

Industry Sponsored Research Agreement

An overview of the terms and
conditions

Sponsored Research Agreements

- A Sponsored Research Agreement (SRA) is a contract between the University and a sponsor for the purposes of funding and conducting research at the University. An SRA may be supported by funding from for-profit (private industry) or non-profit (state or federal government research corporations, foundations, etc.) sponsors.

Nature of an SRA

- Common or routine tasks that do not contribute to the advancement of knowledge or The University's mission will not be undertaken.
- The University will not place its facilities or services in competition with services performed by the private sector (leads to tax issues for the University).
- Therefore, tests, studies, and investigations of a purely commercial nature are undertaken only when University facilities are unique for those services and no satisfactory facilities for such services exist elsewhere or are not reasonably available to the sponsor.
- As a State of Texas educational institution, the University is unable to enter into "work-for-hire" agreements in which the results of the sponsored activity are owned by the sponsor.

SRAs generally include terms governing areas such as:

- Scope of work to be conducted, including reporting and other deliverables
- Budget for the research
- Payment obligations and timing
- Publication of the research results
- Options to license the intellectual property exchanged during the research
- Compliance with export control and other laws and regulations
- Rights and procedures to terminate the project
- Taxes, indemnification, choice of law, and other necessary items for contracts

Establishing an SRA

- Preliminary discussions regarding a proposed sponsored project may begin long before an Industry partner is ready to establish a SRA. (It may be necessary to establish a Non-Disclosure Agreement prior to discussions to protect proprietary information.)
- Before The Office of Sponsored Projects (OSP) can prepare a draft of the SRA the Principal Investigator (PI) on the project must first submit a project proposal to OSP for review and approval. At a minimum, a proposal must include a statement of work, project budget, and budget justification. Additional information and documents may be requested during the proposal review process. If the sponsor and PI desire to move forward with the proposed project, a draft SRA will be prepared and will incorporate the approved statement of work and budget along with the agreed upon funding amount, payment schedule, and any background intellectual property known to the PIs/Co-PIs.

Negotiations

- A Sponsor may agree to use UTD's standard SRA template, or provide their own.
- In some instances the parties may deem it advantageous to develop negotiated key terms; however, the University, as an agency of the State of Texas, has certain constraints regarding the applicability of some contractual terms and conditions.
- The process for developing an SRA may be brief or lengthy, depending on the complexity of the program to be sponsored and what the sponsor expects to obtain for its support.
- If a non-federal sponsor accepts UTD's standard Sponsored Research Agreement without modification, obtaining the signed agreement may take a few weeks.

UTD'S STANDARD SRA

The University of Texas at Dallas

Office of Research

Legal Identity

- This Sponsored Research Agreement (the "Agreement") is made this ____ day of _____, 20__ (the "Effective Date") between **The University of Texas at Dallas**, 800 West Campbell Rd., Richardson, Texas 75080 ("University"), a component institution of The University of Texas System ("System"), and _____, a corporation with its principal place of business at _____ ("Sponsor").

The University of Texas at Dallas is an agency of the State of Texas and a component institution of The University of Texas System, governed by the UT Board of Regents. All sponsored research agreements and related contractual agreements such as visiting scientist agreements, nondisclosure agreements, teaming agreements, material transfer agreements, etc. must be executed by an authorized official of The University and in The University's legal name: "The University of Texas at Dallas." Individuals, Departments or Organized Sponsored Research Units may not directly enter into sponsored activity agreements or legally bind The University.

The University of Texas at Dallas

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RECITALS

University and Sponsor are each pursuing research in the area of _____; and

Sponsor desires to collaborate with University and is willing to sponsor University's research;
And

Sponsor desires to obtain certain rights to patents and technology resulting from the research; and

University is willing to collaborate and to grant certain rights to patents and technology that result from the research collaboration.

