

## **Contracts**

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### **Characteristics of a Contract**

A research contract is a formal agreement for conducting designed research in exchange for payment. Here are a few key features of contracts:

- A contract is a legally binding agreement that provides financial support to investigators to conduct and complete research or to provide a service under specific terms and conditions. The contracting agency can be a private industry, a government agency, or a non-profit entity.
- A contract can include an honorarium or payment made to the investigator(s).
- The investigator(s) cannot change the statement of work without the consent of the sponsoring entity and UNB (i.e., the Office of Research Services).
- Funds must be spent as stated in the budget.
- Contracts involve specific deliverables. These include such items as interim and/or final reports, research milestones, software creation, CD-ROM creation, test results, and other deliverables may be specified.
- Ownership of equipment bought with contract funds usually resides with UNB, rather than the sponsor.
- The absence of overhead (indirect costs) in a budget does not make a contract a grant, nor should it be construed as such.

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### **Types of Contracts**

#### Service Agreement:

- Outside party requesting that UNB perform a service
- Usually for analytical, testing or other services requiring little or no intellectual input
- Rights to intellectual property (e.g., compound to be tested remain with the sponsor)
- Rights to testing process, etc., used to complete the service remain with the faculty and University
- Standard University overhead charges apply

#### Research Agreement

A research agreement is usually one in which an outside party requests that UNB perform research on its behalf. Research may be collaborative between a company (sponsor) and UNB.

- Research outcomes/deliverables are addressed in research agreements.
- The sponsor usually obtains certain rights - in the form of an option or license - to intellectual property developed pursuant to the agreement. Government contracts often request assignment of rights to such intellectual property. This is of particular concern if the contract involves graduate or undergraduate students. Students should be informed by the contract's principal investigator about the project's intellectual property provisions prior to participating in the project. Many sponsors also obtain non-disclosure agreements with UNB.
- Publication of information about research may be temporarily restricted within clearly defined limits (usually not to exceed ninety (90) days) in order for the sponsor to check the material to be published for confidential information and for patentable subject matter. This is of particular importance if a graduate or undergraduate student is involved, as they must be free to publish their theses and defend their results.
- Sponsors may provide principal investigators with proprietary data that must be kept confidential for a certain time period. This restriction is generally subject to certain exceptions, which are stated in the agreement.
- Liability and indemnity of parties are usually defined.

### Confidentiality Agreement (Nondisclosure Agreement; Secrecy Agreement)

Confidentiality agreements are generally agreements to transfer confidential information between the parties. In general, they contain elements that:

- specify terms under which confidential information is transferred.
- may include testing procedures, formulae, test data, know-how, software, business information, trade secrets, etc.
- make important distinctions between information provided by the sponsor and information that arises from UNB-performed research, the results of which must be publishable.
- should include exemptions where information is already known by the recipient, or where information is required to be disclosed by law, administration, court order, etc.

NOTE: Individual faculty members, including department heads and the directors of research centres, are not authorized to sign service agreements, research agreements, confidentiality agreements etc. on behalf of the University although a researcher may be asked to confirm that s/he has read and understood the terms of the agreement and agrees to be bound by them.

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## **Budget Formulation**

### General Budget Information

Research contracts should provide investigators with payments to cover the total time they are to spend on the contract. The investigators' salaries included in research agreements and contracts are important and must have the full prior approval of the chair/director and the dean of the faculty.

*Salaries* - A contract budget must specify the names of the principal investigator and co-investigator to be paid. For other employees, names need not be supplied, and salary budget amounts can be assigned by function.

Example:

Research Associates: est. X months at \$Y/day  
Technician: est. X months at \$Y/month or X hours at \$Y/hour  
Secretary: est. X months at \$Y/month or X hours at \$Y/hour  
Graduate Students: est. X months at \$Y/month (see information below on hiring a student)

*Materials and Supplies* - Contract research expenditures for such expenses as stationery, long distance telephone services and other minor consumable research supplies should be included under the heading Materials and Supplies.

*Computing* - For all externally funded research in the form of contracts and agreements, the FULL COST of computing should always be recovered from the agency, whether the computing facilities are central or departmental.

