

NONSTANDARD (PREVIOUSLY CALLED "BAD") TERMS

In some circumstances, when the intellectual property terms of a sponsored contract deviate from the accepted policies or practices of the University, DRDA will route what is commonly known as a "bad" terms memo. Recently DRDA changed the name of this process to NONSTANDARD TERMS. This avoids the inadvertent connotation that the agreement should not be accepted.

Once the DRDA representative identifies an area of concern in a contract and concludes that further negotiation will not change the intellectual property terms, he/she will contact the PI to get his/her approval to accept the altered terms. The standard practice is for DRDA to then send a form letter to the PI (typically by email). The PI prints and routes the letter for signatures of the Chair and Associate Dean for Research. **Please note** that for the Medical School the entire process is done via email approvals in lieu of signatures for the PI and Chair. The Associate Dean then signs on behalf of the school and faxes the form letter back to the DRDA representative. Connie Bridges is your contact in the Medical School for facilitating nonstandard terms approvals.

Why does DRDA require this memo?

The purpose of the memo is to allow the University to accept the agreement with the full understanding of all parties that the intellectual property terms are less favorable to the University and investigators than terms contained in similar agreements. It could mean that the University will not be able to exploit an invention that may arise in the course of the project.

Examples of issues that require a memo are:

- The sponsor is granted an exclusive royalty-free license, or is assigned the intellectual property rights in situations where there is a potential for intellectual property. (**Please note** that DRDA now accepts these terms without processing a memo when the contract is for a multi-site, sponsor-initiated clinical trials.)
- The agreement requires the University to absorb all patent costs.
- The agreement grants the sponsor a non-exclusive royalty-free license with the right to sublicense.

What about Nonstandard Terms in Material Transfer Agreements?

DRDA commonly negotiates unique terms on Material Transfer Agreements after consultation with the investigator(s) and review of the terms contained in any other sponsored research that may be related. Memos are much less commonly required.

What is a PAF-R and how is it different than a Nonstandard Terms Memo?

Some restrictions on contracts involve constraints on publication or participation of foreign nationals. These terms reach a higher level of concern and require a PAF-R (for

Restriction). PAF-Rs are prepared by the department/PI. The Chair and the Associate Dean for Research must sign the memo and each must include a letter of explanation before routing to DRDA. DRDA representatives often provide input and advice in the preparation of a PAF-R. Final approval of a PAF-R rests with the Vice President for Research who periodically reports them to the Regents. The most common reason for a PAF-R is to accept a contract where the sponsor requires prior approval before publication.

The PAF-R policy and procedure is described on the DRDA website: (http://www.research.umich.edu/policies/um/Regents_policy.html).