

## Research and Knowledge Exchange Contracts at the University of York

This document provides information as to what can be expected when collaborating with the University of York (“University”). As part of any collaboration, the University enters into contracts with third parties (for ease of reference such third parties shall be referred to as “collaborators” in this document) in relation to such activities to ensure there is clarity about the respective rights and responsibilities of the parties involved. This document provides detailed notes around the University’s contracting positions and explanations as to why these are in place.

Research and knowledge exchange related contracts should be drafted and/or reviewed at the University by the [Research and Knowledge Exchange Contracts team](#) (RKEC) who are part of the [Research, Innovation and Knowledge Exchange](#) (RIKE) directorate. While different University staff may discuss contracts, research-related agreements can only be signed on behalf of the University by delegated individuals. The RKEC team will be able to arrange the signature process once the terms have been reviewed and agreed.

Below are some of the key considerations the RKEC team takes into account when preparing or reviewing research agreements on behalf of the University, as well as an explanation of some of the University’s usual contracting positions.

### 1. University’s status and purposes

[The University of York](#) was created by Royal Charter and is a public higher education institution and exempt charity in England. As a charity the University must act in accordance with its primary charitable purpose; that is, the advancement of education through teaching and research. The University exists for, and is committed to, [public good](#). This purpose influences the University’s approach to the negotiation of its contracts.

As a public body, the University must also comply with certain statutory requirements and these legal and policy requirements may affect the negotiation of contracts. For example, the University is subject to the [Freedom of Information Act](#) (FOIA) and so the University must preserve its ability to disclose information in accordance with its obligations under the FOIA. However, it can make use of permitted exemptions or exceptions where appropriate. The University may also be subject to [UK subsidy control legislation](#) (which has replaced state aid law now the UK has left the EU). This can affect the negotiation of contractual clauses regarding intellectual property ownership, licensing and payments.

The University has comprehensive [insurance policies](#) and while the University endeavours to work to a high standard, much of our work is experimental and the University cannot guarantee particular results. The University can only make limited warranties and will seek to include appropriate limitation of liability clauses in contracts.

### 2. Nature of collaboration and funding sources

There are different ways to collaborate with the University. Some examples are set out below:

- As a co-applicant for public funding from a public body, such as the [UKRI](#);
- As the sole funder of a research project;
- As a participant in a collaboration with the University and other universities or businesses with complementary interests;
- By way of a studentship, which involves sponsoring a PhD student to undertake a research project, either through fully funding the student project or contributing to the funding;
- Engaging the University as a consultant or to provide services.

The nature of the collaboration is likely to influence the contracting process. For example, if the project involves funding from an external funding body the University is likely to be subject to the external funder's terms and conditions that any collaborating party will also need to be aware of and agree to comply with. This can include requirements regarding publication and dissemination of research results and compliance with legislation, such as the [UK subsidy control legislation](#).

Alternatively, if a collaborator is fully funding the project then different contractual provisions may be appropriate. For example, the University may be able to agree to allow greater rights and control in relation to any intellectual property generated as a result of the project. Furthermore, where a collaborator is making an in-kind contribution to a project, such contributions will be detailed in the project agreement and their value considered as part of the negotiations.

### **3. Intellectual Property**

The University values and protects its intellectual property and that of others. Intellectual property that the University owns prior to start of a project (usually termed "background intellectual property" in agreements) will usually only be licensed for the purpose of the project and the University would seek a corresponding licence to use the background intellectual property of a collaborator. Any further rights to use the University's background intellectual property, including for commercial purposes, would need to be agreed separately and would be subject to appropriate commercial terms and revenue sharing arrangements in consultation with the University's [Commercialisation](#) team.

The University seeks to maintain ownership of intellectual property generated by its staff and students. If a project also involves a third party funder, retention of intellectual property by the University is sometimes a requirement of that funder. Alternatively, an external funder may require other intellectual property ownership arrangements, in which case this would be discussed with collaborators. However, any arrangement would need to reflect the external funder's requirements.