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the University and Sponsor agree as follows:

- Recitals are non-binding. Key terms and conditions must go in the body of the contract.
- Recitals can affect the entire Agreement because they indicate what the parties wish to accomplish. The recitals declare the intent of the parties.
- They also state any background information that the parties may find relevant.

1. Research Program

- University will use its own facilities and its reasonable best efforts to conduct the research program described in Attachment A ("Research Program") under the direction of _____ or [his or her] successor as mutually agreed to by the parties (the "Principal Investigator").
- The Research Program shall be carried out from the Effective Date through and including _____ (the "Term"), unless terminated in accordance with the provisions of Section 11 hereunder. The parties may extend the Research Program under mutually agreeable terms.
- Sponsor understands that University's primary mission is education and advancement of knowledge and the Research Program will be designed to carry out that mission. The manner of performance of the Research Program shall be determined solely by the Principal Investigator. University does not guarantee specific results.

- UTDP 1065 states: "As a public institution that is part of The University of Texas System, the University cannot conduct proprietary research, develop exclusive or proprietary data for a sponsor, conduct "work-for-hire," or permit a sponsor to direct or control research on campus.
- Allowing a Sponsor to control the Research Program could potentially lead to biased results.
- Because research or sponsored activity results are unpredictable, The University performs sponsored activities on a "best efforts basis" with no stated warranties or guarantees. The University will not accept contractual provisions that require a warranty or guarantee of the results, provide penalties due to failure to make progress by firm deadlines, or provide for the withholding of payment if the sponsor is not satisfied with the results.

Research Program Continued

- d. Sponsor understands that University may be involved in similar research through other researchers on behalf of itself and others. University shall be free to continue such research provided that it is conducted separately and by different investigators from the Research Program, and Sponsor shall not gain any rights via this Agreement to other research.
- e. University does not guarantee that any intellectual property will result from the Research Program or that any resulting intellectual property will be free of dominance by others' rights, including rights based on inventions made by other inventors in the System independently of the Research Program.

- Subsection C of the Research Program informs the Sponsor that they will not have access to other related University research, nor will they be able to prevent the University from pursuing similar research.
- UTD cannot make the assumption that the Research Program will produce intellectual property (IP) because research is unpredictable. We will also not guarantee that project IP will not be free of dominance by other's rights, because some of the research that produced Project IP under this SRA, may have been generated under a separate Agreement with a different sponsor who may wish to assert their rights.

The University of Texas at Dallas

Office of Research

2. Compensation

- a. As consideration for University's performance, Sponsor will pay the University an amount equal to its expenditures and reasonable overhead in conducting the Research Program subject to a maximum expenditure limitation of \$ _____. University will invoice Sponsor according to the payment schedule detailed in Attachment A. Payment is due to University within thirty (30) days of receipt of invoice by Sponsor.
- b. Sponsor will make payments to University, referencing the Principal Investigator and Research Program title, to the following address:

The University of Texas at Dallas
Attn: Accounting Operations
800 W. Campbell Rd., AD37
Richardson, TX 75080

Please include University's invoice number and reference Project ID # _____ and Dr. _____ on all checks.
- c. The Principal Investigator may transfer funds within the budget as needed without Sponsor's approval so long as the scope of work under the Research Program remains unchanged. It is understood that any unexpended funds remaining at the conclusion of the Research Program shall be retained by University.
- d. University shall retain title to all equipment purchased and/or fabricated by it with funds provided by Sponsor under this Agreement

- UTD's preference is to enter into a cost reimbursable contract with a maximum expenditure limitation, as opposed to a fixed price agreement. This poses less risk for the University, as unexpected expenses may arise during the course of the project.
- This section also tells the Sponsor where to send payments. The PI will work out the payment schedule with the Sponsor. Payment schedules are commonly set with monthly invoices or based upon certain project milestones and dates.
- UTD also adds language in Subsection c. to allow the PI freedom to move funds around.
- Subsection d. permits title to all equipment purchased for the Research program to vest with UTD.

