



TEXAS A&M SYSTEM
**Sponsored Research
Services**

Contract Negotiation Desk Manual

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Introduction

This desk reference manual is a detailed resource for Contract Negotiators (CNs) to utilize in completing the requirements of their work. CNs should utilize this manual along with the Maestro Guide and the other resource materials referenced to successfully complete negotiations on behalf of members of The Texas A&M University System.

In the event of any questions or conflicting information, please contact, as appropriate, your supervisor/SRS C&G Director, mentor, or training coordinator.

The Role of a Contract Negotiator at Texas A&M System Sponsored Research Services

The CN's role is to protect the interests of The Texas A&M University System (TAMUS) and consider the impact of proposed agreement terms on the Principal Investigator (PI), the institution, students, and subrecipients. CNs are often the first line of defense against risk and liability. CNs work at the intersection of many varied, and sometimes conflicting, internal and external interests.

The CN is responsible for reviewing and negotiating the terms and conditions of award documents and contractual agreements with sponsors to ensure compliance with applicable TAMUS policies, and federal and state regulations. The CN routinely interacts with the Office of General Counsel (OGC), Texas A&M Technology Commercialization (TTC), Risk Management, and other System offices to determine optimal agreement terms.

CNs are essential in controlling risk and together with the other SRS staff are a key component in the administration of research and development conducted within The Texas A&M University System.

Maestro

Maestro is an enterprise-wide system that supports researchers and research administration for TAMUS. Maestro was created to provide researchers with the timely and accurate information needed to manage their research activities and to establish collaborations.

SRS utilizes Maestro to administer sponsored projects. It is the record of file and is utilized to track actions, store documents and provide information to the System members. Maestro is a tool and the Maestro Project Module Guide provides step-by-step instructions for using Maestro to process agreements at SRS. The Maestro guide is located at <K:\Maestro\Final Documentation\Master-Maestro Project Module Guide.pdf>. A step-by-step process for a CN's particular responsibilities in Maestro can be found at <K:\Maestro\Final Documentation\SRS Maestro Project Workflow Process.pdf>.

Specific requirements for negotiation status histories, document uploads and terms and conditions are:

Negotiation History Required Statuses:

1. Agreement Logged
2. CN Reviewing Agreement
3. Negotiations & Review Process Complete
4. Sent for OSRS/System Member Signature and/or Sent for External Party Signature
5. Fully Executed

Negotiation Documents Required Uploads:

1. Original or Draft Contract
2. Agreement Assessment Tool
3. FCOI List of Investigators
4. All Negotiation Correspondence
5. Fully Executed Contract
6. Award Routing Sheet
7. Export Control Form - TEES ONLY

Required Completion of Terms and Conditions

CNs are responsible for completing the Intellectual Property and Confidentiality sections under the Terms & Conditions tab in Maestro. Additional information can be added under this section that explains non-standard terms that are part of the agreement, and this information will go to the Principal Investigator (PI) when the Sponsored Project Summary (SPS) notice is distributed.

Agreement Processing Steps

1. Intake:

Agreements and amendments are received in various ways and formats. All agreements and amendments should be forwarded upon receipt to the CGST for entry in Maestro and initiation of a set-up. Electronic documents should be forwarded to awards@tamus.edu. Hard copy documents should be placed in the CGST in-box (next to room 152). Initiation of a set-up includes entry in Maestro, assigning an account or basic agreement number, linking any associated proposal, tasking the correct Contract Negotiator (CN) in Maestro and providing the CN a hard copy file, and routing sheet for continued processing.

2. Task to Negotiator:

CGST will task the appropriate CN through Maestro for agreements/amendments that require negotiation. CNs should accept tasks within 48 hours.

3. Agreement Assessment Tool - (K:\Contracts and Grants\Contract Negotiations\Best Processes - Contract Negotiations\Workload Distribution\SRS Negotiation Assessment Tool)

The negotiator completes this negotiation assessment tool and uploads the document in Maestro. A Document Type of "Other" should be selected and a Document Description of Assessment Tool should be used when uploading the document. This tool is used to assist the workload distribution committee when assessing work for possible reallocation.

4. Sponsor Screening (Not Applicable to Federal and State Sponsors):

The sponsor may be an entity or an individual (less likely).

a. Restricted Party Screening

The Restricted Party Screening function of Visual Compliance is used by Contract Negotiators to check sponsors to determine if there is some federal prohibition that would prevent the System member from doing business with a sponsor. These prohibitions may be

due to export control issues, criminal activity, debarment and suspension, and other statutory prohibitions. Log on to Visual Compliance at www.visualcompliance.com, go to RPS tab, enter Company Screening information, and click “Screen”.

If Restricted Party Screening indicates there is an issue with a Sponsor, the Contract Negotiator should consult their Director in regard to what action to take. The System member’s Research Compliance Office may need to be contacted. No agreement should be signed until the issue is resolved.

b. Vendor Hold

As an agency of the State of Texas, SRS reviews the State’s vendor hold list prior to contracting with third parties. Payments may not be made to entities that are currently on Vendor Hold with the State of Texas. For sponsored agreements (incoming funds), this screening is utilized as a risk assessment tool. SRS requires sponsors be screened prior to finalizing sponsored agreements with non-state or non-federal entities to determine whether the entity is on Vendor Hold.

