

Policy Title	PREFERRED TERMS AND CONDITIONS FOR RESEARCH AND RELATED AGREEMENTS
Reference	ROP/05 (previously incorporated within College Approval and Authorisation Policy ROP/02)
Version	5 (Apr 2021)
Effective Date of Policy	1 September 2015
Dissemination Method	Research Office to Faculty Deans for Faculty dissemination
Policy Review Date	1 March 2024
Policy Owner	Director of the Research Office
Revision Timetable / Process	Regular review of the policy is required to ensure it evolves to support the changing funder portfolio and College needs.

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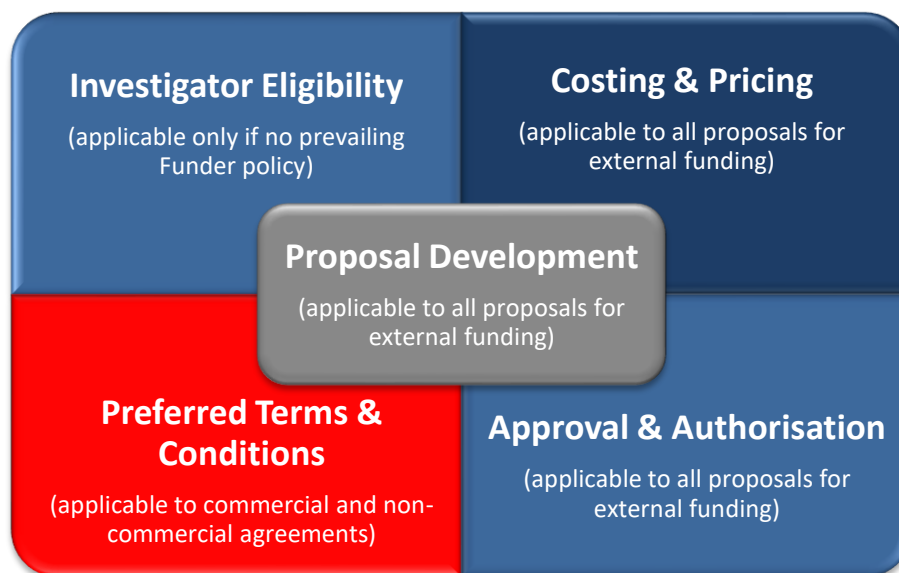
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1. INTRODUCTION

1.1 Description

Application: This policy applies to all proposals for externally funded research and research-related agreements to be undertaken by the College including, but not limited to, all externally-funded research grants and contracts, collaborative agreements, consortium agreements, memoranda of understanding, confidentiality agreements and material transfer agreements.¹ The policy is a component of the Research Office pre-award policy framework illustrated below:



Exceptions: Activities to be administered through N, F, G and I codes – these are subject to Faculty Finance policies and procedures
 Research proposals and agreements which include non-research activities (such as the provision of education) should be considered in consultation with the appropriate College officer(s).
 Applications for approval of exceptions (other than the above) to this policy should be made through the Director of the Research Office.

1.2 Background

Pre-award approval and authorisation principles and obligations were formalised in the College's Approval and Authorisation policy (ROP/02), first released in 2008. The policy included a framework for authorisation of research proposals, referred to as the 'Preferred Terms of Trade'. Faculties were delegated authority to agree to proposals for external research funding (grants and contracts) within the preferred terms and guidance included a pathway for approval of terms outside of those set out in the policy.

The Preferred Terms of Trade was re-launched as a standalone policy in 2015, under the revised title of 'Preferred Terms and Conditions for Research and Related Agreements'.

1.3 Aims

The Preferred Terms and Conditions for Research and Related Agreements provide a College framework for the agreement of terms and conditions in research and research related agreements. The policy aims to protect the interests of the College and Principal Investigators and to ensure that appropriate benefit is received by the College in relation to the outcomes of its research projects. The policy sets out a clear approach which reflects the preferred contractual position for the core elements of a research agreement, whilst retaining flexibility to take account of the context, for example the contributions of the respective parties and the importance of the project to the Faculty strategy etc.).

¹ Research activity is as defined in [What counts as Research?](#) and [Classification and Management of Research Funding Guidance \[pdf\]](#)

Consideration of the Preferred Terms and Conditions for Research and Related Agreements should not be exclusive to approval and authorisation processes, rather they should inform all stages of proposal development.

The policy provides a framework for Faculty Research Services and Contracts Teams to operate within in order to balance the different and sometimes conflicting aims:

1. Maintain consistency in negotiating practice and the avoidance of unintentional precedents by supporting a co-ordinated approach to Funders. Where poor terms are agreed with a funder, difficulties can arise for future projects and previous agreement may be used as leverage in any future negotiations. A precedent set within a project in one department may have long term implications across the Faculty or indeed for College-wide research.
2. Achieve the most appropriate contractual position for a research project underpinned by the following principles:

1. **To protect academic freedom to operate in future research projects.**

As a minimum, the College must retain certain basic rights to any Intellectual Property (IP) it generates to protect academic freedom to operate. Even if the College does not retain ownership of IP it may generate in the course of a research project, it must retain a licence for research and teaching purposes, both in order to allow future work in the same area, but also to help enable the College in meeting its remit as a public body.

2. **To be able to disseminate research outcomes.**

It is essential that the College has freedom to disseminate the outcomes of research it conducts. This is both from the perspective of demonstrating a 'public benefit' to its core activities, but importantly, in enabling academic recognition for both the College and its research staff. On its core activities, the College should never agree to terms which prevent it from being able to disseminate the results of its research within a reasonable timeframe.

