracts or agreements apply to this research partnership?

- ❖ Based on the nature and purpose of the research partnership, what types of agreements might be employed to set out the terms of this partnership? (e.g. confidentiality / non-disclosure agreement, materials transfer agreement, licensing agreement, memorandum of understanding etc)
- ❖ Will these agreements be stand-alone contracts or will they be included as clauses within the overarching research contract?
- ❖ What are the implications and obligations of these agreements for each partner?

What are the priority clauses for inclusion?

- ❖ Considering the purpose and intended outcomes of the research partnership, what clauses should be prioritised for inclusion in the contract?

(For e.g. if IP is an integral part of the research, then clauses relating to intellectual property rights need to be carefully considered; if data sharing is a likely outcome, material transfer clauses may apply)

How will the contract be enforced and disputes resolved?

- ❖ What mechanisms are in place for enforcement of the contract? What costs might be involved and how will these responsibilities be shared?
- ❖ What mechanisms and procedures for dispute resolution will be included? What costs might be involved and how will these responsibilities be shared?

What national legislation and relevant conventions must be adhered to?

- ❖ What are the relevant country laws of each partner and how will these impact on issues of enforcement and dispute resolution?
- ❖ How will choice of law (jurisdiction governing the contract) be negotiated and chosen?
- ❖ What are the implications for each partner of the choice of law?

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