

Establishing and Working with Embedded Companies

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1. Introduction

1.1 The University of Cambridge has an international reputation for the quality, breadth, and depth of its collaborative links with industry. Its research grant income from research in 2002-2003 was £162.2m of which £16.4m was obtained from UK industry. In addition, in 2001-2002, the latest year for which data is available, some £9.5m (figure provided by the Development Office) was received from industry for the creation of trust or special funds and donations accounts.

In the same period 169 collaborative agreements with industry were negotiated, worth £23m in total. The top five industrial sponsors were GSK, Rolls Royce, Pfizer, AT&T Laboratories, and Qinetiq. Research carried out under such agreements is a well-established mode of interaction between the University and industry.

1.2 In general, the company provides funding to the University to appoint post-doctoral researchers, or students, to carry out a mutually beneficial, agreed programme of research. The projects, on a defined topic, typically last from one to three years. The associated contracts describe, inter alia, arrangements for the publication of results, subject to protection of intellectual property, and the budgets cover the costs of appointing the staff and students, indirect costs, equipment, consumables and travel. Students are made parties to the agreements. The research is carried out in University premises, and is supervised by University staff, although joint supervision of e.g. CASE

students, and reciprocal visits to each other's premises by individuals from the collaborating parties, may occur.

1.3 Within Research Services Division (RSD), the Research Collaboration Office (RCO, formerly known as the Research Grants and Contracts Section) deals with the acceptance of all research contracts awarded to the University by commercial companies and their financial administration. The Contract Negotiation Group is responsible for their negotiation. RSD is responsible for the authorisation of expenditure from contracts, and for the submission of expenses, claims and invoices to research sponsors. It approves the establishment of assistant staff posts on outside grants, and administers the policy of the University on overhead rates and, working with the Technology Transfer Office (TTO), on intellectual property rights and publishing rights. RSD publishes a Research Grants Handbook that describes the procedures in detail.

1.4 The University has its own [Standard Collaboration Agreement](#) containing its preferred terms for engagement with industry. This has proved generally acceptable to industry and effective in facilitating the establishment of research collaborations.

1.5 Consultancy or contract work carried out at a company's behest, to its specification, and where the company has complete control over publication of the results, is undertaken either by individuals acting in their private capacities, or using the University's wholly owned trading company, Cambridge University Technical Services Ltd (CUTS). For more information about consultancy see the [Technology Transfer Office web site](#).

1.6 The term "Embedded Companies" has been used loosely in Cambridge to describe a wide variety of arrangements with companies that extend beyond those described above and a suggested taxonomy is provided below.

2. Embedded Companies - a Taxonomy

2.1 Proximate Companies

Proximate Companies establish research facilities on land or in buildings leased from the University. They employ their own staff to carry out research and may have research relationships with the University. Such collaborative relationships are facilitated by proximity but experience suggests that proximity alone is insufficient to guarantee that mutually beneficial relationships will result.

These companies are best not described as "embedded", as the relationship between the University and these companies is fundamentally that of a landlord and tenant. The ability to use of University land for such purposes is described in the University's Estate Plan, as approved by the Planning and Resources Committee, and is not addressed further in these guidelines. Individual cases are subject to committee approval.

2.2 Co-located Companies

- Co-located Companies establish research units within the University. These may be in refurbished space within a department or in a separate building joined to a department
- This is the archetypal type of "embedded" relationship with large corporations and company employees may carry out research separately or jointly with University employees
- It is the presence of company employees working in University departments for extended periods that differentiates true "embedded" relationships from proximate relationships, or the more common collaborative research relationships, where industry sponsors research carried out by University employees or students, sometimes on a multi-million pound scale
- In the past, the process and procedures for setting-up relationships with Co-located Companies have been opaque and ad hoc, and in some cases neither the benefits nor the disadvantages appear to have been readily assessable by the University or the company itself

2.3 Spin-Off Companies

Spin-Off Companies: This term is used to describe companies that have been set up to exploit intellectual property, usually patents or copyright in software, arising from research within the University and that are "spun out" of that research.

- These companies may sponsor further research that is carried out by University employees and students
- They may have employees present in departments and may also rent space and pay for use of facilities and specialist equipment
- They commonly start as virtual entities with a board of directors but no full-time employees
- Equity in these companies may be owned by the University directly through the Chest, or through CUTS, its wholly owned trading subsidiary. Shares are also likely to be held by investors, which may include the University's own Challenge Fund and by founder inventors, one or more of whom may be named as Principal Investigators on research projects that these companies may sponsor subsequently

2.4 Small, tenant companies

Small, tenant companies are companies that rent space within departments and pay for access to unique facilities available in the University.

