

# Key Research Agreement Terms & Definitions

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Below are basic definitions of some common terms that come up when negotiating grant agreements. The precise legal meaning of these terms will vary from contract to contract. Our goal in creating this resource is to provide a useful point of reference before engaging with legal counsel.

- **Bayh-Dole Act:** Codified at 35 U.S.C. § 200 et seq., the Patent and Trademark Law Amendments Act of 1980, more commonly known as Bayh-Dole, shifted the ownership of inventions created with federally funded research. Before Bayh-Dole, inventors were obligated to assign inventions made using federal funding to the federal government. Bayh-Dole permits a university, small business, or nonprofit institution to elect to pursue ownership of an invention in preference to the government. (Source: 35 U.S.C. § 200 et seq.)
- **Commercially Reasonable Efforts (may be referred to as “meaningful work”):** This term does not lend itself to a precise definition, so it is important to consult with legal counsel and communicate with your counterpart to ensure you have a mutual understanding of how this term operates in a particular agreement. As a general concept, however, this term refers to the level of effort that a “reasonable” person or business would devote to the research and development of a particular product.
- **Confidential Disclosure Agreement (CDA):** Also known as a non-disclosure agreement, a CDA is a legal contract between at least two parties where the parties agree to protect the confidentiality of certain information, such as confidential research, financial information, or trade secrets, that may be disclosed as part of the working relationship between the parties.
- **Consortium:** A partnership framework that provides a neutral and temporary collaborative working environment for several, oftentimes competing, organizations and leverages the aggregated intellect and resources of stakeholders to create consensus solutions to common research and development challenges.
- **Copyright:** Protects only the form of expression of ideas, not the ideas themselves. Copyright protects the owner of rights in artistic works against those who “copy,” that is to say those who take and use the form in which the original work was expressed by the author. (Modified from [WIPO Intellectual Property Handbook](#))
- **Direct Costs:** Expenses that can be attributed directly and accurately to a particular sponsored project (e.g., salaries, benefits, equipment, and supplies). (See [UIDP Costs & Value of Sponsored Research](#))
- **Facilities & Administrative Costs/Indirect Costs/Overhead:** Expenses that cannot be directly attributed to a particular project (e.g., labs, classrooms, offices, libraries, office supplies,

departmental administrative staff, utilities, maintenance, and research administration staff and offices).” (See [UIDP Costs & Value of Sponsored Research](#))

- **Field of Use:** A field of use license is a license to rights in intellectual property that is limited to a defined use and provides the licensor greater control over the use of intellectual property. A field-of-use license does not have the right to all uses of the licensed technology. Such a licensee can avail only a subset of those uses. The scope of the license could be limited by a general field of use or a very specific field of use and the licensor has freedom to work with other companies on other uses. (Source: [USLegal.com](#))
- **Freedom to Operate:** For a given product or service, at a given point in time, with respect to a given market or geography, no intellectual property (IP) from any third party is infringed. (Source: [ipHandbook](#))
- **Gift:** Something of value provided by a donor to a university done with no or few conditions on use, with no expectation of direct benefit to the donor and with little accounting to the donor by the university for use of the gift beyond stewardship. The essence of a gift is the donative intent of the donor. (Modified from [UIDP Contract Accord 11](#))
- **Indemnification:** Indemnity is defined by Merriam-Webster as “a promise to pay for the cost of possible damage, loss, or injury.” An indemnity agreement, sometimes called a “hold harmless agreement” is a provision where one party agrees to indemnify, or hold harmless, the other party for damages that might arise in connection with the agreement.
- **Intellectual Property:** A legal term that refers to creations of the mind. Examples of intellectual property include music, literature, and other artistic works; discoveries and inventions; and words, phrases, symbols, and designs. Owners of intellectual property are typically granted certain exclusive rights. Some common types of intellectual property rights (IPR) include patents and copyright. (Source: [Wikipedia](#))
- **Invention:** Different institutions may approach the technical definition of “invention” in different ways. However, the United States code defines patentable subject matter as “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” 35 U.S.C. § 101. In general, a complete invention is formed when it has been conceived (thought of) and reduced to practice (made real).
- **Interruption License:** A license given to the grantor at the time of the award that remains dormant unless an “interruption” occurs. An interruption is usually defined as a cessation of commercially reasonable efforts to develop a commercial product for a specified period of time. If the interruption license is triggered, the original grantor obtains the right to develop the intellectual property, usually through another commercial partner. (Modified from Schaner & Lubitz, “[The Importance of an Interruption License](#).”)
- **License:** A private grant of the right to use some intellectual property such as a patent or musical composition. (Source: [law.com](#))

- **Exclusive License:** License where only the licensee has the right to make use of the intellectual property.
  - **Non-Exclusive License:** Licensor remains free to exploit the same intellectual property and to allow any number of other licensees to also exploit the same intellectual property.
  - **Sub-licensable License:** A license that is capable of being sub-licensed (licensed by the original licensee).
  - **Research-only License:** License where the licensee is permitted to use the intellectual property for research purposes only.
- **Materials Transfer Agreement (MTA):** A contract that governs the transfer of tangible research materials such as reagents, animal models, or tissue samples between two organizations, when the recipient intends to use it for his or her own research purposes.
  - **Patent:** A set of exclusive rights granted by a sovereign state to an inventor or assignee for a limited period of time in exchange for detailed public disclosure of an invention. ([WIPO Intellectual Property Handbook](#))
  - **Pre-competitive research:** Although a concept that is difficult to define, at its most basic, pre-competitive refers to early stages of the research and development, during which competitors might be more willing to collaborate. The basic biology, the understanding of disease, biomarkers of prognosis, and even drug responses all can be areas of precompetitive R&D. (Source: [NCBI](#))
  - **Publication:** The release into the public domain of research results, usually in a scientific journal.
  - **Research Results/ Tangible Research Results:** The end products of a research project. Results that may be generated, developed, or produced in the performance of sponsored projects include:
    - Intangible research results such as, but not limited to, undocumented findings, conclusions, methods, techniques, and know-how;
    - Tangible research results such as, but not limited to, findings, raw data, or information recorded in any medium, samples and prototypes, chemical intermediates, biological materials, etc. (Source: [UJDP Contract Accord 4](#))
  - **Royalty:** A usage-based payment made by one party (the licensee) to another (the licensor) for the right to ongoing use of an asset.
  - **Scientific Failure:** Failure to achieve the primary project endpoint(s) identified in the research proposal or protocol, despite the exercise of reasonable and good faith research and development efforts. This is distinct from a failure to commercialize. It might be invoked in a contract as a decision point regarding further project funding.

- **Trade Secrets:** Information that provides a key economic advantage to its owner and for which reasonable measures of secrecy are maintained, typically in perpetuity. ([UIDP Contract Accord 9](#))