Vendor Hold Screening Methods include utilizing FAMIS FRS screen 171 or the State of Texas Comptroller of Public Accounts website:

<https://cpafmprd.cpa.state.tx.us/tpis/search.html>.

Sponsors listed in FAMIS FRS 171 or on the Comptroller’s website are currently on Vendor Hold. If a sponsor is on Vendor Hold, the set-up should be reviewed by the C&G director prior to continuing processing.

c. Documentation

For non-affirmative results, update the routing sheet to note these items have been checked. For positive findings, document the resolution/director’s input. The routing sheet and other documentation, if applicable, should be uploaded in Maestro.

5. Compliance Review

Review the proposal compliance screen in Maestro to see if the PI has identified any compliance issues. Review the scope of work in the agreement to determine if there are compliance issues that were not identified by the PI in the proposal. If there are variances or questions, the CN can request that the PI review and recertify the proposal compliance statement. In the Project Module, from the PI Compliance Statement tab, you can select “Send to PI for review” under “Action.” After choosing this option, a text box will appear and the CN can enter pertinent details for the PI’s review.

Financial Conflict of Interest – For incoming new awards, the negotiator must confirm FCOI compliance in accordance with the steps provided in SRS FCOI procedure located at: K:\Contracts and Grants\FCOI.

E-Verify – Review the agreement to determine if Employment Eligibility Verification (FAR 52.222-54) through E-Verify is required. If applicable, the CN will note the requirement in Maestro (under Terms & Conditions) and will stamp the award routing sheet with “E-Verify.”

Based on compliance review, determine if specific approvals/documentation is needed in order to proceed. See the compliance section of the Desk Reference Manual for additional detail and requirements.

6. Award Review and Negotiation

The CN reviews the terms and conditions of the sponsored agreement to determine acceptability in accordance with System member, TAMUS, State of Texas requirements.

The CN resolves any necessary changes with the sponsor.

The CN requests System member approval for non-standard terms. See the Agreement Review section of this Desk Reference Manual for detailed information on non-standard terms. Upload these approvals in Maestro.

7. Award Finalization

The CN routes the agreement for signatures and updates Maestro accordingly. The CN may also utilize CGST's Signature and Suspense process to finalize the agreement.

Award Processing Checklist

Award Receipt/Intake (CGST – awards@tamus.edu)

Task Contract Negotiator (CN) through Maestro

Award Review (CN)

Receive/Complete Task from CGST in Maestro (within 48 hours)

Complete Negotiation Assessment Tool and upload in Maestro

Update Maestro History throughout Negotiation (5 required statuses: Agreement Logged, CN

Reviewing Agreement, Negotiations & Review Completed, Sent for SRS/System Member Signature/Sent for External Party Signature, Fully Executed)

Review agreement terms and identify needed revisions, areas of risk, or issues.

Compliance (CN)

Restricted Party Screening (Visual Compliance <https://www.visualcompliance.com>)*

State of Texas Vendor Hold (<https://cpafmprd.cpa.state.tx.us/tpis/search.html>)*

Proposal Routed and in conformance with agreement (Scope, budget, PI Compliance Statement)

Required Compliance Approvals Documented

FCOI

E-Verify

Award Negotiation (CN)

Negotiate changes with sponsor.

For problematic terms that cannot be resolved, obtain system member approval, as needed.

(Examples of problematic terms can be found in the Agreement Review section.)

System Member Approvals (as applicable based on System Member)

PI Approval

Department, College, Administration, if needed for non-standard terms

Award Finalization Signature (CN)

Update Maestro Negotiation History

Upload Documentation in Maestro (Approvals, Routing Sheet, FCOI List of Investigators, Negotiation Correspondence and Fully-Executed Contract)
Complete SPS Terms and Conditions (IP and Confidentiality)
Maestro Integrity Check
Task Project Administrator to set-up finalized agreement
Option: CGST Signature and Suspense. If this procedure utilized, CGST Signature and Suspense will obtain signatures, upload Routing Sheet, upload Fully Executed Agreement, and Task Project Administrator
Account/Project Set-up (Project Administrators)

Agreement Assessment Tool

The Assessment Tool was developed to assist the Workload Distribution Committee reallocate assigned contracts or amendments and work as a quick reference for a CN's backup when on sick leave or vacation. The need for redistribution can be driven by workload, short staff situations, illness, etc.

The Assessment Tool is to be completed by the CN immediately following the acceptance of the negotiation task from "My Dashboard" screen in Maestro.

The completed document is to be uploaded into Maestro under Documents/Initial Award Related Documents for new awards, and under Modification/Documents for amendments. Choose the "Document Type" of "Other." The document description should be "Assessment Tool."

After the Assessment Value is calculated on the Assessment Tool, enter the value in the "Assessment Value" field on the General Screen in Maestro under the "Negotiation Required" field, or on the Modification Screen under the "Negotiator" field.