3. **To maximise opportunities in relation to research outcome, where possible and in proportion to other benefits.**

At the heart of the many benefits of university research is Intellectual Property (IP) and it can be one of its prime assets. Ownership of IP arising from its research allows the College to exercise the greatest degree of control over the use of Intellectual Property Rights, including use in further research and future commercialisation. IP is key to future academic growth and development and has value in developing relationships with other research organisations. A funder may want to own the IP, but it might be that their requirements are met by securing the rights to use the IP, rather than ownership itself. Where College is unable to retain ownership of IP arising from its research, it should expect to receive a proper share in any benefits generated from any commercialisation of that IP. Demonstrating an appropriate management over the use of IP the College generates is a factor in meeting its remit as a public body.

4. **To minimise financial and reputational risks and the liability of the College.**

Risks can be difficult to quantify and require some assessment of their likelihood and balanced against potential benefits received. There are some contractual terms which the College cannot accept, whereas others may be acceptable in specific cases. For example, the College should guard against providing guarantees that particular research results will be achieved, and should protect against implied warranties that may expose the College to claims from a third party. The College also needs to ensure that activity is covered under its Insurance policies.

5. **Ensure activity is capable of being classified as Research (in order to meet the Colleges remit as a public body).**

The preceding principles support the College in meeting its remit as a public body. Universities are recognised as charities under law and exempt from tax on its core activities (teaching and research), therefore the College must be able to demonstrate these activities meet the principles laid down by The Charity Commission, and The Office for Students, that research activity meets the definition of charitable research (See [What counts as Research?](#)). Research may not be regarded as a charitable activity if its results are not disseminated either through publication or further application, or if their dissemination is so limited that there is no public benefit. Funding council requirements for reporting activity as research also stipulate that the research project must have 'Scope' agreed with the funder and Performance Related Conditions where there must be a particular level of service or units of output to be delivered and payment, or entitlement

to the resource, is conditional on the performance (For further information see [Classification and Management of Research Funding Guidance \[pdf\]](#)).

3. Provide a clear pathway for escalation, and the approval of contractual terms which might fall outside of this policy, to those College Officers to whom responsibility for component parts of legally-binding contracts has been delegated (detailed in Appendix I). Terms outside of the policy may be acceptable under certain circumstances if the risks, or the likelihood of those risks occurring, are considered to be tolerable or their effect may be mitigated by further action, or the inclusion of additional terms.

2. PRINCIPLES GOVERNING THE PREFERRED TERMS AND CONDITIONS FOR RESEARCH AND RELATED AGREEMENTS

- 2.1 The President and Provost are the recognised Institutional Signatory for research applications / proposals and research-related agreements; they have delegated College Authorisation (i.e. authority to enter into legally binding agreements) to named Faculty Research Services / Contracts Managers (or equivalent) and as such they have the delegated authority to agree research and related agreements where they are within the Acceptable Deviations as set out in this Policy.
- 2.2 The principles of 'Preferred Terms and Conditions for Research and Related Agreements' apply equally to non-commercial and commercial funding (i.e. grants and contracts), collaborative activities and unfunded projects (where applicable).
- 2.3 Authority for approval of contractual terms outside of the preferred position has been assigned to College Officers with relevant expertise e.g. terms relating to Liability and Insurance are referred to the College's Insurance Manager, whereas terms relating to IP are referred to the Research Office.

3. FACULTY OBLIGATIONS

Faculty Research Services / Contracts Managers have been delegated authority within a framework of contractual terms representing the College's preferred position to ensure they work to maximise the College's position in relation to research outcomes and to minimise any associated risks. Research outcomes and risks need to be assessed in relation to the project at hand and Faculties shall ensure that:

- 3.1 Processes should be in place so that Faculty Research Services / Contracts Managers obtain key information regarding the research project from the Principal Investigator (PI) at the outset. Such information should include the nature of the research, the financial and intellectual contributions of the respective parties, the importance of the project to the PI, the likely outcomes arising from the research and what each party wants from the research project. These factors will help inform what terms and conditions should be sought in a contract, or the assessment of risks arising from grant terms and conditions.
- 3.2 Faculty Research Services / Contracts Managers should give consideration to the College's preferred term (as detailed in column [2] of Appendix I) and the acceptable deviations (as detailed in column [3]), in relation to the information about the project, and to negotiate towards an equitable contractual position within a reasonable timeframe which takes into account the following key aims:
 - 3.2.1 protect academic freedom to operate in future research projects
 - 3.2.2 the ability to disseminate research outcomes.
 - 3.2.3 maximise benefits in relation to research outcomes (achieving terms that are both proportionate and appropriate to the research project)
 - 3.2.4 minimise financial and reputational risks and the liability of the College
 - 3.2.5 ensure activity is capable of being classified as Research (in order to meet the Colleges remit as a public body and for reporting requirements to the Office for Students and funding councils).

- 3.3 Approval of terms outside of this policy (or the 'Agreed Deviations' documented in Appendix I) should be referred by the Faculty Research Services / Faculty Contracts team to the appropriate College Officer(s) as detailed in column [5] of Appendix I. Any referral should take the form of a recommendation including a rationale for acceptance or rejection of the terms, and should take account of all relevant factors to the activity in question.
- 3.4 All research and research related agreements are approved, authorised and signed off in accordance with the Approval and Authorisation (ROP/02) policy.

