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Prior to Submitting Review Request

Send the [Certification of Funds](#) form to the sponsor for signature.

Proposal Routing Forms

- Find the related **Proposal Routing Form** and ensure it is **completed**; a contract should not be sent forward without a completed Proposal Routing Form
- **Compare** the contract to what was entered into the approved proposal routing form
- Negotiate as needed; do not send contract forward until all parties agree and all proposal items are **approved**

Budget

- Verify that cost share is **not included** in the contract **unless** it is approved in the Proposal Routing Form; verify that the cost share **amount** is the **same** as what was approved
- Confirm that any **budget changes** have been verified by the PI
- Confirm that the payroll benefits and F&A rates match the **current year rates** (as opposed to the proposal rate, which may have been different)
- Confirm that any graduate tuition included matches the rates for the relevant semesters

Risk Management

- Risk Management must review all contracts that request a **Certificate of Insurance**

Financial Requirements

Deliverables

- Cannot require that **time sheets** be provided to the sponsor
- Cannot request **original financial documents**; the originals must remain on file at UNO
 - e.g., Cannot request original receipts
- If the contract is **fixed price**, it cannot require **detailed backup** for the invoices

Invoicing

- **Contact Information:** Contract must include the point of contact for invoices (including name, email, address, phone number, etc.)
- **Frequency:** Prefer no less frequently than **quarterly**, and no more often than **monthly**
- **Timing:** Deadline for invoicing (if given) should not be prior to the 20th of the month
 - Note: Some sponsors, such as Board of Regents, will not negotiate.

Handling of Funds

- If the contract is **fixed price**, residual funds must remain at UNO
- If the contract is **cancelled early**, UNO should be reimbursed for expenses to date and un-cancellable expenses (e.g. custom orders, etc.)

Cost Share

- Verify that cost share is **not included** in the contract **unless** it is approved in the Proposal Routing Form
- Verify that the cost share **amount** is the **same** as what was approved in the Proposal Routing Form

Contract Language

Nonfederal Awards

The [CFDA Certification Form for Pass Through Funds](#) must be filled out to verify:

- Whether the award is **fixed price or cost reimbursable**
- Whether the award **involves federal funds**
- Whether the award is subject to the **Federal Funding Accountability & Transparency Act (FFATA)**

An email is acceptable in place of the form, provided that the email addresses all three issues above.

New Award or Amendment?

- If the contract involves a new purchase order number or a new award reference number, it is probably a **new award** and not an amendment.
- Pre-Award and Post-Award should discuss the reporting requirements.

Late Payment

- If the sponsor insists on including a late fee, the contract should include language like, "Assessment of any late fees will follow the rates and procedures outlined in LA RS 39:1695."
- If the sponsor needs to know the actual rates, we use the federal discount rate (currently 0.25) + 3.25

Audit Requirements

- Any vendor contract for services or goods must contain a provision to allow the **State of Louisiana** to audit the vendor, even if the contract is solely funded by a federal source.

Publication Rights

- We should not agree to any **limitations on publication rights** unless the contract is work-for-hire.
- Ultimately, the PI owns any copyright to an academic publication. The publication is theirs to give away. But we should at least make them aware of any clauses and **discourage** them from agreeing to any limitations.
- If there are **students** on the project, publication restrictions may impact their ability to **graduate**, if they need to publish their research in their thesis or dissertation.

Intellectual Property

The nature of the project/contract generally determines how we will approach intellectual property. IP terms are negotiable and the President or the Vice President of Research & Economic Development will have final approval.

Typically:

- If the contract represents a **work-for-hire** arrangement, the hiring party keeps 100% of any intellectual property.
- If the contract represents a **joint research** project, each party keeps what they invent independently; anything jointly created is jointly owned.
 - If the contract includes a joint-ownership clause, there needs to be language like “the parties must agree to licensing terms.”
 - Joint research projects that will likely result in commercializable intellectual property should have a separate Cooperative Research Agreement or Interinstitutional Agreement in place.
- Any pre-existing intellectual property that will be incorporated into the project should be disclosed in advance.
- Any pre-existing intellectual property that contains flow-down licenses (like open source or creative commons) should be disclosed in advance.