- Such facilities may include unusual, unique or expensive equipment, libraries, or in the case of biotechnology companies, access to animal houses and laboratories equipped to handle radioactive materials
- These companies may or may not be Spin-off companies
- They do not formally sponsor research but may have close, informal relationships at the departmental level
- These companies may or may not be Start-up Companies i.e. companies created by current or former University staff or students to exploit more general know-how and expertise in all areas and on innate or acquired entrepreneurial skills

2.5 Other Companies

Other Companies are companies that are run by staff and or students within the University, sometimes using the University as their postal address, and sometimes involving non-University employees. They are sometimes called "silent" or "invisible" companies as the inherent nature of such companies means that monitoring their activities is not straightforward.

- They do not rent space but may use University resources, including staff and students in the course of their business, which is often consultancy
- They do not formally sponsor research but may have close, informal relationships at the departmental level
- They may or may not be Spin-offs or Start-ups
- Despite their low profile, the nature and duration of such activities must be approved by the relevant Head of Department and all uses made of University resources for personal activities, fully recompensed

3. Policies and Procedures Relating to Establishing Embedded Companies

The University creates policies where it needs to maintain control of activities for financial, ethical, legal and managerial reasons, and to support its overall mission of teaching and research.

The University's policy is to encourage and support mutually beneficial relationships with companies and the commercial exploitation of its intellectual property, including the creation of spin-off companies.

As described above, the term "Embedded Companies" covers a wide range of entities and activities that are subject to a number of fundamental University policies. Policy areas that affect Embedded Companies are shown in the Table, with web references from which further information may be obtained.

Table: Policies affecting Embedded Companies

Policy	Reference
1. Intellectual Property ownership and exploitation	<p>1. Externally funded IP approved policy at http://www.rsd.cam.ac.uk/tto/ip/</p> <p>2. "HEFCE" and non-externally funded IP latest proposal see "Joint Report of the Council and the General Board on the ownership of intellectual property rights", Reporter, 24 July 2002.</p> <p>3. Report of the RPC Working Group on Ownership of Intellectual Property Rights (IPRs), Reporter, 6 August 2003</p>
2. Conflicts of Interest and Commitment	<p>Discussion paper approved by Research Policy Committee (RPC) in January 2001. Draft policy paper approved by the RPC, 3 October 2002 Council Working party established 2003</p>
3. Use of University space	<p>The Estates Plan 2000 - 2001 as approved by the General Board and Council, describes the management of the University's overall estate</p>
4. Costing and pricing of University facilities	<p>Financial Regulations, 1 August 2002 approved by Council and issued by the Finance Division, http://www.admin.cam.ac.uk/offices/finance/finregs.html</p>
5. Collaborative research with industry	<p>See Research Collaboration Office (http://www.rsd.cam.ac.uk/rco/), the Research Grants Handbook http://www.rsd.cam.ac.uk/cam-only/rco/handbook/ and Model Agreements (http://www.rsd.cam.ac.uk/cam-only/rco/contracts/model.html)</p>
6. Consultancy	<p>See Technology Transfer Office, http://www.admin.cam.ac.uk/offices/tto/</p>
7. Use of University facilities by visitors and company employees	<p>See Health and Safety Division web site and 8 below http://www.admin.cam.ac.uk/offices/safety/</p>

8. Health and Safety	Policy published in the Reporter 11 February 1998, and Health and Safety Division web site http://www.admin.cam.ac.uk/offices/safety/
9. Personnel matters	Personnel Division web site http://www.admin.cam.ac.uk/offices/personnel /

4. Guidelines for Establishing Embedded Companies

4.1 Opportunity costs, use of and payment for space

4.1.1 Use of space in departments must support departmental academic objectives. The opportunity costs of using space for Embedded Companies must be compared with using space for teaching, or for research funded by the Research Councils or charities in the short and longer term, and duly evaluated. The views of the relevant School must also be taken into account in light of the Resource Allocation Model. Use must be consistent with the University's Space Guidelines and the department's own Gap Analysis, as described in the Estate Plan.

4.1.2 Allocation of University space to a company and change of use of space between different classes of use requires planning permission from the Local Planning Authority. This may take several weeks to achieve and may be controversial if the changes are significant. Assistance from the Estates Management and Buildings Service is essential if such a change of use is proposed.

4.1.3 Capital costs of building a new facility are usually less than the long-term revenue income needed to support research in that facility. The lifetime costs of an Embedded Company must be assessed taking both capital and revenue costs into account. Once the full costs of have been calculated, and the opportunity costs to the department as a whole assessed, the price the Embedded Company is o be charged can be estimated. The University's Financial Regulations provide high-level guidance on financial matters and advice about sources from which specific information may be obtained.

