

Standardised terminology in contract naming

CPUT

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Cautionary Note: Please be advised that this list is not exhaustive and is indicated only as a guideline. In practice, there are many more commercial Agreements that can be dealt with that is not included in this document, which should be kept in mind at all times. This document only serves as a guideline for the university.

1 Research Agreements:

1.1 Research Funding Agreements

This is a contract to provide funding for a specific research project or set of projects within CPUT. It may be funded by a company, government body, charity or other body, and will contain terms and conditions governing the conduct of the project, as well as obligations incumbent upon CPUT and the funder.

The research agreement's terms include ownership and possible commercialisation of intellectual property (IP) as well as other terms regarding completion of the work, liabilities, indemnities, confidentiality etc. The University ensures that the researcher's right to publish the scientific results is protected.

The contract will:

- Define the work to be undertaken
- Define the financial contributions/payment terms
- Define the share of technical, commercial and economic risks of each party
- Set out publication rights of results
- Establish who will own the results of the work and who has the right to use them
- Set out agreed liability and indemnities.

1.2 Collaboration Agreement

These agreements are used where two (or more) parties contribute to the research project through scientific participation or other contributions, such as background intellectual property. Collaboration agreements allow for IP to be shared where co-created and set terms regarding joint publication and commercialisation where applicable.

This agreement sets out the responsibilities, roles and rights of collaborating parties working in conjunction with CPUT on a specific research project or set of projects. All parties will be bound by the same terms and conditions, and the agreement will usually set out how the overall project will be managed between the parties. The agreement is often drafted following a joint award/research funding agreement and the terms of this main award will often be reflected in the collaboration agreement. It may also contain funding terms, for example transfer of funding from the lead partner to the other collaborators, or the transfer of additional funding from a commercial partner.

A collaboration agreement is required for work involving at least one other research partner on a project.

1.3 European Commission Consortium Agreement

Consortium Agreements for European Commission projects are mandatory for most Framework Programme 7 (FP7) projects and the Commission requires that the Consortium Agreement is negotiated and signed before it will sign the Grant Agreement (i.e. the contract) for the project. The Consortium Agreement is concluded between all partners in the consortium but the Commission is not a party to it. Consortium Agreements supplement the Grant Agreement by expanding on and clarifying key terms and conditions (e.g. Intellectual Property, confidentiality, liability, publication rights) and provide details of the internal management and working practices of the consortium (e.g. voting rights, internal reporting structure, dispute resolution).

1.4 Consortium Agreement

The agreement usually consists of a few universities or institutions, with one funder funding the consortium under a Research Contract Agreement. The Consortium Leader will be responsible on behalf of the consortium members to make the necessary arrangements in order to finalise the contract. The terms of the Consortium Agreement will be subject to the requirements of the Main Research Contract Agreement. All the Consortium members (Collaborators) (their researchers and legal representatives) have to agree on the terms and conditions of the Consortium Agreement.

1.5 Service Level Agreement (SLA)

Generic SLA:

A service level agreement (SLA) is a contract between a service provider and CPUT that defines the level of service expected from the service provider and the performance standards that the service provider is obligated to meet. The SLA contractually determines all the terms and conditions applicable to both parties and details the nature, quality, and scope of the service to be provided

TTO SLA:

The agreement usually consists of a few universities or institutions, with one funder funding the consortium under a Grant Agreement. The Consortium Leader will be responsible on behalf of the consortium members to make the necessary arrangements in order to finalise the contract. The terms of the Consortium Agreement will be subject to the requirements of the Main Grant Agreement. All the

Consortium members (Collaborators) (their researchers and legal representatives) have to agree on the terms and conditions of the Consortium Agreement.

1.6 Sub-contracting Agreement

A subcontract is used when a research- or research related contract is already in place and a different external party needs to be subcontracted to assist with the project, or needs to deliver a specific portion of the deliverables. The University can also be subcontracted by another institution to perform specific tasks or services. When drafting a subcontract where the University contracts in services from outside, to be able to complete the University's obligation towards the client, the principal agreement between the client and the university should be used as a basis to draft the subcontract. Relevant clauses from the principal agreement, to which the subcontractor must abide, must be reflected in the subcontract. A back-to-back agreement is therefore recommended.