If intellectual property is created jointly then the contract would usually provide for joint ownership of such jointly created intellectual property and the parties can discuss apportionment of registration costs and exploitation in good faith.

In some cases, where considered appropriate by the parties involved in the project, the University may agree to assign intellectual property created by its staff or students to a collaborator. However, such an arrangement must not contravene the [UK subsidy control](#)

[legislation](#), particularly where the University is also receiving public funding for the project, and this would require the University to receive at least its full costs in relation to a project involving a non-public body funder.

Where the University retains ownership of intellectual property arising from projects (usually termed “foreground intellectual property” in agreements) it will normally offer a royalty-free, non-exclusive licence to such intellectual property to its project collaborators for internal research and development purposes, but not commercial exploitation. As with background intellectual property above, a licence to use University foreground intellectual property for commercial purposes would need to be agreed separately and would be subject to appropriate commercial terms and revenue sharing arrangements in consultation with the University’s [Commercialisation](#) team. Such licences would also be subject to the University retaining the right to use such foreground intellectual property for education and non-commercial research purposes. This would occur towards the end of, or after the conclusion of a project, once the foreground intellectual property is known and can be valued appropriately. Agreements can provide an ‘option’, setting out the procedure for how such commercial licences are to be negotiated.

In a studentship agreement the student will always need to retain the copyright in their thesis. As with other types of collaboration, any background intellectual property of the parties will be retained by its respective owner, but a licence to use it for the project will be granted in the agreement. Any foreground intellectual property arising from the studentship will be considered in a similar manner to that mentioned above; where there is public funding (in a CASE studentship, for example) the funder terms and conditions, as well as any state aid considerations, will need to be reflected in the agreement. However, where a collaborator is funding the full costs associated with the studentship, there is more leeway with the terms and in respect of the position on foreground intellectual property arising from the studentship project.

#### **4. Confidentiality and publication**

The University takes the protection of confidential information seriously. University departments are encouraged to use confidential disclosure agreements and appropriate confidentiality provisions can be agreed in research contracts. A [template CDA](#) is available for use on RKEC’s webpage. University’s employees are under a duty of confidentiality by way of their employment, but separate confidentiality agreements can be prepared with non-University employees involved in the project on behalf of the University e.g. students, consultants, if required. It is worth noting here that students are not subject to the same legal obligations as University employees and may be required to be party to agreements in order for confidentiality and other obligations to apply to them.

Depending on the type of agreement and project, confidentiality obligations will need to be balanced with appropriate exceptions, taking into account publication rights, funder requirements, a student’s requirement regarding their thesis and statutory obligations (e.g. FOIA).

In line with its charitable status and in order to progress the career and education of both academics and students the University also needs to be able to publish the results of

research. This is often also a requirement of publicly funded research, such as projects funded by the [UKRI](#).

The University will normally seek the right to publish results, jointly where applicable, obtained during the project and, in pursuance of its academic functions, the right to discuss work undertaken as part of the Project in internal seminars and to give instruction within the University on questions related to such work. There may be exceptional circumstances where this is not the case, such as those instances where a company engages the University in consultancy or service provision. In these circumstances, the University may be open to waiving its right to publish, but the University academic involved in the project would always be consulted on this before it is agreed in the terms.

The University can agree to submit material intended for publication to an external collaborator for review in advance of submission. This would allow the collaborator an agreed amount of time (usually 14-30 days) to request the removal of any confidential background intellectual property if it is not already agreed that it can be used in a publication. A collaborator may also request a delay in publication for an agreed amount of time (usually no more than 3 months) to allow the registration of any intellectual property arising from the project of potential commercial value. However, the University resists requests for removal of intellectual property arising from the project from publications, as publication and dissemination of research is a key part of its purposes and is also usually an external funding requirement.

The University is regulated by Research England and is periodically assessed as to the excellence of the University's research and the impact of that research. Therefore the University may also want to write and submit a case study to the Research Excellence Framework (REF), or any future similar assessment exercise, relating to any collaborative project and any results. The University will therefore ask collaborators to reasonably cooperate with the University in the preparation of a written case study to be submitted to the REF Panel (on a confidential basis, if required).

