Contracts - overview

Agenda

- What is a contract?
- What contracts does the University enter into?
- Are grants contracts?
- Information required to set up a contract
- Case studies
- Overview of the costing /contracts process
- Questions

What is a Contract?

o Legally binding commitment between two or more parties (having capacity to contract) to take on obligations

o Cannot be impossible or illegal / against public policy

o Intend to contract and agreement reached on key terms

o May, or may not, be written down BUT if you write it down you have **evidence of what has been agreed. Don't leave open to dispute!**

What types of contract does the University enter into?

Extremely varied; some examples:

o Contracts to **receive funding –** can be an agreement with a company or a public funding body

o To **collaborate** on research, to **licence** the outputs of that research

o Contracts to **buy and procure** things, eg equipment, services

o Contracts to **deliver something** e.g. services

o Other specialist contracts e.g. NDAs, studentships, secondment, DPAs, MTAs. These depend on specific project requirements

Grants aren't contracts – are they?

o Just another form of contract, but terms tend to be non-negotiable and issued by a public funding body / charity – if you want the funding, we need to accept the terms!

o Grant terms are legally binding & enforceable. Typically include:

  o Reporting obligations (project and financial, inc audit)

  o Obligations relating to IP (inc ownership), publications, publicity

  o Various warranties and / or **indemnities** (performance/ use of funds as described in application, no infringement of 3rd party IP)

  o Mechanisms to terminate for breach of terms and conditions

Information needed to set up a contract

o Obvious things – start and end dates, cost /price (see your PC early!), legal name of contracting party, statement of work

o The purpose of the contract eg to fund a student project, transfer materials, carry out research / services, collaborate, share / process personal data?

o Does the work involve proprietary IP? Do we have rights to use that? Are the deliverables realistic and achievable?

o Are there any identified project risks that need to be considered that could impact on delivery or payment? Diligence req? Ethics or regulatory considerations?

o Provide as much information as you can!!

Case Study 1

o University enters into a research contract with Company X

o The PI decides to use undergraduate students to support the contract. The PI didn't want the project to seem too expensive; using students seemed a good idea and the students wanted real-life work examples!

o Issues? (IP, confidentiality, visa restrictions, impact on studies, makes the project **too** cheap?)

o The PI decides to use some existing software in the project. That's OK, right? (warranties? IP clause v OS terms? Commercial v academic use licence)

Case Study 2 – Material transfer agreement

- MTA = an agreement for the use of third party materials for a study.

- Typically MTAs give the material provider rights over use of the results from the study. May be required to keep our results as confidential

- The MTA is negotiated and finalised. Later, it emerges that the study is part of a wider project which we are working on with a number of Universities

- Issues? (who is working on the MTA, how are they funded alignment of T&Cs for each activity. Could we have bought materials from a commercial source?)

Case Study 3 – grant terms & indemnity wording

o An application was made for grant funding with a new grant funder

o Application was rushed; grant terms not reviewed before submission

o Grant awarded, conditional on acceptance of terms and a collaboration agreement to be put in place with a number of other Universities.

o Review of the funding terms revealed 'hold harmless' / indemnity wording for the parties actions & omissions requiring an escalated approval process to SMG.

o SMG approval conditional on collaborators granting an equivalent indemnity to us.

o Issues: One University refuses. Consequences?

Case 4 - post award issues

o Contract with Company X is signed, is going great, then some critical equipment fails.

o The country has gone into lockdown – no engineers can come to repair this; the work cannot progress.

o Company contact is sympathetic, says not to worry, all fine.

o New company contact assigned; notice of termination issued due to breach of contract. (why might the company do this?)

o What to do? (Contact contracts ASAP and at step 2! review termination clause, contract change clauses, provisions regarding breach, force majeure, formally amend contract)

Contracts with funding: Process overview

o Contact your PC to cost activity. Your PC will usually sign a **grant**. Some grant terms need escalated approval (indemnities) before signature.

o Industrial funding is normally secured by a contract. Contact contracts team (myself / Louise Andrew) with full details to prepare the contract.

o Contract and costing are iterated, finalised, paperwork is sent to finance (usually cc'd to you).

o Finance set up the account for you to spend.

o Liaise with procurement / transaction hub etc to raise POs for purchases.

o Liaise with HR on employment matters.

o Your PC is the **main point of contact,** can guide you through all the process and signpost you as required!