4. OTHER OBLIGATIONS

As determined by the College, the following central departments shall:

- 4.1 The College Officer with delegated approval for deviations from the terms of trade shall;
- a. Within the context of the case, in consultation with the Contracts Manager, and based on information they have provided, assess the risks or implications associated with the terms being referred.
 - b. Based on information provided by the Faculty, consider the case presented and the rationale for accepting the terms and discuss with the Contracts Manager whether alternatives have been considered.
 - c. Provide professional advice on how any risks identified could be minimised further.
 - d. Provide professional advice on any amendments to the terms which may benefit the College.
 - e. Consider whether the terms could set a precedent and make recommendations as to what changes could be incorporated to limit this.
 - f. In consideration of the above, either;
 - Approve the exceptional terms stating any risks which the faculty may be accepting and specifying any conditions which must be met or expected actions required, on the basis of the approval e.g the College may wish to make it clear that it reserves its position for future dealings with the Company.
 - Reject the exceptional terms stating why the terms cannot be accepted.
- 4.2 The Research Office shall notify Faculties of any necessary amendments or any changes to this Policy.

APPENDIX I: PREFERRED TERMS AND CONDITIONS AUTHORISATION FRAMEWORK

The following table outlines the College's preferred financial and contractual position, and provides a framework within which Faculties and Central Business Units are able to operate. The table sets out a number of accepted deviations from the preferred term, including where these deviations might be appropriately used. To enable College to properly manage its contractual obligations, deviations beyond those set out in the table will need to be referred to the appropriate College officer as set out in column 5 of the table. The identified College officers hold the authority to agree to specific deviations, or to make a recommendation that such a deviation presents a risk and that it should be rejected.

Exclusions under the Referral Escalation Route in column 5.

Contracts falling under the umbrella of a College Framework Agreement do not need to be referred, if the terms contained in that contract fall outside of the Preferred Terms of Trade - **provided they were referred and approved when the Framework agreement was originally negotiated.**

Standard grant terms and conditions for charities should follow referral and approval in line with the table below, receiving Faculty acceptance thereafter. Approval and acceptance are provided through the Research Office Charities Site on SharePoint - additional deviations for charities may be approved on a case by case basis.

CORE TERMS OF AGREEMENT	PREFERRED TERM	ACCEPTABLE DEVIATIONS	APPROVAL AUTHORITY WITHIN PREFERRED TERM AND ALLOWED DEVIATIONS	COLLEGE OFFICER ESCALATION ROUTE FOR DEVIATIONS FROM PREFERRED TERM
[1]	[2]	[3]	[4]	[5]
Payment Terms – Frequency ² <u>Funders with established credit worth</u>	<u>Incoming payments</u> Quarterly in Advance ³	<p>Companies (for which credit worth has been established) – quarterly in advance but may retain up to 10% of payment until receipt of final scientific report.</p> <p>Companies (for which credit worth has been established) – may for commercially-led clinical trials, pay in arrears according to number of patient visits / tests. Invoices must be raised as visit / tests milestones are reached.</p> <p>Charities (for which credit worth has been established) - payment terms up to quarterly in arrears. A final payment of up to 10% may be retained until receipt of final scientific report</p> <p>Wellcome Trust – quarterly in arrears</p> <p>Research Councils – profile payments</p> <p>EU Funding (CEC) H2020 – Initial advance payment followed by annual cost statement</p>	Faculty Research Services Manager/ Faculty Senior Contracts Manager (or equivalent)	<p>Faculty Finance Officer (FFO)</p> <ul style="list-style-type: none"> • can agree payment terms less than quarterly in arrears • can agree deviation from the credit check recommendation and will (in consultation) attribute ownership of the risk of bad debt to the relevant

² **All Funders** must be credit checked at early stage in application / contract development.

³ Where payment terms are 'Quarterly in Advance', the budget should be set up in line with that awarded (either in full or in part) i.e. Budget = Award (Full / Part)

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[1]	[2]	[3]	[4]	[5]
		EU Funding (CEC) Marie Skłodowska-Curie actions – Initial advance payment followed by interim and/or final cost statements European Research Council (ERC) - Initial advance payment followed by interim cost statements. Government Depts: Payment terms up to quarterly in arrears. A final payment of up to 10% may be retained until receipt of final scientific report		academic department. NB. For commercial funders Consideration must be given to future arrangements, and setting of precedents going forward
	<u>Outgoing payments</u> Payments must always be subject to the College having received payment from the Prime Funder and reflect the payment schedule under which the College has been paid. This may be one of the following: <ul style="list-style-type: none"> • equal quarterly instalments in arrears • on achievement of milestones 	No deviation without further approval		
Payment Terms – Frequency <u>High Risk Funders</u>	<u>Incoming payments</u> Secured Advance Payment ⁴	No deviation without further approval	Faculty Finance Officer	Director of Financial Services and Procurement ⁵
Payment Terms – Foreign Currency	<u>Incoming payments</u> United Kingdom Pounds (GBP) should be achieved wherever possible.	EU Funding (CEC) Awards – EURO Other Accepted Currencies; Australia Dollars (AUD), Canada Dollars (CAD), Switzerland Francs (CHF), Denmark Kroner (DKK), Euro (EUR), Hong Kong Dollar (HKD), Japan Yen (JPY), New Zealand Dollar (NZD), Sweden Kroner (SEK), Norwegian Kroner (NOK), United States Dollars (USD), South Africa Rand (ZAR). Any other currency must be approved by the Treasurer, however please note that additional fees will be incurred.	Faculty Research Services Manager / Faculty Senior Contracts Manager (or equivalent)	Treasurer

⁴ Where payment terms are ‘**Secured Advance Payments**’, the budget should be set up in line with income received only i.e. Budget = Income Received
 Any Funder designated by Finance (Accounts Receivable) as a ‘High Risk Funder’ will be subject to expenditure controls to mitigate risk.

