Collaborative Provision - Templates
Guidance Notes

Legal Services, University College London
May 2015
Introduction

1.1 The templates listed below have been prepared for use in international academic teaching collaborations and have been designed to be as user friendly as possible and should require minimal amendment. If a lot of changes are required it may be that a different template should be used and you should seek guidance from the Legal Services team. All of the templates are set up so that you only need to:

1.1.1 amend the items in [yellow square brackets] in the front part of the agreement (the "Main Agreement"); and

1.1.2 complete the schedules located at the back of the document after the Main Agreement (each a “Schedule”). The details of the programme which the UCL will enter into with the partner institution ("Partner Institution") should be inserted into the Schedule 1 and the Student Agreement should be completed in Schedule 2 (the “Student Terms and Conditions”). Please see the additional detail in Guidance Note 3.2.4 below.

1.2 The templates cover a broad range of possible collaborations. These are set out in the table below.

<table>
<thead>
<tr>
<th>No.</th>
<th>Type of Agreement</th>
<th>Use for</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Memorandum of Understanding</td>
<td>The preliminary stages of a relationship or discussion with a partner. The majority of the provisions of the document are not intended to be legally binding.</td>
</tr>
<tr>
<td>2.</td>
<td>Joint Award – Memorandum of Agreement</td>
<td>UCL and a Partner Institution jointly develop and deliver a programme and the student receives one degree certificate. One institution acts as the “Lead Institution”.</td>
</tr>
<tr>
<td>3.</td>
<td>Dual Award – Memorandum of Agreement</td>
<td>UCL and a Partner Institution develop and deliver a programme and the student receives a certificate from each institution. Each party has discretion whether to award a degree from their institution.</td>
</tr>
<tr>
<td>4.</td>
<td>Placement Agreement - Memorandum of Agreement</td>
<td>UCL and a Partner Institution agree to allow UCL students who meet certain criteria for a short period of time to undertake a placement or research project at the Partner Institution.</td>
</tr>
<tr>
<td>5.</td>
<td>Exchange Agreement - Memorandum of Agreement</td>
<td>UCL and a Partner Institution establish a framework to enable students from both institutions to participate in a reciprocal exchange at each institution.</td>
</tr>
<tr>
<td>6.</td>
<td>Data Sharing Agreement - Template A</td>
<td>Where the relationship with a Partner Institution involves personal data being shared between UCL and the Partner Institution based within the EEA a data sharing agreement in the form of Template A should be put in place in addition to the relevant MOA.</td>
</tr>
<tr>
<td>7.</td>
<td>Data Sharing Agreement – Template B</td>
<td>Where the relationship with a Partner Institution involves personal data being shared between UCL and the Partner Institution based outside the EEA a data sharing agreement in the form of Template B should be put in place in addition to the relevant MOA.</td>
</tr>
</tbody>
</table>
Not all arrangements will fit neatly into one of the templates set out above. You should consider carefully before using a template whether or not your arrangements are more complex and may require a bespoke agreement.

It is important to use the correct template as a starting point as this will save time and cost later. Contact the Legal Services team for advice before proceeding if you are unsure which template applies.

2. **Due Diligence**

Before entering into any international academic collaboration you are strongly advised to conduct appropriate academic, financial and legal due diligence.

3. **The Regulatory Context**

3.1 Where a relationship requires a formal binding agreement, a relevant Memorandum of Agreement template should be used. The purpose of a Memorandum of Agreement is to: (i) set out the parties’ respective roles and responsibilities; (ii) aim to protect UCL from a legal perspective; and (iii) address requirements relating to the UCL’s regulatory compliance.

3.2 **Regulatory Requirements**

3.2.1 **Quality Assurance Agency for Higher Education ("QAA")**

UCL must comply with guidance issued by the QAA in the UK. In particular the UCL needs to comply with Chapter B10 of the UK Quality Code for Higher Education - "Managing Higher Education Provision with Others". Please be aware that:

- the QAA conducts regular audits of the UCL’s compliance with its guidelines; and
- on-going management of collaborations is required.