Approved Agreement Templates

SRS has several agreement templates that have been reviewed and approved by SRS administration and System Office of General Counsel (OGC) and are intended to be used as a standardized set of terms and conditions. Approved SRS Agreement Templates are saved at <K:\Contracts & Grants\Contract Negotiations\OSRS Agreement Templates>. The documents are locked, so to use, copy into a Word document and edit as needed. Utilizing these templates can expedite negotiations with sponsors and Contract Negotiators CNs can offer it as an alternative to using a sponsor's agreement format.

The process for adding additional agreement templates to the approved templates list starts with a request to the Templates subcommittee chairperson. The subcommittee will meet to discuss the merits of creating a new template, or modifying an existing template and if it is determined to proceed, the subcommittee will assign tasks to members to develop the template. Once the subcommittee has approved the draft, it is submitted to the CNs for comment. After vetting the comments and making modifications, the draft is sent to OGC for review and approval. After receiving OGC's comments, the subcommittee chairperson sends the draft to the SRS Contracts & Grants Directors for approval. Upon approval by the Directors, the template is added to the above referenced file on the K drive, by emailing a request to add it to SO Help Desk.

Negotiated Agreement Review

Contract Negotiators (CNs) review and finalize negotiated agreements on behalf of the Members. Negotiated agreements (e.g., research agreements, master agreements, task orders issued under master agreements, research services/testing agreements) contain the terms and conditions under which a sponsored project will be conducted. Negotiated agreements serve as legally binding documents between the Sponsor of the research and the System member(s). These legal instruments serve to protect the interests and rights of each party as they relate to the disposition of intellectual property, payment terms, and additional respective responsibilities. They also provide specificity with regard to the deliverables that are expected from the performing party, as well as clarify the rules by which the parties will interact with each other during the course of the project.

Negotiated agreements differ from certain grant documents which also contain legally binding terms and conditions. CNs are not responsible for reviewing grants that contain standard terms accepted by System members. These include grants from federal agencies, Cancer Prevention Research Institute of Texas (CPRIT), American Heart Association and others. Grants are forwarded directly to the Project Administrator. Grants with non-standard terms and conditions should be reviewed by a negotiator.

The SRS Contracts & Grants Support Team (CGST) reviews grants and agreements and makes an initial determination of whether negotiation is needed. CGST also reviews amendments or modifications to negotiated agreements and assigns them to a Project Administrator (PA) if the revisions do not appear to affect substantive terms of the agreement. If substantive terms are amended, CGST forwards the amendment to a CN for review and negotiation. If an amendment needs to be drafted (regardless of the terms involved), the CN will draft and negotiate the amendment. PAs may forward a grant document or an amendment to a CN for review if the PA determines that review of the terms and conditions is advisable.

This section of the desk reference manual will review typical agreement provisions and common issues identified in agreements.

Contracting Parties

The contracting parties should be listed in the opening paragraph of the Agreement. Each party should be addressed by their legal name and provide indication of the type of agreement that will follow. Always check the name to ensure the correct System member's name is identified. The System member may be designated a "member of the Texas A&M University System" and "an agency of the State of Texas". If the System member address is included, check the address for accuracy. Identify the Sponsor and check the address and name for accuracy.

Example:

This RESEARCH AGREEMENT ("Agreement") is between the (SYSTEM MEMBER), a member of The Texas A&M University System and an agency of the State of Texas, having a place of business at _____, College Station, Texas _____, ["(SYSTEM MEMBER)"], and _____, a _____ *duly organized and validly existing under the laws of the State of _____*, having a place of business at _____, ("SPONSOR"), each of the aforementioned being referred to individually as the "Party" or collectively as the "Parties";

Sponsor Type

Projects are sponsored, or funded, by external organizations of various types. In Maestro, the Sponsor Type is noted under the Sponsor Name on the General screen under General Info. Typically, the sponsor type is identified at the proposal stage. However, if a new sponsor needs to be added to Maestro, the CN should complete and submit the Sponsor Input/Change Request form. The form is located at <https://srs.tamus.edu/wp-content/uploads/2013/07/Maestro-New-Sponsor-Input-Request.pdf>.

Definitions of sponsor types and an example for each are listed below.

Federal: Agency of the U.S. Government (National Institutes of Health). CFDA number is provided for federal and federal flow-through assistance funding (not contracts)

State/State Agency: State located in the U.S. (State of Florida), State Agency (Cancer Prevention and Research Institute of Texas), or a State College or University (Michigan State University)

Local Government: County, City, School Districts, Municipality (Colorado River Municipal Water District)

Private: Non-Profit entities (Morris L. Lichtenstein, Jr. Medical Research Foundation) and For-Profit entities (AM Biotechnologies, LLC). Agreements received from for-profit sponsors are negotiated by the Industry Negotiators.

Foreign: Entity located outside of the U.S. (Egyptian Ministry of Agriculture)

Notices / Contact Information

This section of an agreement identifies various contact persons for both the Sponsor and the System member. The main type of contact is to where and to whom legal notices should be sent. Other contacts will often be for administrative, financial, and/or technical matters.

The main contact types are:

Notices – SRS mailing address and fax number and the SRS Awards email address (awards@tamus.edu)

Administrative – Project Administrator, with SRS mailing address and fax number, and the PA's email address and phone number.

Financial / Invoicing – Project Administrator, with SRS mailing address and fax number, and the PA's email address and phone number.

Contract Negotiation – Contract Negotiator, with SRS mailing address and fax number, and the CN's email address and phone number.

