

NU-RES Conference 2024

A Fork in the Road: NU-RES Contracts Process v. The Gatekeeper Process

June 12, 2024



Agenda

1. Introductions
2. Background and Overview of the Contracting Options at Northeastern University
3. How Do You Make the Call?
4. Important Differences Between Approaches
5. Questions



Introductions

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Background and Context

What is considered a contract?

Contract means any agreement, whether labeled “Contract” or not, between the university and another party or parties that creates an obligation on behalf of the university or a third party to the university.... The other party may be a person, corporation or other entity, including an employee of the university. A contract may or may not involve the payment of money.

Source: Northeastern University Policy on the Review and Approval of Proposed Contracts



Background and Context

- Who can sign a contract?
 - The President
 - The Vice President for Academic Affairs
 - The Chief Financial Officer
 - The Treasurer
 - The Assistant Treasurer
- **Any one of the above-named officers may delegate Signature Authority to another University employee provided that the delegation is in writing, that it defines the scope of the authority, and that it is on file with the Office of the Board of Trustees.**

Source: Northeastern University Policy on Signature Authority



Overview of Research Contracts at Northeastern University:

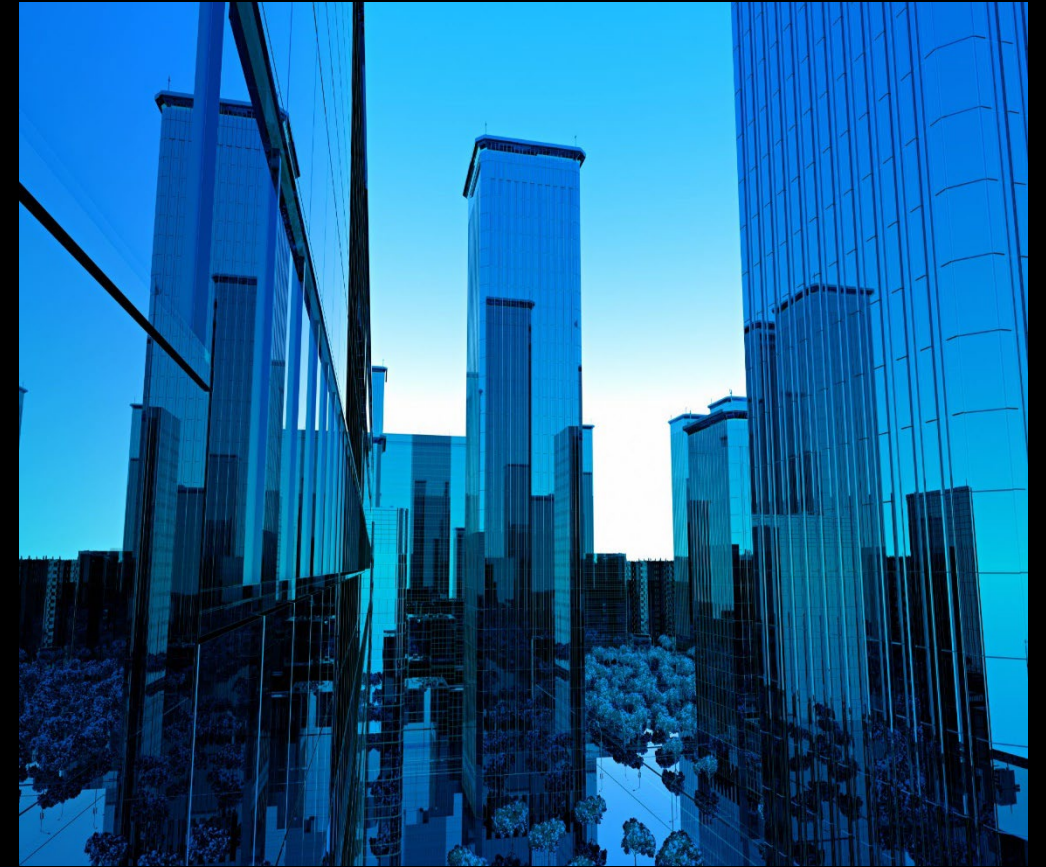
- an R-1 (highest) categorization from the Carnegie Classification of Institutions of Higher Learning indicating “very high research activity.”
- Over \$250.3 million in research funding in FY 2023-2024 to date
- 1,531 actions completed in eCLAWS through June 1, 2024.