The clause below is an example of a QAA requirement which has been incorporated into the templates (i.e. to enable students to complete the relevant programme even if the collaboration breaks down):

"Termination under Clauses 17.2 and 17.3 is subject to an obligation on each of the Parties to ensure that satisfactory arrangements are in place for existing Students on the Programme, and those to whom an offer of a place on the Programme has been formally made, to enable such Students to complete their programme of study and be assessed for the Jointly Awarded Degree and, in the absence of such satisfactory arrangements being put in place, the termination date of this Agreement will be extended accordingly."

Please do not delete this clause.

3.2.2 **Data Protection**

As a data controller of staff and student personal data UCL needs to comply with the requirements of the Data Protection Act 1998 or risk an action against it from the Information Commissioner’s Office. UCL will often be required to disclose personal data of staff and students to its Partner Institutions under collaborative teaching arrangements, and must ensure that the Partner Institution is contractually obliged to comply with the relevant requirements of the Data Protection Act 1998. If personal data is to be transferred to a country outside the European Economic Area (EEA) UCL must ensure that the Partner Institution is contractually obliged to comply with the relevant requirements of the Act. This will not apply where a country has been
awarded adequacy status by the European Commission

The data protection clause refers to a data sharing agreement (a DSA) which the Partner Institution must enter into. This is essential where data is transferred outside the EEA and it is the UCL’s policy that a DSA should be entered into for all collaborations. The UCL Data Protection Officer has 2 relevant DSA templates available:

- Template A for use when personal data is shared within the EEA
- Template B for use when personal data is shared outside the EEA

In addition to a DSA, UCL must ensure that students and staff are made aware that their personal data will be shared with a Partner Institution (this should usually be done in the student agreement that is sent out to students with their offer of a place on the relevant course).

A Data Sharing Agreement is almost always required for collaborations with Partner Institutions if student “personal data” or “sensitive personal data” (as defined by the Data Protection Act 1998) is being transferred and processed by the Parties. Please speak to UCL’s Data Protection Officer, if required, for guidance as regards what is required.

3.2.3 UK Home Office

UCL is a “Tier 4 Sponsor” for UK Home Office purposes. This means that it can sponsor students coming to the UK to study in terms of their visa. As a Tier 4 Sponsor UCL has certain obligations to the UK Home Office (previously the UK Border Agency). These include reporting obligations – for example if the student does not attend classes etc. This obligation continues if a student spends a period of time studying at a Partner Institution. The templates therefore provide that the Partner Institution must provide UCL with such reasonable assistance and information as it may require in order to comply with its obligations to the UK Home Office.

If UCL does not comply with its obligations as a Tier 4 Sponsor then it can lose this status. This would have a detrimental effect on the UCL’s reputation and its ability to offer programmes to international students. Consequently it is very important that the relevant clause in each template dealing with UK Home Office requirements is not deleted or amended.

3.2.4 Consumer Law - Student Terms and Conditions

The Joint Award and Dual Award templates include, as a schedule, a form of terms and conditions that govern the relationship between UCL, the relevant Partner Institution and each relevant student. The purpose of the Student Terms and Conditions is to set out clearly for each student the scope of the contractual relationship that he/she has with each institution. It is envisaged that these Student Terms and Conditions will be sent out to each relevant student at the time an offer of a place on a relevant course is made to them (to ensure compliance with UK consumer law). See Guidance Note 4.19 below for more detail.

4. General Guidance on Legal Issues and Completing the Templates

4.1 Explaining to a Partner Institution why a clause has been included often makes it more likely that the clause will be accepted by the Partner Institution. The clauses in the templates have
been included for legal reasons and should not be deleted without consulting Legal Services. The majority of information specific to your collaboration should be inserted in the Schedule, meaning that you should only need to amend the Main Agreement itself in exceptional circumstances.

4.2 UCL should always complete the template. The Partner Institution should be sent the completed template for review and comment once it has been fully reviewed internally.

4.3 Where possible, you should encourage the Partner Institution to use the UCL’s templates and not their own style of agreement. If this is unavoidable then you should compare their agreement with the UCL’s templates to ensure that, as far as possible, the clauses included in the templates are reflected in the draft agreement. Where clauses are missing, further discussion with the Partner Institution is required to ensure their inclusion. Further advice on this can be obtained from the Legal Services team.