Technical – Principal Investigator, with their mailing address, email, and phone and fax numbers.

Authorized Official – C&G Director

Communications basic information may vary by System member, but listing all contracting Parties is essential:

NOTICES to System Member:

Texas A&M System Sponsored Research Services
400 Harvey Mitchell Parkway South, Suite 300
College Station, TX 77845-4375
Telephone: 979-862-6777
Facsimile: 979-862-3250
Email: awards@tamus.edu

NOTICES to SPONSOR:

Entity Name
Street Address
City, State & Zip
Telephone:
Facsimile:
Email:

COMMUNICATIONS to System Member:

CONTRACT NEGOTIATIONS/ADMINISTRATION:

System Member Name
Texas A&M System Sponsored Research Services
400 Harvey Mitchell Parkway South, Suite 300
College Station, TX 77845-4375
Attn: Awards (or list Project Administrator/Contract Negotiator
Names here)
Telephone: 979-862-6777
Facsimile: 979-862-3250
Email: awards@tamus.edu (and list Project
Administrator/Contract Negotiator Names)

TECHNICAL:

System Member Name
Street Address
City, State & Zip
Attn: (PI Name, Title)
Telephone:
Facsimile:
Email:

COMMUNICATIONS to SPONSOR:

ADMINISTRATION:

Party Name
Street Address
City, State & Zip
Attn: (Contract Contact)
Telephone:
Facsimile:
Email:

Scope of Work

Definition and Purpose: The scope of work ("SOW") or research project is a scientific activity planned by the Principal Investigator (PI). The SOW is agreed upon by the sponsor and the PI. The SOW is a guide for the actual research conducted under the Agreement. The SOW should be definitive and clearly stated in the event the sponsor refuses payment due to incomplete work or failure to perform.

Contractual payment is based on the scope of work and items defined within the SOW. Therefore, when reviewing the SOW the following considerations should be closely reviewed for any ambiguous or contradictory agreement language:

Considerations: The SOW should state the methods, milestones and deliverables that are to be performed within date range stated in the Agreement. [Period of Performance](#) is defined and explained in the Period of Performance section of this manual. The SOW should be the same as the SOW in the proposal; otherwise, PI approval must be obtained. All work performed is on a reasonable efforts basis; no work is guaranteed or warranted. Remove any reference to contractual terms in the SOW.

Items for review in the Scope of Work include:

Deliverables and Milestones – Is the stated time frame reasonable and attainable?

Intellectual Property – Do any of the deliverables include intellectual property such as data ownership, software codes, copyright of publication ideas or other creative works that could result in patentable ideas?

Avoid:

- Avoid accepting language that presents the PI in the role of Consultant or a "work for hire" independent contractor.
- Avoid accepting language that implies or suggests that a Sponsor has control of the research program.
- Avoid accepting language that imposes obligations on the System member to "ensure" or guarantee control of PI activities.

The sponsor should review and approve the planned research program prior to the start of an agreement and can request adequate reporting of the results. The control of the research must remain with the PI. The PI must have academic freedom and faculty control over scientific study that are fundamental to a research institution's mission.

Note: If the award is a subaward to the System member, the SOW should clearly define the System member responsibilities as delineated from the Prime Recipient.

Changes in the Research Program: If the PI determines that the Research Results, request from Sponsor or other information gathered changes the scope of work substantially or changes the direction of the Research Program, he /she will notify the Sponsor in writing of the changes. Together, the PI and Sponsor will review and agree upon any necessary changes in the scope of work of the Research Program. Any changes must be done in writing and signed by an authorized signatory of each party.

Example:

The (System Member) shall use reasonable efforts to perform the Research Program entitled "_____ " as further described in the Scope of Work set forth in Appendix A, which is attached and hereto incorporated herein by this reference.

Budget

Detailed budgets should be included and referenced in cost-reimbursable agreements. A detailed budget should not be included and referenced in fixed price agreements. In either case, no funded award document should be submitted for SRS signature without a proposal with a budget having been routed by a SRS Proposal Administrator and approved by the System member.

The Contract Negotiator makes sure the following terms in the award document are compatible with the budget.

- Does the award amount match the proposal budget? If not, is the change significant enough to require a re-route of the proposal according to System member policy? Confer with the PI regarding any differences between the proposed budget and the award amount. These may require adjustment to the Scope of Work.
- Is the IDC rate in the proposal budget allowed in the award document? If not, the re-route of the proposal will need to include an IDC Waiver.
- Does the award period of performance match the time period as per the budget? A shorter period of performance may mean the PI could have difficulty completing the project or may have to change his % of effort on the project in a way that is unacceptable.
- If a multi-year proposal budget was routed and the award is for the first year only without indicating future funding for the subsequent years, then only the year 1 budget should be included in the award document and the scope of work may have to be changed to reflect a one year project.
- If there is a Prime Award, the budget period should be checked against the prime award term to be sure the dates are covered.

Consideration, Payment and Invoicing

The cost or price for work to be conducted under an agreement is the “consideration” provided by the sponsor for the System member’s work. The consideration amount (in U.S. Dollars), basis (cost-reimbursable, fixed-price, etc.), payment method/schedule, and invoicing and payment instructions must be clearly stated and defined in an agreement. Various factors affect the preferred terms that are included or accepted in an agreement. This section describes various agreement types and preferred terms.

