

Agreement Terms Quick Guide

This quick guide is intended to provide a general overview of some of the most common issues with terms requiring negotiation for agreements executed by ORA based on Harvard policies and requirements.



Agreements are made between the institution (Harvard) and the third party. Faculty **should not** sign on behalf of Harvard, but forward to an appropriate Harvard signing authority. [See Negotiating and Signing Authority for Agreements Related to Research](#) for a guide when determining the responsible parties for coordinating the review and signature of research-related agreements at Harvard. ORA should be contacted for guidance in case of uncertainty. Any agreement signed by Faculty will need to be reviewed and negotiated following Harvard policies and will delay your research.

ISSUE	WHY IT MATTERS TO YOUR WORK	WHAT IS ESSENTIAL	RESOURCES/POLICIES
<p style="text-align: center;">PUBLICATION</p> <p>The right to publish our research</p>	<p>Protects Harvard and Harvard researchers' ability to disseminate information – the products of academic research and scholarship – through publication and other public disclosures.</p>	<ul style="list-style-type: none"> ● Harvard must retain the right to publish its research without prior approval of the other party (e.g., sponsor, data provider, collaborator, etc.). ● A maximum of 30 days will be permitted for the other party to review to protect confidential information. ● Delays in publication of up to an additional 30 days may be agreed to in order to permit time for filing of patent applications (for a maximum total of 60 days). 	<p>Harvard Policy on Publications</p>
<p style="text-align: center;">INTELLECTUAL PROPERTY (IP)</p> <p>Any new and useful process, machine, composition of matter, life form, article of manufacture, software, copyrighted work or tangible property</p>	<p>Proper ownership terms ensure (a) works produced can be used in ways that are meaningful in the public interest, (b) financial benefits from any work or invention flow to Harvard and the distribution of royalties to relevant parties (researchers/school) are managed at the institution. See below regarding specific elements of IP:</p>	<ul style="list-style-type: none"> ● OTD is consulted as necessary to confirm acceptability of language. 	<p>Harvard Statement of Policy in Regard to Intellectual Property (IP Policy)</p>
	<p>Background IP: Includes knowledge, experience, and expertise obtained by Harvard prior to the agreement</p>	<ul style="list-style-type: none"> ● Sponsor shall not have any right to acquire by assignment or licenses, exclusive ownership or use of Harvard Background IP. 	<p>Harvard Research Data Ownership Policy</p>
	<p>Copyright: Protects tangible expression and communication of ideas—not the ideas themselves (e.g. books, articles, course syllabus, lectures, software)</p>	<ul style="list-style-type: none"> ● Harvard generally retains rights to copyrightable works, including the right to reproduce, distribute, make derivative works, perform, publicly display the work and to authorize others to do so. <i>May agree to grant a license to the other party, but assigning rights to copyrightable works to the other party requires review of publication rights by OTD.</i> 	
	<p>Data: Includes results of sponsored research</p>	<ul style="list-style-type: none"> ● Harvard owns the data it generates under an agreement and may provide sponsor a license to use it, generally for internal purposes. 	
	<p>Inventions: Includes patentable inventions and discoveries</p>	<ul style="list-style-type: none"> ● Ownership in inventions that Harvard discovers shall vest in Harvard. Sponsor may be granted a non-exclusive license for internal, noncommercial purposes or first option to negotiate an exclusive or non-exclusive license. 	