*Student involvement* - When a graduate student is involved in any way in externally sponsored research, it is most important that nothing in the formal agreement or contract have any impact on the graduate student's thesis, its availability for academic evaluation, or its accessibility to interested readers. If there are any doubts about the freedom of a student to have the thesis evaluated in the usual way and readily accessible to general readers, then it is better not to use students who are working directly on a thesis, but rather to use other research assistants and associates.

*Subsistence*: Please see the [Financial Services](#) website for information on meals and accommodations.

*Please note*: Please refer to the *Research Financial Services* section of the ORS website for other helpful guidelines.

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## **Publication Rights**

UNB expects that its research agreements will allow for the publication of research results, based on the following guidelines:

- Undergraduate and graduate students, postdoctoral fellows, and UNB faculty will be free to disseminate results and defend theses.
- Where protecting intellectual property requires time, delays in disseminating research results will normally not exceed six (6) months.
- UNB and its researchers will retain reasonable freedom to use the knowledge generated by their research in teaching, in future research and in the practice of their professions.

- Confidential information belonging to an industrial partner will be protected from unauthorized, inadvertent, or untimely disclosure.

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### **Confidentiality Agreements**

These types of agreements specify the terms by which confidential information may be transferred and used. They are commonly referred to as non-disclosure agreements, confidentiality agreements, or secrecy agreements.

Confidential or proprietary information exists in many different forms. It may consist of notes, testing procedures, trade secrets, formulae, test data, specifications, know-how, software, etc. An important attribute of such information is its unavailability and inaccessibility to the public.

Any agreement on confidential information should clearly define the confidential information or should contain terms that allow for both parties to agree in writing what constitutes confidential information. In determining what information UNB may agree to keep confidential, it is important to distinguish between information provided by the other party or parties and that which arises from the research performed by UNB. The results of research undertaken at UNB must be fully publishable at the discretion of the researcher, subject to limited and mutually agreed upon publication delays.

The definition of confidential information normally excludes information that is already known by the recipient; independently developed by the recipient; disclosed to the recipient by a third party without an obligation of confidentiality; in the public domain at the time of disclosure or during term of the agreement; or disclosed pursuant to judicial or administrative order.

The lead researcher working under a confidentiality agreement is responsible for obtaining the agreement of any students, technicians, or other researchers to the terms of the confidentiality agreement prior to disclosure of the confidential information.

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### **Signature Policy**

All applications must bear the signatures of:

- Applicant(s)
- Chair/Head of Department and/or Dean of Faculty
- President's designate (i.e., VP (Research) or Director, ORS)

All applications/proposals must have appropriate academic endorsement before being submitted for a signature from ORS. Signatures of all of the above are required even though a space may not be designated on the application form. A [Contract Authorization Form](#), identifying the agency, project title, and with appropriate signatures must be included with all contract proposals.

The Principal Investigator(s) on a research contract must hold an academic appointment at the University of New Brunswick. The names of all the principal investigators are to be listed above and submitted to ORS at the time the proposal is initiated. In the event that during the project a change is required in the list of principal investigators, a memorandum is to be sent by the principal investigator to both Financial Services and ORS indicating the name of the person being replaced.

Deans, Chairs, and faculty members **do not** have the authority to sign applications and contracts on behalf of the University.

#### Processing:

All grant applications and contract proposals must be reviewed by ORS prior to their submission to the funding agency. Grant applications should be emailed to ORS at least two weeks prior to the deadline to allow for sufficient time for review of the proposal (a paper copy can be submitted when an electronic version is not available).

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#### **Contract Default: Procedures and Remedies**

When difficulties arise to the extent that the researcher cannot fulfil the terms of a contract, the researcher must immediately contact the Office of Research Services to seek advice. S/he should provide all information concerning the particular circumstances and document all action taken.

NOTE: To avoid individual liability, and to ensure payment to researchers for services rendered, work on a project or the performance of a service should not begin until after the researcher has received approval from the Office of Research Services, indicating that all the parties have signed a final contract.

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