



## Office of the Vice Provost for Research

### MEMORANDUM

**To:** Faculty  
**From:** Dawn Bonnell  
**Date:** January 29, 2020  
**Subject:** Managing Challenges Associated with International Collaborations

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As the national security concerns over some types of international collaborations increase, we have been developing programs and tools to support faculty global engagement (*Global Engagement Tool* <https://research.upenn.edu/resources/international-partners/> *Global Engagement Guidance Document* <https://research.upenn.edu/resources/international-partners/guidance/>). Penn's goal is to enable international teaching and collaborative research in an open science environment, while educating the faculty and students about Penn's policies, legal requirements, ways to minimize the risks and possible unintended consequences arising from engaging in these potentially beneficial global opportunities.

There have been several recent public reports of investigations of international research relationships, such as that at Moffitt Cancer Center reported recently in *Science* (<https://www.sciencemag.org/news/2020/01/moffitt-cancer-center-details-links-fired-scientists-chinese-talent-programs>), as just one example. These articles illustrate some of the potentially problematic aspects of international teaching and research engagements that can lead to legal consequences, sometimes including indictments.

Many of the pitfalls are associated with terms in an employment, visiting scholar, or visiting researcher agreement, between a faculty member and an international institution. Other agreements, such as extramural activity or consulting agreements, also may contain terms that are potentially problematic. Some terms in these agreements would not be allowed under Penn's policies, while others might be accommodated. Potentially problematic terms include:

- Titles such as Department or Center Chair
- Time commitment of 2-3 months for full time Penn faculty
- Requirement to keep the contract confidential such that the school cannot approve it
- Provision of lab space and funding that might constitute a 'shadow lab' if not managed appropriately and disclosed to federal agencies
- Contractual requirements for publications and speaking engagements
- Inappropriate intellectual property assignment

A more complete list of issues related to these agreements is attached, along with recommendations and helpful resources.

If you have any concerns or questions regarding agreements in your current research portfolio or anticipated new collaborations, contact your department chair and/or the relevant contacts listed below. In particular, you should review your research agreements with colleagues in sensitive countries.

Penn's policies require faculty to seek advance approval before agreeing to participate in an international teaching or research engagement, and require disclosure annually of all outside activities, including global engagements. Disclosures are also required on an ongoing basis to federal agencies providing you with research support.

**Consideration of Certain Common Terms seen in  
Faculty Individual Academic Engagement Agreements with International Institutions  
("Employment Agreements"; Visiting Researcher Agreements; Extramural Activity Agreements; etc.)**

Full-time faculty members usually should not sign an "employment agreement" with another institution, since they are employed by Penn. The terms in an international institution's "employment agreement" could adversely affect many aspects of the employment relationship with Penn, including employee benefits, health benefits, and tenure, and also cause unexpected personal tax liabilities. Faculty members should be advised to consult their own lawyer or tax adviser before signing any contract. They should use the University's resources available to review the draft agreement to advise you whether it complies with Penn's policies.

A faculty member teaching or doing research at the international institution might be given the title Professor, Chair Professor, or Chair of a Center. This could be a conflict of professional commitment, depending on the expectations of the School, and may need approval within Penn, before being agreed upon.

An international institution may propose an agreement with a Penn faculty member to teach and/or research at an international institution for 2 or 3 months per year, or more. This may violate Penn's policy on conflict of commitment if the faculty member has a 12 month appointment at Penn. The commitment would need to be disclosed to funding agencies as part of numerous federal conflict of interest and award reporting obligations. It also has implications for effort reporting, grant proposal submissions, and compliance with funding agreements. If Penn or the faculty member reports his/her effort incorrectly, the government may question whether a misrepresentation, fraud, or a false claim for payment has occurred.

Sometimes an international institution proposes a requirement that the agreement and its terms be kept "confidential." If this restriction requires the faculty member not to disclose the existence and terms of the agreement with his/her department chair or dean, or to federal agencies, then the agreement would violate Penn policy (and, potentially, federal law), and should not be entered into. A faculty member must be able to report outside activities, and teaching and research outside of the U.S., to Penn and federal funding agencies when required.

The international institution may provide a visiting researcher with lab space and research assistance. This may be acceptable, but this also may constitute a 'shadow' lab, if the research work done at the international institution's lab is not substantially different from the research work at Penn. Federal funders may consider research conducted at a "shadow lab" to be problematic if the funder has funded similar work at Penn, or if the faculty member doesn't disclose the work being done at the "shadow lab" for the government to consider when making funding decisions.