⁵ At the discretion of the Director of Financial Services, consultation with the relevant FOO may take place in reaching a decision

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[1]	[2]	[3]	[4]	[5]
	<u>Outgoing payments</u> Payment must be made in the currency in which the award was received.	No deviation without further approval		

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[1]	[2]	[3]	[4]	[5]
Price	As detailed in the College's Costing and Pricing of Externally Funded Research Policy, the FEC of an activity should be recovered in the price charged wherever possible. ⁶	<p>Agreed deviations in line with prescribed pricing policies:</p> <p>Research Councils: 80% FEC (with exceptions for equipment > £10k and S/Ship Stipend and Fees).</p> <p>Charities: Directly Incurred costs only</p> <p>EC Funding (CEC) H2020:</p> <ul style="list-style-type: none"> Research and Innovation Actions (RIA) & Innovation Actions (IA) Coordination and Support Actions (CSA) European Research Council (ERC) Starting Grants (StG), Consolidator Grants (CoG) and Advanced Grants (AdG) <p>Indirect costs: 25%, Recovery: 100% up to budget ceilings</p> <p><u>Marie Skłodowska-Curie Actions:</u> Indirect costs: varies according to the action, flat rate per researcher month and is combined with Management costs. Recovery:</p> <ul style="list-style-type: none"> Individual Fellowships (IF) and Innovative Training Networks (ITN): 100% of researcher salary/salaries (EC-defined flat rate per researcher month); Research, Training & Transfer of Knowledge costs (flat rate per researcher month) Research & Innovation Staff Exchange (RISE): Staff member top-up allowance (flat rate per researcher month), Research, Training & Networking costs (flat rate per researcher month) <p>Government Agencies: Should target FEC. Projects < FEC recovery may be acceptable providing they do not fall below the 80% recovery. No other deviation is permitted without prior approval by the relevant Faculty Finance Officer.</p> <p><i>Where non-commercial funders prescribe pricing policies not listed above, Faculty Research Services should liaise with the Research Office to establish College position.</i></p> <p>Commercial Agreements: Recovery less than the minimum faculty percentage recovery must be approved by the relevant Faculty Finance Officer.</p>	<p>HOD for proposal price <£5m and with recovery rate either:</p> <ul style="list-style-type: none"> (non-commercial) in line with prescribed policy (commercial) rate > Faculty minimum recovery level <p>FFO</p> <ul style="list-style-type: none"> (commercial) rate < Faculty minimum recovery level 	<p>All Faculties</p> <p>If PI = HOD then Faculty Dean to approve.</p> <p>If PI = Faculty Dean then President / Provost to approve.</p> <p>Value Limits</p> <p>Proposal Price £5-10m: Faculty Dean to approve.</p> <p>Proposal Price > £10m: Faculty Dean with reference to President/Provost.</p> <p>Institutional Contribution</p> <p>Institutional contributions (outside of those agreed through prescribed funder or faculty policy) should be referred to the Faculty Finance Officer for approval.</p>

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[1]	[2]	[3]	[4]	[5]
Publication	College should retain an unfettered right to publish results of research, including submission of a student thesis for examination.	<p>Delays in publication should be kept to a minimum and should be for the purpose of protecting confidential information or to allow time for the protection of Arising IP only. Where circumstance does not allow for this, delays in publication may be extended up to 12 months maximum, from the point of notification or request to publish.</p> <p>In the case of multi-centre Clinical Trial Agreements, publication may take place up to 12 months following completion/termination of a trial at all sites, as may be appropriate to the work being undertaken. Please consult with the Principal Investigator.</p> <p>A student thesis may be placed upon restricted access 'in accordance with College's regulations for restriction of access'. No fixed period of embargo which is greater than 2 years should be agreed in the contract. See further guidance⁷.</p>	Faculty Research Services Manager / Faculty Senior Contracts Manager (or equivalent)	Director of the Research Office or Head of Research Contracts Policy
Confidentiality	<p>Provisions to survive termination of the contract for a maximum of 5 years.</p> <p>Exclusions from confidentiality should encompass information:</p> <ul style="list-style-type: none"> known prior to receipt. independently developed or provided by a third party who has the right to provide it. in the public domain prior to receipt. that enters public domain through no fault of the recipient. required to be disclosed under law or order of court. 	<p>Up to 10 years in exceptional circumstances.</p> <p>For MoD/DSTL – DEFCON 531 may be accepted.</p> <p>Confidentiality provisions may be omitted from Grant terms if no information of this nature is intended to be exchanged.</p> <p>Confidentiality provisions shall remain in force without limit in time in respect of Personal Data⁸ and any other information which relates to a patient, his or her treatment and/or medical records.</p>	Faculty Research Services Manager / Faculty Senior Contracts Manager (or equivalent)	Director of the Research Office or Head of Research Contracts Policy

⁶ If a project has significant expenditure in foreign currency, please contact Treasury to discuss the possibility of hedging this risk. See [Guidance](#)

⁷ See internal guidance notes - [I:\RS Operations\CONTRACTS NEGOTIATION GROUP\Contract Templates\Guidance\Preferred Terms and Conditions - Thesis Embargo Guidance.pdf](#)