4.4 Definitions and Interpretation

This clause is an important part of each template. It is necessary for interpretation purposes to give the terms of the template the desired legal meaning. Suggested definitions are provided and should be checked and expanded upon as appropriate. If you find that you need to make significant amendments to this clause then please contact the Legal Services team. It may be that the template that you are using does not fit the circumstances.

4.5 Responsibilities

The responsibilities of UCL and the Partner Institution will be different depending on the type of arrangement. The parties’ responsibilities are set out in the templates.

Please note that there has been a recent increase in emphasis from the UK Competition and Markets Authority on ensuring the quality and accuracy of information that is shared with students about available courses. The CMA requires that certain information is made available to students during the application process (e.g., concerning tuition and other relevant fees, details of course structure and content) as well as changes to that information. UCL needs to ensure that its Partner Institutions comply with the information requirements of the CMA so that students are able to make informed decisions in respect of the relevant programmes.

4.6 Fees

Details should be inserted regarding:

- to which institution students should pay Fees;
- if applicable, when one party shall pay the relevant proportion of the Fees to the other Party following receipt of the Fees from the student;
- the currency in which Fees payable to the Partner Institution should be paid. Note that Fees payable to UCL should always be in Sterling so that UCL does not bear the risk of exchange rate fluctuations;
- details of the method of payment and nominated bank account (if relevant); and
- any other information relating to the financial arrangements for the Programme.

Also bear in mind that both UCL and the Partner Institution should ensure that applicants to the Programme are fully advised of the financial requirements (including but not limited to the need for successful applicants to be financially sustainable for the whole period of study).
Under UK consumer law it is not possible for an institution to withhold the award of an academic qualification for non-payment of debts other than tuition fees.

4.7 Supervision

Depending on the Programme, this clause may not always be required. It is most relevant to research-based degrees such as PhDs. Note that if this Clause is deleted, the relevant wording in “Academic Appeals, Student Conduct and Complaints” will also need to be amended.

4.8 Academic Appeals, Student Conduct and Complaints

You need to consider and agree what regulations, policies and procedures apply to students during their period of study and this needs to be made clear to students when they accept an offer of a place on a relevant course.

For joint degrees, the template envisages that a set of “Joint Procedures” will be developed that specify what regulations, policies and procedures apply and in what circumstances.

4.9 Academic Standards

Maintenance of academic standards and quality is key to UCL. Where UCL is the degree awarding body, you should ensure that UCL has ultimate discretion over whether to award the degree.

All the templates contain a clause which allows for review of the academic standards of the Partner Institution as well as a right to terminate if academic standards are not being maintained (this right is contained in the termination clause).

4.10 Thesis Copies

This clause specifies that a copy of the thesis of each student participating in the programme will be submitted and deposited in the UCL library and the library of the Partner Institution. This clause may not be required depending on the nature of the degree.

4.11 Marketing and Publicity

This clause outlines the responsibilities of both UCL and the Partner Institution with regard to advertising and promotion of the programmes. It is essential that in all cases there are arrangements in place for the effective control and regular monitoring of marketing and publicity materials, especially where these are published by the Partner Institution. It is important for reputational reasons that UCL has control over: (i) information that the Partner Institution may publish about any collaborative programme; and (ii) use of UCL’s brand/logo. This is a reciprocal right as it would often also be a concern of the Partner Institution.

The provisions dealing with the timely production of publicity materials are intended to ensure that the Partner Institution enables UCL to comply with its obligations under UK consumer law.

4.12 Data Protection and Freedom of Information

The purpose of these clauses is to protect each party's confidential information, and to ensure compliance with the UK’s Data Protection and Freedom of Information legislation. These clauses are in a standard form with limited exceptions. For example, information already in the public domain and disclosures required by law will be exempted from this clause. In addition, it makes specific provision for disclosures in accordance with the Freedom of Information Act 2000.
These should not be deleted or amended without consultation with the UCL’s Data Protection Officer.

