The contractual side of research projects is often neglected by research organisations, simply because greater emphasis is placed on scientific matters. This can be compounded where there is no lawyer or institutional framework at hand to support the contracting process.

International collaborative research partnerships are key to improving global health and have the further benefit of creating opportunities for research organisations and their staff to benefit from, and make future use of, research results. However, organisations, which have limited contracting expertise on hand, have the potential to be disadvantaged when negotiating these arrangements. So, care needs to be taken in developing the terms of the research contract. Particular care needs to be taken where one partner country may not have a legal framework in place to govern contractual disputes, or where enforcement mechanisms are weak or inefficient.

It is therefore crucial for contracting parties to carefully consider all aspects of the contracting process: how the outputs of the research will be distributed and utilised, what will happen if there is a dispute, and if so, in what jurisdiction, or through which mechanism, will that dispute be resolved?

**KEY QUESTIONS TO CONSIDER**

- Do you have access to model contracts? Do you understand the standard clauses included in contracts and realise that there is usually room to negotiate terms and conditions?
- The basic elements of a contract are: (i) mutual assent, (ii) consideration, (iii) capacity and (iv) legality. Are these all present?
- What is the nature and purpose of the research collaboration you are engaging in? This will assist you in thinking through what types of terms need to be included (or avoided) in an agreement.
- Is the contract based on reasonableness, responsibility, and good faith?
- Is the agreement legally binding on its own or will it be included as part of an overarching research contract?
- Are you obliged to include specific terms of another agreement you might have with the funder of a particular project or study?
- Who are the research partners (parties) to the contract? Are authorised representatives informed and able to legally bind the institution to the contract?
- By signing the contract, are there any other conditions/policies linked to the contract that the signatories have implied they assure compliance with and which may not be directly expressed in the contract (in other words: have you read and understood all of the fine print)?
- Is the period of performance clearly set out in research contract (i.e. is there a start and end date)? Is it possible to modify the contract? If so, under what conditions?
- What are the implications where research activities described in the contract do not start or finish on the specified dates?
- Can research partners negotiate an extension to the period of performance (such as a ‘no-cost extension’)?
- Have you carefully considered and understood the implications of the clauses that take priority (often contracts can include general and specific terms and conditions)?
- Should there be a dispute between the parties later on, are there any clauses that explain how disputes should be resolved (e.g. amicable negotiation between senior staff, mediation or arbitration)?
- What will happen if a dispute cannot be resolved – will parties have the right to terminate the contract or to take the matter to court?
- What legislation or specific rules and regulations must be adhered to? Are these provided for in the contract? Do the parties understand their meaning?
- How will the country-specific laws of each partner impact on contractual issues, such as enforceability?
- Can the choice of law (the jurisdiction governing the contract) be negotiated? What will the implications be for your organisation on the choice of law governing the contract?
Evaluate the scope of your collaboration and the objectives that you and the research partner hope to achieve.

Always look at the risk-benefit ratio for your research and your institution before signing a research agreement.

Get to know the partner and seek information or clarification from them if any clause is not clear to you (due diligence).

Always include definitions of the key terms in the contract to avoid ambiguity.

Always include a mechanism for dispute resolution.

Ensure you understand the jurisdiction (legal forum), and the implications of this for your organisation.

Ensure there are specified ways for you to exit/terminate the contract, not only if things go wrong.

Agree on a common standard for arbitration. If you wish to include this option for conflict resolution, try to select a place that your organisation is familiar with, or at least choose a neutral place.

Ensure you understand the meaning of legal terminology and the intention of each clause used in the contracts. Indemnification, hold-harmless, and warranty clauses can be particularly difficult to understand and potentially risky for your organisation to sign up to. If you are not sure, seek independent explanation and clarification.

Avoid having conjoined (multiple) limitations of liability written in a single contract clause.

Recognise the need to take tailored guidance, wherever possible. There are pro bono legal networks who may be able to review your contract and your questions. For example the network of Public Interest Intellectual Property Advisors (PIIPA) attorneys and supporters: http://www.piipa.org

"Scientists and academics often underestimate the importance of contracts for the research projects they carry out. Staff involved in drafting, reviewing and negotiating research contracts should not be seen as obstacles, standing in the way of science, but as partners working hand in hand with academics in ensuring that research projects can be carried out smoothly and that results and achievements benefit all parties involved in a fair and equitable manner." -- JENS HINRICHER, HEAD OF LEGAL SERVICES, LONDON SCHOOL OF HYGIENE AND TROPICAL MEDICINE

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Feedback

This is the first version of this guidance note, and we constantly strive for improvement. In the next phase, we will be transforming these generic guides into a web-based decision support system. We would be pleased to receive your feedback, comments or suggestions for further improvement to these guides, or for the future of this project, to cohred@cohred.org