⁸ For definition of Personal Data and guidance see <https://www.imperial.ac.uk/admin-services/secretariat/information-governance/data-protection/processing-personal-data/>

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[1]	[2]	[3]	[4]	[5]
Transfers of Personal Data ⁸ (As defined under the General Data Protection Regulations)	Controller to Processor⁹ Where the College (Controller) shares Personal Data with another party (Processor) who will process data on the College's instructions, contractual clauses ¹⁰ must be in place which cover the following: <ul style="list-style-type: none"> the details of the processing including, the subject matter, the duration and the nature and purpose of the processing, the type of personal data and the categories of data subject. The contract must include terms stating that the Processor must; <ul style="list-style-type: none"> only act on the controller's instructions, unless otherwise required by law; ensure that people processing the data are subject to a duty of confidence; take appropriate measures to ensure the security of processing; only engage a sub-processor with the controller's prior authorisation and under a written contract; take appropriate measures to help the controller respond to requests from individuals to exercise their rights; assist the controller in meeting its GDPR obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments; delete or return all personal data to the controller (at the controller's choice) at the end of the contract, and also delete existing personal data unless the law requires its storage; and 	Transfers under Binding Corporate Rules and/or explicit consent should be referred to the DPO.	Faculty Research Services Manager / Faculty Senior Contracts Manager (or equivalent)	College Data Protection Officer

⁹ For definitions of Processor and Controller under the General Data Protection Regulations see <https://www.imperial.ac.uk/admin-services/secretariat/information-governance/data-protection/processing-personal-data/>

¹⁰ Templates and further guidance are provided in the contract templates folder which should be used without further amendment.

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[1]	[2]	[3]	[4]	[5]
	<ul style="list-style-type: none"> submit to audits and inspections and give the controller whatever information it needs to ensure they are both meeting their Article 28 obligations <p>Standard Contractual Clauses In addition to the clauses described above, for transfers to a country without an Adequacy Decision from the EU Commission¹¹ (i.e. a restricted country, including the US) or transfers from the EEA to the UK, the "Standard Contractual Clauses¹² " must be entered into.</p> <p>Controller to Controller Contractual clauses should be in place which cover the following:</p> <ul style="list-style-type: none"> the details of the processing including, the subject matter, the duration and the nature and purpose of the processing, the type of personal data and the categories of data subject. The contract should include terms stating that each party should; <ul style="list-style-type: none"> Acknowledge the respective processing of personal data each controller will be conducting ensure that people processing the data are subject to a duty of confidence; take appropriate measures to ensure the security of processing; ensure all fair processing notices have been given ensure it is free from restriction which might prevent it from processing 			

¹¹ https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outside-eu/adequacy-protection-personal-data-non-eu-countries_en

¹² "Standard Contractual Clauses" also known as the EU Model Clauses, are a set of clauses which have been approved by the European Commission for data transfers outside the EU or EEA

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[1]	[2]	[3]	[4]	[5]
	<p>or disclosing or transferring the personal data to other party</p> <ul style="list-style-type: none"> ○ take appropriate measures to help the other party to respond to requests from individuals to exercise their rights; ○ assist the other party in meeting its GDPR obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments <p><u>Standard Contractual Clauses</u></p> <p>In addition to the clauses described above, for transfers to a country without an Adequacy Decision from the EU Commission¹³ (i.e. a restricted country, including the US) or transfers from the EEA to the UK, the “Standard Contractual Clauses¹⁴” must be entered into.</p>			
Intellectual Property: Background IP	<p>College retains ownership of its Background IP.</p> <p>A royalty-free, non-transferable, non sub-licensable (except to Group Companies or Affiliates), non-exclusive licence to College owned/controlled Background IP may only be given for the purposes and duration of the project (subject to any existing 3rd party rights).</p> <p>No other licence may be granted to College owned/controlled Background IP for the purpose of exploitation, or the commercialisation of Arising IP.</p>	College (in so far as it is able to) may grant the Funder/Collaborator of the project a non-exclusive licence to Background used in the project, for the purpose of exploiting project Arising IP that Funder/Collaborator owns, on terms to be agreed.	Faculty Research Services Manager / Faculty Senior Contracts Manager (or equivalent)	Director of the Research Office or Head of Research Contracts Policy

¹³ https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outside-eu/adequacy-protection-personal-data-non-eu-countries_en

¹⁴ “Standard Contractual Clauses” are a set of clauses which have been approved by the European Commission for data transfers outside the EU or EEA and should not be amended.

