

Agreement Issues Quick Guide for Faculty

This quick guide is intended to provide an overview of some of the most common issues requiring negotiation for sponsored agreements.
University policies and procedures inform our negotiations.

Issue	What It Is	Policy	Preferred Language
Publication	The ability of the University to disseminate information –the products of research and scholarship - through publication and other public disclosures is required.	<p>JHU Intellectual Property Policy: http://jhuresearch.jhu.edu/JHU_Intellectual_Property_Policy.pdf</p> <p><i>“The University shall only enter into a research contract or other binding commitment to perform work that can reasonably be expected to be publishable, provide educational opportunities, and/or be in the public interest. ... The University shall enter into contracts or other binding commitments to conduct research and training only if they permit the disclosure and publication of research.”</i></p>	<ul style="list-style-type: none"> • JHU must retain the right to publish its research without prior approval of sponsor. • 30 to 90 days will be permitted for Sponsor review to protect confidential information. • Delays in publication up to 120 days may be agreed to in order to permit time for filing of patent applications.
Intellectual Property (IP)	Any new and useful process, machine, composition of matter, life form, article of manufacture, software, copyrighted work or tangible property	<p>JHU Intellectual Property Policy: http://jhuresearch.jhu.edu/JHU_Intellectual_Property_Policy.pdf</p>	See below regarding specific elements of IP.
• Background IP	Includes knowledge, experience, and expertise obtained by JHU prior to the agreement	<p>JHSPH Copyright Policy: https://my.jhsph.edu/Resources/PoliciesProcedures/ppm/PolicyProcedureMemoranda/Faculty_09_Ownership_and_Use_Educational_Materials.pdf</p> <p><i>“The University owns all rights, title and interest in and to Intellectual Property developed as a result of support either directly from or channeled through the University.”</i></p>	Sponsor shall not have any right to acquire by assignment or licenses, exclusive ownership or use of JHU Background IP.
• Copyright	Protects tangible expression and communication of ideas—not the ideas. (e.g. books, articles, course syllabus, lectures, software.)		JHU 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. May agree to grant a license to sponsor.
• Data	Includes results of sponsored research		JHU owns the data it generates under an agreement and may provide Sponsor a license to use it, generally for internal purposes.
• Inventions	Includes patentable inventions and discoveries		Ownership in inventions that JHU discovers shall vest in JHU. Sponsor may be granted a first option to negotiate an exclusive or non-exclusive license.
Confidentiality	Designates specified sensitive or proprietary information as confidential and places restrictions on the sharing of that information	<p>JHU Intellectual Property Policy: http://jhuresearch.jhu.edu/JHU_Intellectual_Property_Policy.pdf</p> <p><i>“The faculty shall not undertake research which prohibits the faculty member from disclosing the existence of the agreement or restricts the faculty member’s public disclosure of information developed.”</i></p>	JHU cannot accept confidentiality terms that would restrict public disclosure of the research results.

