Concluding Collaborative Research Agreements and Service Mandates

The purpose of this DIRECTIVE is: (i) to determine the procedure for concluding collaborative research agreements and mandates with third parties; and (ii) to present the University’s recommendations regarding agreements to researchers.

This DIRECTIVE is an official translation of the DIRECTIVE 0283 « Conclusion des accords de collaboration en matière de recherche et des mandats de service » published on March the 20th, 2014 in the University of Geneva MEMENTO. In the event of inconsistency or discrepancy between the English and the French version of the Directive, the French versions shall prevail.

Summary

Preamble .................................................................................................................................................. 2
1. DEFINITIONS ..................................................................................................................................... 3
2. SCOPE .................................................................................................................................................. 4
3. GENERAL INSTRUCTIONS .................................................................................................................... 4
   3.1 Scope of action of the Legal Affairs Department, the Research Services and UNITEC ........ 4
   3.2 Procedure ......................................................................................................................................... 4
   3.3 Evaluation by the Accounting and Financial Management Division ............................................ 5
   3.4 Evaluation by the Legal Affairs Department, the Research Services or UNITEC ..................... 5
      3.4.1 Principle ..................................................................................................................................... 5
      3.4.2 Special case ................................................................................................................................. 5
4. GENERAL DUTIES ............................................................................................................................... 6
5. CONTENT OF THE AGREEMENT AND NEGOTIATIONS ................................................................. 6
   5.1 Content of the agreement .................................................................................................................. 6
   5.2 Estimated budget ............................................................................................................................... 7
   5.3 Financial compensation by third parties .......................................................................................... 7
6. SIGNING OF AGREEMENTS .............................................................................................................. 8
   6.1 Principle ........................................................................................................................................... 8
   6.2 Special case ....................................................................................................................................... 8
   6.3 Signature by the rector ....................................................................................................................... 8
   6.4 Counter-signature by project managers ........................................................................................... 9
   6.5 Dissemination of the agreement ....................................................................................................... 9
7. NON-COMPLIANCE WITH THESE GUIDELINES ............................................................................. 9
Preamble

Subject to Article 88, Paragraph 2 of the University Statutes, contractual commitments between the University of Geneva and third parties may only be undertaken by the rector. His or her jurisdiction may be delegated in line with the principles set out in a directive adopted by the rector’s office.

The purpose of the present Directive is to determine the procedure for entering into collaborative research agreements and mandates with third parties, and to present the University’s recommendations to researchers regarding contracts.

This Directive supplements the Directives regarding signing of orders, contracts or agreements in the name of the University. It is also supported by the recommendations of the Research Services on agreements relating to research programmes, as well as by the Directives regarding agreements on knowledge and technology transfers.

The interest shown by third parties in the research activities carried out at the University of Geneva, and the use of the knowledge of researchers, is regularly reflected in the conclusion of agreements with various titles (research agreements, mandates, collaboration agreements, consortium agreements, partnership agreements, etc.) and very diverse content.

The conclusion of an agreement on behalf of the University implies not only the agreement of the parties regarding the services to be carried out and their financing, but also reciprocal commitments concerning in particular intellectual property, confidentiality, the liability of each of the parties and the terms and conditions of any extension of the collaboration.
These clauses are no trifling matter, and neglecting them amounts to depriving the University, and the researchers themselves, of a vital protection. The omission of a clause on intellectual property, for example, may deprive the researcher of the possibility of enjoying the fruits of his or her work at a later date.

The obligatory evaluation of agreements, and their subsequent signing, are subject to temporal contingencies that third parties should be informed of. Far from being obstacles, these steps are necessary and create a greater degree of security and peace of mind in the contractual relations.

Close collaboration between researchers, the Legal Affairs Department, the Research Services, UNITEC (the office for technology and skills transfer) and the Accounting and Financial Management Division makes it possible to accelerate the signing process and, where applicable, propose solutions that take into account the interests of all the parties involved (the research interest, protecting the University and the researcher, and the interests of the third party).

The researchers' knowledge of the University's contractual recommendations and compliance with the procedure for concluding agreements may thus ensure that the conclusion process is swift and fluid.

