

Welcome to the Tri-University Research Administration Conference.

Your session will begin shortly. While you wait, please review the following reminders::

Zoom Troubleshooting

Issues with Audio

Turn off headset/computer speakers and call in by phone for audio

General Issues

Log off and log back in using SSO

Technical Support

Call 480-965-9065 Ext 1.

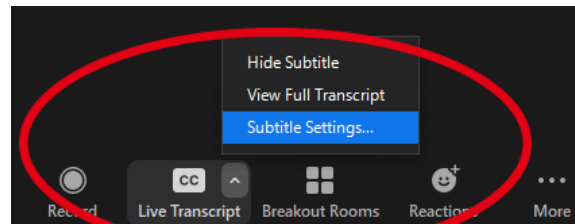
About this Session

Recording

Today's session is being recorded and will be made available for later viewing

Closed Captioning

The Closed Caption/Live Transcript feature has been enabled. You can show/hide the CC via your meetings controls located at the bottom of your screen.



We'd Love Your Feedback!

To help us plan next year's Tri-University Research Administration Conference, we would love to get your feedback.


If you want to provide feedback for the presenters of today's session, make sure to complete the survey you will receive via email at the end of the day.



Contract Negotiations 101

Radha Radhakrishnan (UA) and Avery Wright (ASU)

OBJECTIVES

- Identify troublesome clauses within agreements and discuss why these provisions present issues for public universities
 - Gain insight into the negotiation process
 - Acknowledge internal matters that can delay negotiation or execution of agreements
- 

**What do you think of when I say
“contract”?**

What comes to mind?

University Contract Negotiators

Support the research mission of the University, by achieving a **balance** of...

timely negotiation of agreements

...while...

minimizing the risk of liability to the University, its employees, and students

Types of Agreements

Grants

Contracts

Confidentiality/Non-Disclosure Agreements

Intergovernmental Agreements

Memoranda of Understanding

Teaming Agreements

Student Experience Agreements

Testing/Professional Services

Data Use Agreements

Material Transfer Agreements



Who Negotiates Contracts for Externally-funded Research, Instruction, and other Sponsored Activities?

Sponsored Projects Contracting

Procurement Services

Tech Transfer

Office of General Counsel

Office of the Provost

Trade Mark and Licensing

Some aspects of Agreements require review and comment by specific parties at the University


Office of General Counsel *Export Control*

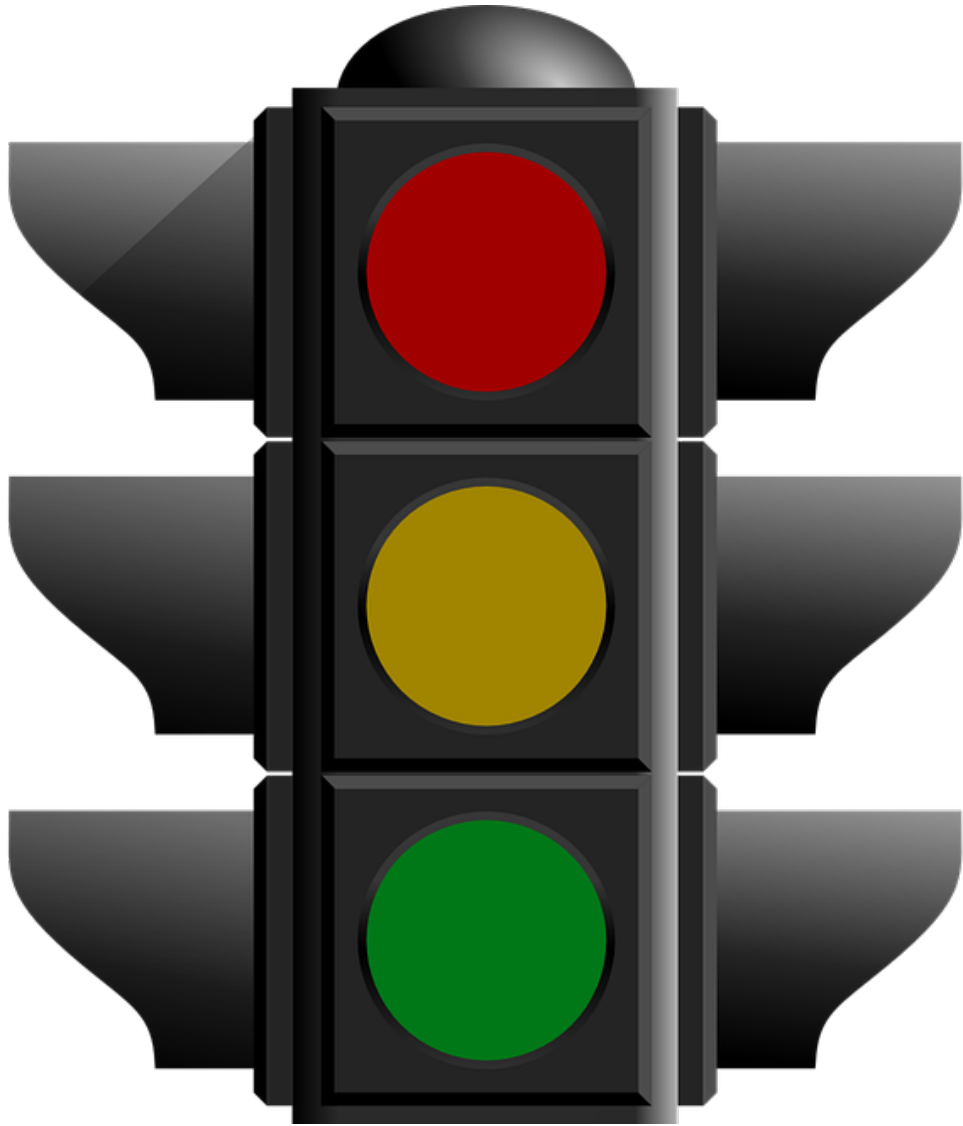
Information Technology *Risk Management*