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[1]	[2]	[3]	[4]	[5]
Intellectual Property: ¹⁵ Arising IP	<p><u>Where College is conducting the research work.</u> Bilateral arrangement including research funding projects and Studentships College will own Arising IP.</p> <p>An internal, non-exclusive, non-commercial licence, for research and development purposes only may be granted to the Funder/Collaborator (and their Group Companies or Affiliates as defined in the Agreement).</p> <p><u>Multi Party Research</u> (i.e. two or more parties need to be carrying out the research or have responsibility for carrying out one or more of the main elements of the research) Including CASE and KTS In/Out</p> <ul style="list-style-type: none"> Where the work is collaborative, Arising IP may be owned by the party generating the same, i.e. College owns outputs it generates ¹⁶. Joint IP: Where more than one party will/has made a significant inventive contribution to the generation of the same Arising IP, joint ownership may be agreed, providing no deviation from the principles outlined in the 'guidance notes on Joint IP' is agreed without prior approval. <p><u>Sub-Contracted Work</u> (i.e. research work sub-contracted out to another party) Includes a Participating Site agreement.</p>	<p>Any permitted deviation must be equal to the following principles; <u>Licences</u> In addition to the grant of a non-exclusive R&D licence for non-commercial purposes, the following may be agreed for research projects including H2020;</p> <ul style="list-style-type: none"> College may grant the Funder an option to a non-exclusive licence for commercial exploitation on terms to be agreed. College owns the Arising IP and grants the Funder, or a specific collaborator, a non-exclusive internal R&D licence, and an option to an exclusive licence which may be restricted by Field. Any option period granted <u>may not exceed 3 months</u>, without prior approval, from the point of notification. The option does not extend to their Group Companies or Affiliates. <p><u>Clinical Trials</u></p> <ul style="list-style-type: none"> In the case of a commercially led clinical trial, the company may own the Arising IP. College must retain a non-exclusive, perpetual, research and teaching licence to Arising IP. <p><u>Research reliant on a Funders background</u></p> <ul style="list-style-type: none"> In the case of a project reliant on a funders background (including materials as defined), the funder may own the Arising IP directly related to that background/materials, provided the PI is content with this. The College will own Arising IP directly related to College background and any new techniques and methodologies. College must retain a non-exclusive, perpetual, research and teaching licence to the funders Arising IP. <p><u>Specific Funders</u></p>	Faculty Research Services Manager / Faculty Senior Contracts Manager (or equivalent)	<p>Director of the Research Office or Head of Research Contracts Policy</p> <p>Except as specified in the Acceptable Deviations (column 3), any proposal for a Funder to own Arising IP, or one to use Collaborative Agreement Template 3 should not be agreed without Research Office Approval (Funder owns the Arising Intellectual Property and grants to College a non-exclusive, internal R&D and teaching licence).</p>

¹⁵ Advice relating to the interpretation and redrafting of IP terms must be referred to the Director of the Research Office

Any requirement to define Field must be agreed with the PI and may be referred to Innovations where clarification is required

¹⁶ It is preferable for College to retain a non-exclusive, research and teaching licence to Arising IP generated by a collaborating party or parties, if the PI wishes to have ongoing access to other consortium IP, however this may be omitted if this is not the case.

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	College will own Arising IP. An internal, non-exclusive, non-commercial licence, for research and development purposes only may be granted to the sub-contractor (and their Group Companies or Affiliates as defined in the Agreement)..	For MoD/DSTL – DEFCON 705 may be accepted. DEFCON 703 may not be accepted without reference to the appropriate College Authority.		
Intellectual Property: Arising IP Notification	A notification of Arising IP may be given but a time-frame must not be stipulated, e.g. to inform the Funder within 30 days of its creation	No deviation without prior consultation with the appropriate College Officer	Faculty Research Services Manager / Faculty Senior Contracts Manager (or equivalent)	Director of the Research Office or Head of Research Contracts Policy
Intellectual Property: Commercial Terms	Except as expressly provided in the acceptable deviations, no commercial licence terms should be agreed, including licence fees, option fees, specific revenue share or equity agreements or any other specific trading of intellectual property, No agreement to assign or licence IP to a technology transfer company other than Imperial Innovations.	Any proposal to include commercial terms should in the first instance be discussed with the appropriate College Officer. Charities: Standard grant terms and conditions for revenue and equity sharing which follow the Colleges current model, and allow for a 35:65 revenue share split between the charity and University, deduction of costs and a 30% technology transfer fee (in line with the previous AMRC guidelines, version 2007).. Charities that follow the new AMRC guidelines¹⁷ which provide for a 50:50 revenue share split between the charity and University , deduction of costs and a 5-10% technology transfer fee may also be accepted, however see footnote below.	Faculty Research Services Manager / Faculty Senior Contracts Manager (or equivalent)	Director of the Research Office or Head of Research Contracts Policy
Liability and Insurance	Contracts which include any of the following risks must be referred to the Insurance Manager for approval: <ul style="list-style-type: none"> Contracts where staff or students will be working on offshore rigs or platforms Radiation or nuclear contamination or assembly Punitive, exemplary or liquidated damages (especially relevant to US law) 		Faculty Research Services Manager / Faculty Senior Contracts Manager (or equivalent)	Insurance Manager, Finance Department.

¹⁷ AMRC revised their guidelines in July 2018 and the College is working with a number of other universities to amend the changes. The two key changes were:

- Removal of the 30% technology transfer fee allowance
- Amendment to the revenue share division to 50:50 (previously 65:35 in favour of HEIs)

The new terms may be accepted but please notify Ben Hughes where a Charity has adopted these new terms.