Overview of Gatekeeper Contracts at Northeastern University



- 4,746 Gatekeeper agreements signed through May 2024.



How Do I Make the Call?

- Is it “Research”?

A systematic investigation, including research development, testing and evaluation designed to develop or contribute to generalized knowledge.

Source: 45 CFR 46 (The Common Rule)

- Also includes “Other Sponsored Activity”

Not organized research, but still benefits the general public. Activities may include health service projects, community service projects, etc.



How Do I Make the Call?

- Is it more of a “commercial” transaction?
 - Something offered to the general public under the same or similar terms
 - The contract serves to fill an operational or business need of the university
- If so, likely a “Gatekeeper” transaction
- Funding source does not determine submission route. If it fits the description above and is funded by a grant it should go through intellibuy. (ex. Consultant agreement as part of a grant goes through intellibuy)



Gatekeeper Workflow

- Majority of Gatekeeper request are submitted through Husky IntelliBuy
- Key functional roles are the “submitter” and the “Gatekeeper”
- Any proponent of the transaction can be a submitter. Each college or business unit has specifically designated Gatekeepers.



Gatekeeper Workflow

- What is a “Gatekeeper”?
 - A Gatekeeper is a person designated by a college or department as one of the individuals authorized to submit contracts for review and signature.
 - The role of the Gatekeeper is to serve as an operational and budgetary clearinghouse.
 - Submission of a contract by a Gatekeeper indicates to other departments (for example, the OGC and the Finance Division) that the department approves the action and, perhaps more importantly, is prepared to pay for any financial obligation that arises from the contract.



Gatekeeper Workflow

- Husky IntelliBuy contract request submitted by the proponent of the transaction (“submitter”)
- Request is routed to the college Gatekeeper
- Gatekeeper reviews and approves the request
- Gatekeeper then creates the contract in Intellibuy.
 - Majority of information in contract record is populated by data entered by submitter in the original request
- After the contract request is submitted OGC/Treasurers office will reach out to submitter and gatekeeper with any questions



Gatekeeper Workflow

- Gatekeeper Review and Consideration
 - Label document correctly

Note: The Contract Main Document (the attachment to be signed) is required. The file should be named in the following format: "FOR SIGNATURE_PG # - Vendor - Date".

PG # (ex. PG 5) indicates the page on which the signature line appears.

- Ensure documents are complete (payment info, addresses)
- For NU templates, ensure the version submitted is the most recent one
- Helpful hint: submit any previously approved agreements with vendor. This can help speed up the process



How Do I Make the Call?

- Factors to consider

1. Funding source-public or private (for profit)
2. Use of funding entity's proprietary information/materials
3. Does NU anticipate publishing the results of this work
4. Does the funding entity intend to prevent release of any of the results generated by NU or prohibit publication of any specific data / findings
5. Does the funding entity require that it owns the data/results/IP
6. Did NU faculty/students/staff contribute intellectually to the scope of work, or is it assigned by the other party
7. Are students participating in the work



Important Differences

- Very significant in terms of IP ownership
 - Research=Joint Ownership
 - Gatekeeper=Work for Hire



Important Differences

- To the extent Consultant or any Subcontractor generates, creates or develops: plans; materials; reports or results; documents; graphic elements, aesthetic qualities, “look and feel” and all other unique, novel and/or customized parts and aspects of deliverables not generally used or applied to similar products; computer software, in source code, object code and/or script form, and all related user, programmer and technical documentation, as well as all modifications and enhancements of any of the foregoing; text, photos, recordings or other materials of any kind or nature; and/or any other deliverables or any part thereof (collectively, “**Work Product**”) specifically for Northeastern in the course of supplying goods or performing Services under this Agreement, *such Work Product shall be deemed to be works made for hire and shall be the sole property of Northeastern.*