Vice President of Research

Conflict of Interest *Tech Transfer*

HIPAA *HSPP*





Classified Information
Data/IT Security
Indemnity/Liability
Intellectual Property
Publication Restriction

Confidentiality
Exclusivity
Export Control
Insurance
Physical Security Requirements
Termination

Arbitration
Federal Flow Downs
Governing Law & Venue
Invoicing/Penalties
Non-Standard Payment

Stop!

**Slow
Down!**

Go!



Green Light – Clauses that are Generally Straightforward to Work With

	Purpose of Clause	Preferred Position
Arbitration	<p>Dispute resolution:</p> <ul style="list-style-type: none">• a neutral third party (arbitrator) renders a decision• arbitrator has power to render a binding decision• may or may not be legally binding	<p>Exhaust all administrative remedies to resolve disputes</p> <p>Remove/adjust legally binding arbitration language</p>
Federal Flow Downs	<ul style="list-style-type: none">• Federally required clauses or terms• Must be included (flowed down) in university issued subawards	<p>Accept and flow-down</p>



Green Light – Clauses that are Generally Straightforward to Work With

	Purpose of Clause	Preferred Position
Governing Law and Venue	Statement that dictates what laws will govern the proceedings and where any agreement-related court cases will be held	Options include: <ul style="list-style-type: none">• Arizona law and venue• Remaining silent on governing law and venue• Accepting another state's law or venue with Department/College approval



Green Light – Clauses that are Generally Straightforward to Work With

	Purpose of Clause	Preferred Position
Non-Standard Payment Terms	Payment terms are imposed to ensure that payments are received by suppliers within a reasonable period of time	Net 30- Payment 30 days after invoice date
Invoicing / Penalties	Invoicing terms are imposed to ensure that invoices are submitted to the sponsor within a reasonable period of time	<ul style="list-style-type: none">• Monthly invoicing or an agreed upon schedule• NET 30• Not acceptable<ul style="list-style-type: none">• penalties for late invoices or reports• paying interest or penalties for delayed payment of subrecipient invoices



Yellow Light – Clauses that May Take Some Time

	Purpose of Clause	Preferred Position
Exclusivity	Requirement that university will only partner with a certain party	Preference is to not enter into exclusive arrangements
Confidentiality	Specifies how confidential or proprietary information must be handled	Arizona's public records law: <ul style="list-style-type: none">• Maintain the confidentiality of certain information• All information must be marked in order to be protected• Time when obligation to protect confidential information expires• Exclusion• Trade Secrets not accepted

Confidentiality

~~*Any and all information or materials provided by the Discloser under this Agreement shall be considered to be Confidential.”*~~

To be protected hereunder, Confidential Information must be **marked confidential** if disclosed in **written or other tangible form**. If Confidential Information is disclosed **orally or visually**, Confidential Information must be **identified as confidential at the time of disclosure** and **reduced to writing**, marked confidential, and transmitted to the recipient party within thirty (30) days of initial disclosure.





