Agreement Types

Office of Sponsored Programs

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Training Credit

- Employees must use k@te to submit training credit
- hr.tennessee.edu/training
- Click: Register → Login → Learning → View Your Transcript → Options → Add External Training
- EOD approves submitted external training weekly
Sponsored Research Agreement Types

- What is an Agreement? What is a Contract?
- Internal UTK policies and Tennessee state law considerations
- Focus on agreements for sponsored research
- Common types of sponsored research agreements
- Other agreement types that may be required for a sponsored research project
What is a Contract?

Why are some award documents titled “contract” and others “agreement”? Does it make a difference?

What’s in a name?
Legal Documents, Many Names
All Are Legally Binding Contracts

- Grant Award
- Cooperative Agreement
- Contract
- Addendum
- Agreement
- Amendment
- Attachment
- Exhibit
- Schedule
- Scope of Work
- Subaward/Subcontract
- Memorandum of Agreement (MOA)
- Confidentiality/Nondisclosure/Proprietary Info Agreement (CDA/NDA/PIA)
- Terms and conditions (T&Cs)
- Purchase Order (PO)

- Material Deposit Agreement (MDA)
- Material Transfer Agreement (MTA)
- Small Business Innovation Research (SBIR) Agreement
- Small Technology Transfer Innovation Research (STTR) Agreement
- Cooperative Research and Development Agreement (CRADA)
- Basic Ordering Agreement (BOA)
- Task Order (TO)/Work Order (WO)
- Membership Agreement/Consortium Agreement
- Research Agreement
- University Agreement
- Joint Faculty Agreement
OMG

is so confused now
Determining Agreement Type

• How do you know what kind of Agreement it is?
• This will depend on the document’s Content rather than its Title
“Contract” vs. “Contract”

• All **legally binding** Agreements regardless of what they are titled are Contracts.

• When discussing Sponsored Research, there are differences between Grant Agreements, Cooperative Agreements, and Contracts issued by Federal Agencies. The differences lie in what is required of the Parties as stated in the terms and conditions (T&Cs). Legally, however, these are all Contracts.
Contract – Legal Definition

To be legally binding, a Contract (or other title) must have:

1. **Mutual assent**
   - offer & acceptance

2. **Consideration**
   - something bargained for & received (e.g., UT performs research for Sponsor & UT receives funds from Sponsor)

3. **Capacity**
   - authorized officials entered into the contract on behalf of UT and the Sponsor

   *and*

4. **Legality**
   - for a lawful purpose – not an illegal activity
UT Contracts Fiscal Policy

• FI0420 – Contracts
  http://policy.tennessee.edu/fiscal_policy/fi0420/

• FI0205 to FI0235 – Sponsored Projects Policies
  http://policy.tennessee.edu/fiscal_policy/
Because the University of Tennessee is an instrumentality of the State of Tennessee (i.e., Tennessee state government entity), UT has limited contracting authority and can agree only to contract terms and conditions consistent with Tennessee law.
It depends on what the Sponsor wants UT to do, and what UT agrees it will do.

So what type of agreement does UT need for sponsored research?

"Would you tell me, please, which way I ought to go from here?"
"That depends a good deal on where you want to get to," said the Cat.
Agreement Types

• **Sponsored Research Agreements**
  → processed by Office of Sponsored Programs (OSP)

• OSP does not process Gifts or University Contracts
Sponsored Research Agreements

**Sponsored Research** = externally funded research with defined Scope of Work (SOW) providing a basis for Sponsor’s expectations

- **Specific SOW with a line item budget**
- **Deliverables**
- **Principal Investigator (PI) responsible for carrying out requirements as stated**

Processed by OSP
Agreement Types

3 most common Sponsored Research agreement types (all are legally binding):

- Grant Agreements
- Cooperative Agreements
- Contracts (including incoming subcontracts to UT)
Grant Agreements

• Grants are “grantee driven” – UT performs and drives research project.
• UT agrees to carry out Sponsor’s approved research project.
• Sponsor agrees to provide money, property, or both to UT.
• Sponsor will not have substantial programmatic involvement with UT during performance of sponsored project.
Cooperative Agreements

• Cooperative agreements provide for substantial involvement between the Sponsor and UT in carrying out sponsored research project.

• Equally driven with equally shared responsibilities.