The University of Texas at Dallas

Office of Research

3. Communication and Reports

- a. Sponsor's designated representative for communications with the Principal Investigator shall be _____ or any other person Sponsor may designate in writing to University and the Principal Investigator ("Designated Representative").
 - b. The Principal Investigator will make up to _____ oral reports and one written report summarizing the work completed each year of the Research Program. The Principal Investigator shall also submit a comprehensive final report within one hundred twenty (120) days after termination of the Agreement. The Office of Accounting Operations will submit a financial report of related Research Program expenses within ninety (90) days after termination.
- This section establishes the point of contact for the PI, as well as outlines how frequently the PI will communicate with the Sponsor.

4. Publicity

Neither party will reference the other in a press release or any other oral or written statement in connection with the Research Program and its results intended for use in the public media, except as required by the Texas Public Information Act or other law or regulation. University, however, may acknowledge Sponsor's support of the Research Program in scientific or academic publications or communications without Sponsor's prior approval. In any permitted statements, the parties shall describe the scope and nature of their participation accurately and appropriately.

It is a long-standing University policy that under no circumstances shall a sponsor be permitted to use its name in any publication or other published announcement to state or imply that The University approves or endorses any product or service of the sponsor. The University also requires that its name not be used in connection with any advertisement, press release, or other form of business promotion or publicity, or refer to a sponsored activity agreement, without its prior written approval.

5. Publication and Academic Rights

- a. The Principal Investigator has the right to publish or otherwise publicly disclose information gained in the course of the Research Program. In order to avoid loss of patent rights as a result of premature public disclosure of patentable information, University will submit any prepublication materials to Sponsor for review and comment at least sixty (60) days prior to planned submission for publication. Sponsor shall notify University within thirty (30) days of receipt of such materials whether they describe any inventions or discoveries subject to the parties' rights under Section 7. University shall have the final authority to determine the scope and content of any publications.
 - b. University investigators may discuss the Research Program with other investigators for scientific or research purposes but shall not reveal information which is Sponsor's Confidential Information under Section 6. If any joint inventions result from such discussion, University shall grant Sponsor the rights set forth in Section 7, to the extent these are not in conflict with obligations to another party as a result of the involvement of the other investigator(s). In this latter case, University shall, in good faith, exercise reasonable efforts to enable Sponsor to obtain rights to the joint invention
- The University retains the right to publish and disseminate all work done under sponsored activity and cannot accept or undertake any sponsored project that provides for sponsor approval or undue control over the timing or content of University publications, or which prohibits the publication of the results of the project, except with limited restrictions.
 - Also, as an institution of higher education that performs fundamental research, we have exceptions to the Export Control regulations. If we give up the right to publish, we will lose our exception.
 - Subsection b allows our PI to discuss the Research Program with other researchers.

6. Confidential Information

- a. The parties may wish to disclose confidential information to each other in connection with work contemplated by this Agreement ("Confidential Information"). Each party will use reasonable efforts to prevent the disclosure of the other party's Confidential Information to third parties for a period of three (3) years from receipt, provided that the recipient party's obligation shall not apply to information that:
 - i. is not disclosed in writing or reduced to writing and marked with an appropriate confidentiality legend within thirty (30) days after disclosure;
 - ii. is already in the recipient party's possession at the time of disclosure;
 - iii. is or later becomes part of the public domain through no fault of the recipient party;
 - iv. is received from a third party having no obligations of confidentiality to the disclosing party;
 - v. is independently developed by the recipient party; or
 - vi. is required by law or regulation to be disclosed.
 - b. In the event that information is required to be disclosed pursuant to subsection (vi), the party required to make such disclosure shall notify the other to allow that party to assert whatever exclusions or exemptions may be available to it under such law or regulation. Such disclosure shall be limited to only that portion of the Information which is legally required to be disclosed.
- This section clearly defines what classifies as Confidential Information and how to handle the material.
 - Sometimes confidentiality is addressed in a separate agreement that is then incorporated into the SRA by reference.

