

Risk Assessment in the Negotiation of Contract Terms

As of 8/27/18 and subject to change

All events at Shirley Ryan AbilityLab, unless otherwise noted.

Wednesday, September 12, 2018	
7:00 – 8:30 AM	Workshop Check-In and Registration
8:30 – 8:40 AM	<p>Welcome and Overview <i>Elizabeth Adams, Princeton, and Steve Harsy, Arizona</i></p> <p>Research contracting offices in universities and companies play an increasingly important role in helping their organizations achieve ambitious goals to grow and diversify collaborations, as well as respond to opportunities with maximum efficiency and nimbleness. To succeed in the current highly competitive environment, offices must have the tools to address uncertainty and risk, from well-established challenges, to new and unclear regulations, to the ongoing specter of penalties, audits, and other unfavorable outcomes. Risk assessment in the negotiation of contract terms has become a critical organization activity, ultimately ensuring connectivity between an organization’s research strategies and its operations.</p>
8:40 – 9:10 AM	<p>Assumption of Liability <i>Lead: Matt Bartman, Carnegie Mellon</i> <i>Discussant: Charles Adelsheim, Varian Medical</i></p> <p>As the amount of applied work in collaborations between university and industry grows, increasing time in contract negotiations is being spent on terms associated with avoiding liability. Each party seeks to insulate itself from unforeseen liability through indemnification and other provisions that may or may not be necessary, based on the risk associated with activities under the agreement and use of deliverables. This session will review approaches to the allocation of risk in various types of agreements.</p>
9:10 – 9:40 AM	<p>Risks and Costs of Litigation <i>Lead: Gaylene Anderson, Boehringer Ingelheim</i> <i>Discussant: Elizabeth Adams, Princeton</i></p> <p>Litigation resulting from a research contract between universities and industry is rare. Nevertheless, much time may be spent negotiating terms governing how litigation will be managed in the event of negative project outcomes. With this in mind, this session will offer practical tips addressing how to assess risks associated with terms such as venue, governing laws, and arbitration.</p>
9:40 – 9:55 AM	BREAK
9:55 – 10:25 AM	<p>Guarantees and Warranties for Deliverables <i>Lead: Darin Bartholomew, Deere</i> <i>Discussant: Robin Beach, Illinois</i></p> <p>Universities have traditionally operated on a “reasonable efforts” basis with respect to deliverables. As university-industry engagements tend toward commitments to specific deliverables, especially in service-type agreements, contractual attempts to “de-risk”</p>



	<p>collaborations include increasing use of guarantees and warranties for deliverables. This session will address the range of approaches that reasonably can be taken to increase certainty on the matter of deliverables as well as accept greater levels of uncertainty.</p>
10:25 – 10:55 AM	<p>Risk of Loss of Intellectual Property Rights <i>Lead: Charles Adelsheim, Varian Medical</i> <i>Discussant: Steve Harsy, Arizona</i></p> <p>Negotiations over rights to intellectual property are a frequent roadblock. Companies and universities have standard positions that can be too universally applied, without adequate consideration given to what outcomes are likely, and how carefully IP rights must be apportioned to protect the interests of each party, in the context of the likely outcomes of the activity under consideration.</p>
10:55 – 11:10 AM	BREAK
11:10 – 11:40 AM	<p>Risk of Loss of Confidentiality of Information <i>Lead: Steve Harsy, Arizona</i> <i>Discussant: Darin Bartholomew, Deere</i></p> <p>In many university-industry engagements, perspectives on confidentiality are diametrically opposed: companies would like to see work done in confidence, invisible to their competitors, and universities; ultimate goal is to tell the world what they have done. In reality, individual engagements are more nuanced. Companies may not be so negatively impacted by release of information, and universities may be able to tolerate some limitations without harm to their mission. This session will focus on how to establish reasonable parameters based on thoughtful assessment of the activity.</p>
11:40 – 12:10 PM	<p>Financial Exposure and Cash Flows <i>Lead: Robin Beach, Illinois</i> <i>Discussant: Gaylene Anderson, Boehringer Ingelheim</i></p> <p>A “pay upon delivery” model that works in private sector transactions is generally not a comfortable fit at a university, where upfront payment is the norm, as set by the model for federal grants. Payment schedules, milestones, and termination clauses can subject each party to varying degrees of financial exposure. Strategies to help in assessing financial risks for various types of engagements will be discussed.</p>
12:10 – 12:30 PM	Wrap Up