Confidentiality / Non-Disclosure

There are few statutory prohibitions against these clauses, but we should make sure that we do not agree to something with which we cannot realistically comply—so it is best to **avoid clauses that try to cover “all” communications about “all” topics “forever.”**

We must have language that limits the scope using something like the following:

- **Subject Matter:** “All communications related to ___ invention,” but this limitation must be realistic
- **Specially Marked:** “This agreement only applies to information labeled ‘confidential’”
 - Make sure they can’t retroactively mark something confidential (or at least, the ability to mark something confidential must be limited to within 24-48 hours)

There should be a **termination date** for the obligation, preferably within 2-5 years

The contract must contain a provision that allows UNO to comply with any **Freedom of Information Act (FOIA) requests**—e.g. “the recipient is allowed to disclose upon court order”

Watch out for “all,” “any,” “must,” and “shall” language

Once these agreements are in place, there’s very little enforcement from the discloser. We mostly need to make sure they cannot return years later and get us on a technicality.

Export Controls

The following language may indicate export controls. See [AP-RE-05](#) for more information.

- Export control
- Foreign national restrictions
- Publication restrictions
- Dual-Use technology
- International Traffic in Arms Regulations (ITAR) Listed
- Export Administration Regulations (EAR) Listed
- Department of Treasury, Office of Foreign Assets Control (OFAC)

Controlled Unclassified Information (CUI)

Controlled unclassified information is any information that requires safeguarding or dissemination controls but that is not classified.

Governance & Jurisdiction

Choice of Law

i.e., “This contract will be governed by the laws of the State of _____”

We cannot agree to be governed by anything other than **State of Louisiana** law.

Note: There may be references to governing laws hidden in other sections, such as Mediation, Arbitration, or Insurance requirements.

Solutions:

- The easiest solution is to completely strike this section and remain silent on the matter
- We *can* agree to comply with other rules, regulations, terms, standards, etc.—we just cannot agree to allow non-Louisiana law to govern a dispute

See [Louisiana Revised Statute 9:2778](#): “Public contracts, certain provisions invalid”

Choice of Venue

i.e., “We agree to submit to the jurisdiction of _____ court”

We cannot agree to submit to the jurisdiction of any court other than the **19th JDC in Baton Rouge**.

We also cannot agree to the phrasing “**or Federal Court**”—if the contract involves a federal-only area of law like patent validity, the venue will be settled during litigation. But some issues can be filed in state or federal court, and we cannot agree to federal courts.

Solutions:

- The easiest solution is to completely strike this section and remain silent on the matter
- We can agree to a non-specific term like “any court of competent jurisdiction”

See [Louisiana Revised Statute 9:2778](#): “Public contracts, certain provisions invalid”

See *Louisiana Administrative Code, Title 34, Part V. Chapter 31, § 3117*

See *Louisiana Administrative Code, Title 34, Part XIII. Chapter 17, § 1702*

Right to a Jury Trial

Waiving our right to a jury trial is allowed for contractual issues but not for torts.

While it may or may not be a good business decision to waive jury trials in contract disputes, the university could decide to agree. We cannot waive jury trials in tort claims because we do not own that right. All tort claims proceed through the Attorney General’s office and are covered through Office of Risk Management. Those entities own the right to waive a jury trial, not the university.

Solutions:

- The easiest solution is to completely strike this section and remain silent on the matter
- We can agree to something like “any dispute related to the terms or performance of this contract...” or “as to contractual claims...”

Mediation

Mediation is allowed for contractual issues but not for torts.

Solutions:

- The easiest solution is to completely strike this section and remain silent on the matter
- We can agree to something like “any dispute related to the terms or performance of this contract...” or “as to contractual claims...”

Note that Choice of Law clauses can be hidden in these terms.

Arbitration

We cannot agree to **binding arbitration**—this is basically the same thing as an alternate choice of venue. Non-binding arbitration follows the same rules as Mediation.

Note that Choice of Law clauses can be hidden in these terms.

Waiver of Subrogation

Only allowable for **Workers’ Comp** insurance—it is not allowable for any other insurance policies.

See [Louisiana Revised Statute 38:2915](#), “Prohibited provisions.”

Indemnification

We cannot indemnify **third parties** for their actions. All indemnification clauses must be limited to actions caused by our **employees** within the scope of their employment.

Watch out for the words “any” and “all” in this section.

Attorney Fees

We cannot agree to any clause that says anything like “in the case of a dispute, the loser pays the attorney fees of the winner.”

We can agree to pay for legal fees related to indemnification—including costs for production of documents and/or subpoenas.