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	<ul style="list-style-type: none"> Human Clinical studies involving children under 5, pregnant women or over 5000 participants per site Human Clinical studies being conducted overseas¹⁸ <p>NB Clinical studies at overseas sites sometimes require a local Insurance Policy.</p> <p>The following terms on a contract require a referral to the Insurance Manager: Terms which require the College to name a beneficiary on its Insurance Policy Terms which include a 'hold harmless' clause, whether reciprocal or not, or a mutual indemnity or terms which waive subrogation rights.</p>			
	All four aspects of liability provisions below must be considered in the agreement:			
	<u>1. Limitation of Liability</u> To the extent permitted in law, the liability of the College should NOT extend to, indirect or consequential loss. 2. Financial cap: The aggregate liability of the College (except where losses arise from death, personal injury, fraud or deliberate breach of agreement) should be limited to: <ul style="list-style-type: none"> Funded research agreements: twice the contract price provided this is no more than £2m All non-funded agreements (<u>except NDAs</u>), £500k in total. 	No variation without referral to the Insurance Manager Financial cap: ¹⁹ Funded research agreements: Where it is not possible to agree twice the value, a flat figure may be agreed an appropriate level up to £2m. Non-funded agreements: An appropriate figure up to £2m may be agreed Charities: Standard non-negotiable grant terms and conditions for research may exclude the financial cap on liability provided that the Colleges liability does NOT extend to, indirect or consequential loss.	Faculty Research Services Manager / Faculty Senior Contracts Manager (or equivalent)	Insurance Manager Finance Department
	<u>3. When can the College provide an Indemnity?</u>		Faculty Research Services Manager /	Insurance Manager

¹⁸ The Insurance Manager will require the number of sites, number of participants likely to be involved at each site, description of the study and countries the study is taking place in. If staff travel overseas from the UK, they should use the overseas travel registration process and therefore there is no need for these individuals to contact the Insurance Manager especially, unless they have any policy queries. Staff who are part of the clinical trial and resident overseas would not require overseas travel insurance since they are already on site. They would be covered by the Clinical Trial policy in respect of their work for the trial.

¹⁹ It is the responsibility of the individual negotiator to limit the College's liability as far as possible, therefore in exercising the deviation it is expected that a value appropriate to the project is agreed on.

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	<p>The College may indemnify other parties, only in the following cases:</p> <ul style="list-style-type: none"> claims arising from the College's negligence or breach of statutory duty during the course of the research. The College may indemnify an organisation conducting a College clinical study for any claims against them resulting from their undertaking the study in accordance with the protocol, except where there are wrongful acts, omissions, negligence or breach of statutory duty on the part of that organisation. For a College sponsored clinical trial, the College may agree to provide no-fault compensation in respect of claims arising from personal injury or death of any participant as a result of their participation in the trial, for trials conducted in the countries listed in: Preferred Terms and Conditions - No Fault Compensation Guidance. 	No other variation without referral to the Insurance Manager.	Faculty Senior Contracts Manager (or equivalent)	Finance Department
	<p><u>When should the College receive an indemnity?</u></p> <ul style="list-style-type: none"> For commercially funded projects, or in collaborations where a company may own results, College should receive an indemnity against use by the company of any results, or materials generated in the course of the project. <p><u>Human Clinical Research</u></p>	<p>If the company is unwilling to provide an indemnity, an experimental waiver MUST be in place and the Colleges liability should NOT extend to, indirect or consequential loss. Nothing should limit either party's liability for losses which arise from death, personal injury, fraud or for any sort of liability that, by law, cannot be limited or excluded or deliberate breach of agreement by the College</p> <p>No other variation without referral to the Insurance Manager</p>	Faculty Senior Contracts Manager (or equivalent)	Finance Department

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	<p><u>Academically-led human clinical studies</u>: where funding and subsidised product is supplied to the College by a pharmaceutical company (or similar), the commercial party should indemnify the College against its use of the product, including product liability claims arising from study participants, and warrant that the product is suitable for the uses outlined in the protocol</p>			
	<p><u>4. Confirmation of Insurance Coverage</u></p> <p>For <u>academically led trials</u>, the commercial party must confirm in the contract that they have appropriate insurance coverage of not less than £5 million for one claim or a series of claims²⁰.</p>	No variation without referral to the Insurance Manager	Faculty Research Services Manager / Faculty Senior Contracts Manager (or equivalent)	Insurance Manager, Finance Department
Termination	<p><u>Termination Right and Notice Period</u></p> <p>Bilateral Agreements: Either party may terminate an agreement for convenience providing no less than 3 months written notice is given. Reciprocal rights should always be retained for the College.</p> <p>Multi Party Collaborative Agreements: Each party should retain a right to withdraw from the collaboration, (3 months from the start of the project) following a further notice period of 3 months.</p>	<p>Termination or withdrawal <u>for convenience</u>, may be omitted in the following cases:</p> <ul style="list-style-type: none"> Bilateral and Multi Party Collaborative Agreements with other Universities only and where the prime funder is one of Research Council, UK Govt or UK charity.²¹ Where the College is a sponsor of a clinical trial conducted at an NHS Trust site ²² 	Faculty Research Services Manager / Faculty Senior Contracts Manager (or equivalent)	<p>For all other matters refer to Director of Research Office or Head of Research Contracts Policy</p> <p>Matters that have a detrimental financial impact may be referred on to the Faculty Finance Officer</p>

²⁰ The NHS requires this level of insurance

²¹ Brunswick inter University Long Form Agreement template

²² Model Agreement for Non Commercial Research (mNCA) template

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	<p>Any agreement may be terminated following a breach event, providing no less than a 60 day period for remedy is granted.</p> <p>Termination may be immediate only in cases of insolvency of the other party.</p>	<p>Period for remedy may be reduced to no less than 28 days.</p> <p>In the case of clinical work, the College may terminate with immediate effect if:</p> <ul style="list-style-type: none"> Regulatory approvals are withdrawn The study must cease in interests of health of participants Where medicinal products become unavailable Where the PI becomes unavailable and cannot be replaced <p>In the case of sub-agreements, termination may be immediate if the prime agreement is terminated.</p>		
	<p><u>Payment of Costs</u></p> <p>On termination of a contract by either party all costs incurred and committed by College or in the case of a sub-agreement, a sub-contractor (subject to receipt of payment from the prime funder), up to date of termination should be payable.</p> <p><u>Studentships</u></p> <p>In the event of Funder terminating payment of costs should include payment of remaining fees and stipend of the student.</p>	<p>No other variation without prior consultation.</p>	<p>Faculty Research Services Manager / Faculty Senior Contracts Manager (or equivalent)</p>	<p>Faculty Finance Officer</p>

