

# **TEXAS STATE UNIVERSITY-SAN MARCOS**

## **GUIDE FOR INDUSTRY**

### ***GENERAL PRINCIPLES***

This guide is a summary of the broad principles applicable to research agreements between Texas State University-San Marcos (Texas State) and industrial and commercial organizations. The principles set forth in this guide reflect Texas State's position as a public university and agency of the State of Texas. This summary guide has been prepared in alignment with policies at Texas State to assist in planning and to facilitate our research relationship with industry.

As a public, State of Texas university within the Texas State University System (TSUS), it is important to remember that State of Texas constitutional, statutory, and administrative law and regulations apply to some of the sections described below, particularly in areas of intellectual property, liability/indemnification, and publication. TSUS policies and procedures apply to industrial agreements and contracts, as relevant, and include various requirements that distinguish public universities from private universities. All questions, in particularly sensitive areas that include contracts, liability and intellectual property, as indicated above, should be discussed and resolved in consultation with the Office of Associate Vice President for Research (AVPR), Office of Commercialization and Industrial Relations (OCIR).

### ***INTRODUCTION***

TEXAS STATE is developing its collaboration with industry in the support of research that fosters our missions of teaching, research, and public service. The university fully supports cooperative efforts as mutually beneficial in developing research, society, and economic development. Industry support contributes to the education of engineers, scientists, and others and also, to the development of technologies that can be put to practical use by society. Facilitating the transfer of technology is an important goal of Texas State. The University-Industry Partnership Agreement is one vehicle that is used to foster the relationship.

TEXAS STATE's strategic goals include development of knowledge through research. The OCIR coordinates the university's commercialization and industrial activities related to on-campus research activities as well as those activities that take place the Texas State's Science, Technology, and Advanced Research (STAR) Park. The OCIR supports the University's entrepreneurial activities and provides resources for the support and enhancement of "education with relevance."

To promote commercialization opportunities, TEXAS STATE has developed infrastructure to foster growth in regional, national and international collaborations. The OCIR manages projects that are located within STAR Park. Specific guidelines exist for the development of incubator and industry program agreements. Research related projects within the OCIR Incubator Program and University-Industry Partnership Program are coordinated with the Director of the OCIR

### ***CORPORATE IDENTITY***

TEXAS STATE is a public, Texas institution of higher education. All research agreements are to be issued to "Texas State University-San Marcos."

### ***AUTHORITY TO CONTRACT***

While initial discussions between industry sponsors and TEXAS STATE faculty or senior research staff occur in many ways, no program or project may be established or undertaken unless a carefully defined research proposal, including a budget, has been submitted through the university's internal review procedures, and an acceptable funding agreement has been negotiated and signed by the authorized representatives of both parties.

Authority to negotiate and execute awards for research on behalf of TEXAS STATE is delegated to the Associate Vice President for Research. TEXAS STATE does not honor contracts or commitments made on its behalf by unauthorized individuals.

### ***PUBLICATION POLICY***

Publications whether from instruction, research, or service projects are a central hallmark of higher education in the United States. TEXAS STATE currently confers with the Office of General Council to assist with protection of publication rights. TEXAS STATE recognizes the legitimate proprietary concerns of industrial sponsors. Where appropriate, publications may be reviewed by sponsors in order to protect patent rights. Similarly, on those occasions where a sponsor's proprietary information has been accepted as necessary background data for a research project, the sponsor may review proposed publications in order to identify any inadvertent disclosure of that data. Thirty days is typically allowed for such reviews.

### ***PATENT POLICY***

The purpose of TEXAS STATE's intellectual property policy is to promote the progress of science and technology, to assure that discoveries and inventions are used to benefit the public, and to provide appropriate royalty revenues to the university inventor.

TEXAS STATE has an interest in all inventions of its personnel which are conceived of or first actually reduced to practice as part of or as a result of a university administered program of research; activities within the scope of the inventor's employment by TEXAS STATE; or activities involving the use of TEXAS STATE time, facilities, or materials. This includes all funded research projects whether from public or private sources.

The TSUS Board of Regents has a right to ownership of any invention in which it has an interest. In cases where joint-inventorship results from collaborative agreements with industrial sponsors, joint ownership terms are negotiated, as appropriate. Texas State and TSUS will normally grant the right of first refusal to the sponsor for an exclusive or nonexclusive license.