Regardless of the type of agreement, a budget is prepared by the Principal Investigator and a Proposal Administrator to determine a realistic estimate for the conducting the work.

Cost-reimbursement (C/R) agreements: The sponsor will make payment based on the actual costs incurred to perform the work up to a specified or not-to-exceed amount. Work will stop once costs in the not-to exceed amount have been incurred.

Example:

Actual cost to complete the work: \$92,343.86.

Amount paid by sponsor: \$92,343.86

Project administration: Expenditures are not allowed beyond the not-to-exceed amount.

Typically, payment is based on monthly invoices for costs incurred. Advance payment(s) or scheduled payments can also be utilized or may be required by the System member. However, a final reconciliation is completed for cost-reimbursable agreements and if payments exceeded actual costs, a refund for the difference will be paid to the sponsor.

For state, federal or large non-profit sponsors, monthly or quarterly invoices for costs incurred are common and acceptable payment terms.

For private for-profit and foreign sponsors, advance payments are recommended and may be required by the System member. Additionally, it might be advisable to utilize advance payments for new sponsors that SRS has not worked with previously. When determining payment schedules, the timing of anticipated costs should be considered.

Guidance on allowable costs and budget transfers should also be included in cost-reimbursable agreements. Budget flexibility is preferred. Sample allowable cost criteria: System member's current policies and procedures; OMB Circular A-21; the costs detailed in the agreement budget.

Fixed-price (F/P) agreements: The sponsor will pay a specified amount for the work to be conducted. Payment is not based on the actual cost to perform the work.

Example:

Actual cost to complete the work: \$92,343.86

Amount paid by sponsor: \$100,000.00

Or

Actual Cost to complete the work: \$103,500.55

Amount paid by sponsor: \$100,000.00

If payment exceeds costs, the System member retains the residual amount of funding

If costs exceed payment, the System member is responsible for the additional costs.

Because actual costs could exceed payment, a fixed-price agreement carries a risk of loss. System member approval should be obtained for fixed-price agreements exceeding \$500,000.

An up-front payment of the full amount is ideal; however, a typical schedule follows:

50% due upon execution of the Agreement and receipt of invoice (CN needs to request an invoice from Accounts Receivable and send that with the fully-executed agreement to the sponsor.

25% due half way through the project, upon submission of invoice (use date)

25% due at conclusion of term, upon submission of invoice (use date)

Consideration of the timing of anticipated costs should also be a factor when determining payment schedules for fixed-price agreements (e.g. if a major piece of equipment must be purchased early in the project in order for the project to be completed, the initial payment may need to be increased).

Since the payment is based upon an agreed upon price, a budget and allowable cost guidance should not be included or referenced in the agreement. Additionally, the right for the sponsor to audit costs should not be included in the agreement.

Fixed-rate agreement:

A fixed-rate agreement provides for reimbursement of specified services or deliverables at a fixed-rate per unit. This type of agreement is commonly used for clinical trials and sample analysis. A budget amount is usually established for the PI to perform the work but careful monitoring is required by the project administrator to keep track of the actual services/deliverables provided to the sponsor and the actual funding due under the agreement to make sure costs do not exceed actual funding. Upon final reconciliation of services provided and funds received, if payment exceeds costs, the System member retains the residual amount of funding.

Time-and-Materials Agreement:

A time-and-materials contract provides for acquiring supplies or services on the basis of—

- (1) Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and
- (2) Actual cost for materials (and applicable indirect cost).

System members document personnel effort as a percentage of effort. Since labor hours are not tracked for exempt employees, this type of contract is not appropriate and the CN should negotiate a change to a cost-reimbursable or fixed-price agreement.

If the sponsor will not agree to use another type of agreement, System member approval is required to accept a time-and-materials agreement.

Invoicing

Agreements should specify where/how SRS should submit invoices to sponsors.

Adequate time is needed for SRS to prepare and submit invoices to sponsors. Sixty to ninety days is needed for submission of the final invoice. Forty-five days may be accepted but any shorter period of time should be approved by the C&G Director, who will likely ask the CN to obtain approval by Accounts Receivable prior to approving.

Excessive or manual cost documentation requirements should be eliminated from agreements. If needed, Accounts Receivable should be contacted with questions regarding the invoice requirements.

If an advance payment is due upon signature of the agreement, the CN should work with the appropriate A/R Clerk to prepare an invoice that can be provided to the sponsor with the agreement.

Payments

Payments should be mailed to SRS, Attention: Deposits, 400 Harvey Mitchell Pkwy S, Suite 300, College Station, TX 77845-4375.

Electronic ACH or wire payments are also acceptable. Each System member's account information is different so A/R should be contacted for the correct information to include in an agreement.