Subawards

Contract Terms

- **End Date:** We prefer that the subaward end date is in the month prior to the award end date
- If the subaward is **fixed price**, ensure that this is allowed by the Prime Sponsor and compare all terms and conditions

Records & Compliance

- Verify that the **Subrecipient vs. Vendor** PDF has been uploaded to the Proposal Routing Form and that the results match what is listed in the contract in order to ensure reporting, monitoring, and F&A accuracy
- Compare the UNO proposal and the UNO award to the subaward draft contract:
 - Does the subaward need IRB, IACUC, or other **protocols** or assurance?

- Does the subrecipient need RCR **training**? Financial Conflict of Interest training?
- Can the subrecipient **meet these needs**, or do they need UNO assistance?
- We must have **all referenced documents** prior to approval
 - e.g., if the subcontract incorporates the terms from the prime contract, we must have the prime contract
 - Other necessary documents include statements of work, monitoring plans, appendices, etc.; all must be finalized prior to approval

Invoicing

- **Frequency:** Prefer no less frequently than **quarterly**, and no more often than **monthly**
- **Due Date:** The final invoice should be due within 30 days of the subaward end date, or within 60 days of the UNO invoice deadline—these dates may be different

Language for Negotiation

Find below some adaptable examples of language that can be used when negotiating with sponsors:

Choice of Law/Venue

_____ says “We prefer to keep the language as detailed in the prime agreement.” However, for UNO, it isn’t a preference. Louisiana law prohibits UNO from entering into an agreement governed by the laws of another jurisdiction other than those of Louisiana or where jurisdiction/venue is other than Louisiana. I don’t know of a remedy other than requesting a change in the wording to incorporate the terms and conditions of the prime agreement with the exception of section 15, b, regarding governing law. [insert statute language/link]

Subrecipient Monitoring Forms

With other Expanded Clearinghouse institutions:

Dear Colleague,

[MY Institution Name] and [YOUR Institution Name] are both participants in the [Expanded Clearinghouse](#), a [Federal Demonstration Partnership \(FDP\)](#) initiative that reduces the administrative burden associated with the exchange of subrecipient monitoring forms. As a condition of our participation, we agreed to utilize the Expanded Clearinghouse to obtain publicly available information rather than exchange forms.

As you may know, the Expanded Clearinghouse makes our data publicly available, including general institutional information, audit reports, rate agreements, contacts, registrations, certifications, and assurances. Furthermore, the data included in each profile has been certified by the appropriate Institutional Official, and a profile printout has proven sufficient documentation of information receipt. Therefore, please obtain at <https://fdpclearinghouse.org>.

For more information on this matter, please contact your institutional contact [YOUR Profile Contact], also copied on this email. Additionally, you may contact [OUR Contact Name] with any questions related to our profile, and [OUR Contact Name] to request any project-specific information not available in the Expanded Clearinghouse.

Thank you in advance for your consideration and cooperation.

With non-participating institutions:

Dear Colleague,

[MY Institution Name] is a participant in the [Expanded Clearinghouse](#), a [Federal Demonstration Partnership \(FDP\)](#) initiative that reduces the administrative burden associated with the exchange of subrecipient monitoring forms. The Expanded Clearinghouse developed a streamlined systems that makes participants' data publicly available, including general institutional information, audit reports, rate agreements, contacts, registrations, certifications, and assurances.

With this in mind, please obtain our institutional information by using the FDP Expanded Clearinghouse, located at <https://fdpclearinghouse.org>. Organizations are **not** required to be FDP members to access and utilize the data available in this online system. Furthermore, the information included in each profile has been certified by an appropriate Institutional Official, and a profile printout has proven sufficient documentation of information receipt.

Please contact [Contact Name] with any questions related to our profile, and contact [Contact Name] to request any project-specific information not available in the Expanded Clearinghouse.

Thank you in advance for your consideration and cooperation.

Changelog

Date	Change(s)	Changed By
8/9/21	Approved	Carol Lunn
8/10/21	Formatting	Julie Landry
8/11/21	Additions, revisions	Erik Wahl
7/8/22	Added pre-submission guidelines	Julie Landry & Carol Lunn
6/10/24	Added export controls	Julie Landry
9/3/24	General editing; added links to LA Revised Statutes; added language samples for contract negotiation	Julie Landry
10/4/24	Reformatting, CUI added	Julie Landry
11/18/24	Added language from Linda Clark regarding right to waive jury trial	Julie Landry