Where TEXAS STATE is a subcontractor to an industrial firm under a federally funded program, this policy remains the same with the exception that the federal government is granted non-exclusive rights for government use only. In addition, TEXAS STATE must comply with certain government reporting and licensing requirements of the Bayh-Dole Act (P.L. 96-517) for inventions resulting from federally sponsored research. Further information about patent, copyright and licensing policies can be obtained by contacting the OCIR and through reference to university policy and procedures.

### **STATEMENT OF WORK**

The statement of work should be in sufficient detail that allows both parties a clear understanding of the research project and the expected deliverables (e.g., the technical reports or a prototype). Allowances should be made for changes in research direction by the PI/PD. Should the statement of work change significantly, a provision should be made for a cost adjustment.

### **TIME PERIOD AND COST**

A fixed period for the agreement should be stated with mechanisms for extension or renewal of the project. Full costs of the research should be paid by the sponsoring industry, including recovery of F&A (indirect) costs at TEXAS STATE's research rate.

Industry grants and contracts which support sponsored projects should include both direct and indirect costs.

Current fringe benefit and indirect cost rates and bases are available from the TEXAS STATE Office of Sponsored Programs. Where TEXAS STATE is a subcontractor to an industrial firm under a federally sponsored program, the current federally negotiated indirect cost rates and fringe benefit rates will apply (unless the federal program specifies a lower indirect cost rate).

### ***LIABILITY, INDEMNIFICATION, RISK AND REASONABLE BEST EFFORTS***

Due to the unpredictable nature of research activity and without guarantee of successful results, research is conducted on a reasonable "best efforts" basis. However, research projects are organized within the guidelines of funding agencies, conducive to the requirements and time constraints provided by the sponsors. Contract provisions cannot be accepted that guarantee results, impose penalties for failure to make progress by firm deadlines, or provide for withholding of payment if the sponsor is not satisfied with the results. Furthermore, TEXAS STATE does not "warrant" research and work product/deliverables.

It is TEXAS STATE's expectation that each party will be responsible for its own negligent acts or omissions. In addition, TEXAS STATE cannot accept contract provisions requiring TEXAS STATE to carry liability insurance in addition to the types and levels established by Texas law and/or the State of Texas.

### ***PROJECT ADMINISTRATION***

TEXAS STATE's policies and requirements pertaining to environmental, health and safety (such as those governing protection of human subjects, bio-safety, occupational and environmental protection and animal welfare) are applicable to all research conducted at TEXAS STATE. Projects are also conducted in conformance with equal protection and affirmative action principles established at the Federal and State levels. TEXAS STATE has financial management programs that ensure careful control and accountability of all expenditures and high standards of performance in all research projects.

Research supported by industry should not commence prior to the execution of an agreement outlining each party's responsibilities. This agreement should contain basic understandings such as the agreed-upon statement of work, agreement on TEXAS STATE's ability to publish (which may only be subject to review and comment by the sponsor), and the ownership of intellectual property. While it is the responsibility of the Office of the AVPR to negotiate the terms and conditions of these agreements, Principal Investigators/Project Directors should be familiar with the policies of TEXAS STATE in order to convey these accurately to a potential sponsor. This will permit all parties to have a clear understanding of the proposed research project and will allow negotiations to proceed smoothly.

### ***ENDORSEMENT OF RESEARCH RESULTS***

Because Texas State imposes no limitations on the freedom of the faculty in the choice of fields of inquiry or the media of public dissemination of the results obtained, any results obtained or disseminated are the sole responsibility of the PI/PD and do not carry institutional endorsement of TEXAS STATE. Consequently, TEXAS STATE does not permit the use of its name in advertising or promotional material related to the results of sponsored projects.

### ***CONFLICTING INTERESTS OR OBLIGATIONS***

TEXAS STATE's conflict of interest policy and procedures govern requirements for investigator financial disclosures.

TEXAS STATE does not accept contracts with blanket provisions that preclude the investigator from performing research for others in related areas. Additional information on conflict of interest and other areas of research compliance (such as export controls) is available through the Office of the AVPR.

### ***TERMINATION***

In the event a funding agreement is terminated by the sponsor for any reason, the sponsor will be expected to reimburse TEXAS STATE for all costs incurred through the date of termination and for all non-cancellable obligations.

### ***INFORMATION***

For further information, contact Dr. Reddy Venumbaka, Director, Commercialization Services at [reddy@txstae.edu](mailto:reddy@txstae.edu).