Sample Price and Payment Language

Cost-reimbursable and fixed-price payment language can be found in SRS' approved agreement templates located at: K:\Contracts and Grants\Contract Negotiations\OSRS Agreement Templates

Period of Performance

Contract Negotiator (CN) will need to check the period of performance in a sponsored agreement to be sure the project term matches the proposed term and budget term in the agreement. They will also need to make sure the start dates and end dates are specified and contact the PI to confirm the performance dates are acceptable. There may be circumstances that require a revision of the period of performance. If the PI has spending that occurred prior to the agreement start date, it may be necessary to contact the Sponsor to request a revision of the start date to cover the spending (pre-award costs). In some cases, an agreement may have been delayed for a long period of time, so the Period of Performance may need to be adjusted. All agreement renewals or extensions must be in writing.

Example:

The term of this Agreement shall begin September 1, 2014 (the “Effective Date”) and shall continue until December 31, 2015 (the “Completion Date”). The Completion Date may be modified or extended only by written agreement of the Parties.

Deliverables

One of the most critical aspects of any contract is the definition of contract deliverables. Deliverables are often explained within a scope of work (SOW), specifications, or other title of similar terms, and should explain the research or services to be provided under the contract.

A common approach is for the contract deliverables to be described in terms of the results or outcomes required, particularly in relation to services. The emphasis on results and outcomes rather than on inputs and processes used by the contractor can allow the opportunity for operational flexibility and innovation. A deliverable may be composed of multiple smaller deliverables. It may be either an outcome to be achieved or an output to be provided

In some situations, a more prescriptive description of the contract deliverables may be appropriate, particularly where there is little room for flexibility in how those services will be provided. Often deliverables appear as an Addendum or Appendix to the contract. Usually this is taken from the section of the proposal which describes the results or objectives of the research to be conducted.

TAMUS System Members work product or “service” provided is generally research (though one System member, Texas A&M AgriLife Extension, only performs services), the outcome and results of which, by its very nature, may vary greatly and therefore are not definite. Hence, such a work product cannot be guaranteed or indemnified, nor warranted. Work is performed on a “reasonable effort” basis.

Depending on the complexity and nature of the goods or services there may be a short version of *the deliverables, followed by more detailed description in schedules to the contract*. The statement of deliverables should set out: what needs to be delivered, to what standard and in what timeframe(s). It should contain the following characteristics:

- as concise as possible
- clear, consistent, unambiguous and not conflict with itself or other contract terms and conditions
- complete, accurate and correct
- feasible and achievable
- measurable and verifiable

In defining the contract deliverables, it can often be important for the contract to reflect the fact that the deliverables may need to be amended over the life of the contract to take account of changing circumstances or requirements. In defining the deliverables, one of the main items to include is the

reporting requirements, such as monthly technical reposts. These reports should be brief and concise, rather than overly burdensome due to excessive Sponsor expectations.

Deliverables and report requirements should be sent to the Principal Investigator (PI) for review and approval before the contract is finalized.

Compliance Approvals/Review

Contract Negotiator (CN) will review the Proposal Compliance Items screen in Maestro to see if the Principal Investigator (PI) has identified any compliance issues. In addition, CN will review the scope of work in the agreement to determine if there are compliance issues that were not identified by the PI in the proposal. If there are variances or questions, the CN can request that the PI review and recertify the proposal compliance statement.

Based on compliance review, CN will determine if specific approvals or documentation are needed. The CN should notify the PI of required approvals and document any such approvals. The CN will document the file and proceed with finalizing the agreement. The PA will confirm approvals are in place prior to releasing funds.

Following is a review of the compliance areas addressed in the PI Compliance Statement in Maestro:
Human Subjects - An approved Institutional Review Board (IRB) protocol must be on file before funds are set up if the project involves human subjects.

To find an approved IRB protocol, CN will check the Research Compliance & Biosafety electronic portal Integrated Research Information Systems (iRIS) <https://imedris.tamu.edu/> *, contact the Principal Investigator, or send an email to irb@tamu.edu for a status update.

If an IRB protocol has not been approved, the CN will continue processing the agreement for signature. If an IRB protocol is required in a later year of the project, send an email to irb@tamu.edu. IRB will make a determination as to the amount authorized to be set up and the period of performance associated with that funding.

The CN also reviews the agreement to determine if language exists involving release of human subjects data or information. If language exists, notify the Compliance Office at irb@tamu.edu so a review can be conducted to make sure it is compatible with release language in the Consent Form.

Protected Health Information - Research projects involving obtaining Protected Health Information (PHI) from a covered entity are subject to review by the System's Health Insurance Portability and Accountability Act (HIPAA) Compliance Officer, in addition to IRB review.

Human Embryonic Stem Cells – IRB office is notified if Human Embryonic Stem Cells (hESC) are used in the research project. IRB office will check to see if hESC cell line is listed on the NIH Registry for Federally funded research, or will check other listings if funded from sources other than the Federal Government.

Animals (Vertebrates) - An Institutional Animal Care and Use Committee (IACUC) protocol and approval must be in place before work with vertebrate animals can begin.

To find an approved IACUC protocol, check the Research Compliance & Biosafety electronic portal Integrated Research Information Systems (iRIS) <https://imedris.tamu.edu/> *, contact the Principal Investigator, or send an email to animalcompliance@tamu.edu for a status update. Check the approval time period to make sure it is within the period of performance of the agreement.

