

Twitter response to Maternova Research

Question: What is the best boilerplate language you've seen for assuring data access, publication rights, etc? Is there a template you rec.?

Answer: In a collaborative research partnership researchers should always consider the legal, ethical and practical implications for the data access, control and ownership. Research data, can often be referred to under the concept of Intellectual Property Rights. Thus, while some contracts may have specific terms and conditions pertaining to data rights, others may refer to data access under the general clause of Intellectual property rights. Negotiating data access and publication rights can be a complex issue with some funding institutions placing restrictions such as exclusive ownership and access to research project data. Indeed, the landscape of intellectual property is wide and complex and most often partners in research lack the tools or approaches to make appropriate decisions that fit a rational engagement.

COHRED's Fair Research Contracting (FRC) Initiative aims to encourage research partners to carefully consider how they intend to approach the issue of data rights (often termed data ownership, data sharing or data access) from the outset when negotiating with a collaborative research partnership. While there exists a wealth of literature and some institutions have gone as far as developing template clauses for data rights, we encourage researchers to take the step insofar as it means to address complex issues early on in the research contracting process and not necessarily sign template contracts provided by funding institutions. COHRED's FRC encourages that such clauses fit the disparate needs of the partner in research. The FRC initiative encourages fairer research practice and the maintenance of data integrity. Therefore, issues such as who will own and have access to research data/outputs in research collaborations context is very important.

Depending on the kind of research conducted, data can be varied and thus research partners would need to carefully consider how they wish to make it available for future use, for further research, to others or public benefit. The difficulty arises when some institutions have specified data sharing policies and the recipient funding institutions find themselves limited in negotiating around such clauses in a contract and as a result feel obliged to sign contracts at the cost of losing the funding where the research data or outputs are owned exclusively by the funding institution. Thus the implication is that data ownership is restricted and may not be freely available for further use in other research undertakings. In such cases, an indepth evidence based analysis can be made to demonstrate that the needs for access to data is the core for the accomplishment of fair research outputs. Under such circumstances, gaps in the clauses need to be filled to ensure that the partner in question has access to essential data.

We can't say with certainty that there is one particular template that sets out the best boilerplate language for data access and publication rights. However, there are a number of resources that we have developed to help research partners think through similar issues before signing off on a research contract as well as the types of factors that need to be considered in the negotiation process. This is particularly the case when a funding institution provides a template agreement, which could well be negotiated for fairer terms that could drive towards equitable research partnership.

We would like to refer you to our website, where we offer useful guidance on research for health contracting. The Fair Research Contracting Initiative addresses some key challenges relating to Intellectual Property, research costing, technology transfer, the legislative context and data sharing in the health research context. In addition to this we have developed 5 key guidance notes and a guidance booklet to assist in the 'soft' skills of negotiation (how to engage with your negotiation partner to get the best results for your organization). These materials aim to assist research organisations, who may not have specialist research contracting departments or a lack of access to legal expertise, to get greater benefit from collaborative research activities about the issues in research contracting, particularly inequitable research collaborative contracting arrangements.

Please visit our website on www.cohred.org/frc, in particular, we would suggest you to go through the guidance note '3' entitled '*Ownership & Sharing of Data & Samples*'; page 17-21 of the Fair

Research Contracting document entitled '*Where there is no lawyer: Guidance for fairer contract negotiation in collaborative research partnerships*'.

In addition to this, WIPO, the Wellcome Trust and the National Institutes of Health are typical examples of organisations that have developed extensive policy guidelines on access to research data, outputs and resources.

Some useful links include:

http://grants.nih.gov/grants/policy/nihgps_2010/

<http://grants.nih.gov/grants/guide/notice-files/NOT-OD-03-032.html>

[Working Towards Quality Research Through Good Data Management Practices \(PDF\)](#)

Some template agreements can be found on:

<http://www.iphandbook.org/> (Materials Transfer Agreement, Confidentiality Agreement or Non-Disclosure Agreement, Access Agreement, Licensing Agreement)

Other useful links include:

<http://www.wellcome.ac.uk/About-us/Policy/Spotlight-issues/Data-sharing/Guidance-for-researchers/>

MRC Guidance and Resources: The MRC has comprehensive and useful guidance for researchers on data sharing. The MRC Data and Tissues Toolkit offers assistance on the regulatory requirements for use of personal information and human tissue samples in healthcare research.

NCRI - Template for Access Policy Development: The NCRI has a flexible template for access policy development which can be adapted for the specific collection of data or samples. The resource also provides a template Data and Material Transfer Agreement (MTA).

UK Data Archive - Managing and Sharing Data: The UK Data Archive provides easily accessible resources for researchers on data sharing issues.

Wellcome Trust Sanger Institute Data Sharing guidance: The Wellcome Trust Sanger Institute policy can assist in setting out the principles underlying data sharing, in addition there is an accompanying guidance document for researchers.

Sample clauses in research contracts:

1. Intellectual Property: 'Any intellectual property, including datasets, technical information, know-how, copyrights, models, drawings, specifications, prototypes, inventions and software (intellectual property) that is developed solely by the personnel of a party in performance of this Agreement shall be owned solely by that party. Any Intellectual Property that is developed jointly by personnel and the parties in performance of this agreement shall be owned jointly by the parties, who shall negotiate an appropriate joint ownership agreement in good faith. The parties acknowledged that any interest in Intellectual Property is also subject to their respective institutional policies, procedures and/or collective agreements with personnel'.
2. Data Rights: 'Subject to its legal liability to do so, the Collaborator shall grant to funding institution the right to use data created in the performance of the Award Agreement for the purpose of education and research or to the extent required to meet the institution's obligations under its Prime award'.

Copyrighted Material: 'Subject to its legal liability to do so, the Collaborator shall grant the funding institution an irrevocable, royalty free, non-transferable, non-exclusive right and licence to use, reproduce, make derivative works, display, publish and perform any copyrights or copyrighted material (including computer software and its documentation and/or databases) developed under this Agreement for the purpose of education and research or to the extent required to meet funding institutions obligations under its Prime Award'.

3. 'The Contractor/Collaborator shall disclose to the funding institution and the sub-contractors/collaborators any foreground intellectual property resulting from the performance of this agreement as soon as possible. The owner shall grant non-transferable access rights to the foreground intellectual property to any of the other participants to the research project/study upon written request. Access rights to the relevant background intellectual property or other pre-existing know-how shall be granted as well upon written request provided that the owner is free to grant these access rights and granting these rights are in line with the objects of the funding institution. Such requests for access to Intellectual Property shall be granted on a royalty free basis where these requests are reasonably required to undertake any activity under the work plan and /or the validation plan or any other non-commercial purpose in line with the objects of the funding institution'.
4. 'Intellectual Property (IP) means an intangible asset which can be valued taking the form of any patent applications whether these have been provisionally registered or granted, copyright, trademarks, design rights (whether registered or unregistered) research results and database rights, developed during the course of this agreement or any extension thereof with funding from this institution.

The funding institution shall govern how all IP generate from the project shall be dealt with, a copy of which shall be provided to the institution prior to signature hereof. However, where the terms of the IP policy and those of this Agreement conflict, the terms of this Agreement shall take precedence.

The funding institution agrees that any inventor from the institution on background IP and project IP shall be entitled to benefit from the funding institutions benefit-sharing formula in terms of the IP policy referred to above.

All background IP owned jointly by the institution and the funding institution prior to the commencement date shall remain so vested.

All project IP emanating from the project and developed with the institution's funding shall be jointly owned by the institution and the funding institution and the institution shall duly acknowledge the inventors of the project IP concerned'.