• Sponsor *may* provide funds.
Contracts

- Contracts are Sponsor driven.
- Agreement by Sponsor to procure products and/or services from UT that are associated with Sponsor’s specific research project.
- Details specific obligations for both Sponsor (financial) and UT (task performance).
- Research topic and methods for conducting research specified in detail by Sponsor.
- Title does not have to be “Contract” to make it legally enforceable.
Agreement Types

In addition to grant agreements, cooperative agreements, and contracts, other agreement types may be used for and in conjunction with Sponsored Research.
Other Sponsored Research Agreement Types

- MOU
- MOA
- CRADA
- Master Agreement
- BOA
- IDIQ Agreement
- Orders (TO/CO/PO/DO/WO)
- SBIR Agreement
- STTR Agreement
- Membership Agreement
- CDA
- NDA
- PIA
- Teaming Agreement
- MTA
- Product Evaluation Agreement
- Data Use Agreement (Restricted vs. Non-Restricted)
MOU vs. MOA

Memorandum of Understanding (MOU) vs. Memorandum of Agreement (MOA)

• Significant difference between MOU and MOA.
• Both are broad, general agreements but distinctive from each other.
Memorandum of Understanding (MOU)

• **Understanding** between parties; a formalized handshake between parties.
• General area of understanding stating common goals the parties have and want to discuss for future collaborations. *Generally not legally enforceable.*
• No transfer or obligation of funds between parties.
• Outlines general areas of anticipated cooperation between parties. Next step could be a Memorandum of Agreement (MOA), contract, or cooperative agreement.
Memorandum of Understanding (MOU)

- Establishes official partnership between Sponsor and UT.
- First step to developing a more detailed research partnership agreement.
- MOU allows parties to have a more detailed exchange of ideas for future research projects.
- Parties can then discuss specifics on potential research collaboration and the best agreement type for this collaboration.
When is a MOU not a MOU?

- Some MOUs are not really MOUs but MOAs
- Important to read the content rather than to rely on the document title
- Common to see a document entitled “MOU” with detailed T&Cs, a SOW, deliverables, funding commitment, a budget, and sometimes even cost-share requirements – But this is not a MOU! It is at least a MOA!
NIH MOU

National Institutes of Health

• Prelude to NIH developing Collaborative Research Agreement (CRA) and Project Plan with Organization under future NIH Grant Program

• States potential NIH CRA will take the form of an opportunity for research funding from NIH and use of Organization’s “assets”

• Has specific start date and end date, and termination clause
NIH MOU does not contain the details and specifics on:

- type of NIH Grant Program and how it will be administered by NIH
- “assets” to be shared by Organization
- type of confidentiality clauses or nondisclosure agreement Organization needs
- support/funding structure and requirements; anticipated amounts of funding

No guarantee from NIH that MOU will result in a CRA, Project Plan, and/or research funding
Memorandum of Agreement (MOA)

- **Agreement** between the parties; conditional collaborative agreement between parties.
- May be legally enforceable – depends on MOA language.
- May include transfer or obligation of funds for services anticipated, or commitment of cost-share funds, equipment, lab space, and/or personnel effort by each party.
- Next step: contract or cooperative agreement.
Cooperative Research and Development Agreement (CRADA)

- Legally binding.
- Sponsor and UT agree to work together on specific projects with SOWs and both agree to commit Cost-Share funds as stated in budgets incorporated into the CRADA.
CRADA

• Each party is responsible for its own costs but also provides and shares its personnel, facilities, labs, equipment, and other resources in a collaborative research project.

• Commitments detailed in CRADA’s terms and conditions, especially Cost-Share details.

• Protects intellectual property rights of parties’ expected inventions/patents resulting from research collaboration.
CRADA

“C” in CRADA stands for **Cooperative**

• **Co-op** (sharing of UT personnel, facilities, and resources)
• **Cost-Share Commitment** by UT
• **Collaboration**
Master Agreement

- May also be called:
  - Master Contract
  - Overarching Agreement
  - Basic Ordering Agreement (BOA)
    - *federal* BOAs per FAR 16.703 different from non-federal BOAs
  - Umbrella Agreement
  - General Terms and Conditions for Orders
Master Agreement – Basic Ordering Agreement (BOA)