The University will also usually seek to ensure that nothing in any agreement would prevent or delay any registered student of the University from submitting for a degree a thesis based on the results obtained during the course of a project, or the deposit of such a thesis in the University's library and in an electronic repository in accordance with its regulations.

All studentship agreements also need to comply with the University's agreement with the student for the provision of education, which includes the rules and regulations of the University. In particular this would include the University's [Policy on Research Degrees](#) which includes provisions regarding any potential [redaction or embargo of a thesis](#). The University will not usually agree to an embargo of longer than 12 months after the date of the award (in line with UKRI conditions).

The University will always require the ability to comply with the FOIA and so cannot agree to confidentiality clauses which would prevent this. However, any concerns in relation to this can be discussed with the University and appropriate safeguards can be agreed.

## **5. Limitation of liability**

As a charity and recipient of public funds the University must protect itself from undue risk and financial liability.

It is standard for the University to state in agreements that it does not make any representation or warranty that advice or information given by any of its employees, students, agents or appointees who work on a project, or the content or use of any materials, works or information provided in connection with the project, will not constitute or result in infringement of third-party rights.

The University will not accept any responsibility for any use that may be made of any work carried out under or pursuant to an agreement, or of the results of the project, nor for any reliance which may be placed on such work or results, nor for advice or information given in connection with them.

The University will always seek to exclude liability for indirect or consequential loss. It will also seek to agree an appropriate general liability cap. This will usually be linked to the amount of funding to be received by the University for the project. The University resists granting indemnities unless there are very well articulated and justified reasons why an indemnity is required for the particular risk. However, if an external funder requires the University to provide an indemnity as a condition of its funding then we may need to include a corresponding indemnity in any contract associated with such funding.

The University tries to be fair and flexible in relation to limitation of liability and can also consider separate caps for different types of loss depending on the relevant circumstances. However, please do not expect that the University will agree to unlimited liability or the provision of indemnities in research agreements.

## **6. Policies and processes**

The University works to high ethical and legal standards. It has processes and/or policies in place concerning the following and is committed to its [core principles](#) of environmental sustainability, collaboration across multidisciplinary boundaries, internationalism and equality, diversity and inclusion.

- [Research integrity and ethics](#)
- [Anti-Bribery](#)
- [Modern slavery](#)
- [Access to genetic resources \(Nagoya Protocol\)](#)
- [Export controls](#)
- [Information security](#)
- [Data protection](#)
- [Procurement](#)
- [Sustainability](#)
- [Equality, diversity and inclusion](#)
- [Open Research](#)

The University can consider requests to comply with the policies of collaborators but, given the extent of the University's policies and processes, such additional obligations are usually not required.

## **7. Term and termination**

The term of a research agreement will usually reflect the project period agreed with any external funder. Otherwise, the University is happy to discuss the project duration and any requirements with potential collaborators.

As the University requires certainty that its costs will be covered and any funding may cover employment contracts or other commitments the University has made (including any commitments made to an external funder) the University cannot usually accept a termination for convenience clause.

However, the University can consider instances where this may be appropriate subject to a commitment to pay any irrevocably incurred or committed costs or expenses.

## **8. Governing law and jurisdiction**

The University uses the laws of England and Wales as the governing law in contracts. The University usually agrees to the exclusive jurisdiction of the English Courts to deal with any dispute which may arise out of, or in connection with, any agreement. However, any party may bring proceedings for an injunction or enforcement of a judgement in any court of competent jurisdiction.

If other dispute resolution mechanisms are required in the contract, such as dispute escalation clauses or mediation clauses, these can be discussed. The University does not usually agree to arbitration or the jurisdiction of overseas courts. However, any particular requirements can again be discussed in order to find a suitable way forward.

## **9. Non-York standard agreements**

The University understands that some collaborators may have standard template agreements that they are required to use. If this is the case then the University can consider these. However, they may require amendment to reflect the requirements of the particular project and to take into account the issues referred to above. The University's RKEC team will be happy to work with a collaborator so that a suitable agreement can be prepared that meets the needs of all parties.