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<p>CONFIDENTIALITY</p> <p>Places restrictions on the sharing of designated sensitive or proprietary information</p>	<p>Limits confidentiality with the goal of preserving and protecting the freedom of research and maintaining a teaching and research environment that is open and that promotes the free exchange of research results.</p>	<ul style="list-style-type: none"> ● Harvard policy does not permit acceptance of confidentiality terms or confidential information that would restrict public disclosure of the research results. ● Confidential information should be clearly defined and marked as confidential. Exceptions should be specified, and confidentiality obligations should be limited to an appropriate time period. ● Harvard should never receive “trade secrets” and the definition of “Confidential Information” should not include “trade secrets.” 	<p>Harvard Openness in Research Policy</p> <p>Confidential Information and Your Research Guidance</p>
<p>INDEMNITY/LIABILITY</p> <p>Which party will be legally responsible for actions taken under the agreement and resulting consequences</p>	<p>Limits legal responsibility of Harvard and Harvard researchers to their own work. NOTE: may include when one party will defend the other against legal claims.</p>	<ul style="list-style-type: none"> ● Each party should be responsible for its own negligence, including the acts of its own employees. ● Harvard should not be held responsible for sponsor’s (or other third party’s) use of any data or deliverables provided by Harvard under the agreement. ● Harvard should not agree to liability terms in which it accepts liability for any acts or omissions outside of its control. 	<p>Office of General Counsel guidance</p>
<p>BUDGET</p> <p>Outlines the anticipated expenditures for a project</p>	<p>Ensures funds are available in the appropriate categories necessary to complete the work and minimize the need to return to the Sponsor to request re-budget approval. NOTE: Must comply with Harvard and sponsor requirements.</p>	<ul style="list-style-type: none"> ● Federal IDC rate (aka NICRA rate) must be used for every federal award without explicit IDC cap. ● For non-federal awards, a minimum IDC rate must be collected in accordance with Harvard and HMS policy 	<p>Harvard’s Sponsored Awards Budgeting Policy</p>
<p>PAYMENT</p> <p>Sets forth the terms and mechanisms by which Harvard will be paid under the agreement</p>	<p>Ensures proper timely payment for work performed.</p>	<ul style="list-style-type: none"> ● Must specify Fixed Price or Cost Reimbursement (preferred). ● Payment structure (e.g., invoicing process, frequency of payments, etc.) must be established upfront and follow general acceptable Harvard practices. ● USD payment strongly preferred to foreign currency. ● Payment should never be based on sponsor acceptance of deliverables. ● For deliverable/milestone payments: avoid large percentage of payments made near end of project, and/or final payment after receipt of final report/deliverable. 	<p>OSP guidelines on preferred financial terms</p> <p>Foreign Awards Paid in Foreign Currency guidance</p>
<p>TERMINATION</p> <p>How and for what reasons the agreement can be ended prior to its expiration date by one or both parties</p>	<p>There may be risks posed by the termination language that Harvard and/or the researcher don’t want to accept.</p>	<ul style="list-style-type: none"> ● Harvard should have the ability to terminate agreements for convenience. ● If termination is due to Harvard’s default, Harvard should be provided with written notice and an opportunity to cure first (ideally 30 days). ● Harvard should always be paid for non-cancelable commitments made in good faith and should not have to return funds spent properly in accordance with the agreement. ● Harvard should be paid through the effective date of any termination. 	<p>Office of General Counsel guidance</p>

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<p>USE OF HARVARD NAME</p> <p>Any use of Harvard's name, logo, trademark, etc.</p>	<p>Ensures that any implied association with the University is appropriate, accurate, and non-endorsing. NOTE: Faculty cannot provide/approve use of Harvard's or its Schools' or units' names and/or Insignias (see use of name request guidance).</p>	<ul style="list-style-type: none"> ● No sponsor/third party use of Harvard's names, logos, etc. without prior written approval from the Trademark Program (trademark_program@harvard.edu). 	<p>Policy on the Use of Harvard Names/ Insignias</p> <p>Use of Name Inquiries</p>
<p>GOVERNING LAW/VENUE</p> <p>Which laws will be applied to agreement disputes (governing law), and where the arbitration/litigation to resolve disputes will take place (venue)</p>	<p>Ensures laws and related venues for dispute resolution are favorable to Harvard and its ability to effectively litigate on our behalf.</p>	<ul style="list-style-type: none"> ● Massachusetts law and venue are always preferred. ● Other governing laws/venues may be acceptable when statutorily required (e.g., for state university systems) or due to specifics of the project involved and associated risks 	<p>Office of General Counsel guidance</p>