

**February 1, 2016**

**Subject:** State of California Model Agreement (formerly the AB20 Model Agreement)

**Background**

In January of 2010, Assembly Bill 20 (AB20 2009-2010) became effective and codified under Education Code Section 67325. The purpose of the Bill was for the [Department of General Services \(DGS\)](#), on behalf of the State of California, to negotiate model contract terms for use by agencies funding research, training or public service projects performed by campuses of the University of California (UC) and California State University (CSU) systems. On November 2, 2015, the implementing MOU for the AB20 model agreement was executed by the three parties with an implementation date of January 1, 2016. This memo provides initial guidance and resources concerning the model agreement. Additional guidance will be issued subsequently as needed.

**Implementing Memorandum of Understanding (MOU) and the application of the model terms**

The implementing MOU for the model agreement (see Attachment) has three basic functions:

- 1) It defines the relationship of the three parties (DGS, UC, and CSU) and describes the future interaction of the parties,
- 2) It outlines when and how the model agreement will be used as well as providing the agreement template and the negotiated terms,
- 3) It includes approved alternate provisions (the liability provision for the CSU auxiliaries and the patent provisions) and instructions regarding when and how to include them in the model agreement.

The model agreement will be used for almost all new research, training, and public service awards to a campus issued after January 1, 2016. Please note that the model agreement and terms will supersede new awards made under existing master agreements UCOP previously negotiated with individual agencies, e.g. the Caltrans On-Call Agreement or the DWR HAFOO Master Agreement. At this time, exceptions to the use of the model terms include awards from the California Institute of Regenerative Medicine, the California Energy Commission's EPIC program, and the California Marketing Boards.

A new agreement is defined as the award of funds not previously budgeted or awarded by a State agency to a university campus. As a result, existing awards made and executed prior to January 1, 2016 will continue to be administered under the already agreed upon terms until that project terminates either at the end of the project period or under a no-cost extension. However, an award of additional funds to an existing award (with a presumed

expansion of the scope of work) would be considered “new” funds under the MOU and would be issued under the model agreement.

Proposals submitted prior to December 31, 2015 but awarded after the January 1, 2016 are not required to use the model agreement or the university-established indirect cost rate, since it is likely that the proposal was not submitted using the model agreement exhibits. However, where such a proposal can be adapted to the model agreement template, the use of the University Terms & Conditions (UTC-116) and the agreement template is strongly encouraged. Additionally, individual provisions from the UTC-116 can be suggested, if agency-proposed provisions in their standard agreements are not acceptable. Additionally, individual provisions from the UTC-116 can be suggested, if agency-proposed provisions in their standard agreements are not acceptable.

### **A new business model**

The model agreement changes the way the State and the universities conduct business. Foundational to the process is the understanding that complete proposals, approved and endorsed by the campus sponsored projects office, will be required prior to award. These proposals will contain much more detail upfront in an effort to clarify the expectations of the parties to avoid downstream misunderstandings (e.g., deliverables and the delivery schedule), and to reduce the post-award administrative burden (e.g. in invoicing) The proposal exhibits will become a part of the final award, so it is important to ensure that they are complete and accurate.

As an aide, the CSU and UC negotiating teams have drafted a State and University Proposal & Administrative Manual (SUPAM) (see Attachment). The SUPAM contains instructions on completing the exhibits for a complete proposal as well as information on award and post-award processes. Currently, the SUPAM is only being used by the universities, however the MOU specifies that DGS, UC, and CSU will continue to adjust the SUPAM for eventual adoption by the State agencies over the next two years (or later if mutually agreed to).

### **The Agreement Template and the University Terms & Conditions**

The University Terms & Conditions (UTC-116) (see Attachment) contains the terms that govern the administration of the award. They are housed on the DGS Office of Legal Services [standard language website](#) with the other standard terms for awards, e.g. the General Terms & Conditions (GTC-610) and the General Terms & Conditions for Interagency Agreements (GIA-610). The UTC-116 has multiple references to specific exhibits in the award agreement. As such, the format of any award subject to the terms in the UTC is prescribed and should not vary. The template format (see Attachment) for exhibits is as follows:

**Standard Form 213:** this is the form that covers most State agency agreements

**Exhibits A-A7:** the Scope of Work and attendant detail exhibits

**Exhibits B-B2:** the Budget and Justification

*(Exhibits A and B will have been submitted as part of the proposal)*

**Exhibit B3:** invoice elements, will be incorporated into the agreement

**Exhibit C:** the UTC-116 incorporated by reference

**Exhibit D:** Additional Requirements Associated with Funding Sources *(to be used if the award is a pass-through from other funding that the State agency has received, e.g. Federal funding)*