7. Patents, Copyrights, and Technology Rights

- a. "Background Intellectual Property" means property and the legal rights therein of either or both parties developed before or independent of this Agreement including inventions, patent applications, patents, copyrights, trademarks, mask works, and trade secrets. The relevant Background Intellectual Property for each party, and those which may be used nonexclusively and without compensation by the other party solely for performance of the Research Program (indicated with a "Yes" in the "Research Program Use" column), are defined as the following:

This subsection is followed by a chart that allows the parties to declare what type of intellectual property they will be bringing to the Project. The chart is filled in with the Technology ID or Patent Serial number, when it was filed, if it can be used for the Research Program, and the title or description of the IP.

Patents, Copyrights, and Technology Rights Cont...

- b. This Agreement shall not be construed as implying that either Party hereto shall have the right to use Background Intellectual Property of the other except as otherwise provided herein.
- c. "Project Intellectual Property" means the legal rights relating to data, results and inventions and discoveries that are conceived of or reduced to practice as a direct result of performance of the Research Program during the term of this Agreement including but not limited to patent applications, patents, copyrights, trademarks, mask works, trade secrets and any other legally protectable information, including computer software resulting therefrom.
- d. Title to all Project Intellectual Property made solely by University inventors shall reside in University; title to all Project Intellectual Property made solely by Sponsor inventors shall reside in Sponsor; title to all Project Intellectual Property made jointly by University and Sponsor inventors shall reside jointly in University and Sponsor. Inventorship shall be determined in accordance with U.S. Patent law.

- Subsections b-d outline ownership of IP.

Patents, Copyrights, and Technology Rights Cont...

- e. University will disclose to Sponsor any inventions and discoveries resulting from the Research Program as soon as possible after creation and/or reduction to practice. Sponsor shall notify University in writing within thirty (30) days of receipt of disclosure whether:
- i. In the case where title to related Project Intellectual Property resides solely in University or jointly in University and Sponsor, Sponsor elects to have University file patent applications on any invention, in which case Sponsor shall reimburse University for all documented, out-of-pocket patent expenses incurred by University, including those for patentability opinions, within thirty (30) days of Sponsor's receipt of an invoice from University; or
 - ii. In the case where title to related Project Intellectual Property resides jointly in University and Sponsor, Sponsor elects to use its own patent counsel to file patent applications, in which case Sponsor shall be directly responsible for patent application filing and all related expenses and agrees to periodically update University on the status of said patent applications, and Sponsor and University agree to coordinate to obtain and record proper patent assignments; or
 - iii. Sponsor does not desire that a patent application be filed, and therefore elects neither to be directly responsible for nor to agree to reimburse University for associated patent expenses. In this case, or if Sponsor does not notify University of any election within the defined notification period, University's rights to such invention shall be disposed of in accordance with University policies with no further obligation to Sponsor.

- Section 7 subsections e. i-iii outline how the Sponsor can handle Project IP that it is interested in.

Patents, Copyrights, and Technology Rights Cont...

- f. With respect to University rights in Project Intellectual Property for which Sponsor has elected to be directly responsible for or to reimburse University for associated patent expenses in accordance with Section 7.e.i. or 7.e.ii, University grants Sponsor:
- i. a non-exclusive, world-wide royalty-free license to make or use for internal, non-commercial purposes only without the right to sublicense under said rights for Project Intellectual Property that is solely owned by University. Under provisions of this Section 7.f.i., University retains the right to non-exclusively license its rights in Project Intellectual Property to third parties, including commercial or for-profit entities.
 - ii. an option to negotiate either a non-exclusive, worldwide, royalty-bearing license or an exclusive, worldwide, royalty-bearing license to make, use and sell under said rights. Sponsor shall notify University in writing of its desire to exercise this option within one year of receiving notification of Project Intellectual Property from University under Section 7.e., including its election as to type of license to be negotiated. If Sponsor elects an exclusive license, it shall include the right to sublicense with accounting to University. The parties shall negotiate in good faith for a period not to exceed six (6) months after notification by Sponsor, or such period of time as to which the parties shall mutually agree in writing. During the one-year notification period as well as the subsequent negotiation period, if any, University agrees that it will not market its rights in Project Intellectual Property or negotiate with third parties with respect to those rights. If the parties fail to enter into a license agreement under the provisions of this Section 7.f.ii., University rights in Project Intellectual Property shall be disposed of in accordance with University policies with no further obligations to Sponsor.