- Federal BOA per FAR 16.703
- Sometimes treated by the federal government as a MOU or “non-contract” and sometimes treated by the federal government as a contract
- The BOA itself is a “$0 award”
- Orders issued under the BOA are where the $$$$$ are
- No guarantee that Orders will ever be issued under the executed BOA
- However, FAR 16.703(c)(iv) requires the federal BOA to state when each Order issued under it becomes a contract
- Best practice is to treat a BOA as a contract since its Orders are contracts
Master Agreement

- Legally binding contract.
- Overall broad general T&Cs mutually agreed upon for future specific tasks requested by Sponsor. DOES NOT OBLIGATE ANY FUNDS.
- Sponsor issues individual separate detailed Orders during the specific finite term stated in the Master Agreement. ORDERS OBLIGATE THE FUNDS.
- Orders incorporate the overall broad T&Cs of the Master but also include that Order’s specific detailed T&Cs.
Master Agreement

- *Master Agreements do not obligate any funding.*

Funding is issued and obligated by Orders issued under the Master/BOA.

- Each Order will have its own specific detailed budget, period of performance, and SOW.
Orders – nomenclature

- **Task Order (TO)**: usually for services (conducting research); most common type of Order
- **Change Order (CO)**: Sponsor’s authorization to perform work outside the Master SOW
- **Purchase Order (PO)**: Sponsor’s intent to purchase specific itemized services and/or supplies (usually where Sponsor is industry)
- **Delivery Order (DO)**: usually for supplies
- **Work Order (WO)**: Sponsor’s authorization to proceed on a specific task

- All Orders are legally binding contracts. Treated as separate contracts issued under their applicable Master Agreement.
IDIQ Agreements

• Legally binding U.S. federal government contract for an Indefinite Delivery/Indefinite Quantity.
• Provides for an indefinite quantity of supplies or services during a fixed period of time.
• Awards are for Base Years and Option Years.
• Government places Orders for supplies and/or services against a basic contract for individual requirements.
• Minimum and maximum quantity limits are specified in the basic contract as either number of units for supplies or as dollar values for services.
Small Business Innovation Research Agreement (SBIR) & Small Business Technology Transfer Agreement (STTR)

- Small Business Administration (SBA)
  - SBIR STTR Program Overview Presentation
- Competitive grant/contract program for U.S. small businesses (SB) to engage in federal research & development (R&D) with U.S. research institutions (RI)
SBIR/STTR – Federal Agencies

- USDA
- DoC
  - NIST
  - NOAA
- DoD
- ED
- DOE
- EPA
- HHS
  - NIH
- DHS
- NASA
- NSF
- DOT
SBIR/STTR Phases

Phase I
- Concept Development
  - SBIR FUNDING
  - STTR FUNDING

Phase II
- Prototype Development
  - SBIR FUNDING
  - STTR FUNDING

Phase III
- Commercialization
  - NO SBIR FUNDING
  - STTR FUNDING
SBIR/STTR T&Cs Flow-down

Federal Prime Contract

- Federal Agency issues Federal SBIR/STTR Prime Contract to SB

SB Subcontract

- SB issues Subcontract to RI (UT)
- T&Cs of SB’s Subcontract + Federal Prime Contract apply to RI (UT)
SBIR

• Legally binding contract.
• Set-aside program for SB to engage in federal R&D.
• *Early stage R&D* with potential for commercialization.
• SB partnership with RI (UT) is *not required*, however, it is encouraged.
• RI (UT) may complete up to 33% of total research effort for Phase I and up to 50% of total research effort for Phase II.
STTR

- Legally binding contract.
- Set-aside program to facilitate cooperative R&D between SB and RI (UT).
- Agreement formalizes SB and RI (UT) collaboration.
- Potential for commercialization.
- **SB partnership with RI (UT) is required.**
- SB must perform at least 40% of work.
- RI (UT) must perform at least 30% of work.
- Remaining 30% of work may be performed by SB or RI (UT). [Or sponsor approved third party that is a subcontractor to RI (UT) or SB.]
Membership Agreement

• Legally binding contract.
• Used by research organizations to establish research cooperatives.
• Sets out membership requirements and obligations for participation in cooperative research with other members.
• If fees/dues are required, these are set out in T&Cs for membership.
• Focus on intellectual property (IP) rights, especially publicity and publications.
Confidentiality Agreement (CDA)  
=  
Nondisclosure Agreement (NDA)  
=  
Proprietary Information Agreement (PIA)

