

University of New Hampshire Guide to Standard Research Agreements with Industrial Sponsors

The purpose of this guide is to explain the standard Research Agreement used by the University of New Hampshire (UNH) for commercially sponsored research.

The character and purpose of sponsored research at UNH, the essential contracting principles, and the procedures for establishing research projects can be summarized as follows:

Character and Purpose of University Research:

The mission of a research university includes: the education of students, the creation of knowledge, and the dissemination of knowledge for the benefit of society. These aims are largely interdependent and benefit from real-world experience and practical application, which commercial partners can provide. That said, commercially sponsored research projects must maintain a balance between UNH's pursuit of research as an integral part of its mission and industry's expected return on investment.

The aims of an educational institution are not always compatible with those of commercial interests. The contract principles and clauses explained herein serve only to describe a framework for collaborative effort. Potential arrangements that have no prospect of furthering the missions of *both* parties, however appealing, should be discouraged.

Essential Contracting Principles:

To meet statutory requirements relating to its tax exempt status, UNH research must serve a public purpose, with the results disseminated on a non-discriminatory basis.

Since basic research is by definition unpredictable, with no guarantee of success or even specific outcomes, UNH research is conducted on a "reasonable-efforts" basis. The University explicitly disclaims providing warranties for, among other things, merchantability or fitness for a particular purpose.

UNH receives no fee or profit on its research with which to cover financial loss or liabilities. For this reason, and also because it is inconsistent with the "reasonable efforts" principle, UNH conducts research only on the basis of full cost-reimbursement without financial risk. For the same reason, UNH cannot accept contract provisions that impose penalties for failure to make progress by firm deadlines, or allow payment to be withheld if the sponsor is not satisfied with the results.

Establishing Projects and Authority to Conduct Business:

While initial discussions between sponsors and UNH faculty or senior research staff occur in a variety of ways, no work may be undertaken before an approved research proposal, including a budget, is in place and an acceptable funding agreement has been negotiated and signed by the authorized representatives of both parties. Incurring expenses for a project is conditioned upon approved payment terms and the establishment of a distinct University account.

Authority to negotiate, execute and modify agreements for conducting research on behalf of UNH resides with the Office of Sponsored Research (OSR) as delegated by the University System of New Hampshire (USNH) Board of Trustees.

UNH is a public institution of higher education. It is an institution of the USNH and should be identified, for business and legal purposes, as "University of New Hampshire."

SELECTED CLAUSES FROM THE STANDARD RESEARCH AGREEMENT

Statement of Work

The Statement of Work becomes a part of the contract and should be specific enough to describe the project tasks, deliverables, and schedule as well as the general objectives of the research effort.

Principal Investigator

UNH requires that responsibility for directing the research described in the Statement of Work reside with its principal investigator. University research is generally investigator-initiated and UNH does not direct or redirect the research efforts of its faculty.

UNH does not accept contracts with provisions that preclude principal investigators from performing research for others in related areas and will not accept terms limiting competition from other University investigators.

Period of Performance

The specified period of performance is based on the principal investigator's best estimate of the time required to carry out the research project.

Reimbursement of Costs

The proposed direct cost of a research project is estimated based on the salaries and wages and associated employee benefits of project personnel employed by the University, equipment, materials and services, travel, tuition support for graduate students working on the project and other direct costs necessary for performance of the project.

In addition to direct costs, project budgets include an allocable share of UNH's Facilities & Administrative (F&A) Costs (aka indirect costs), which are calculated in accordance with a federally negotiated rate agreement. F&A

covers maintenance of the physical plant and facilities, the libraries, the general and administrative organization and other University support services.

The University agrees to use reasonable efforts to accomplish the research or studies described in the statement of work within the total estimated cost. It is understood, however, that if funds are exhausted before the project is completed, the principal investigator will, at the option of the sponsor, either submit a report on what has been accomplished to date, or will provide an estimate of further funds required to complete the work and will continue if such funds are provided by the sponsor.

Reports of expenditures submitted to the sponsor will be in the same format and provide the same level of detail as is provided to U.S. government sponsors. The volume of transactions processed by the University's accounting office makes it impossible to provide sponsors with copies of original receipts, vouchers and other source documents relating to the costs. Financial records are maintained for inspection and audit by the sponsor for at least three years following completion of the project.

Payment

The University's teaching resources cannot be diverted to provide the working capital necessary to support research projects from the time costs are actually incurred until invoices are submitted to sponsors and payment received. Additionally, the interest costs which the University would incur in borrowing funds for the purpose of financing sponsored projects are not reimbursed as costs of the research. Therefore, research agreements must provide funding (in U.S. dollars net of taxes) in advance to cover work-in-process.

Termination

In the event of project termination by the sponsor for any reason, the sponsor will be expected to reimburse the University for all costs incurred to the date of termination and for all uncancellable obligations incurred prior to termination.

UNH reserves the right of termination in the event sponsor breaches the agreement or if conditions beyond its control preclude the University from continuing the research program.

Publication and Copyright

It is the policy of UNH that research and scholarship be accomplished openly and lead to the exchange of ideas and information through scholarly publication and discussion. The university will enter into no agreement that bars investigators from publishing or otherwise disclosing their findings publicly.

UNH retains title to copyrights, and grants to the sponsor a royalty-free, non-exclusive right to use the copyrighted material. Such rights in computer software, however, are limited to that which is specified in the Statement of Work to be developed and delivered.

Where a sponsor's proprietary information has been accepted as necessary background data for a research project, the sponsor may review proposed publications in order to identify any inadvertent disclosure of that data. Manuscripts will be submitted to the sponsor thirty (30) days prior to journal submission with the possibility of an additional delay of up to sixty (60) days to allow for the filing of patent applications.

Materials Provided by Sponsor

UNH recognizes the legitimate proprietary concerns of industrial sponsors and will endeavor to protect their confidential data as required.

UNH also requires the additional protection provided by insurance and indemnity clauses if a sponsor is providing equipment or materials as these could pose a risk to UNH personnel that may be outside the University's standard insurance policies.

Patents and Inventions

The objectives of UNH's policy with regard to inventions resulting from UNH research are to promote the progress of science and technology, assure that discoveries and inventions are used to benefit the public, promote economic development, and provide appropriate royalty revenues to the University and inventor. Therefore, UNH retains ownership of any inventions or other intellectual property (e.g., software) developed by its personnel under sponsored programs. Rights to inventions or other intellectual property developed solely by sponsor's personnel shall belong to the sponsor and inventions or other intellectual property developed by UNH personnel in collaboration with sponsor personnel shall be jointly owned.

Additional Clauses

UNH's Standard Research Agreement also contains other clauses that are largely self-explanatory and arise out of UNH's operation as a tax-exempt, non-profit, educational institution.

For international sponsors, the most significant such clause is entitled "Export Controls." It references the requirements of U.S. laws dealing with the export of technology and technical data, including software.