1.7 Master Agreement

A comprehensive contract that governs all research activities supported by a particular sponsor. Individual project specific addendums (or task orders) are issued each time a new project is engaged. Each addendum details such aspects as the personnel, funding amount, performance period, and scope of work for the individual project, along with any deviations from the terms of the Master Agreement that may be necessary for performance of the specific project. Also called "umbrella" agreements, this mechanism often takes much longer to establish than a traditional agreement, however it virtually eliminates any need to negotiate the individual project addendums.

1.8 Letter of Intent

A Letter of Intent (LoI) is often a preliminary document and is generally not intended to create a legal commitment between the parties but to set out the future working principles of the relationship.

LoI's are used to establish the basis for future research projects. It is an undertaking for future contracts, but generally without payment terms and a contract amount. A LoI should be followed by a formal research agreement when the Parties are ready to formally start collaboration, or obtain funding for their research activities.

1.9 Material Transfer Agreement (MTA)

This is used when the University is receiving or supplying tangible research materials (any tissue, cells, or other biological or other proprietary materials required for a research project). Specific ethical and import or export permit requirements are considered. The rule of thumb is that the supplier of the material's MTA is used.

The MTA should define the rights of the parties in respect to scope of use of material, confidentiality, publication, and ownership of Intellectual Property. Occasionally a transfer may include software. These agreements should not include payment for the material, other than reimbursement of transport costs.

There are two types of MTA:

MTA-out

Covers the transfer of materials owned or controlled by CPUT to another university, company or other external body for research purposes.

These are dealt with by Faculty Research Services teams.

MTA-in

Covers the transfer of materials to CPUT from another university, a company or other external body.

These are dealt with by the Research Office.

1.10 Confidentiality or Non-Disclosure Agreement (NDA)

Generic NDAs

A legal contract between at least two parties that outlines confidential material, knowledge, or information that the parties wish to share with one another for certain purposes, but wish to restrict access to or by third parties. It is a contract through which the parties agree not to disclose information covered by the agreement. An NDA creates a confidential relationship between the parties to protect any type of confidential and proprietary information or trade secrets. As such, an NDA protects non-public business information

TTO NDAs

This is an agreement to regulate the ways by which confidential information, including Intellectual Property, may be disclosed by one party to another. The agreement sets out the terms of disclosure and whether information is returned to the provider or destroyed upon request. Confidential information includes any information, results or know-how that is owned by someone, and which the owner wishes to be kept secret. The disclosure of confidential information requires that a confidentiality agreement is signed before any discussions take place.

A NDA must be signed when a Client approaches the University for the exchange or sharing of confidential information as the fore-runner to a potential project. A Standard Confidentiality Agreement can be used. Universities could also enforce a student/staff NDA internally, to ensure that the student or researcher complies with the confidentiality undertaking of the University.

2 Contract Research

2.1 “Commissioned” Research agreement

These agreements are mostly used when a client requires a specific outcome, output or product and intellectual property is usually created. The agreement will be for a specific time period, and have a specific project budget and work plan. The research agreement’s terms include ownership and possible commercialisation of intellectual property (IP) as well as other terms regarding completion of the work, liabilities, indemnities, confidentiality etc. The University ensures that the researcher’s right to publish the scientific results is protected.

3 Clinical Trial Agreements

3.1 Clinical Trial agreements

A Clinical Trial is a research related study designed to test the safety or effectiveness of drugs, devices, treatments or preventive measures in humans. The agreement is almost always provided by the Client with reference to the protocol. It is crucial that the Principal Investigator abides strictly to the protocol in order to do the clinical trial study, and the needed ethical clearance is pertinent to the study.