4.1.4 Where an Embedded Company is not sponsoring research, the University is being asked to act as the landlord of an incubator with unique resources. Any potential arrangements like this must be scrutinised particularly closely by the host department. Genuinely surplus space is rare in the University and rent income alone is rarely sufficient compensation for hosting an Embedded Company. Where a department has spare capacity, such as poor quality space that is not being used, and is, for example, able to

refurbish such space or create facilities that it would not otherwise be able to do, such arrangements can however be of real benefit. Any such arrangements must be closely monitored by the department and limited to a period of e.g. one to two years at most. A proper lease must be agreed between the Company and the University. Negotiations of leases of University are handled by Estates Management and Building Services, and rent will be paid directly to the Chest, and not retained by the department, unless otherwise agreed.

4.1.5 The University has charitable status and the presence of Embedded Companies can potentially affect both its tax and its VAT status. Income from Embedded Companies could, in some circumstances, be regarded as income from trading and be subject to tax. When a new building is constructed, the types of activities that are carried out in that building determine how much VAT is charged on its construction. The presence of commercial activities in a department may therefore affect its VAT status. This could be very significant if the University has gained legitimate VAT exemptions for the building's construction. The subsequent presence of an Embedded Company could lead to a reassessment of the building's status and the generation of a potentially significant VAT liability. Proper advice from the University's Finance Division must therefore be obtained prior to entering into any such arrangements.

4.2 The presence of company employees and their use of University facilities

4.2.1 The University has social and legal responsibilities towards its employees with regard to terms and conditions of employment, the quality of their working lives, the promotion of a healthy and safe working environment and for their systems of work and similar responsibilities for the students that work on sponsored research projects. All such personnel are responsible for abiding by the Universities procedures and regulations, including the University's published Safety Policy. Heads of relevant departments are responsible for all activities in their departments including those of personnel in Embedded Companies. The respective responsibilities for University personnel and those of an Embedded Company must be identified, stated, and agreed in the contract that describes the terms of the relationship.

4.2.2 University personnel and students employed on industrially sponsored research projects have the same access to facilities as any comparable staff member or student sponsored by other bodies. While employees of Embedded Companies may expect the same level of access, it is necessary to define the arrangements for such access and for them to be described in the agreement covering the relationship. Any costs incurred must be added to the overall budget. Explicit arrangements for payments for the use of utilities, cleaning, maintenance, phone lines, independent computer links, and access to libraries

must be made, and quantified in advance. The University's computer network is not available for commercial use.

4.2.3 Heads of Department are responsible for ensuring that the presence and permitted activities of all visitors, including company employees, whether of embedded companies or not, are consistent with the University's regulations, especially its Health and Safety Regulations.

4.2.3 Any use made of University resources, including of its staff or students, by other staff or students in the course of consultancies, or for other private purposes, must be consistent with the University's Financial Regulations, and any costs incurred, including appropriate overheads, fully reimbursed.

4.2.4 Use of chemical substances, radioactive materials, biological materials and animals are subject to very specific rules and to national legislation. Planning and use regulations often prevent local companies based on science parks from using such materials, and so access to the University's resources is potentially very attractive to early stage companies in the biotechnology and biomedical areas.

There are exacting requirements for the purchase, use, storage and disposal of radioactive materials. These are particularly complex when applied to individuals employed by separate organisations and who are working in common space. Establishing Embedded Companies may require substantial additional work by the Health and Safety Office, and/or the Biomedical Support Service in order to assess the nature and scope of the intended research and to ensure that it complies with the University's policies and with UK legislation. It is essential that these organisations are consulted in advance so that proper arrangements can be made, costed and priced correctly, and appropriate provisions made in the overall budget for the Embedded Company. This may include the costs of additional work incurred by Health and Safety Office and/or the Biomedical Support Service.

4.3 Intellectual property management and revenue sharing

4.3.1 [The University's policy on ownership of intellectual property rights \(IPR\) from sponsored agreements](#) was adopted by the University on 12th December 2005. When University employees collaborate with the employees of Embedded Companies, foreground IPR may be generated by University employees, by company employees, or jointly. The University's preferred position is for foreground IPR i.e. that arising in the course of the collaborations, to be owned by the employer of the inventor(s).