**Exhibit E:** Special Conditions for Security of Confidential Information *(to be used if additional legal and regulatory requirements regarding the security of certain kinds of information need to be added)*

**Exhibit F:** Access to State Facilities or Computing Systems *(to be used if access to the State's facilities or computer systems is anticipated, and if such access has specific requirements)*

**Exhibit G:** Negotiated Alternate UTC Terms *(use of one of the patent provisions or mutually agreed upon changes to the UTC-116 are to be included here)*

If a given exhibit is not needed for a specific award, for example Exhibit D, then the exhibit may be omitted but the remaining exhibits should not be reordered. In this example Exhibit E would follow Exhibit C. This represents a change in how State agreements are ordered. At least in the initial months, please review the awards carefully to assure that the exhibit order conforms to the agreement template.

### **Alterations to the University Terms & Conditions (UTC-116)**

The legislation allows for alternate agreement terms to be negotiated **by mutual agreement of the parties**. Because the entire intent of AB20 was to eliminate the need for negotiation, alterations are expected to be rare and only for compelling circumstances. Because changes to the UTC cannot be made in Exhibit C or added in any other exhibit, any such change to the terms in the UTC should be included only in Exhibit G, *Negotiated Alternate UTC Terms*, including an indication of whether the provision supersedes one in the UTC-116. Please inform RPAC prior to Exhibit G's use in an agreement, and contact RPAC immediately should a State agency unilaterally include terms in Exhibit G or elsewhere in the agreement, and refuse to remove them.

### **Terms Not Included in the Model Agreement**

The State and the universities were unable to reach agreement on two significant issues: establishing a State-wide indirect cost rate and base for the universities, and agreement on a default patent provision. Although the UTC-116 is silent on both of these issues, UC and CSU have developed a new methodology for assessing indirect cost on State awards (based on our final offer to the State during negotiations), and approved patent provisions are included in the MOU for use if needed. The following two sections address each of these issues in turn.

### **Indirect Cost**

The CSU and UC have established a base rate of 25% increasing over the first 4-1/2 years to 40% of the Modified Total Direct Costs (as defined in our federally-negotiated rate agreements) for the recovery of facilities and administrative costs for State of California funding that falls under the AB20 model agreement. However, if a campus is a subrecipient of federal funds and the State agency is a pass-through entity, as defined in [2 CFR 200.93](#) and [2 CFR 200.74](#), respectively, then the campus should budget and receive their federally negotiated rate for the project as specified by [2 CFR 200.331\(a\)\(4\)](#).

In its first year, the base rate has a core component of 25% of the MTDC for administrative costs and no facilities cost. Beginning on July 1, 2017 through July 1, 2019, facilities costs will be added in increments of 5% until the F&A rate reaches 40% MTDC. Projects that are

performed off-campus will only use the 25% MTDC rate for administrative costs. The administrative component of the rate will not escalate.

**Rate Schedule for F&A Recovery for State of California Agreements under the model agreement**

Facilities	Administration	Total Rate	Base	Effective Date
0%	25%	25%	MTDC (F&A Rate Agreement)	January 1, 2016
5%	25%	30%	MTDC (F&A Rate Agreement)	July 1, 2017
10%	25%	35%	MTDC (F&A Rate Agreement)	July 1, 2018
15%	25%	40%	MTDC (F&A Rate Agreement)	July 1, 2019

The rate in effect for the first year of a multi-year project will be the rate used for the entire project in proposed and awarded budgets. If additional funds (not previously appropriated or budgeted) are awarded by a State agency; the proposed budget for these additional funds would use the rate in effect at the time the new budget request is submitted.

The UC Chief Financial Officer (CFO), the President's Immediate Office, State Governmental Relations, and the Office of Research and Graduate Studies initially discussed this framework, and the Chancellors subsequently agreed to this approach in a discussion with the CFO. We expect that the California State University will implement the same cost recovery framework for their State of California funding under the model agreement.

**Patents**

For the vast majority of agencies and projects, a patent provision is not necessary and should not be included in the agreement. Historically, only 2-3 of the State agencies that fund work at UC have raised the issue of inventions and patents in their agreements, and the model agreement alone should not prompt a change. It continues to be acceptable, and preferred, to remain silent on the issue of patents.