Failure to comply with this Directive, which would be a source of risk for the University, may result in damages for which the researchers could be held liable.

Where doubts or difficulties arise regarding an agreement, it is recommended that all researchers make contact immediately with the Legal Affairs Department, the Research Services or UNITEC.

1. DEFINITIONS

Collaborative research agreement: any agreement between the University and a third party, where the third party and the University boast expertise in identical, similar or complementary fields, and agree to pool these skills within the framework of a research project.

Service mandate: any agreement involving a project carried out exclusively or mainly in the interests of the third party. The University's expertise or scientific infrastructure is harnessed, and the third party requests a defined service, particularly in terms of research or teaching (examples: expert assessments, advice, tests, measurements or analyses).

Agreement: for the purposes of this Directive, this term includes collaborative research agreements and service mandates.

Third parties: any person, physical or moral, private or public, with whom the University wishes to conclude an agreement.
Project manager: any faculty member or senior lecturer who ensures the proper execution of the commitments made by the University with regard to a third party within the framework of a particular agreement. For each agreement, a single project manager must be designated.

2. SCOPE

This Directive governs the conclusion of collaborative research agreements and service mandates entered into between the University and a third party, in accordance with Article 88, Paragraph 2 of the University Statutes.

3. GENERAL INSTRUCTIONS

3.1 Scope of action of the Legal Affairs Department, the Research Services and UNITEC

![Diagram]

1 Research programmes include the following programmes monitored by the Research Services: Swiss National Science Foundation (SNSF) programmes, European research and innovation framework programmes, and other European and international research programmes (Eureka-Eurostars, AAL, EDCTP, EMPIR, ESPON, ESA, INTERREG, NIH, NSF, etc.).

3.2 Procedure

The conclusion of an agreement must include and comply with the following steps:

- Determination of the services provided by each party;
- Evaluation of the estimated research or mandate budget by the Accounting and Financial Management Division;
- Preparation of the draft agreement in collaboration with the Legal Affairs Department, the Research Services or UNITEC (hereinafter the relevant department);
- Final evaluation of the draft agreement by the relevant department;
• Submission of the draft agreement by the relevant department to the vice-rector in charge of the administrative subdivision concerned, or the rector, for signature.

For agreements relating to a research programme, this procedure is supplemented by specific rules and recommendations issued by the Research Services.

3.3 Evaluation by the Accounting and Financial Management Division

Project managers must draw up a budget estimate and have it evaluated by the Accounting and Financial Management Division prior to the draft agreement being sent to the vice-rector or rector.

The evaluation by the Division focuses on the budgeting of costs incurred for implementing the draft agreement. This is based on the full cost principles defined in Section 5.2 of this Directive.

The evaluation does not concern the allocation of funding between the parties to the agreement. The allocation between the University and the third party for meeting the full cost must be approved by the supervisor or project manager prior to signing the agreement.

The evaluation by the Accounting and Financial Management Division gives rise to a notice that the project manager must attach to the agreement for signature by the vice-rector or rector.

Project managers are encouraged to seek the support of the Accounting and Financial Management Division as soon as possible and, at the latest, before entering into negotiations with third parties regarding the financing of the costs linked to carrying out the research project or service mandate.

3.4 Evaluation by the Legal Affairs Department, the Research Services or UNITEC

3.4.1 Principle

A prior evaluation of each draft agreement must be carried out by the relevant department before being sent to the vice-rector responsible for the relevant administrative subdivision or to the rector.

Negotiations are carried out by the project managers, who are encouraged to request the support of the relevant department from the beginning of the contractual discussions with the third party.

The relevant department then decides to complete the negotiations in the most pragmatic way in collaboration with the project leaders.