All mean the exact same type of contract

(Typically, they are referred to as “NDA” by Sponsors)
CDA = NDA = PIA

• Legally binding contract.
• Outlines confidential/proprietary material, knowledge, or information (Confidential Information) UT and Sponsor wish to share with one another for a specific purpose.
• Enforces the protection each parties’ Confidential Information from public disclosure and from disclosure to third parties who are not part of the agreement.
CDA = NDA = PIA (cont’d)

• States access restrictions and procedures to maintain confidentiality.
• Parties agree not to disclose Confidential Info covered under the agreement except to specifically named employees.
• Creates a contractual relationship between the parties to protect clearly identified (i.e., marked) Confidential Info.
• Should have a clear, finite period of confidentiality, and conditions when confidentiality no longer applies.
• May be multi-party agreement (including UTRF).
CDA=NDA=PIA limited for UT

• Agreement **must** be signed by UT authorized official to be valid
  • PI cannot sign on behalf of UT
• Agreement only covers **UT employees**
  • ORNL employees/JFOs are not covered
• UT **will not** accept receipt of trade secrets
  • if Sponsor insists on disclosing trade secrets to UT, then UT General Counsel must be involved in contract negotiations
Teaming Agreement

• Legally binding contract.
• Agreement for UT and Other Organization to work together to submit a proposal to a specific Federal Agency in response to a specific Federal Solicitation.
• One party designated Team Leader/Prime Contractor; other party is Team Member/Subcontractor.
• Sets out each party’s responsibilities for preparing specific parts of the proposal submission.
• Team Leader is point of contact with Federal Agency and submits proposal to Federal Agency.
Teaming Agreement (cont’d)

• May include a Noncompeting Clause for proposal submissions by UT’s PIs to this specific solicitation.
• May incorporate a Non-Disclosure Agreement (NDA).
• Several Team Members may be involved. Who is Lead Team Member? Who are Subs?
• Each party responsible for its own costs in preparing the proposal.
• Termination clause needed.
• Should not require a SOW! Not a research agreement!
Material Transfer Agreement (MTA)

- Legally binding contract
- Transfer of tangible research materials between two organizations
- Recipient intends to use materials for their own research purposes
- Defines rights of materials provider and recipient with respect to materials and any derivatives
- May require ORE Compliance review
  - Incoming/Outgoing Materials Questionnaire
- May require UT to pay fee and/or shipping costs
MTA - UBMTA

• **Uniform Biological Material Transfer Agreement (UBMTA) – Master Agreement** developed by NIH to simplify the transfers of Biological Materials

• Where both Organizations are signatories to UBMTA Master Agreement, execution of an Implementing Letter is sufficient for each transfer

• Non-signatories may use the UBMTA template

• Basic compliance reviews still needed
Product Evaluation Agreement

• Legally binding contract
• Contract between UT and Sponsor for UT to test and analyze Sponsor’s product, includes T&Cs for:
  • Testing to be performed by UT
  • Expected testing completion date
  • Expected final report due date
  • Payment(s) to UT by Sponsor
  • Shipping and return of product
• UT will not insure product or be responsible for theft, loss, or damage
• If Sponsor requires special insurance, then UT General Counsel and Treasurer’s Office must become involved
• Title to product remains with Sponsor
Data Use Agreement (DUA) (Restricted vs. Non-Restricted)

• Legally binding contract
• Organization agrees to share certain data and/or data sets with UT
• Sponsor may or may not charge a fee
• UT agrees to T&Cs of data use
  • Restricted – access and use restrictions (detailed in T&Cs) due to confidential or sensitive data. May require UT IRB Committee or Export Control Officer review and signed compliance letter.
  • Non-Restricted – no restrictions on access beyond DUA basic T&Cs for use.
Data Use Agreements (DUA)

In general, sets out the T&Cs for:

- What data will be released or shared
- Who has ownership of data
- What, if any, identifiers will be included
- Purposes for which data may be used
- With whom, if anyone, data may be shared
- Data security and safeguards
- To whom violations of agreement should be reported
- Term of agreement (period of performance)
- Disposition of data at end of agreement
- Any liability or insurance requirements
Questions?
For more information, please contact OSP:

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Training Schedules & Registration:
http://research.utk.edu/training-workshops/schedules-registration/