Yellow Light – Clauses that May Take Some Time

	Purpose of Clause	Preferred Position
Export Control	Federal regulations that control the conditions under which certain information, technologies, and commodities can be exported out of the United States to anyone, including U.S. citizens, or to a foreign national on U.S. soil	Seek exclusion for Fundamental Research Accept or include requirements from sponsoring organization
Insurance	Sponsor requires performing party to have or maintain insurance coverage as a condition of performing under the agreement Some Sponsors expect to be named as third party on insurance	Standard statement that university is self-insured under the State of Arizona



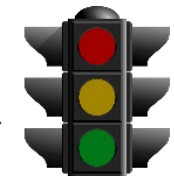
Yellow Light – Clauses that May Take Some Time

	Purpose of Clause	Preferred Position
Physical Security Requirements	<p>Restrict who will have access to:</p> <ul style="list-style-type: none">• Children• Vulnerable populations• Sponsor or Federal facilities	<p>Sponsor will need to work directly with the persons that are responsible to receive/provide:</p> <ul style="list-style-type: none">• Background checks• Fingerprinting• Access badges



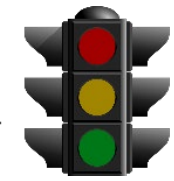
Yellow Light – Clauses that May Take Some Time

	Purpose of Clause	Preferred Position
Termination	Allows one or both parties the right to terminate (end) a contract in whole or in part at their discretion.	<p>Language that provides the same benefits/restrictions for both parties.</p> <p>Mutual termination clause, however, government agencies will typically not agree to mutual termination</p> <p>Termination for cause/default:</p> <ul style="list-style-type: none">• Prefer a cure period of at least ten (10) days (preferably 30 days)



Red Light – Clauses that May Cause Significant Delays

	Purpose of Clause	Preferred Position
Classified Information	Specifies the agreement or contract will involve access to US Government information classified “Confidential,” “Secret,” or “Top Secret”.	As public institutions, ASU, UA, and NAU do not engage in classified work on campus. On occasion, however, access to classified materials may be necessary.

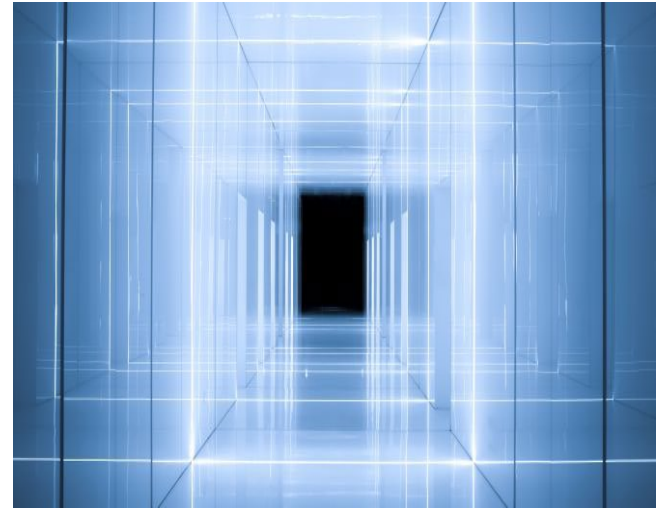


Red Light – Clauses that May Cause Significant Delays

	Purpose of Clause	Preferred Position
Data / IT Security	<p>Requirements intended to protect the disclosure of:</p> <ul style="list-style-type: none">• personal data and information• patient data and information• other sensitive data that should not be released to the general public	<p>Preference is to not include any data security requirements.</p> <p>If the requirements are applicable to the work being performed, the least restrictive requirements are preferred/ideal.</p>

Data / IT Security

“Contractor shall comply with all security requirements, including but not limited to the regulations and guidance found in the Federal Information Security Management Act of 2014 (“FISMA”), Privacy Act of 1974, E-Government Act of 2002, National Institute of Standards and Technology (“NIST”) Special Publications (“SP”), including NIST SP 800-37, 800-53, and 800-60 Volumes I and II, Federal Information Processing Standards (“FIPS”) Publications 140-2, 199, and 200, OMB Memoranda, Federal Risk and Authorization Management Program (“FedRAMP”), DOJ IT Security Standards, including DOJ Order 2640.2, as amended”

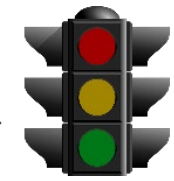


Data / IT Security

There are several IT Security laws, publications, standards, and memoranda that discuss the technical requirements that universities must comply with.

IT support must review these requirements and work with the PI's department to ensure that we have the capability to comply.



