

Date: August 23, 2017

Guidance SP2017-0823

To: Sponsored Programs Directors & Chief Research Officers

Subject: California Model Agreement (CMA/AB20) 2017 Update

Purpose

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

Background

On May 1, 2016, the CSU Chancellor's Office (CSUCO), Sponsored Programs Office (SPO) released the [CSU Guidance on the Implementation of the CMA/AB20](#) 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, the 2016 CSU Guidance Memo 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 the patent rights provision and 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 [Model Agreement Language for UC/CSU](#) and will be posted on the [UKnowledgeShare](#) site (by the end of August). 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.

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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 contracts and procurement 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/contracts office. The Cal Ed. Code prescribes 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 SPO.

Question #3: Should the CMA be used for Material Transfer Agreements (MTAs) and/or Data Use Agreements (DUAs) between a State agency and a CSU or UC campus?

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 CSUCO and UCOP, 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.

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)

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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 “CSU Rate” for state agreements is based on an analysis of F&A costs for performing work for the state. In 2012, UC and CSU proposed the 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 CSU Rate, should be applied when a State of California agency is acting as a pass-through entity of a federally funded subaward to a CSU campus or auxiliary. 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 federally funded project, is required to accept an approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government (2 CFR 200.331(1)(4)).

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 the 2016 CSU Guidance Memo, the Parties initially agreed to exempt awards from CIRM, California Marketing/Commodity Boards, the California Energy Commission EPIC program and the CSU Sacramento student assistant contracts and conference planning contracts. Exemption of other contracts must follow a specific process as follows:

If the exemption request originates from a CSU campus⁷: The campus sends an exemption request to CSUCO SPO explaining why the CMA is inappropriate or inadequate for the project. SPO will review the request and, if sound, will forward it to UCOP 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 CSUCO-SPO 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).

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

⁷ The process is similar for UC requests.

⁸ CSU concurrence for an exemption must come from CSUCO SPO.

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

While an agency-specific Exhibit G is ill-advised, CSUCO and UCOP have worked together to identify reasonable language compromises that may reach across all contracts for a given agency.¹⁰ CSUCO and UCOP continue to collaborate with agencies that have identified a need for an agency-specific Exhibit G and will house any approved agency-specific Exhibit G on the CSYou RSP [CMA Collab](#) page and on the public page www.UKnowledgeShare.com.

If you have trouble accessing the CMA Collab page on the CSYou RSP SharePoint site, please contact Ana Aguirre for assistance. We are working on bringing the information over to the [CSYou SPO](#) intranet site that does not require specific group permissions and is upon to all CSU employees using the campus SSO.

CSUCO SPO Contacts

Ana Aguirre
aaguirre@calstate.edu
562.951.4320

or

Sue DeRosa
sderosa@calstate.edu
562.951.4213

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)

Click [here](#) for the clean version of the MOU, Amendment 01 and Attachments (in pdf).

Clean version of Model Agreement Template v2.0 is available on the RSP [CMA Collab](#) site in the [CMA v2.0](#) library.

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).

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.