- At this stage in the relationship with the sponsor, UT System policy only allows for two licensing options. A NERF for internal non-commercial purposes, or the option to negotiate a license. Since this is research, we will not give licenses away to something that has not been created yet.

Patents, Copyrights, and Technology Rights Cont...

- g.** The grant of any rights to Sponsor in this Section 7 is subject to the rights retained by University to:
- i.** Publish or otherwise publicly disclose, subject to the provisions of Section 5 and Section 6, information, including inventions and discoveries solely or jointly owned by University, resulting from the Research Program; and
 - ii.** Use information, including inventions and discoveries solely or jointly owned by University resulting from the Research Program, for research and education purposes.
- h.** Under University policy, University investigators own copyright in their scholarly works. Scholarly works resulting from the Research Program are not subject to the terms of this Section 7.

- Subsection g. i-ii are making it clear that we reserve the right to publish. These subsections state that we will not publish confidential information and that we maintain the right to use Project IP for internal educational and research purposes.
- Subsection H clarifies that UT System Policy states that PIs own copyright in their scholarly works, and they are not subject to the licensing options in section 7.

8. Liability

- a.** Sponsor agrees to indemnify and hold harmless System, University, their Regents, officers, agents and employees from any liability, loss or damage they may suffer as a result of claims, demands, costs or judgments against them arising out of the activities to be carried out pursuant to the obligations of this Agreement, including but not limited to the use by Sponsor of the results obtained from the activities performed by University under this Agreement; provided, however, that the following is excluded from Sponsor's obligation to indemnify and hold harmless:
- i.** the negligent failure of University to substantially comply with any applicable governmental requirements; or
 - ii.** the negligence or willful malfeasance of any Regent, officer, agent or employee of University or System.
- b.** Both parties agree that upon receipt of a notice of claim or action arising out of the Research Program, the party receiving such notice will notify the other party promptly. Sponsor agrees, at its own expense, to provide attorneys to defend against any actions brought or filed against University, System, their Regents, officers, agents and/or employees with respect to the subject of the indemnity contained herein, whether such claims or actions are rightfully brought or filed; and subject to the statutory duty of The Texas Attorney General, University agrees to cooperate with Sponsor in the defense of such claim or action.

- We ask the Sponsor to indemnify (meaning to secure against hurt, loss, or damage) UTD and UT System because we are a non-profit research institution. We are not a commercial, for-profit partner, so when we give a Sponsor the results of a project, they need to be willing to bear the risks of how they choose to use the information. We give them the results with no guarantees. This section also states that if we are negligent in any way, we are responsible for our own negligence.
- UTD can, to the extent permitted by the Constitution and laws of the State of Texas, agree to indemnify the sponsored activity sponsor for The University's own negligent acts or omissions in the performance of the sponsored activity project.

9. Alternate Dispute Resolution

To the extent that Chapter 2260, Texas Government Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by University and Sponsor to attempt to resolve any claim for breach of contract made by Sponsor that cannot be resolved in the ordinary course of business. The Vice President for Administration at University shall examine Sponsor's claim and any counterclaim and negotiate with Sponsor in an effort to resolve such claims. The parties hereto specifically agree that:

- (a) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Sponsor; and
- (b) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of the University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit; and
- (c) University has not waived its right to seek redress in the courts.