4.13 Intellectual Property

The default position in the templates is that each party will continue to own any background intellectual property used in connection with the agreement. Foreground intellectual property will be owned by the party that develops it (although the other party will be granted a non-exclusive and non-transferable licence to use that foreground intellectual property to fulfil its obligations under the relevant agreement an in respect of the relevant programme). You will need to consider how any jointly developed foreground intellectual property will be handled. It is usually advisable to avoid a situation where foreground intellectual property is jointly owned. Please speak to Legal Services if you need assistance.

4.14 Insurance and Indemnity

An indemnity is a commitment for one party to pay the other party on the occurrence of a certain event. The default position outlined in the templates is that if either party breaches the agreement then the party in breach is responsible for any losses etc. suffered by the other party. This will be the case unless the loss was contributed to by the negligence, fraud or willful misconduct of the party not in breach.

It is difficult to predict the extent of any damage or loss that may be incurred by UCL if the Partner Institution breaches any of its obligations, in particular as regards reputational damage. You should not delete or amend this provision without consulting the Legal Services team.

The student exchange agreement template doesn’t currently include an indemnity provision, reflecting what we understand is accepted current “market practice” in respect of these sorts of arrangements – but we will need to keep this under consideration.

We would expect any Partner Institution to have appropriate insurance in place in respect of its activities. The insurance clauses should not be deleted.

4.15 Limit of Liability

Most of the templates include a provision that seeks to limit the liability of each party to the other. The level of the liability cap should ideally be agreed on a case-by-case basis with the other Party. The limit must be set at a level where UCL’s pay out obligation is minimised, but without limiting its ability to recover its losses. This is because the liability cap will apply to both parties, i.e. it will apply to UCL’s recovery under the Agreement against the Partner Institution and to the Partner Institution’s recovery under the Agreement against the UCL.

The level of liability should not be a nominal amount (for example it should not be £100) and must reflect the relevant circumstances in each case. Indeed, depending on the type of contract, its value and its risk profile £100,000, or £1,000,000 may even be appropriate. Please be aware that as a matter of law liability can never be limited or excluded for fraud, death or personal injury and so these provisions should not be deleted.

To be enforceable the cap generally needs to be “reasonable” and this will require an analysis of the individual facts and circumstances applying. Relevant facts will include, by way of example, the proportion of fees each Party is receiving.

If you are unsure as to what liability cap is suitable, please contact the Legal Services team.

The student exchange agreement template doesn’t contain a liability cap – again we will need to keep this under consideration.
4.16 **Term and Termination**

This clause sets out the length of the agreement and the circumstances in which it can be terminated early. It is always important to include precise termination provisions in a contract and to set out what will happen after the agreement terminates. As noted above, students still studying on the relevant programme must be allowed to complete that programme, even if the agreement has ended.

4.17 **Compliance with Relevant Requirements**

This clause requires the parties to comply with the “Relevant Requirements”, which means all laws relating to anti-bribery and corruption, including the UK Bribery Act 2010. Deletion of this clause should not be accepted and if a Partner Institution asks for deletion of this clause then this raises significant concerns about their anti-corruption policies and additional diligence may be required.

4.18 **General**

The clauses in the “General” section of the templates are important to protect UCL’s position under the agreement and include the following (N.B. this is not an exhaustive list):

4.18.1 **Anti-Discrimination**

This clause has been included to ensure that neither party discriminates against any student or staff member on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. Deletion of this clause should not be accepted.

4.18.2 **Entire Agreement**

The purpose of this clause is to exclude anything that may have been discussed between the parties (verbally or in writing) before the contract was signed. If this clause is not included, there is a risk that pre-contractual discussions will form part of the contract. Inclusion of this clause ensures that all the terms of the agreement are contained in one place: within the agreement and the schedule. This means that neither party can argue that a term applies by virtue of negotiations before the contract was signed if that term has not been inserted into the agreement.

4.18.3 **Prohibition on assignment/sub-contracting**

This clause prevents either party transferring or sub-contracting its rights and/or obligations under the contract to a third party unless UCL has consented. This clause is important because it prevents UCL ending up in a contractual relationship with a party it has not agreed to contract with. This is required for QAA compliance.

