



Strengthening
University-Industry
Partnerships



Foundational Aspects of Industry Sponsored Research Agreements

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What is a U-I Sponsored Research Agreement (“SRA”)?

University Perspective

- Funded research agreement to engage relevant topics of research on the cutting edges of scientific discovery, student education, and faculty expertise.

Industry Perspective

- Funded research agreement in support of research and development, technology transfer, and technology translation with respect to specific objectives of interest to the sponsor’s business.

Synthesis

- Negotiated agreement for the performance of research reflecting distinct, critical interests of both parties requiring nuanced analyses and fairness in good faith.

Key Terms and Conditions

Recommended Framework: UIDP Contract Accords

- 17 Accords providing guiding principles on key aspects of SRAs.
- Each Accord identifies a critical term and explores relevant issues from the university's perspective and the sponsor's perspective.
- Emphasis on addressing the interests and duties of each party in a thoughtful, realistic, and fair manner.

We will focus on a select cluster of the most important terms hereafter.

Defining the Research Project

Statement of Work (“SOW”)

- Integral part of the SRA, defining the who, what, when, where, why, and how of the project.
- Should function as a technical document that neither restates nor contradicts the terms of the SRA.
- University Perspective: A clear research objective must be defined consistent with the regular educational and scientific mission of the university. Work performed solely for the benefit of the sponsor is problematic.
- Industry Perspective: A clear research objective is defined with respect to some foreseeable benefit to the sponsor’s business. Must get comfortable with the fact that the subject matter of the SOW may not be unique to the relationship, and the benefits of the research are not necessarily limited to the sponsor.

Rules of Engagement

Standard of Performance, Liability, Indemnification, and Warranties

- University Perspective: Standard of performance must be consistent with the mission. Warranties and uncapped liabilities are difficult to accept. Indemnification for sponsor's commercial use of intellectual property is advised because of most universities' non-commercial structure.
- Industry Perspective: Companies want to understand the full cost implications before entering a SRA, including potential costs associated with any risks that the project presents or use of project results presents. Important for sponsors to understand certain asymmetries in risk probabilities that may require a greater assumption of risk by the sponsor, particularly with regard to the use of intellectual property ("IP").

Intellectual Property

Novel IP resulting from the performance of SRAs can take many forms. For our purposes, IP means potentially patentable inventions or copyrightable works conceived during performance of a SRA.

- University Perspective: University must be careful not to view IP as either a sponsor-only interest or a university-only interest. The answer is “both and.” The university has a legitimate interest in seeing its IP disseminated for the public good. The sponsor is often a prime candidate for such action by means of commercialization. Costs, risks, and ongoing diligence are other key considerations.
- Industry Perspective: Sponsors need clear terms defining the methods of access, scope of use, costs, and risk management. Important to understand that the consideration for IP access is not reducible to the cost of the research project.

Publication

- University Perspective: Freedom to publish is a foundational policy across universities. It is often required for graduate-level degrees and professional advancement. Publication is also a primary method of technology transfer and is important to promoting scientific and public policy development. As a result, universities negotiate rigorously for express publication rights in SRAs.
- Industry Perspective: Sponsors often seek and anticipate competitive advantages from research results. High interests in protecting IP rights and “first mover” advantages affect viewpoints on acceptable terms and conditions.

Confidential Information

- University Perspective: Because their missions are focused on educating students and disseminating research results for the public good, universities generally promote openness and shared knowledge. Needs to protect information from disclosure are rare outside of temporary confidentiality protocols in connection with patent protection. Highly restrictive requests, such as trade secret protection, are difficult to manage.
- Industry Perspective: Companies seek to keep information confidential to protect essential information and support a competitive advantage in the marketplace. The range of information considered inappropriate for public disclosure is much broader than universities. It is therefore important for sponsor's to think clearly about what information is truly sensitive and at risk by reason of disclosure for research purposes.

Export Control

Most U.S.-based UIDP members, both universities and industry sponsors, are subject to U.S. export laws and regulations. Cultural differences between universities and industry create different internal compliance control processes. Both parties must balance these cultural differences and comply with their respective obligations under the export control laws and regulations, accounting for all relevant contingencies in the terms and conditions.

Budgeting and Payments

Though often considered “boilerplate” parts of an agreement, terms and conditions related to budgets and payments are critical parts of SRAs and require careful review and consideration. Compliance with 2 CFR 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) applies to industry awards because of 2 CFR 200’s requirements that those entities that are subject to 2 CFR 200 maintain consistent accounting principals throughout the enterprise. Some common issues and terms to address include:

1. Determination of allowable costs.
2. Fixed Price vs. Cost Reimbursement
3. Deviations from the budget in the performance of the project.
4. Cost Sharing
5. Invoicing and Receipts
6. Overhead

Classifying Awards by Charitability and Appropriate Receiving Entity

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| Voluntary Support: Gift (received at GSUF) | No economic benefit for donor |
| | Minimal reporting requirements, especially for financial accounting |
| | Does not require IRB approval, course buyouts for specific faculty, contractual requirements for management/reporting |
| | Most often includes funding for endowments, scholarships, construction projects |
| Voluntary Support: Grant (received at GSURF) | Support without receiving/expecting equal value in return from the University |
| | Projects can include IRB approval, course buy-outs, subawards, specific time limits, detailed budgets with expectation of line-item accounting, etc. |
| | Agreements can include provisions for changing/terminating the agreement, binding payment terms, reversion of funds to the support source, language around warranties, indemnification, deliverables, governing law, assignment of the agreement, etc. |
| Contract Support (received at GSURF/university) | Expectation of exchange of economic benefit |
| | Provisions identifying remedies available to the parties |
| | Provisions governing the ownership and licensing of Intellectual Property |
| | Recipient paid only if work is accomplished (cost-reimbursable) |

Discussion and Questions



Key Takeaways

- University Perspective: Universities enter SRAs to engage relevant topics of research on the cutting edges of student education, faculty performance, and scientific discovery. The mission of the university is the guiding principle that should never be displaced. Rather, the mission should inform each term and condition accepted or imposed.
- Industry Perspective: Industry funds university research for two purposes, the first being corporate responsibility, most often through research gifts. SRAs are typically entered to gain a competitive advantage through research and development or technology transfer and translation. The sponsor must pursue its business model, and engagement through SRAs presumably further that goal.
- Synthesis: Successful collaborations depend on clarity, forethought, good faith and fair dealing with a cooperative spirit in view of the other side's legitimate and reasonable interests.
- **Refer to the Contract Accords for guidance:** <https://uidp.org/publication/contract-accords-2020/>

THANK YOU!

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