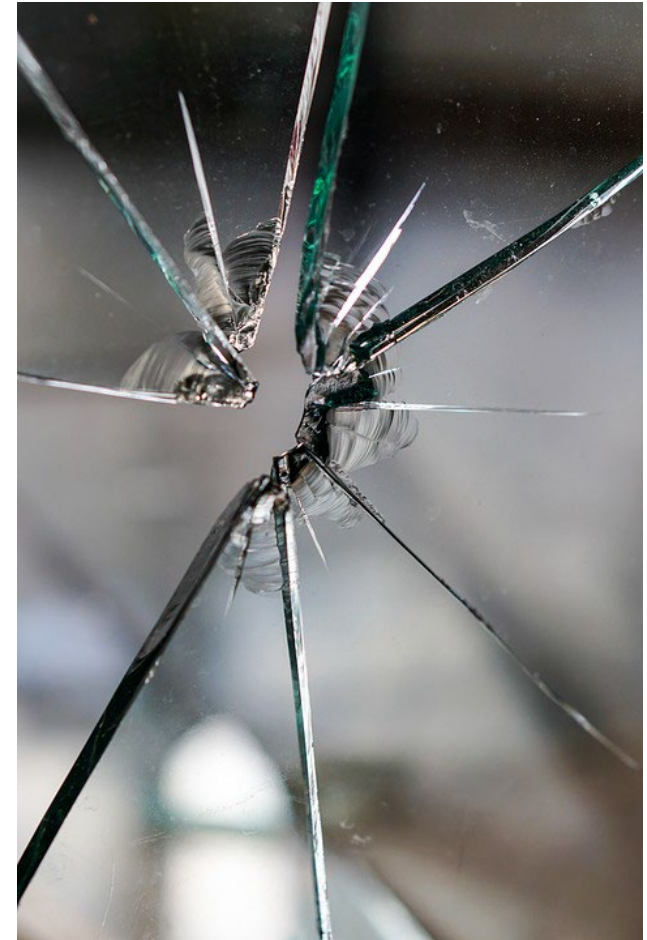


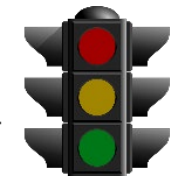
Red Light – Clauses that May Cause Significant Delays

	Purpose of Clause	Preferred Position
Indemnity / Liability	Identifies the liability obligations the parties have to each other under the agreement	Typically universities prefer to remain silent on indemnity and liability

Indemnity / Liability

~~*“To the maximum extent permitted by law, University agrees to limit Company X’s liability for the University’s damages to the sum of \$_____ or the total amount of compensation owed to University, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.”*~~





Red Light – Clauses that May Cause Significant Delays

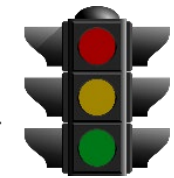
	Purpose of Clause	Preferred Position
Intellectual Property	These clauses address the ownership (including joint ownership) and licensing of technology, patents, and copyrights	Intellectual property developed by An ABOR University, regardless of the funding source, is the property of the University

Intellectual Property

~~*“All intellectual property resulting from work pertaining to this Agreement shall belong exclusively to the Sponsor.”*~~

“Ideas, know-how, data (including clinical study results), and other intellectual property generated under this clinical study shall be the sole and exclusive property of the employer of the inventing party. Inventorship shall be determined in accordance with U.S. Patent laws.”





Red Light – Clauses that May Cause Significant Delays

	Purpose of Clause	Preferred Position
Publication Restrictions	<p>To restrict, limit, or delay publication of research results, which may include:</p> <ul style="list-style-type: none">• Publication restrictions or pre-approval by sponsor• Publication delays beyond 90 days• Submittal of manuscripts for sponsor approval prior to publishing	<p>University policy is to not agree to publication restrictions.</p> <p>Include language that protects the mission of the university to carry out research in an open and unrestricted manner.</p> <p>Include language that protects the rights of University investigators and students to publish the results of their research and other sponsored activities.</p>

Publication Rights

~~*“Due to the confidential nature of the Project, University understands that it will not be allowed to publish or make known the Results of the Project.”*~~



~~*“All Results of the Project shall be considered to be Confidential Information.”*~~

Publication Rights

“Sponsor recognizes that under University policy the results of work performed under this Agreement must be publishable and agrees that University and its employees and students engaged in work under this Agreement shall be free to publish. University must present copies of all proposed publications to Sponsor at least thirty (30) days prior to publication. Should Sponsor identify its Confidential Information in the proposed publication, Sponsor will notify University and University ~~agrees to remove all Confidential Information~~ will make a good faith effort to remove or amend sections containing Confidential Information, assuming the change does not alter the intention or spirit of the publication.”



Slowing Due to Internal Issues

Sponsor or PI changed (or is changing) the Scope of Work or Budget

Institutional Review Board (IRB) and other special reviews

Information Technology (IT) Security assessments



University Contract Negotiators

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Questions?

Tri-University

Research

Administration

Conference