4.18.4 **Governing Law and Jurisdiction**

This clause confirms which legal system governs the agreement and specifies which courts have jurisdiction in the event of a dispute. The legal system specified will affect how the agreement is interpreted. **It is important to include this clause to avoid later confusion over the applicable governing law.** UCL normally enters into agreements governed by English law subject to the jurisdiction of the English courts. Only in very limited circumstances would UCL agree to a governing law other than English. It would never be sensible to have more than one governing law as there would never be certainty as to which law would apply. **Please contact Legal Services if you require further advice.**
You should be aware that there is no guarantee that a judgment in an English court will be enforceable in the courts of another country.

The obligation on the parties in the templates to use reasonable efforts to resolve any dispute before raising a court action is contained in a separate clause. The dispute resolution clause should not be amended or deleted without consulting the Legal Services team.

The Partner Institute may suggest recourse to arbitration rather than to a court process. This may be appropriate in some circumstances, however there are jurisdictions that do not recognised arbitral awards on public policy grounds. Please contact Legal Services for advice.

4.11 Sovereign Immunity

Please be aware that if a Partner Institution is (or is part of) a foreign government, e.g. the Ministry of Education, then the doctrine of state immunity may apply. Under the UK State Immunity Act 1978 it is not possible to bring legal proceedings against a foreign government/governmental body in the UK courts, subject to certain exceptions. Therefore it may not be possible to obtain a judgment in the English courts against such a Partner Institution to enforce the agreement. If a Partner Institution is (or is part of) a foreign government, the following wording should be added to the Governing Law clause:

"[Name of Partner Institution] irrevocably waives any right to sovereign immunity with respect to any proceedings raised in the Courts of England and Wales pursuant to a dispute arising out of or in connection with this Agreement and hereby waives any right to sovereign immunity from execution to which it might otherwise be entitled with respect to the enforcement of any award rendered by the Courts of England and Wales pursuant to or in connection with this Agreement."

Inclusion of this wording, however, does not guarantee that a judgement against the Partner Institution in England and Wales will be enforceable in the Partner Institution's country of origin. This will depend on the reciprocity of enforcement of judgements between the UK and that county. For example, in the past Saudi Arabia has refused to enforce UK judgements on the basis that the UK courts would not enforce a judgement from a Saudi Arabian court. In such a case it is unlikely that a judgement could be enforced against the Partner Institution in practice and UCL should be aware of that risk in the event of default by the Partner Institution.

4.19 Completing the Programme details in Schedule 1:

4.19.1 When you are completing an agreement, the Programme details should be completed in Schedule 1 and appended to the Main Agreement.

4.19.2 When completing the Programme details, be aware that each section relates to a part of the Main Agreement. If you delete any section, fail to complete it, or include incorrect information then the Main Agreement may not make sense. You should therefore complete all the necessary sections of the Schedule as fully and as accurately as possible. In particular please be aware when completing the Schedule:

(a) the “number of consecutive intakes” section dictates the length of the collaboration – i.e. 3 intakes means that the agreement will commence on the specified commencement date and remain in place (unless otherwise terminated) until the third intake of students has completed the relevant programme;

(b) the entry requirements are very important. Only qualifying students should be offered a place on the relevant programme.
4.19.3 A clear timetable should be included detailing the periods of study that each student will complete at each institution.

4.19.4 The tuition fees of each institution need to be set out clearly. UCL’s fees should always be expressed in Sterling. If any scholarship discount applies to the course you should set this out clearly in the fees section of the Programme.

4.19.5 For Joint Degree programmes, you must identify which institution is the "Lead Institution".

4.20 Student Terms and Conditions in Schedule 2 of the Joint Award and Dual Award templates:

4.20.1 The Joint Award and Dual Award templates have a set of Student Terms and Conditions included in Schedule 2. The Student Terms and Conditions set out the contractual relationship between the student, UCL and the Partner Institution and operates to vary the "regular" student contract that the student would otherwise have with UCL and the Partner Institution on acceptance of an offer of a place to study on a relevant course. The Student Terms and Conditions are therefore of fundamental importance as they sets out the scope of UCL’s contractual relationship with the relevant student. The Student Terms and Conditions should be sent out to relevant students together with the other relevant information that is sent when an offer of a place is made to that student.

