



Strengthening  
University-Industry  
Partnerships

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## **UIDP Academy Workshop**

# **Industry-Sponsored Contract Negotiation**

**April 18, 2023**

**8:15 to 10 a.m.**



We are Different not Difficult



- What is the difference between industry and academia?
- Meaning of research is the same, the context changes!
- You work in isolation in academic labs
- Project volume





# 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.



# Federal Regulations

The Federal Acquisition Regulations (**FAR**) was established to codify uniform policies for acquisition of supplies and services by executive agencies. The FARs govern federal contracts.

<https://www.acquisition.gov/browse/index/far>

The Defense Federal Acquisition Regulation Supplement (**DFARS**) is a set of cybersecurity regulations that the Department of Defense (DoD) now imposes on external contractors and suppliers.

<https://www.acquisition.gov/dfars>

**Uniform Guidance (2 C.F.R. Part 200):** establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities (universities and non-profits). 2 CFR 200 governs federal grants and cooperative agreements.

<https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200>



# RED Flags

## **“Works for Hire”**

- Has copyright implication

## **Use of Foreign Nationals**

- Can impact the use of PIs and students

## **FAR 52.227-17 Special Works**

- Prevents the release, distribution and publication of any data first produced in the performance of this award. All data and deliverables will belong to the Government.

## **FAR 52.227-14 Rights in Data**

- Requires the prior written consent of the Government to establish a claim in copyrightable data first produced or delivered under the contract.

## **“DFARS 252.204-7000 Disclosure of Information**

- Prevents the release of unclassified information without advance, specific contracting officer approval.
- Serves as a waiver of the university fundamental research exclusion to export control laws.
- Requires subrecipients to “scope out” fundamental research portion of their statement of work with Government CO (requires understanding and cooperation from the prime sponsor)

# 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!

Jarrett Ellis  
Georgia Institute of Technology  
[jarrett.ellis@gtrc.gatech.edu](mailto:jarrett.ellis@gtrc.gatech.edu)

Sophia Herbert-Peterson  
Georgia Institute of Technology  
[sophia.herbertpeterson@gtrc.gatech.edu](mailto:sophia.herbertpeterson@gtrc.gatech.edu)

Yogesh Sharma  
Novartis International  
[yogesh\\_k.sharma@novartis.com](mailto:yogesh_k.sharma@novartis.com)



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