Conducting research at an international institution also presents complicated intellectual property issues, which is why a visiting researcher agreement always should be put in place after review by the appropriate University and School personnel.

Agreements may contain vague language such as 'all teaching and research achievements during the term of the contract are related to the international university employment'. In this example, attributions for achievements are not limited to the work done in that country or the time the faculty was in the country. This often can be resolved with revised, more specific language that clarifies expectations on both sides.

Agreements may have a requirement that the Penn faculty member deliver international seminars identifying him/herself as a Professor of the host university. While an investigator or faculty member can and should recognize support and interaction at the host university, they should not be required to speak and identify only on behalf of the host university during the time they are a part time visiting scholar.

Some agreements require that publications must list the international host university as the first author institution. This term may be acceptable, if the publications pertain to work done primarily with host university support, but problematic if there is pressure that all collaborative work list the host university first. The term also may be problematic if the faculty member also has received support from Penn, federal funders, and/or commercial sponsored research funding.

International employment agreements sometimes specify the number of publications the Penn faculty member may be required to publish. (For example: 6 publications each year, with 2 appearing in high impact journals, with the international host institution as the first author.) Agreeing to this type of contract term is not wise; it can have the consequence of diminished rigor and lapses in research integrity (and cause the individual faculty member to be in breach of contract if he/she is unable to generate that level of scholarly output). The term, however, is not illegal.

The international institution may propose a contract obligation for 'international training with Penn,' requiring the faculty member to find research projects in the US for the international institution's graduate students. This may be a reasonable component of a long term collaboration, but it should be part of the University's and the School's or Department's overall global strategy, and entered into by the University through a Memorandum of Understanding.

In many situations, collaborative agreements may state that research data cannot be removed from the host country. This is a constraint, but may be workable for some types of studies. However, certain countries (including China and Russia) currently place significant restrictions on the ability to publish research data without submitting it to the government first.

Faculty members are reminded that when performing activities outside the U.S., the laws of the host country will apply (and certain U.S. laws will still apply to the faculty member and activities.) Certain activities that are perfectly legal in the U.S. may be illegal in the country to which you travel to teach or conduct research.

Most agreements propose challenging IP terms that may not be consistent with your other sponsored research commitments, Penn's policies, and/or federal requirements. Penn Center for Innovation is available as a resource to review and negotiate "win-win" IP language.

### **Consequences and Implications of some International Collaboration Agreements**

The terms of the engagement must be disclosed to federal funding agencies as part of applications and progress reports. In some cases, and with some agencies (including NIH), you may need the federal agency's advance approval if research overseas is a "foreign component" of your existing funded work.

If the agreement is associated with a Talents Program from a sensitive country, the PI should understand that it is likely that this will preclude NIH, NSF or DOD funding in the future. It is often not obvious at first glance that the agreement is associated with a Talents Program.

If the international institution is a "restricted party," a "specially designated national," or otherwise listed on one of the many government control lists, a license is required from the federal government to teach or conduct research, or risk violating the law. A license may be possible to obtain, but it takes the government significant time to decide and issue. The School's export control liaison and the University Office of Research Services export control personnel are available to check lists and, when needed, apply for licenses.

If the faculty member is provided with a lab and lab support at the international institution, there should be explicit and clear documentation that the research carried out in that lab will be different from that done at Penn.

Faculty need to be extremely careful and accurate about how effort is allocated and reported.

### **Additional Resources for Dept Chairs and Faculty Members**

Global Engagement Tool <https://research.upenn.edu/resources/international-partners/>

Advice on disclosing to federal agencies, hosting foreign visitors,  
export control, FAQs, Scenarios of Global Engagement Examples

Global Engagement Guidance Document <https://research.upenn.edu/resources/international-partners/guidance/>.

Comprehensive guide for developing and implementation international  
collaborations

Office of Research Services [epeloso@upenn.edu](mailto:epeloso@upenn.edu)

Export Control [expctrl@lists.upenn.edu](mailto:expctrl@lists.upenn.edu)

For extramural activity approval contact your dept chair and/or deans office according to school policy.  
Faculty Handbook: ( <https://catalog.upenn.edu/faculty-handbook/> Sections II.E III.E and III.F address  
extramural reporting. Schools may also have additional policies.

Penn Center for Innovation <https://www.pci.upenn.edu/>