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[1]	[2]	[3]	[4]	[5]
Law and Jurisdiction	English Law and Jurisdiction	<p>Agreement may remain silent on law and jurisdiction.</p> <p>EU Funding (CEC): Belgian Law</p> <p>Research conducted in Scotland: Scottish Law</p> <p>Research conducted in Northern Ireland: Northern Irish Law</p> <p>Any other deviation must be given due consideration on the merits of proposed relationship, and referred for approval</p> <p>A proposal for acceptance of US federal law or a state law must be referred to the Insurance Manager.</p> <p>A proposal for acceptance of a US arbitrator must be referred to the Insurance Manager.</p>	Faculty Research Services Manager / Faculty Senior Contracts Manager (or equivalent)	<p>Director of the Research Office or Head of Research Contracts Policy</p> <p>For proposals involving US federal law or a state law referral must be made to the Insurance Manager.</p>
Warranties	<p>No specific warranties should be provided other than that the College is able to enter into and be bound by the agreement</p> <p>'Experimental Research Waiver' should always be included where appropriate²³.</p>	<p>In exceptional circumstances only, a knowledge warranty may be included, i.e. "to the best of its knowledge, without having conducted specific searches"</p> <p>Requests for compliance with the UK Bribery Act 2010 may be accepted.</p> <p>For projects involving human subjects/sample/tissue, warranties of compliance with the law may be given only provided that the Faculty RSM/SRCM are content and can demonstrate such compliance is in place.</p>	Faculty Research Services Manager / Faculty Senior Contracts Manager (or equivalent)	Director of the Research Office or Head of Research Contracts Policy
Other	The College should not be committed for more than five years to a contract or framework of projects	No deviation without prior consultation	Faculty Research Services Manager / Faculty Senior Contracts Manager (or equivalent)	Director of the Research Office or Head of Research Contracts Policy

²³ The presence of the experimental waiver must be considered alongside the presence of other key terms within the contract, for example where liability provision are outside of this policy, this waiver may be needed to help limit the College's liability.

APPENDIX II: GLOSSARY OF TERMS

Term	Acronym (if used)	Definition
'Academic Freedom to Operate'		<p>A key consideration in a research contract and refers to the PI's future ability to publish and engage in further research. Not being able to publish could affect a PI's career and future ability to engage with potential sponsors and carry out research.</p> <p>The ability of the College to engage in future research projects should not be constrained because the IP terms limit the use of IP generated from the project. What rights do other parties have to IP and could the College be infringing terms of licences which have been granted? Is it crucial for the College to own arising IP as the project will form a fundamental part of the PI's future research? An exclusive licence to College owned IP will restrict how the College can use that IP for the period of the licence.</p>
College Authorisation		College Authorisation is the administrative sign-off that informs the Funder that Faculty Approval to submit / execute the application / agreement has been granted.
Confidentiality		The provisions in a research contract concerning the protection of sensitive information exchanged between the College and the sponsor, as well as the results of the work and the agreement itself.
High Risk Funder		Judgment of an organisations current and future ability, and inclination to honour debt obligations as agreed upon based on the credit history, credit rating, and character of the entity. Recorded on Oracle Grants for a company.
Intellectual Property	IP	<p>Intellectual Property is intangible property that is the result of creativity. Intellectual Property can refer to a number of different rights, e.g. patents, confidential information, database rights, copyright etc. which may have commercial value.</p> <p>The results or outcomes of a research project can be viewed as IP, and are often referred to as <i>Arising or Foreground IP</i>. IP created prior to or outside of entering into a particular contract is often referred to as <i>Background IP</i>.</p>
Faculty Approval		Faculty Approval seeks to ensure that: all relevant parties are consulted, and are in agreement with, the strategic direction of the research; that the capacity and resource and infrastructure implications have been properly considered and planned for; that the application/contract terms and conditions (financial and contractual) have been considered; that the regulatory requirements (health & safety, environmental, research governance framework for health and social care, human tissue act etc.) have been considered and satisfied; and that all other issues such as reputational consideration, commercial implications, adherence to College strategy and policy etc. have been addressed.
Law and Jurisdiction		This refers to which law the contract will be interpreted under, and the courts of the country in which a claim may be heard.
Liability and Insurance		<p>This refers to the legal obligation of the Funder and / or the College when committing a wrong or default on the contract. In such instance, whoever commits the act will be responsible or liable for it. In many instances liability is limited to a specific value to mitigate the financial risk.</p> <p>Insurance provisions cover the financial aspect of liability, but may also cover any warranties or assurances that may be given on particular points in the contract.</p>
Payment Terms		The method, frequency, currency and amount of payment the Funder may agree to, for example quarterly in advance.
Price		The amount of money a Funder is willing to pay. This represents the amount of money the College will actually receive regardless of the cost of the research.
Termination		The agreed provisions under which each party may end a research contract. These should typically include notice periods, whether payment of outstanding costs will be honoured, or return of information or materials provided under the contract.
Warranties		Clauses in a contract where one party promises or gives assurance to the other, and which may give rise to liabilities should that party fail to deliver.