3.4.2 Special case

Service mandates that are based in their entirety on a standard agreement that has been previously evaluated by the relevant department and validated by the rector’s office do not require additional contractual evaluation when the contribution of the third party is below CHF 10,000.
4. GENERAL DUTIES

In all agreement negotiations, project managers ensure that:

a. The interests of the University are respected, including in terms of its image;
b. The commitment fits in with the University's teaching, research or service missions;
c. The University's code of ethics is respected;
d. The full costs of the project are evaluated (for the concept of full costs, refer to Section 5.2);
e. The University has the skills, infrastructure and financial resources necessary for the satisfactory performance of the services provided for in the draft agreement;
f. The University can carry out the agreed services within the time limit provided for in the draft agreement;
g. The third party is informed about the existence of the signing process and temporal contingencies that it may involve;
h. Any firm promise of commitment to the third party is avoided;
i. Discussions with the third party are conducted in a climate of trust and good faith;
j. Any potential conflict of interest has been announced in due time in accordance with the provisions of the Directive on Financial Conflicts of Interest;
k. The principles relating to the determination of third-party consideration are respected (see Section 5.3).

Project managers must also have requested and obtained the necessary authorisation for animal testing or the authorisation of the competent ethics commission – Commission cantonale d'éthique de la recherche (Cantonal Commission for Research Ethics) or Commission universitaire d'éthique de la recherche (University Commission for Research Ethics) – for research with human participants.

5. CONTENT OF THE AGREEMENT AND NEGOTIATIONS

5.1 Content of the agreement

The particular circumstances of each contractual relationship affect the content of the agreement.

In all cases, the protection of the University’s interests and the interests of its employees requires that particular attention be paid to issues relating to:

- Details of the services to be provided by each of the parties and their financing;
- Intellectual property rights;
- The use of data at the end of the draft agreement;
- The right of publication;
- Liability;
• The warranty given by the University;
• Data and information confidentiality;
• The duration of the draft agreement and its eventual termination;
• Jurisdiction and applicable law.

The absence of clauses addressing these issues or inadequate wording may represent a significant risk for the University, which is likely to refuse the conclusion of the agreement.

Paragraph 8 of this Directive sets out the University's recommendations regarding the content of these essential clauses.

5.2 Estimated budget

An estimated budget for the duration of the agreement is drawn up by the project managers. This budget is intended to determine the full cost of the research project or service.

An Excel file, used to evaluate this full cost, is made available to the project managers.

The full cost is made up of direct costs (the cost of staff assigned to the project, the cost of supervisory staff, the direct operating costs and the direct costs related to the use of expensive equipment and premises) and administrative support costs (HR support, IT, financial, legal, etc.).

Project managers identify the nature of the direct costs generated by their project. Administrative support costs are calculated automatically on the basis of the costs of staff assigned to the project and direct operating costs at a rate of 10%.

The estimated budget is sent for evaluation to the Accounting and Financial Management Division in accordance with Section 3.2 of this Directive.

5.3 Financial compensation by third parties

When the financial compensation due by the third party takes the form of a price, it is determined by taking into account the amount of the full cost and any contributions to the financing granted by the University (contributions in kind).

Project managers ensure that the commitment does not result in a situation of unfair competition with private research groups.

The price also includes VAT where applicable. VAT is calculated on the part of the costs borne by the third party. A table summarising the cases in which VAT must be calculated is made available to the project managers, who are also invited to contact the relevant accounting unit if necessary.
The currency must be specified. Where the third party requires payment in a currency other than Swiss francs, the allocation between the parties of the foreign exchange risk should be settled in the agreement. Where this is not stated, the risk is assumed by the project manager.

It is advisable to require the third party to pay a deposit equal to at least one-quarter of the total price, payable upon signature of the agreement or when the agreement enters into force.

The payment of the balance should be staggered at intervals based on the different phases of execution of its own services by the University.

If a payment plan is provided by the parties, it must be mentioned in the agreement or attached to it.

Depending on the type of third party with whom the agreement will be concluded, an amount will be added to the amount owed by the third party in accordance with the Collecting overheads procedure (Ref. 0041) and paid into the University Strategic Reserve Fund.

6. SIGNING OF AGREEMENTS

6.1 Principle

The agreements are signed by the vice-rector in charge of the relevant administrative subdivision or by the rector, and counter-signed by the project manager.

6.2 Special case

Service mandates based in their entirety on a standard agreement previously evaluated by the relevant department and validated by the rector's office (see Section 3.4.2) are signed, when the contribution of the third party is below CHF 10,000, within the faculties, by the director of the department or the chair of the section, and, within inter-faculty centres, by the director of the centre. They are counter-signed by the project manager. A copy of the agreement, duly signed, is sent to the relevant department.