Indemnity/Liability	Addresses which party will be legally responsible and/or under what circumstances one party will defend the other	General Counsel guidelines	<ul style="list-style-type: none"> • JHU will not be responsible for Sponsor’s use of the data or deliverables. • Always use General Counsel Guidelines to mitigate risk.
Budget	Outline the anticipated expenditures for a project and must comply with JHU and Sponsor requirements.	JHSPH Indirect Cost Policy and JHSPH Cost Recovery Policy: https://my.jhsph.edu/Offices/ORAPages/default.aspx JHU Cost Sharing Policy: http://finance.jhu.edu/policy_procedures/category_account_policy_procedures.html JHU Effort Reporting Policy: http://finance.jhu.edu/policy_procedures/category_account_policy_procedures.html	<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, minimum IDC must be collected in accordance with JHSPH policy. • PI must include minimum of 1% effort. • Voluntary cost sharing is prohibited and should not be included in budget or SOW.
Payment	Sets forth the payment terms and mechanisms by which JHU will be paid		<ul style="list-style-type: none"> • Must specify Fixed Price or Cost Reimbursement • Payment Structure (e.g., invoicing process, frequency of payments, etc.) must be established at the outset and approved by ORA. • Payment based on receipt of deliverables • More/larger payments at the start of project • Final payment no greater than 10% of total value
Termination	How and for what reasons the agreement can be ended by one or both parties	General Counsel guidelines	<ul style="list-style-type: none"> • JHU must have the ability to terminate for convenience. • If termination is for JHU default, JHU must have notice and an opportunity to cure first. • JHU should always be paid for un-cancelable commitments and never have to return spent funds. • JHU should be paid through the effective date of any termination.
Use of JHU Name	Using JHU name or logo for products, promotions, marketing, or advocacy	JHU Intellectual Property Policy: http://jhuresearch.jhu.edu/JHU_Intellectual_Property_Policy.pdf <i>“All written or broadcast material containing the University’s name for advertising, marketing, or other promotional purposes shall be submitted for approval to the President prior to use of such material. A statement on the use of the University’s name shall be included in all appropriate contracts between industry (company) and the University.”</i>	<ul style="list-style-type: none"> • No sponsor use without prior approval from the Office of Communications • Faculty cannot approve use of JHU name
Governing Law/Venue	Which state or country’s laws will be applied when there are disputes, and where any arbitration or litigation will take place.	General Counsel guidelines	<ul style="list-style-type: none"> • Maryland law and venue is always preferred. • We can agree to another state’s laws and venue if it is statutorily required. • For international awards, we can agree to English law.

JHURA AGREEMENT REVIEW TIMELINE OBJECTIVES

DAY	ACTION
1-2	<ul style="list-style-type: none"> • Agreement received (via Coeus, if funded; via PI/Department or sponsor, if unfunded), and acknowledgement e-mailed to PI and Department.
3-7	<ul style="list-style-type: none"> • Initial review of agreement and supporting documents for completeness. • If incomplete, request information from PI/Department and/or sponsor.
7-13	<ul style="list-style-type: none"> • Substantive review of agreement. Review with Executive Director when necessary. • Identify contractual issues and draft requested revisions. • Discuss issues and revisions with PI and Department as needed; schedule kick-off meeting as appropriate. • Engage Associate Vice Provost to highlight potentially problematic issues.
14	<ul style="list-style-type: none"> • Provide requested revisions to sponsor and offer a telecon for further discussion as needed. • Brief PI and Department.
21+	<ul style="list-style-type: none"> • Follow up with sponsor weekly until feedback received. • Once initial comments received from sponsor: <ul style="list-style-type: none"> - If further negotiations necessary, schedule telecon within week. - Engage Associate Vice Provost as appropriate. - Contact General Counsel as appropriate. • If sponsor not responsive: <ul style="list-style-type: none"> - Identify and contact supervisor of sponsor POC and notify dept contact and PI of action in separate e-mail. - Request JHU PI contact counterpoint at sponsor. Copy dept contact. • Recommend pre-award account to Department as appropriate.

ROLES AND RESPONSIBILITIES

PI/DEPT	JHURA	PH FINANCE
<ul style="list-style-type: none"> • Identify funding opportunity and develop proposal in Coeus. • Route proposal (or award if no proposal) to JHURA for review, approval and (if award) negotiation. • Send unfunded agreements to jhura@jhu.edu for review and negotiation. • Facilitate communication between faculty, JHURA, and sponsors. • Manage sponsored accounts. 	<ul style="list-style-type: none"> • Review and approve proposals routed through Coeus. • Submit electronic proposals. • Negotiate and accept awards. • Draft and negotiate funded and unfunded agreements. • Create and manage outgoing subawards. • Sign all agreements on behalf of University. • Workflow fully executed awards to SPSS or PH Finance. 	<ul style="list-style-type: none"> • Receive fully executed awards from JHURA. • Review and Identify SAP master data. • Workflow awards with master data coversheet to Sponsored Shared Services. • Verify that master data is setup correctly in SAP. • Process additional IO requests. • Maintain budget for program income & award interest. • Monitor accounts through reporting tools.