3.2 Clinical Trial single site participating agreement and sponsorship agreement

This type of agreement is used for clinical trials taking place in sites external to CPUT. Where CPUT is the Sponsor of a multi-centre trial, it must execute an agreement with each participating site (normally a university or NHS Trust). The agreement ensures the site agrees to comply with relevant laws, regulations and codes of practice applicable to the performance of the trial. It includes provisions such as safety reporting, insurance/liabilities, medical confidentiality, Intellectual Property, publications, funding if applicable, etc. A Sponsorship Agreement is a simplified version of a Clinical Trial Single Site Participating Agreement suitable for less complex non-IMP studies (studies not involving Investigational Medicinal Product). The agreement is signed between the Sponsor and participating site and confirms CPUT’s overall responsibility as legal Sponsor and outlines specific responsibilities of the site in relation to the study (i.e. referral or recruitment of patients to CPUT).

3.3 Investigator led clinical trial

Investigator led trials are designed by academics and usually sponsored by their employer. Such trials are funded by grants from government agencies or with support from pharmaceutical companies. Where a pharmaceutical company is providing funding (and in some cases drugs free of charge) an agreement needs to be executed between CPUT and the company to ensure that each party agrees to comply with the relevant laws, regulations and codes of practice applicable to the performance of the trial. The

agreement includes provisions for the supply of drugs, funding, safety reporting, insurance/liabilities, publications, Intellectual Property etc.

3.4 Commercially led clinical trial

Commercially-led clinical trials are designed, legally sponsored and funded by pharmaceutical companies. The company contracts with individual organisations (trial centres) either directly or through a Clinical Research Organisation (CRO) to undertake the trial on its behalf.

3.5 Drug manufacturing agreement

This type of agreement is executed when CPUT wishes to contract with a pharmaceutical company to produce a medicinal product in accordance with CPUT specifications and/or with materials supplied by CPUT. Manufacturing Agreements are required for both the production of experimental drugs and for the repackaging/dose alteration of existing drugs for new indications. These are complex agreements and must be reviewed carefully to include regulatory compliance (GMP facilities/standards, compliance with UK/EU/FDA regulations, Manufacturing Authorisation for Investigational Medicinal Product (MA-IMP) requirements etc), warranties and indemnities. CPUT insurance cover must be considered under this type of agreement as well as subsequent use of the product in clinical trials.

3.6 Investigational Medicinal Product (IMP) / Drug data transfer agreement

This type of agreement is used when external parties wish to make "in-kind" contributions for investigator-led studies such as the supply of drugs or medical devices. Where provisions for such contributions are not within a principal funding agreement, a Transfer Agreement should be executed between the supplier and CPUT to outline each party's responsibilities in relation to the study and ensure compliance with regulatory framework (warranties/liabilities, quantities of supply, safety reporting, confidentiality etc).

3.7 Qualified Person (QP) release agreement

This type of agreement is used for the release of an Investigational Medicinal Product (IMP) by a Qualified Person (QP) before use. The agreement ensures Sponsor compliance with current EU Clinical Trials Directives (Article 51 of Directive 2001/83/EC, Article 55 of Directive 2001/82/EC) / UK Medicines for Human Use legislation.

4 Studentship agreement

4.1 Postgraduate Bursary Agreement

A postgraduate bursary contract usually set out the terms under which a donor will pay a bursary towards a postgraduate students study in terms of a bursary. Strict SARS regulations applies to bursaries

and the donor are not allowed to make any claims to the results, IP, commercialisation etc. The donor may request progress reports as to ensure that the funding is used for the purpose that it was intended for and that the student is making sufficient progress with his/her studies.

4.2 Undergraduate Bursary Agreement

A bursary agreement sets out the terms and conditions under which a donor/ organization/ company will pay a bursary in the form of a monetary award to any qualifying and deserving CPUT students.

5. Commercialisation (TTO contracts)

5.1 Licensing Agreement

This Agreement is necessary for IP commercialisation where a private company wants to license university intellectual property or where the university itself decides to license its IP to a company, who it believes is best equipped to exploit the IP successfully. The Agreement sets out the terms under which the exclusive or non-exclusive license is granted.

