

***Guidelines for Principal Investigators when
Talking to Potential Commercial Sponsors about Research,
Clinical Trials, or Service Agreements***

The Sponsored Programs (SP) office at Colorado State University recognizes that faculty will often initiate discussions about potential agreements with commercial sponsors on their own, and encourages faculty to make such contacts. While principal investigators are not authorized to conduct formal contract negotiations, it is recognized that discussions often stray from strictly technical considerations into administrative and legal areas, and the interests of commercial entities in these areas usually differ significantly from those of the University. Therefore, we offer the following potential discussion points and guidelines so that faculty may better understand the University's position regarding agreements with commercial sponsors, and avoid commitments which violate University policy or Colorado State law. Please remember that these are general guidelines, and are not intended to supersede discussions with the appropriate University administrative officials.

Publication

Freedom to publish results of work by our faculty and students is an inviolable principle at CSU. Openness and access to information are not only widely held academic principles, but they are especially important aspects of CSU's Land Grant status and heritage. Therefore no agreement with a commercial sponsor may impinge on CSU's right to publish the results of its research. Commercial sponsors may be given the courtesy of a review period prior to publication, in order that they may point out potential patent, trademark and proprietary information issues. Such review periods should be brief, usually no more than 30-60 days. Remember that when the work of a graduate student is involved, no terms of any agreement should jeopardize the student's timely graduation.

Reports/Deliverables

The sponsor should not be allowed to "approve" or in any other way control the content of reports in research agreements. Reporting should make sense in relation to the work scope; for example, monthly reporting might not make sense on a yearlong data gathering effort on which the analysis is done at the end of the project. Generally, agreements will call for a final report to be submitted within a specified time after completion of work.

Payment Terms

The preferred payment option is advance payment of 50% upon execution of agreement, 40% mid-way through the project and 10% upon completion of work and submission of the final report. This method of payment may be on a fixed price or cost reimbursable basis. There are additional alternatives which may be negotiated on a case-by-case basis. One acceptable alternative would be an advance payment with cost reimbursement on a monthly basis. Negotiation of payment terms should be conducted by an authorized representative of the Sponsor and the Sponsored Programs Senior Research Administrator.

Budgeting

In all cases, but especially in the fixed-price agreement scenario, accurate budgeting is vital. Don't underestimate the cost of doing the proposed work, and don't let the sponsor talk you into cutting corners. All costs must be considered, including, but not limited to faculty, staff, and student salaries, fringe benefits, travel and per diem expenses, supplies, equipment, consulting and subcontracting, other miscellaneous costs, and University Facilities and Administrative costs (F&A). F&A is currently applied to all commercial agreements at the rate of 47% of Modified Total Direct Cost (MTDC) for research, 26% of MTDC for clinical trials, and 34.6% of MTDC for "other" service type agreements. Use of the PASS/PBS system in constructing proposals will include all updated applicable rates automatically.

The full F&A rate of 47% applies to commercial sponsors for research. Commercial/industrial sponsors understand the concept of F&A (indirect cost, or overhead) very well as it is very much a part of their pricing of work, and industrial rates are usually well over 100%. This 47% rate does not include profit since we are a non-profit educational institution, so the sponsor does receive a price break when compared to obtaining the work from a commercial entity. PIs can discuss budgets with program officers as long as the project is fully costed. Discounted rates (implying a request for University contribution of F&A) MUST be discussed between the fiscal officer of the sponsor and the Sponsored Programs Senior Research Administrator. PIs are not authorized to support or offer matching funds.

Official Submission of Proposal to Sponsors

It is University policy that proposals to all sponsors, including commercial ones, be reviewed and approved by Sponsored Programs prior to submission to the sponsor. The budget and work scope/protocol, any other proposal materials, and a fully signed Sponsored Programs SP-1 form should be submitted to SP for review prior to transmission to the sponsor. Submission of unapproved proposals to sponsors may result in unacceptable agreement terms and incorrect understandings by sponsors that can't be resolved in negotiation, and bad feelings between the sponsor and the University that can negatively affect future relations.

Proprietary Information and Nondisclosure

The University will use its best efforts, but cannot absolutely guarantee, not to disclose information clearly marked as proprietary and provided to us. The results of our research cannot be considered proprietary information. For additional information on technology transfer issues including copyright policies at CSU, patent/licensing information, the technology transfer process, and more, consult the CSURF website at: <http://www.rttc.colostate.edu/home.html>

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. SP will explain this to sponsors and propose alternate language to the effect that both parties will be responsible for their own wrongful acts.

Other Agreement Terms and Conditions

Agreements range from brief, simple letters, to agonizingly long and complex contracts. While this document tries to address the most commonly disputed issues, any of a number of other administrative and legal terms can be problematic to the University. For example, the University is not authorized to accept governing laws or court venues of another state in agreements. Please do not attempt to negotiate these terms on your own; it is always appropriate to bring your SP Senior Research Administrator into your discussions with the sponsor at this point.

Commencing Work

Do not start work on the project until you have a 5-3 account number which indicates that the agreement is in place with the sponsor. Starting sooner can place the department and college at financial risk.

More Information

More information about submitting proposals to sponsors and interacting with SP can be found in the Principal Investigator's Manual (<http://portal.research.colostate.edu/PIManual/TOC.htm>). Questions and comments may be directed to the SP Senior Research Administrator responsible for your college <http://portal.research.colostate.edu/research/staffsummary.htm> .