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The Hooks, Lines and Sinkers of Contracts. Words That Matter and What They Mean



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What is a Contract?

Definition: A legally binding agreement between two or more parties

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What is a Contract?

Types:

Generally

- Written agreement, verbal agreement, handshake, actions.

Research Administration

- Sponsored Research Agreements (SRAs), Grants,
- Purchase Orders Material Transfer Agreements (MTAs),
- Confidentiality Agreements (CDAs), etc.



Why Understanding Contracts Matters

- Provides a record
- Provides clarity, context
- Protects rights and interests.



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Why Understanding Contracts Matters To You (Research Administrators)

- Funding, compliance, and integrity.
- Ensuring alignment with institutional policies and protecting institutional interests.



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Basic Contract Elements

- Offer and Acceptance
- Consideration
- Mutual Intent (Meeting of the Minds)
- Legality of Purpose
- Capacity



Basic Contract Elements

Offer and Acceptance

- Offer: Promise / commit to do/not do (Perform) something
- Acceptance: Receives the benefit of the promise.

Consideration

- Definition: Something of value exchanged between the parties.
- Examples: Money, services, peace of mind.
- Why it matters: A contract is not enforceable without it.

Mutual Intent (Meeting of the Minds)

- Definition: Clear purpose, objective
- Why it matters: Without this, there may be no valid contract.



Basic Contract Elements

Legality of Purpose

- Contracts must be for lawful purposes to be enforceable.

Examples:

Real Life: A contract to sell a home you don't own; Contract on someone's life.

Research Admin: Terms that require something the law doesn't allow.

- Why it matters: Only legal agreements can be enforced.

Capacity

- Legal authority to enter into a contract
- Why it matters: Protects vulnerable parties



Research Contracts

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Foundation Statements “Whereas”

- Basic undisputed facts
- Provides background
- Sets up the contract.
- Not required but a good idea.
- Help tell a story



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Effective Date vs. Term vs. Period of Performance

- **Effective Date:**
The date the contract becomes valid and enforceable.
- **Term:**
When the contract ends.
- **Period of performance:**
Start and End date (If contract is for a particular service or activity)
- Term and Period of Performance may be the same.

Warranties, Representations, Covenants

Promises or guarantees

Warranties

- Implied or Express
- Assurances that something is useable or suitable “fit” for a particular purpose.

Representations

- Statements of fact.

Covenants

- Promise to act or refrain from acting
- Not all warranties are “Warranties”
- Why it matters: Create risks for the Party making the promise.

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Default

Failure to perform obligations.

Government:

- Problematic because contractor may be on the hook. See FAR 52-249-6; 9)

Re-procurement

- Replace, re-produce, re-perform.
- Unknown Liabilities.

Industry

- Only problematic if re-procurement language is included.
- Termination for default in an industry contract better than breach of contract?

Indemnification

One party agrees to compensate or assume responsibility for damages or losses caused by another party.

Why it matters:

- Sponsor: Protects against unforeseen potential legal and financial liabilities – at the university's expense.
- University: Protects the institution from unforeseen potential legal and financial liabilities.



Force Majeure

Excuses non-performance due to unforeseeable events (e.g., natural disasters).

Why it matters: Protects parties from liability for events beyond their control.



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Cost Reimbursable vs. Fixed Price

Cost Reimbursable or Fixed Price ?

- Monthly invoice for costs incurred – NTE amount
- Fixed price with return of residual
- Fixed amount but budget modifications require approval.
- Milestone Payments
- Invoice with Deliverables

Why it matters: Salaries and expenses depend on timely payment.

Jurisdiction and Choice of Law

Jurisdiction

- Where disputes are resolved

Choice of Law

- How disputes are resolved

Why it matters: Law gives parties the ability to choose.

Finally

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Recap of Key Points

- Importance of understanding basic contract terms to effectively manage research agreements.