Per UC Policy, UC owns inventions made by its personnel in the performance of extramurally funded activities. Any deviation from this is an exception to policy that must be approved by UCOP/RPAC and that continues to be true here.

Attachment 4 of the MOU includes two pre-negotiated Patent Right provisions: one allows for University ownership and one for State ownership of patentable inventions. The two provisions, and their corresponding confirmatory licenses, are parallel in rights, obligations, and processes. They differ only in the ownership of the invention, either the University or the State, and are reciprocal with respect to obligations and processes. The provision that assigns ownership to the University, *Patent Rights – University*, is within University policy and can be readily used. The *Patent Rights – State* provision remains outside of University policy and cannot be used without a UCOP/RPAC approved exception to policy. If a State agency feels strongly that there is likely to be a patentable invention, and that its statutory mission is better served by State ownership of such inventions, and the campus (including

the researchers) supports that request, then an exception to policy must be requested and approved by UCOP/RPAC. As usual with any request for an exception to patent policy, the campus should assess the impact on pre-existing inventions and/or licenses; existing or expected research funding or materials from other partners; dual appointees, students or visiting researchers; or the research program in general to avoid conflicting legal obligations or compromising the researchers' ability to continue research in this area. Any such request should be amply justified with clear explanation of the overarching benefit to the researchers and the campus plus the steps the campus is taking to mitigate any adverse impacts, since it is unlikely that these requests will be routinely approved. Campus administrators should ensure that all researchers participating under State awards have signed either the Patent Amendment (if hired on or before October 31, 2011) or the Patent Acknowledgment form (if hired on or after November 1, 2011.)

It may be useful to know that another IP-related bill was passed during the negotiation of the model agreement, since it might be raised by agencies. As a result of AB744, chaptered in September 2012, Section 13988 of the California Government Code, AB744, requires, in part, that State agencies track and manage intellectual property that results from State-funded activity. However, §13988.4(a) states:

*This chapter shall not apply to intellectual property or intellectual property related agreements administered by the Regents of the University of California, the subcontractors of the Regents of the University of California, and the Trustees of the California State University. This chapter shall apply to a funding agreement from a state agency for the performance of research, and these funding agreements shall be subject to the model contract provisions developed pursuant to Chapter 14.27 (commencing with Section 67325) of Part 40 of Division 5 of Title 3 of the Education Code.*

The referenced section 67325 of the Education Code is where AB20 provisions reside. Thus, AB744 above, defers to the AB20 model agreement. This means that the lack of a patent provision in the UTC-116, or the use of either of the two pre-negotiated patent clauses included in the MOU are entirely consistent with §13988.4(a).

### **Future Collaborations**

The model agreement changes not only the day-to-day operations in conducting business with State agencies, but also our long term relationship. The MOU specifies that UC, CSU, and DGS will meet annually to revisit the terms and make adjustments as needed. Therefore, we request your feedback on the implementation of AB20. It also contemplates the three parties meeting on an *ad hoc* basis should an issue arise that needs more immediate attention.

Additionally, since both UC and CSU are subject to the same terms and issues, for purposes of consistency we intend to adopt a common approach to those issues wherever possible. UC and CSU have also collaborated on in-person AB20 training sessions for campus contracts and grants officers, and will continue to collaborate going forward, including on training webinars.

Finally, a publically accessible page is being established on [UKnowledgeshare.com](http://UKnowledgeshare.com), an "...online collaborative site created to encourage the sharing of information, ideas and high

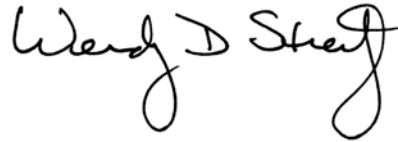
impact practices, in support of improved administrative performance, service and outcomes,” among the CSU, UC and California Community College systems. This public site will house references to the MOU, the UTC-116, the Agreement Template and proposal package, the SUPAM and training webinars as they are produced.

**Contact**

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A handwritten signature in black ink that reads "Wendy D Streit". The signature is fluid and cursive, with the first and last names being more prominent than the middle initial.

Wendy D. Streit

Executive Director

Research Policy Analysis & Coordination

**The following documents referenced herein can be found in the [Research and Technology Transfer Memos](#) application.**

Memorandum of Understanding (MOU)

State and University Proposal & Administrative Manual (SUPAM)

University Terms & Conditions (UTC-116)

Model Agreement Template