5.2 Assignment Agreement/Deed of Assignment

This Agreement stipulates the terms under which university intellectual property is assigned to an assignee in exchange for an agreed monetary amount.

5.3 Project Research Agreement

This Agreement is usually entered into between the university and its students in order to run particular research projects for the university which governs the terms and conditions under which the research project should be conducted.

5.4 Benefit-sharing Agreement

This Agreement is drafted when inventors (staff or students) of the university has created intellectual property that has been successfully commercialized and sets out how the university will share the financial benefits of that commercialization with inventors and under what conditions payments will be made.

5.5 Prototype Development Agreement

This is an Agreement where university innovation exists and the university contracts a private company to develop a prototype for a specific technology that has been created at the university.

5.6 Manufacturing Agreement

This is an Agreement where the university contracts an established private company to manufacture industrial equipment or a pharmaceutical product or to develop a technology on a large scale that has been created through university research and innovation.

5.7 Secondment Agreement

This is an Agreement where an academic staff member is seconded to industry for a specific period to do basic/applied research on a specific project in which the university has an interest.

6. Legal services contracts

Legal Services has considered additional Contract types that Legal Services reviews and vets on a day to day basis. Please be advised that this is not an exhaustive list as there may be other agreements that Legal Services reviews/ vets from time to time.

6.1 Lease Agreement

A lease is a contract outlining the terms under which one party agrees to rent property owned by another party. The lease agreement identifies the lessor, lessee, and the leased asset or property and details the obligations and responsibilities of the lessor and lessee. The lease agreement further states the lease term and fee (rental amount) and detailed terms and conditions of the agreement.

6.2 Employment Contract

An employment contract is an agreement between an employer and employee that sets out the terms and conditions of employment. The contract outlines the rights, expectations and obligations of both the employer and the employee.

6.3 Consultancy Agreement

A Consultancy agreement sets out the terms and conditions of engaging the services of an external consultant. The consultant could be an individual or a company. The consultancy agreement normally sets out the identities of the parties, the definition of the engagement, the period where the agreement is in force, the duties and responsibilities of the consultant, fees, confidentiality, intellectual property, conditions of termination, and assignment conditions if any.

6.4 Discretionary Grant Agreement

A Discretionary Grant agreement is an agreement in terms whereof an external organization/ company provides funding in the form of a grant to deserving and successful applicants (which may include CPUT students and or staff members) for Skills Development Projects, linked to scarce and critical skills across various business and industry sectors.

6.5 Software licence agreement

This is a contract between a licensor and licensee to establish the licensee's right to the use of software. Normally included in the agreement is software maintenance and support services. A software license agreement is an agreement between the licensor and the purchaser of a piece of software which establishes the purchaser's rights. A software license agreement details how and when the software can be used, and provides any restrictions that are imposed on the software. A software license agreement also defines and protects the rights of the parties involved in a clear and concise manner.

6.6 Joint Venture Agreement

A joint venture is a contractual business undertaking between two or more parties. It is similar to a business partnership, with one key difference: a partnership generally involves an ongoing, long-term business relationship, whereas a joint venture is based on a single business transaction.

All joint ventures are initiated by the parties' entering into a contract or an agreement that specifies their mutual responsibilities, obligations and rights.

6.7 Joint Building Contracts Committee (JBCC)

A Joint Building Contracts Committee agreement is a specialised, technical and specific agreement that is commonly entered into between multiple parties, including but not limited to building owners and developers, professional consultants and general and specialist contractors within the building and construction industry.

6.8 Donation Agreement

A donation contract can take different formats. Some institutions provide a letter of award, other institutions requires a contract to be signed. Within the context of research- and research-related contracts, donations are deemed to be funding with the intention to be used for research in the field of interest, and the donor not making any claims to the results, IP, commercialisation etc. The donor may request financial and progress reports as to ensure that the funding is used for the purpose that it was intended for.