

August 8, 2017

To: Contract and Grant Directors

Subject: State of California Model Agreement 2017 Update

Purpose

This 2017 Update (i) introduces the updated California Model Agreement v2.0; (ii) answers common questions surrounding use of the CMA; and (iii) explains the process for exempting a project from use of the CMA.

Background

On February 1, 2016, [UCOP Research Policy Analysis and Coordination \(RPAC\)](#) released [RPAC Memo 16-01](#) which described the development of the California Model Agreement (CMA) by and between the University of California (UC), the California State University (CSU) system, and the state Department of General Services (DGS), (collectively “the Parties”), as required under California Education Code (Cal Ed. Code).¹ In addition, Memo 16-01 described a new business model of working with state agencies, introduced the CMA (comprising the agreement template/exhibits and the University Terms and Conditions (UTC)), and provided guidance on an indirect cost rate schedule for F&A recovery for state-funded projects.

California Model Agreement v2.0

The [Memorandum of Understanding \(MOU\) signed by the Parties](#) outlines when and how the CMA will be used, provides alternate provisions for patent rights (and an alternate liability provision for CSU auxiliaries), and specifies that the Parties will collect user feedback from their respective campuses/departments and meet annually to improve the templates. User feedback and the Parties’ collaborations via regular phone calls and meetings over the last twenty months resulted in version 2.0 of the CMA which has been recently posted at DGS’ website and at the [UKnowledgeShare](#) site. This latest version of the CMA is available immediately for use. We urge your participation in phasing out the original version by October 1, 2017, after which, only the CMA v2.0 should be accepted. A redline comparing the two documents is included in this memo so that you can easily identify the changes between the versions.²

¹ At §67325 et seq.

² Changes to the STD face page may assist in easy identification of CMA template v1.0 vs. 2.0. Also of note, the suffix “-116” was replaced with “817” to denote the August 2017 version of the UTC.

Common Questions

During the first year and a half of CMA implementation, the following questions were prevalent and are answered here.

Question #1: The CMA is for contracts, not grants, right?

Answer: Cal Ed. Code §67325 defines “contract” (for purposes of the Cal Ed Code Article), as “a research, training, or service agreement between the state and the [UC] or the [CSU], or a grant from the state to the [UC] or the [CSU] for research, training, or service.” The Cal Ed. Code further states that the CMA “shall be used in contracts entered into between the [UC] or the [CSU] and the state...” Cal Ed Code §67327(b). Therefore, the CMA is intended to be applicable for both contracts and grants.

Question #2: Do business contracts offices have to use the CMA?

Answer: Depending on individual campus work distribution and signature delegations, research, training, or service agreements could be processed in a sponsored programs office or a procurement, business contracts, or health system contracts office. The Cal Ed. Code proscribes that the CMA will be used for research, training and service agreements, regardless of where on campus such agreements are executed. If a campus office requires training on use of the CMA, please contact RPAC.

Question #3: Should the CMA be used for Material Transfer Agreements (MTAs) and/or Data Use Agreements (DUAs)?

Answer: The CMA is for research, training and service agreements, but the Cal Ed. Code does not specify whether MTAs and DUAs are included in the term “research agreements.” In discussions with the state DGS, the CSU Chancellors Office and UCOP-RPAC, there was general consensus that the California Ed. Code 67325 does not clearly require use of the CMA for data and material transferences that are independent of and not part of a state-funded research, training or service agreement.

Question #4: Does the Cal Ed. Code require the State to pay 25% indirect cost rate on all projects?

Answer: Neither the Cal Ed. Code nor the CMA mandate adherence to an indirect cost rate structure.³ While the Cal Ed. Code states that, to the extent feasible, administrative overhead and indirect costs should be included in the CMA⁴, the Parties were unable to come to agreement on this topic.

Independent of the CMA, UC and CSU have implemented [an indirect cost rate structure for state-funded projects](#) with a floor of 25% MTDC escalating over time to cap at 40% MTDC (for on-campus projects). This “UC Rate” for state agreements is based on an analysis of UC’s actual costs for performing work for the state. Even with indirect cost recovery in accordance with this structure, UC will continue to share in the costs of projects performed for state agencies. In 2012, UC and CSU proposed the

³ The CMA mandates that indirect costs be paid in accordance with an individual project’s budget (Exhibit B).