Source: NU Professional Services Agreement

- Sponsor will own all right, title and interest to intellectual property first conceived and reduced to practice and/or fixed in a tangible medium solely by Sponsor’s personnel. University and Sponsor will jointly own intellectual property first conceived and reduced to practice and/or fixed in a tangible medium jointly by University’s and Sponsor’s personnel during the term of and directly arising from the Research Project (“Joint Intellectual Property”). University will own all right, title and interest to intellectual property first conceived and reduced to practice and/or fixed in a tangible medium solely by University’s personnel during the term of and directly arising from the Research Project (“Project Intellectual Property”).

Source: NU Sponsored Research Agreement



Important Differences

3.1 INVENTIONS. The Parties do not anticipate that any inventions will result from the performance by the University of the Consulting Services. However, if the University conceives and reduces to practice any Inventions during its performance of the Consulting Services then: (a) all right, title and interest in and to Inventions conceived and reduced to practice through the University's access to the Confidential Information of Client provided in connection with this Agreement shall vest in the Client, provided however, that Client hereby grants to University an irrevocable, non-exclusive, fully-paid up license to use such inventions for the nonprofit, educational and/or research purposes of University, subject to the provisions of any applicable NDA; and (b) all rights, title and interest in and to all other Inventions shall vest in University. For purposes of this Agreement, the term "Inventions" means inventions or discoveries conceived and actually reduced to practice as a direct result of the performance of the Consulting Services, and resulting patents thereof, and patent applications therefor (and divisions, continuations, continuations-in-part, or substitutions of such applications).

Source: NU Fee-For-Service Consulting Agreement



Important Differences

- Publication is often restricted in Gatekeeper transactions
- Higher level approvals (SVPR) not required

(B) **Deliverables.** Company shall ensure that the Deliverables comply with all Applicable Laws of each jurisdiction in which Takeda will use such Deliverables. Company shall not post, publish or publicly disclose any Deliverables without ██████'s prior written consent.



Important Differences

- Indemnification is the norm in Gatekeeper transactions
- Not the same as Liability
 - Indemnification is an agreement to pay the other Party for losses or damage they have incurred



Important Differences

9. Indemnification.

(a) Each party (the “**Indemnifying Party**”) shall defend, indemnify and hold harmless the other party and its trustees, directors, officers, employees, contractors and agents (the “**Indemnified Party**”) from and against any and all claims, demands, suits, settlements, damages, losses, liabilities, costs and expenses (including, without limitation, reasonable attorneys’ fees) (each, a “**Claim**”) paid or incurred by, or asserted against, any Indemnified Party and arising out of or in connection with (i) the breach of this Agreement by the Indemnifying Party, or (ii) the negligence or willful misconduct of the Indemnifying Party or any of its officers, directors, trustees, employees, Subcontractors, representatives and/or agents, except to the extent such Claim arises from the negligence of any Indemnified Party.

Important Differences & Examples

- Jurisdiction and Venue
- Payment Terms
- Practical Examples

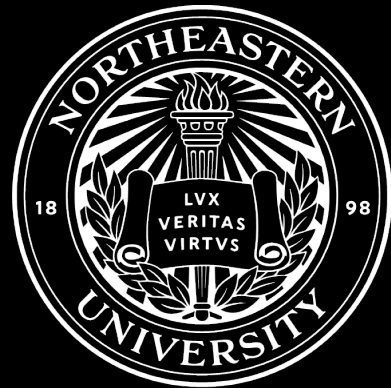


A few final thoughts.....

- Do NOT “forum shop.” It will delay the transaction
- It is almost certain that a PI cannot sign a contract
- Unrelated Business Income Tax (UBIT)
- Whenever possible try to steer the other Party to an approved template
- Approved templates can be found at:
<https://generalcounsel.northeastern.edu/contracts-transactions/approved-university-templates/>



Questions?



Northeastern
University