It is a requirement of UK consumer law that students are aware of the terms of their relationship with relevant HE providers, that surprising terms are drawn to their attention, are not unfair and are written in clear and intelligible language.

4.20.2 For each set of Student Terms and Conditions, the details in [yellow square brackets] should be completed.

4.20.3 Fees

In clause 3, details of the Fees payable by the student should be inserted based on what has been agreed in the Main Agreement, and set out in the Programme.

The Parties may agree that one Party shall collect fees from the student and remit to the other Party. If this is the case, this Clause should be amended to reflect this.

4.20.4 Intellectual Property Rights

Normally, the IP created by UCL students is the property of the student unless, for example, stipulations of a funder determine otherwise. You will need to understand what the policy of the Partner Institution is regarding ownership of student IP to determine whether this issue needs to be addressed in the relevant Student Terms and Conditions. The Joint Award template currently provides that ownership of student IP will be determined in accordance with UCL’s Student IP Policy.

4.21 Signing Blocks

The Partner Institution’s signing block will need to be tailored by the relevant Partner Institution.
5. **Completing The Template - Template Specific Notes**

5.1 **MOU**

5.1.1 Please see the guidance notes accompanying this template.

5.2 **Joint Degree**

5.2.1 **Admissions and Registration**

In clause 4.1, select the most appropriate option depending on how the Parties intend admission to the relevant Programme to work in practice.

5.2.2 **Management Committee**

Sub clause 6 states that the Academic Programme Director from the Lead Institution shall have the casting vote. Consider whether UCL would prefer to have the casting vote if it is not the Lead Institution.

5.2.3 **Course Documentation**

In clause 6, the most appropriate option in respect of the course documentation for the Programme should be chosen.

5.3 **Dual Award**

5.3.1 The principles for completing the Dual Award template are the same as those set out above for the Joint Degree template except that there is no "Lead Institution". In the case of Dual Awards the Programme is normally jointly delivered and leads to a separate award being granted by each institution. Each institution is ultimately responsible for the quality and academic standards of its own award. Normally joint processes for assessment etc. are agreed and outlined in the agreement.

5.3.2 **Management Committee**

The template states that the “UCL Academic Programme Director” shall have the casting vote. The Partner Institution may not accept this, in which case the Parties may have to agree to appoint a Chairperson to have the casting vote, the Chairperson rotating between the parties on a regular basis or, alternatively, agree another mechanism (e.g. escalation) to resolve disputes).

5.3.3 **Graduation**

Consider whether the degree certification needs to reflect the fact of the dual nature of the degree. If necessary, add this requirement in.

5.4 **Student Placement Agreement**

5.4.1 Please note that this type of arrangement is not credit bearing. However, if students of UCL are to be awarded credit for courses undertaken at the Partner Institution, you should ensure that the Main Agreement is not amended to remove the UCL’s discretion/control regarding the award of academic credit. This is a QAA requirement.

5.4.2 **Admissions and Registration**
Clause 3 states that students will register with the Partner Institution at the start of the Placement Period and will have the opportunity to participate in the Partner Institution’s induction activities. Consider whether registration is an option – this will depend on the identity/nature of the Partner Institution.

5.4.3 Management Committee

The template states that the “UCL Academic Programme Director” shall have the casting vote. The Partner Institution may not accept this, in which case the Parties may have to agree to appoint a Chairperson to have the casting vote, the Chairperson rotating between the parties on a regular basis or, alternatively, agree another mechanism (e.g. escalation) to resolve disputes.

5.4.4 Fees

The current position in the template is UCL will pay the Partner Institution a pro-rata percentage of the Fees payable by the student to UCL for the Placement Period. Alternatively, a fixed fee for the placement may be agreed. You may also wish to include payment details here if the Partner Institution requires clarity on how and when it will be paid or include the relevant details in the Schedule.

5.5 Student Exchange Agreement

5.5.1 Note that the template envisages that the arrangement is credit bearing (see clause 6.3).

5.5.2 Students taking part in the Exchange will need to acknowledge that the regulations, policies and procedures of the Host Institution apply to them whilst they are studying at the Host Institution.

5.6 Data Sharing Agreements

5.6.1 These templates should not be changed. Please speak to UCL’s Data Protection Officer if you have any queries.