4.3.2 In general all the contracting parties will have use of any foreground IPR for the purposes of the project, and commercial exploitation will be by mutual agreement of the parties, taking account of their respective ownership positions. A collaboration agreement must be put in place following the RCO's procedures. It will contain relevant terms concerning the management of the IPR, including the University retaining the right to use the IPR for academic purposes. Explicit definition of, and agreement on access rights to the background IPR of all the parties is frequently necessary in agreements with Embedded Companies.

4.3.3 Any revenue generated from the exploitation of IP that is received by the University, will be shared with its inventors by the University's revenue sharing scheme as described in the University's [Intellectual Property Rights Policy](#).

4.4 Conflicts of interest and commitment

4.4.1 There is a potential for major conflicts of commitment and interest to be generated in the course of relationships between University personnel with Embedded Companies and especially those in which the University and/or its employees own equity. In broad terms potential conflicts arise from the amount of time and effort individuals spend on their primary duties and whether individuals' actions are determined primarily by fulfilling their obligations to their employer, the University, or are driven by obtaining personal benefit, financial or otherwise. Individuals must comply with the University's Conflicts of Interest policy (currently in draft form).

4.4.2 To avoid as far as possible potential conflicts of interest, the University will only accept research grants from spin-off companies in which it and/or University employees own significant amounts of equity, if the nature of the research is consistent with the academic objectives of the department, and the work is subject to the normal contractual arrangements for industrial sponsors as described in the University's Model Research Collaboration Agreement. These include payment of full indirect costs, and arrangements for the publication of research results in a timely manner.

4.4.3 The arrangements for ownership and exploitation of IPR must also be consistent with the University's policies for handling IPR arising from industrial sponsorship. Investors in spin-off companies often encourage them to request privileged access, via so-called "pipeline" agreements, to future IPR that is generated anywhere in the University in the field of interest to the company. Consideration will be given to granting such requests but only under specific condition. Access to future IPR will normally be limited to improvements in the field of interest, which are dominated by the initial IPR, which are made by the original inventors, and for a defined period e.g. 2 years. Research

in a particular scientific or technical field may be carried out by a number of people who are funded by a variety of sponsors to whom the University may have wide range of obligations. As a result a University-wide commitment to provide pipelines of IP is not possible.

4.4.3 Founder inventors may have consultancy or other financial arrangements with such spin-offs and these must be declared and be consistent with the University's policies on conflicts of interest and consultancies. Such arrangements must be transparent and consistent with any parallel sponsored research agreements with respect to the ownership and management of intellectual property, and the obligations and position of any students or post-docs involved in any such arrangements.

4.4.4 In addition to the founder inventors, University personnel such as for example, staff of RSD, may be requested to serve as directors or observers on the boards of spin-off companies. The University wishes to facilitate the formation of such companies but recognises the resource implications and acquired responsibilities inherent in appointing its own staff to such positions. Any such involvement once again must be consistent with the University's Conflicts of Interest Policy (currently in draft form).

5. Procedures

Embedded Companies generally arise from the initiative and entrepreneurial ambitions of University staff and/or students.

5.1 Establishing a Co-located Company is a highly visible activity and should be regarded as a Capital Project. As such it will require involvement and approval at the concept stage by the relevant Head of Department and signing off by all the relevant Directors in the Unified Administrative Service in accordance with the Capital Projects Procedures. Subject to appropriate authorisation having been obtained from the relevant University committees at all stages, RSD will be responsible for research contracts, including intellectual property issues, the Corporate Liaison Office for on-going strategic relationships, and the Estates Management and Building Service, if there is a building component or lease to be negotiated. These offices may need to seek advice and approval on matters relating to costing and pricing from the Finance Division and the Health and Safety and Personnel Divisions may need to be involved at an early stage.

5.1.2 A named departmental representative must be identified before setting up a Co-located Company. This individual will be responsible for informing the Directors of RSD and EMBS of the proposed activity, and the latter individuals in turn will assign a member of their staffs to the project.

5.1.3 Once a project team is assembled, responsibilities in the team can be assigned, primary contacts identified, and the project taken forward, with the individuals reporting back as necessary to their parent departments. Identification of a named Project Manager at this stage is crucial.

5.1.4 To facilitate achieving sign-off for Co-located Companies at an early stage, a draft Heads of Terms has been synthesised from the terms of all the existing Co-located Company contracts and the University's Model Collaboration Agreement. It is attached as an Annex.

5.1.5 The process and procedures for renewing any arrangements relating to a Co-located Company must be described in any such agreement.

5.2 Spin-Off Companies by definition arise from work (usually research) carried out in the University. Where they are based on intellectual property funded by external sources of research funds, that intellectual property must be disclosed to the TTO and responsibility for the case will be assigned to an individual executive in the TTO. That executive will work closely with the inventor or inventors to help take the project forward, to ensure that all the necessary documentation is in place, and that arrangements are made within the University, and with external parties, such as investors and research funders, to establish the company in a way that is consistent with the University's policies. Clear assignment of responsibility is essential.