- In 1999, the Texas Legislature passed a law often referred to as the "Required ADR Statute." It is now in the [Government Code, Chapter 2260](#). It describes a procedure for resolving certain contract claims against the State or a State agency. This statute requires, among other things, that we place a clause in every contract to which the statute applies stating that the procedures must be used to try to resolve a dispute arising under the contract.

10. Independent Contractors

For the purposes of this Agreement and all services to be provided hereunder, the parties shall be, and shall be deemed to be, independent contractors and not agents or employees of the other party. Neither party shall have authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other party, except as may be expressly provided for herein or authorized in writing.

- This section states the Sponsor cannot act on behalf of UTD and vice versa, except if permission to do so is given in the Agreement.

11. Termination

- a. This Agreement may be terminated by either party without cause upon ___ days prior written notice to the other party.
- b. In the event that either party shall be in default of its material obligations under this Agreement and shall fail to remedy such default within thirty (30) days after receipt of written notice thereof, this Agreement shall terminate upon expiration of the thirty (30) day period.
- c. Termination or cancellation of this Agreement shall not affect the rights and obligations of the parties accrued prior to termination. Upon termination, Sponsor shall pay University for all reasonable expenses incurred or committed to be expended as of the effective termination date, including salaries for appointees for the remainder of their appointment.
- d. Any provisions of this Agreement which by their nature extend beyond termination shall survive such termination.

- Section 11 establishes the protocols for termination of the Agreement.

12. Attachments

Attachment A is incorporated herein and made a part of this Agreement for all purposes.

- Section 1. a of the Agreement mentions the scope of the Research Program will be detailed in Attachment A. Section 12 integrates the Attachment into the Contract. It is possible that a NDA or MTA or any number of other documents may also be included in the Agreement through this section as well.

13. General

- a. This Agreement may not be assigned by either party without the prior written consent of the other party; provided, however, that subject to the approval of University, which may not be unreasonably withheld, Sponsor may assign this Agreement to any purchaser or transferee of all or substantially all of Sponsor's assets or stock upon prior written notice to University, and University may assign its right to receive payments hereunder.
- b. This Agreement constitutes the entire and only agreement between the parties relating to the Research Program, and all prior negotiations, representations, agreements and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of the parties.
- c. Any notice required by the provisions of this Agreement, other than notifications of Project Intellectual Property, shall be given by prepaid, first class, certified mail, return receipt requested, addressed in the case of University to:

- Subsection a. states that the obligations of the Agreement can only be assigned by Sponsor to another entity with UTD's approval.
- Subsection b. states that the SRA will be the definitive document guiding the Research Program between the parties, and that the document can only be changed by a written document signed by an authorized official.
- Subsection c. sets up the contacts to receive notices, IP, and day-to-day communications.

General cont...

- d. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which taken together constitute one and the same Agreement. In the event that any signature page is delivered by facsimile transmission or by email delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.
- e. This Agreement shall be governed by, construed, and enforced in accordance with the internal laws of the State of Texas

- Subsection d. states that the document can be executed through facsimiles or electronic copy.
- Subsection e. states that the Contract is governed by Texas State Law. This is very important, because UTD is an institution of higher education established under the Constitution and laws of the State of Texas. We are able to agree to remain silent regarding the governing law, but Texas law is our preference.

Signature blocks

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

THE UNIVERSITY OF TEXAS AT DALLAS	SPONSOR
By: _____	By: _____
Rachell Reilly Director, Office of Sponsored Projects	Title: _____
Date	Name: _____
	Date

READ AND UNDERSTOOD

Name: _____
Principal Investigator

- As mentioned in the legal identity slide, only an authorized signatory can legally bind UTD to an agreement. The PI signs the agreement to acknowledge their approval of the terms and conditions. UTD takes legal responsibility for the Agreement, but it is up to the PI to make sure the terms and conditions are upheld.