6.3 Signature by the rector

When the relevant vice-rector considers it necessary, or when UNITEC, the Research Services or the Legal Affairs Department is of the opinion that an agreement presents a very high risk, it is submitted by the vice-rector for the signature of the rector, after consultation with the rector's office.
6.4 Counter-signature by project managers

The agreements must be counter-signed by the project managers, who thereby certify, in relation to the University, that they have the skills, financing and infrastructure needed for the satisfactory and timely fulfilment of the commitments stipulated in the agreement.

By signing, the project managers also attest to having received the approval of their supervisor.

6.5 Dissemination of the agreement

The agreement is signed in as many copies as there are parties. One original copy of the agreement, signed by the parties and counter-signed by the project manager, is forwarded to the relevant department (Legal Affairs, Research or UNITEC).

The relevant department sends a copy of the agreement:

- to the project manager, who forwards a copy to the dean or director of the inter-faculty centre for information.
- to the Human Resources Division when the agreement has implications for the engagement of University employees.

7. NON-COMPLIANCE WITH THESE GUIDELINES

7.1 Sanctions

Any employee who contravenes this Directive may be subject to disciplinary sanctions.

The omission of the counter-signature of the vice-rector or rector is considered an intentional violation of the obligations of service or function.

7.2 Liability

If the University suffers a loss due to non-compliance with this Directive by one of the project managers, the latter shall be held responsible and the University may take action against them.
8. RECOMMENDATIONS REGARDING AGREEMENTS

The recommendations below are guidelines whose purpose is to protect the interests of the University and its employees.

The more an agreement diverges from these recommendations, the greater the potential risk of its signing to the University.

a) Designation of the parties

The University is designated as follows in all agreements:

*The University of Geneva, represented by the [relevant rector or vice-rector], Rue du Général-Dufour 24, 1211 Geneva 4, and by [name of the project manager and the subdivision to which he or she is attached].*

The identity of the third party is described in as much detail as possible. The full address of the third party and the name and function of the signatory of the agreement are to be included.

b) Intellectual property rights

In order to limit any subsequent conflicts with the third party as much as possible, it is important to clarify the issue of who owns the intellectual property rights and the possible terms and conditions for exploiting these rights (transfer of patents, licences, copyrights, etc.).

The allocation of intellectual property rights between the University and the third party depends largely on the object of the agreement, together with the type of agreement, its financing and the expectations of the third party regarding the results requested of the University.

The agreement with the third party must not restrict the future activities of the University in the fields of research and teaching.

In some cases, it is possible to foresee that the University and third party will agree on any intellectual property rights by means of subsequent written agreements.

In the event of the transfer of the exclusive rights to exploit an invention to a third party, it is important to define in the agreement the stages of how it will be commercialised by said third party. The agreement should provide that, in the event of non-compliance with these steps, the University has the right to offer the development of the invention to other partners.
c) Use of data at the end of the agreement

The University should be given the opportunity to use the data and knowledge acquired in the performance of the agreement after it has ended.

This use must at least be possible in the context of internal research and teaching activities at the University.

d) Publication rights and dissemination of results

The agreement must guarantee the University the right to disseminate the results and knowledge obtained during the execution of the agreement and, more particularly, to publish them without prejudice to copyrights.

The question of the publication of the report or reports requested by the third party must be settled in the agreement.

The third party sometimes requires notification about plans to publish or disseminate the results arising from the execution of the agreement. Such a right may be granted, provided that it does not deprive the University of the opportunity to disseminate the results and that it does not delay this dissemination without valid reason.

Under no circumstances may this right give the third party the opportunity to request modifications that may affect the scientific value of the publication or its dissemination.

Only requests for modification arising from usage, and which relate to the following, may be taken into consideration:

- Information or data considered confidential by the third party,
- Information or data whose immediate publication would have a negative impact on the filing of any patents or licences,
- Information or findings that are manifestly incomplete or misleading.

Furthermore, a maximum period of three months should be provided for the third party to give its opinion. After this period, the project manager must be able to proceed with the steps for publication or dissemination.

e) Liability of the University

Damage may occur when the University performs its services. The rules on liability describe the cases in which the University may be required to answer for this damage.
The drafting of the liability clause must be thoroughly thought-out, especially when the third party is located abroad; the terms of liability and damage do not cover the same concepts in different countries, and it is advisable to avoid any misunderstanding.