5.2.1 Companies also arise from students and staff working with the Challenge Fund and the Cambridge Entrepreneurship Centre. Where University IP is involved, it is important that these organisations work together with the TTO as described in 7.2 and a project team with clear reporting lines and responsibilities is created.

5.3 Small, tenant companies and other companies

5.3.1 This category includes a number of differing types of relationships between companies and the University and the nature of such activities means that they are not very visible, and monitoring their activities is not straightforward. As Heads of Departments are responsible for all activities in their departments, it is vital that they are kept fully informed.

5.3.2 Normally a member of staff or student will be the primary motivator and it is essential that they discuss any such proposed activity with their Head of Department and obtain permission for the proposed activity in writing. Full details of the nature and duration of the activity must be provided and approved.

5.3.3 Matters of costing, pricing and use of space and facilities for these activities resemble those generated in the course of establishing consultancies with third parties but in this case, it is usually a University employee or student who wishes to use the University's resources. The procedures for setting up consultancies and the University's Financial Regulations must be consulted and the correct processes and procedures adhered to.

5.3.4 There is potential for significant conflicts of interest in this area so it is essential that any use of University resources for personal activities or gain must be both authorised and fully recompensed.

6. Further Information

6.1 In all cases, it is important that the University has a central, up to date record of embedded relationships. This will be maintained in RSD.

6.2 Additional and specific advice can be obtained from all of the offices listed below:

- Central Biomedical Services, Addenbrooke's Hospital Site, Box 103 Hills Road, Cambridge, CB2 2SP
Tel: 01223 336767
Fax: 01223 336770
- [Cambridge Enterprise](#)
- [Estate Management and Building Services](#)
- [Finance Division](#)
- [Health and Safety Division](#)
- [Personnel Division](#)
- [Research Services Division](#)

Annex

Outline Heads of a Collaborative Agreement with an Embedded Company

References to standard terms are to those in the [University's Model Collaboration Agreement](#).

1. Contract and Parties

Names

Addresses

Commencement Date

2. Recitals

Background to Agreement

Statement of Aims

3. Definitions

Specific and technical terms

4. Interpretations

Use of headings

References to Clauses

Gender

Inclusions of Annexes

5. Basis of Agreement

Summaries of each Party's Obligations

6. Conditions precedent

Approval of any necessary Graces

Planning Permission

Unconditionality of parallel Building Agreements

7. Collaborative Research Projects

Annex describing research programme

8. Space

Lease arrangements (may be a separate agreement)

Area with plan

State of decoration and fitting out

Responsibility for maintenance

Parking

9. Staffing Arrangements

Head of Embedded Company or Centre - funding, appointment procedure, and role

Additional Staff - funding, appointment procedure, and roles

Parties' Responsibility for their Employees

Use of departmental and Embedded Company facilities and equipment by each Party's employees

10. Management Arrangements

Composition of Steering Committee

Function of Steering Committee

Decision-making Processes

Head of Department's approval for all activities

11. Reporting and Publication Arrangements

Type and Frequency of Progress Reports

Publications - standard University terms for publications including student theses

12. Confidentiality

Standard University Terms

13. Equipment

Start-up Costs

Replacement Costs

Servicing

Insurance

Ownership on Termination

14. Payments

Donations

Lease arrangements

Premium, licence or annual fee for right of association

Research Budget

Utilities

Cleaning and maintenance of space

Communication and computer equipment

Special Requirements (radioactivity, biologicals and biological containment)

15. Ownership and Exploitation of Intellectual Property

Standard University Arrangements

Access and licences to background intellectual property (including trademark licences)

16. Term of Agreement

Duration

Arrangements for renewal

17. Termination of Agreement

Expiry

Termination by Agreement

Premature Termination by:

- Breach of Material Obligations
- Bankruptcy or Insolvency
- Take-over or merger.

18. Post-Termination

Survival of Confidentiality and any other Terms

Survival of Obligations accrued prior to termination

19. Miscellaneous Terms

Invalidity

Severability

Cost and Expenses

Counterparts

20. Standard University Terms for

Disclaimer and Indemnity

Publicity

Independent Contractor

Dispute Resolution

Assignment

Force Majeure

Whole Agreement and Variations

Notices

Waivers

Resolution of Disputes

Governing Law and Jurisdiction

21. Signatures and Authority

22. Schedules

Description of Collaborative Research

Budget and Payment Schedule