⁴ Cal Ed. Code §67327(a)(11)

current IDC rate structure to the state and once it was clear that the indirect cost rate would not become a part of the model agreement⁵, both systems implemented the rate structure in 2016⁶.

An appropriate F&A rate agreement, rather than the UC Rate, should be applied when a State of California agency is acting as a pass-through entity of a subaward to UC. Per Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR 200.331, a pass-through entity, a non-Federal entity that provides a subaward to a subrecipient to carry out part of a federal project, is not authorized to make unilateral restrictions of indirect cost recovery.

Exemptions from use of the CMA

The Cal Ed. Code states that DGS, UC and CSU “may determine those *types of contracts* for which the use of the model contract would be inappropriate or inadequate.” (See Cal Ed. Code at §67327(d); emphasis added.) As noted in UCOP Memo 16-01, the Parties initially agreed to exempt awards from CIRM, California Marketing Boards, and the California Energy Commission EPIC program. Exemption of other contracts must follow a specific process as follows:

If the exemption request originates from a UC campus⁷: The campus sends an exemption request to RPAC explaining why the CMA is inappropriate or inadequate for the project. RPAC will review the request and, if sound, will forward it to CSU and DGS for review and approval.

Conversely, if the exemption request originates from a state agency: The agency sends an exemption request to DGS explaining why the CMA is inappropriate or inadequate for the project. DGS reviews the request and, if sound, will forward it to CSU and UCOP-RPAC for review and approval.

An exemption request can only be approved by concurrence of all three Parties⁸. The Parties have agreed that a state agency’s mere preference for non-UTC language is insufficient grounds for exempting awards under Cal Ed. Code §67327(d).

Exemption vs. Exhibit G

While CMA exemption may be appropriate when almost all terms of the UTC are inadequate or inappropriate for an individual project, the Cal Ed. Code authorizes, and the CMA provides, a flexible alternative for projects where only one or more (but not substantially all) UTC terms are inappropriate or inadequate.⁹ Exhibit G was developed as a placeholder for terms that alter, wholly overwrite, or add to the UTC. Exhibit G should be used sparingly, and should not be used to replace major UTC provisions (i.e., Invoicing & Payment, Liability, Dispute Resolution) based merely on agency language preferences. Such practice leads backwards to agency-by-

⁵ There was no mutual agreement between the state and the university systems to adopt the rate structure for state-funded awards. The rate is imposed unilaterally by the university systems. State agencies can determine, on a project-by-project basis, if they can fund the direct and indirect costs of a project.

⁶ Although the “UC Rate” for state projects was implemented at the same time as the CMA, they are not related.

⁷ The process is similar for CSU requests.

⁸ UC concurrence for an exemption must come from UCOP-RPAC.

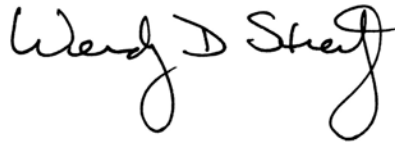
⁹ The standard provisions of the CMA “shall be used in contracts entered into between the [UC] or the [CSU] and the state, unless both contracting parties mutually determine that a specified standard contract provision is inappropriate or inadequate for a specified contract.” At Cal. Ed. Code §67327(b).

agency language negotiations and defeats the resource-saving objectives of the California Education Code.

While an agency-specific Exhibit G is ill-advised, RPAC has identified reasonable language compromises that may reach across all contracts for a given agency.¹⁰ RPAC continues to collaborate with agencies that have identified a need for an agency-specific Exhibit G and will house any approved agency-specific Exhibit G in REMS and in the publically accessible page www.UKnowledgeShare.com.

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Attachment

Memorandum of Understanding Revised May 15, 2017, Amendment 01 (*intentionally in redline format*), including Model Agreement template (comparison against v1.0) and University Terms and Conditions (UTC-817) (comparison against UTC-116)

¹⁰ For example, consider the UTC's provision of two sponsor acknowledgment options for publications. (UTC at §16.C.) For agencies that prefer one acknowledgement as a default, such preference could be specified in an agency-specific Exhibit G.