In all cases, the liability of the University should be limited to situations where the damage arises from an intentional act (wilful misrepresentation) or gross negligence on its part in the performance of its service.

When the third party reserves the right to give instructions during the execution of the agreement, the liability of the University should be excluded if compliance with these instructions leads to damage.

The clause limiting the liability of the University may be worded as follows in agreements written in English:

*The University of Geneva shall be responsible solely for claims or damages resulting from its gross negligence or wrongful acts arising out of the performance of this agreement (direct liability).*

*The University shall not be liable (indirect liability) to the other Party for any damages, costs or expense, whether special, indirect, incidental, consequential, exemplary or punitive damages, regardless of the form of action, including in agreement or in tort or negligence.*

**f) Warranties given by the University**

When the University commits to deliver a result to the third party, it can only guarantee that it is in accordance with the initial expectations of the third party, as described in the agreement.

On the other hand, the University cannot give any warranty related to any other characteristics of the result or its use. Indeed, the University has no control over the use that the third party will make of the result delivered to it.

When the University uses data transmitted by a third party, the agreement must also expressly exclude any warranty as to the completeness and accuracy of this data.

The clauses on the warranty disclaimer may be written as follows in English:

*The University of Geneva makes no warranty or representation, expressed or implied, with respect to the performance, merchantability, efficiency or fitness for a particular purpose (outside the scope of this agreement) of the results generated during the execution of this agreement.*

*When using data collected by the other party or by a third party, the University of Geneva makes no warranty or representation, expressed or implied, that such data are correct, sufficient and complete.*
g) Data confidentiality

Each party must undertake to respect the confidentiality of the data and information that may be known to it during the execution of the agreement. This must specify what data and information is considered confidential.

The confidentiality clauses have a relatively standard content, which may take the following form:

*Each party agrees to keep confidential all data and information belonging to the other party, with which they may come into contact during the course of the project, to disclose it only to its staff on a “need to know basis”, and not to disclose it to any third party without the prior consent of the other party, nor use it for a purpose other than for the project.*

Such obligations shall not apply to any information or data that:

- at the time of disclosure or subsequently, are published or otherwise generally available to the public other than through any act or omission on the part of the receiving party; or
- are in the receiving party’s possession, without any limitation regarding their disclosure at the time they were transmitted to the receiving party, or
- are obtained in good faith by the receiving party and without any commitment relating to confidentiality from a third party entitled to disclose it
- are independently developed by the receiving party without reference to the information or data received from the disclosing party.

h) Duration of the agreement and possible termination

The duration of the commitment made by the University must be specified in the agreement. It is not enough to stipulate that it will end as soon as the services have been performed, since such information is too vague.

It is possible to provide for the renewal of the agreement or its extension. The agreement must then specify that the renewal or extension may take place only by written agreement between the parties.

Automatically extending or renewing the agreement is not acceptable.

Depending on the circumstances, especially when the duration of the agreement exceeds six months, it may be advisable to provide for clauses that allow the parties to terminate the
agreement before expiration. Such clauses must be discussed with the third party, taking into account the object of the agreement and the commitments made by the University.

i) Jurisdiction, applicable law and arbitration solutions

The jurisdiction clause designates the courts in which any dispute between the parties must be brought. In addition, there are often rules defining the right to which the agreement itself is subject.

The University wishes, as far as possible, that these issues be dealt with as follows:

This Agreement is governed and construed in accordance with the laws of Switzerland, excluding conflict of law rules.

If any dispute or difference arises in connection with this Agreement, the Parties will negotiate in good faith to resolve it. If no amicable solution is found, any dispute, controversy or claim arising out of or in connection with this Agreement is subject to the exclusive jurisdiction of the Geneva courts.

In certain circumstances, the parties may consider submitting their disputes to the discretion of an arbitrator. It is then advisable to contact UNITEC, the Research Services or the Legal Affairs Department to draft the rules for any arbitration.

Note: This Directive come into force on the day of publication