'Unfunded' Contracts Process overview

Unfunded contract eg, Data Sharing agreement, NDA, MTAs, loan agreements, collaboration agreements, consortium agreements, MoAs.

o Contact contracts team (myself or Louise Andrew) with full details to prepare the agreement.

o Contracts will liaise with other teams, eg HR, DP, commercialisation team as necessary.

o Contracts negotiated / iterated, finalised and signed; once finalised, the activity can commence

Questions?

o How best to align introductory conversations and development of a contract?

o Is there support in the college to help with industry engagement?

o What does a contract with industry look like?

o What are the University requirements we need to comply with? (cost / price agreed, not tobacco co, right to publish, use of results, compliance with policies, law, subsidies)

o How much funding should I seek for a PhD project?

Questions, continued

o Difference between a subcontractor and partner in a grant. When is a contract needed?
o general/standard procedure in approaching a company and sharing information e.g. track record, activities, ideas
o Any legal considerations that come with sharing research? (know your partner! export control, NSI (17 areas, eg Adv. materials, AI, energy, blockchain, quantum), DP, GU policies, eg research integrity)

o Any further questions?
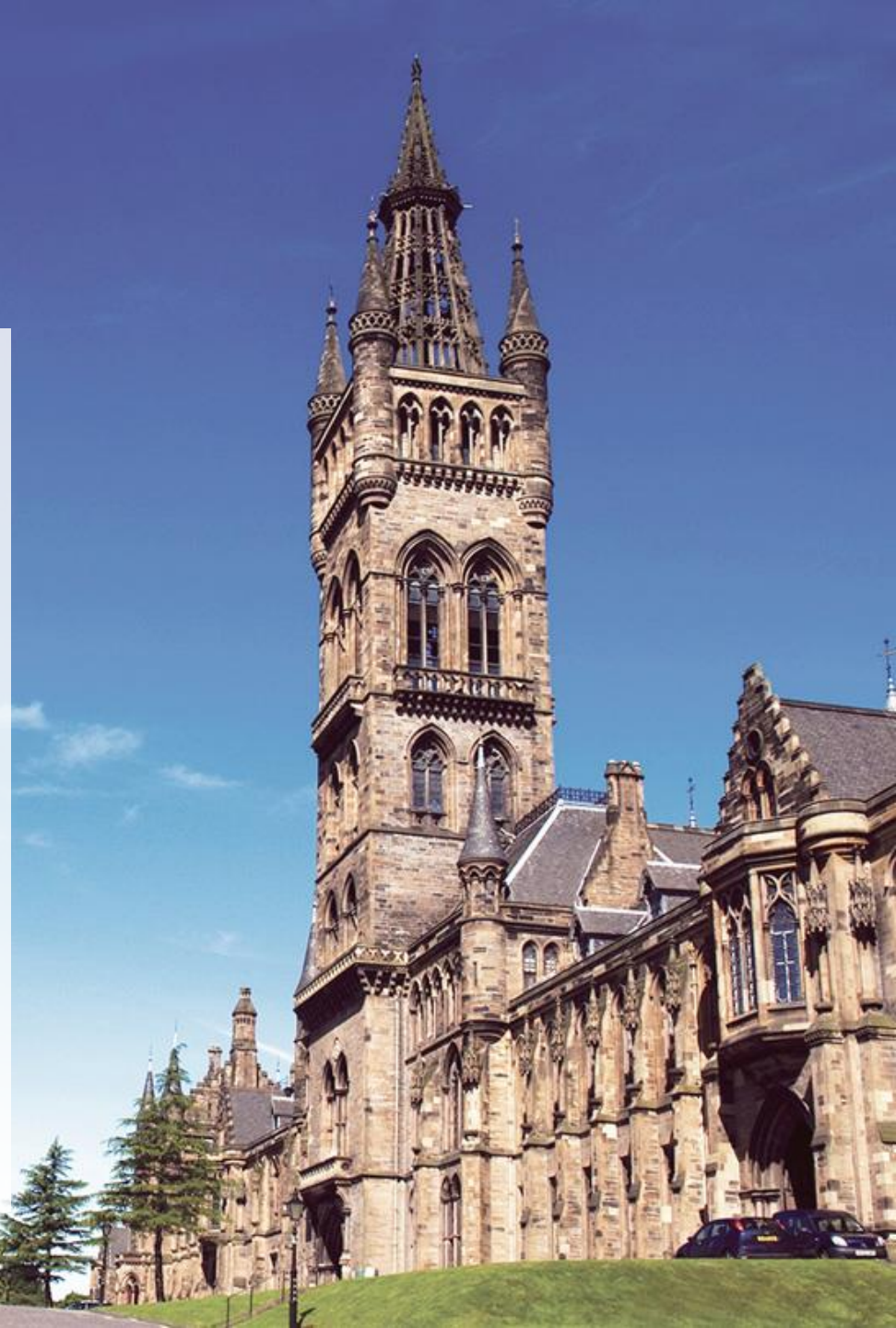
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