



The Office of Sponsored Programs (OSP) at Colorado State University recognizes that faculty will often initiate discussions about potential projects with commercial sponsors and encourages faculty to make such contacts.

OSP is happy to meet with faculty at any time during the process and especially appreciates the opportunity to learn about the project and its goals as soon as possible in order to efficiently manage the processes of developing and negotiating an agreement between the sponsor and the University.

## **I. Pre-agreement Considerations**

### **What should I include in the statement of work for my project?**

- Successful research projects are built on a solid foundation from the statement of work (SOW). While each SOW is unique, a useful description should include clear objectives, deliverables (most often a report) and sponsor obligations to provide materials or equipment. Some items for consideration include:
  - Is the sponsor contributing anything to the research besides funding (such as personnel, intellectual property, materials, or equipment)?
  - How will you separate this work from other ongoing projects?
  - What funding will be needed and when?
  - What timelines are realistic? Is continued funding contingent on periodic reviews?
  - Who is responsible for which parts if the work is collaborative?
  - Since the goal is either research or a service, project descriptions must not promise to produce inventions or achieve specific performance objectives.
  - Keep in mind that highly proprietary projects are not suited to the open environment of CSU.

### **Budgeting for Industry**

- All costs to the university must be considered when discussing project costs including:
  - All of the direct costs needed by the PI to conduct the SOW.
    - Principal Investigators may not offer to cost share to corporate sponsors.
  - CSU's full indirect cost recovery amount must be included in any rough order of magnitude figures discussed with a company.
  - Budgets should be developed on a Total Direct Cost basis.
- Only fully burdened budgets, which incorporate F&A by line item, should be provided to companies. This eliminates the need to negotiate around specific items of cost.

## **II. Agreement Negotiation Considerations**

### **How long will it take to negotiate my agreement?**

Negotiation time depends on how quickly CSU and the company can agree on the contract terms. These negotiations, especially intellectual property terms, can be complex. Factors that influence the negotiation time include:

- A company's prior experiences working with academia. The more experience the company has with academic partners and our concerns, the more likely we will come to agreement quickly.
- CSU's previous experience with the particular sponsor:
  - Sometimes previous agreements with a sponsor can be used as a starting point to expedite a new agreement.
  - In cases where CSU has an existing MRDA (Master Research and Development Agreement) with a corporate sponsor, standard terms & conditions have already been established.
- Conflicts of Interest – If a researcher has multiple relationships with the company (such as sponsored research and consulting), the College RAD and CSU COI (Conflict of Interest) Officer need to know as early as possible so that any potential COI review is timely.

## Industry – Sponsored Agreement FAQs

- Export Control – Depending upon the type of work, a Technology Control Plan may be needed to be developed by and between CSU and the company partner.
- Legal review at the company – Even when technical colleagues at the company and CSU have agreed in principle on a specific project, many companies require legal review and approval, which can be extensive.

### Is there anything the PI can do to help expedite a sponsored agreement?

- PIs can help facilitate the process by getting OSP involved early in the discussion process when engaging with a commercial sponsor. This can be accomplished by:
  - Completing a proposal via the Kuali Research Proposal Development (KR PD) module, to include a statement of work and budget in standard CSU categories (e.g., personnel, materials, travel, etc.), and routing for approvals.
  - Making introductions and helping OSP establish a working relationship with the company.
  - Starting early to obtain appropriate University approvals for using certain materials, working with animal or human subjects, and initiating conflict of interest review as needed.
  - Explaining sticking points to their scientific counterparts at the company, if negotiations stall.
  - Knowing the company's priorities and relaying that information to OSP.

### Who can sign a sponsored agreement?

- Only OSP has signature authority on behalf of the University.
- Principal Investigators are not authorized to conduct formal contract negotiations or sign agreements on behalf of the University.
- PIs are often asked to acknowledge by a counter-signature that they understand and will abide by the final terms of the agreement, but PIs are not formal parties to the agreement as agreements are between the companies and the Institution.

### When can I commence work?

- PI's should never start work on the project until an agreement is fully signed by the sponsor and OSP **and** the project 5-3 account has been established. Starting work prior to the agreement and account being in place can put the PI's department and college at financial risk.

## III. Problematic Terms and Conditions

- Publications
  - Freedom to publish results of work by CSU faculty and students is an inviolable principle. No agreement with a commercial sponsor may impinge on CSU's right to publish the results of its research.
- Proprietary Information and Nondisclosure
  - Having a Nondisclosure Agreement in place *before* the project details are finalized and agreement negotiations begin will help the company understand what the University can and cannot agree to hold in confidence.
- Indemnification
  - Indemnification is a guarantee to an outside party that the University will financially compensate them for negligent or wrongful acts on the part of the University or its employees. State law and fiscal rules do not allow the University to indemnify another party, which could potentially obligate the State to future financial obligations of unknown magnitude. OSP will explain this to sponsors and propose alternate language to the effect that both parties will be responsible for their own wrongful acts.
- Warranty/Guarantee
  - Research results cannot be predicted with 100% accuracy, therefore any provision that unconditionally assures or promises a certain result or outcome is problematic.

## Industry – Sponsored Agreement FAQs

- Governing Law and Venue
  - State law provides that the Attorney General has exclusive authority and control over all matters of litigation involving State agencies, therefore CSU does not have the authority to accept the governing laws of another state.
- Binding arbitration
  - CSU cannot agree to binding arbitration. Provisions which effectively waive the right of the Attorney General to bring actions on behalf of the state are prohibited.