If an IACUC protocol has not been approved, the CN will continue processing the agreement for signature. However, funds cannot be spent on any portion of the research project involving vertebrate animals until an approved IACUC protocol is on file. If an IACUC protocol is required in a later year of the project, send an email to animalcompliance@tamu.edu stating when the research requiring the use of animals will take place.

Recombinant DNA and Transgenic Organisms, Biohazards, and Select Agents - An Institutional Biosafety Committee (IBC) approval and permit must be in place before work can begin in the PI's lab if Recombinant DNA and Transgenic Organisms, Biohazards, and Select Agents will be used in the research project. An approved IBC permit must be on file for the Principal Investigator's lab before funds are spent involving these items. Each lab shall be inspected and approved before the initiation of the research project. Protocols are currently approved for the duration of three years with annual renewals and laboratory inspections.

To find an approved IBC permit, check the Research Compliance & Biosafety electronic portal Integrated Research Information Systems (iRIS) <https://imedris.tamu.edu/> *, contact the Principal Investigator, or send an email to ibc@tamu.edu for a status update. Check the approval time period to make sure it is within the period of performance of the agreement.

If an IBC permit has not been approved, the CN will continue processing the agreement for signature. However, funds cannot be spent until an approved IBC permit is on file

AgriLife, TAMU, TEES, HSC, and TTI use the TAMU Research Compliance. For IBC approval at PVAMU, send requests via email to Kay Peavy, Director of Procurement, Contracts and Reconciliations, wkpeavy@pvamu.edu Tel: (936) 261-1933

Involves use of Biosafety Level 3 (BSL-3) Facility BSL3 non-select agent/ABSL3 – If research involves work with infectious agents that require biosafety level 3 facilities, an approved IBC protocol is required.

Renovations to Facility – System member's Compliance approval required for any Capital Planning activities.

Planned Environmental Release of Infectious, Hazardous or Genetically Modified Organism – If Research project involves release into the environment of infectious material, hazardous chemicals, Radioactive material or genetically modified organisms; this requires an approved IBC protocol.

Radioactive Materials/Radiation Producing Devices – Research involving radioactive materials/ Radiation producing devices requires review and approval by Environmental Health and Safety department.

DEA Controlled Substances – Research involving controlled substances, generally a drug or chemical whose manufacture, possession, and use are regulated by the government require review by Research Compliance & Biosafety office.

Explosives - Research involving explosives, categorized as hazardous materials, may require a License from the Bureau of Alcohol, Tobacco and Firearms (ATF), may institute specific reporting to The Department of Homeland Security (DHS), and will require compliance with specific fire code provisions, all which will require several months of lead time. Review and approval required by Research Compliance & Biosafety office.

Scientific Diving – Research projects involving underwater diving performed by individuals necessary to and part of a scientific, research, or educational activity, in conjunction with a project or study under the jurisdiction of any public or private research or educational institution or similarly recognized organization, department or group. Requires System member approval.

Good Laboratory Practices (GLP)/Good Manufacturing Practices (GMP)/Good Clinical Practices (GCP) if required by sponsor – Requires review by Research Compliance & Biosafety office

Nepotism – The practice among those with power or influence of favoring relatives, especially by giving them jobs. TAMUS policy provides that public officials and employees who have authority to make or confirm appointments may not make or confirm the appointment of an individual if the individual is related to the official or employee. Requires review and approval by System member's Compliance office.

Firearms – A person commits a criminal violation of state law if he or she intentionally, knowingly, Or recklessly possesses or goes with a weapon on the premises of any member of The Texas A&M University System, any grounds or building on which an activity sponsored by any member is Being conducted or in a passenger transportation vehicle of any member, unless the member authorizes such possession. Requires review by System Risk Management.

Intellectual Property Anticipated to be Developed – Requires review by System member

Export Control - Pre-publication Approval Required by Sponsor

Export Control - Sponsor Restrictions on Participation of Non-US Persons

Export Control - International Collaboration

Export Control - Project Performed at a Non-US Location

Export Control - Items to be Shipped to a Non-US Destination

Export Control - Equipment, software or technology used in the project is designed for (or could be modified for) military use or use in outer space

Export Control - The proposed research could be used in the development of weapons of mass destruction including the proliferation of nuclear explosive devices, chemical or biological weapons or missile technology

Export Control - The proposed research contains source code for 128-bit encryption software or mass-market encryption products

Intellectual Property

Intellectual Property in Sponsored Research Agreements: The IP terms in Sponsor generated Sponsored Research Agreements should have the same meaning and effect as those enumerated under Articles 8 and 9 of the Research Agreement template found at <K:\Contracts and Grants\Contract Negotiations\OSRS Agreement Templates>. **If there is any question as to the meaning and effect of terms regarding IP, the contract negotiator should consult one of the in-house OGC attorneys. Acceptance of non-standard IP terms may require the routing of an IP Waiver, or other forms for System Member approval.**

Articles 8 & 9 Address the following IP issues:

- 1) **Definition.** “Intellectual Property” means all intellectual property, including without limitation, electronic or otherwise, technical information, know-how, copyrights, patents and trade secrets, ideas, thoughts, concepts, processes, techniques, data, development tools, models, drawings, specifications, prototypes, inventions and software.
- 2) **Ownership.** The System member (SM) retains title to any Project IP made or conceived solely by SM employees. Title to any Project IP made or conceived solely by employees of Sponsor vests in Sponsor. Title to any Project IP made or conceived jointly by employees of both the SM and Sponsor (hereinafter called “Joint IP”) vests jointly in the SM and SPONSOR.
- 3) **Disclosure.** SM must promptly disclose all Project IP and Joint IP in sufficient detail as to allow SPONSOR’s evaluation (“Invention Disclosure”), and Sponsor shall have a time-limited option to negotiate a license to SM’s interests in such disclosed Project IP. Any such Invention Disclosure shall be considered Confidential Information.
- 4) **Joint IP.** SM and Sponsor are independent owners of any corresponding patent rights under 35 USC 262 with no obligation of accounting to one another, in the absence of a written agreement to the contrary.
- 5) **Option Period.** Sponsor is given an exclusive option to negotiate a commercial license provided the Sponsor gives written notice within 90 days of the receipt of an Invention Disclosure. If the Option Period expires without such written notice, the Sponsor shall have no further rights to the Intellectual Property.
- 6) **Negotiation Period.** Once the Sponsor exercises its option to negotiate a commercial license by written notice to the SM, it will have 90 days to negotiate a commercial license with the SM. During this time the Sponsor may file for statutory intellectual property protection for the optioned Project IP or request that the SM file for such protection. In either case, the Sponsor shall pay the expenses involved directly, or reimburse the SM for its patent expenses within 30 days of receiving an invoice for such expenses.
- 7) **NERF.** To the extent the SM has the legal right to do so, the SM grants the Sponsor a non-exclusive, royalty-free (NERF) license to any Project Intellectual Property for non-commercial internal research and development use only. (This policy is currently under review by OGC. It is advisable to consult the SM in regard to including a NERF in agreement with Sponsors who are for-profit commercial entries.)

Other IP Terms:

- 1) **Background Intellectual Property.** Background IP is preexisting IP that may be utilized in the project. No transfer of rights to Background IP should be included in a Sponsored Research Agreement. Background IP rights may be included as part of the negotiation of a commercial license, with the stipulation that Background IP can be included only to the “extent the SM has the legal right to do so”.
- 2) **Right of first refusal (ROFR or RFR)** in regard to Project IP means that the SM cannot enter into an agreement giving a third party a commercial license to Project IP rights without offering the Project

IP rights to the Sponsor on the same terms. Right of first refusal is not equivalent to the exclusive option to negotiate a commercial license and is not acceptable.

Intellectual Property in Federally Sponsored Research: Pursuant to the Bayh –Dole Act as per 37 CFR 401.14(a) System members may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world. In Federally funded subawards this is rendered as “Subrecipient grants to Prime Recipient a (NERF) license to copyrighted materials and the right to use data solely for the purpose of and only to the extent required to meet Prime Recipient’s obligations to the Federal Government under its Prime Award.” Be aware that the Bayh-Dole Act may not apply to the Department of Defense’s so-called "other transactions"--transactions other than contracts, grants, or cooperative agreements for research or prototype projects and that government ownership of System member IP may be required. Acceptance of government ownership requires System member approval.

Intellectual Property in Research Services/Testing Agreements: Research Services/Testing Agreements are often used when the SM is contracting to do work that involves the use of standard techniques for evaluation of sponsor supplied materials and/or data, or when the SM is using standard techniques to collect and evaluate materials and/or data for a Sponsor and where no significant Project IP will be produced and Sponsor ownership of the Work Product is anticipated. Examples of the types of projects that may fall under this category may include surveys using standard procedures, routine chemical/physical/genetic analysis, and the encoding/analysis/interpretation of data.

- 1) The terms and conditions of Sponsor generated Research Services/Testing Agreements should have the same meaning and effect as those in Article 14 of the Research Services/Testing Agreement template found at SRS (K:) Contracts and Grants/Contract Negotiations/OSRS templates. These IP terms are as follows: “WORK PRODUCT. All data generated including observational data, information, and results of the tests and measurements under this Agreement (“Work Product”) shall be the property of SPONSOR, and SPONSOR may use, copy, make, reproduce, or publish them without restriction and to have and permit others to do the same. System member retains the right to use and publish the Work Product for research and other non-commercial educational purposes except that System member may not publish Confidential Information without SPONSOR’s written consent.”
- 2) The Contract Negotiator should first determine if the agreement is for Research Services/Testing rather than a sponsored research project. Confirm the nature of the project with the PI and consult OGC if needed.

Publications

DEFINITION AND PURPOSE: Publication clauses provide a means to preserve the mission of The Texas A&M University System (TAMUS) as an institution of higher education. In addition to preserving the publication rights of faculty, preserving the publication rights of students is particularly important. If a student is prohibited from publishing their dissertation or thesis, they may not be able to graduate and a university’s failure to protect a student’s scholarly rights and expectations by signing contracts with confidentiality provisions could create legal liabilities for the university. TAMUS should retain freedom to publish without restrictions. A minimal review period, as described below, for the sponsor to either identify an inadvertent disclosure of its confidential information or to identify

patentable developments is not considered a publication restriction. If restrictions are imposed in the contract, System member approval is required as well as export control compliance review.

CONSIDERATIONS: A possible solution to a publication restriction is to allow for a period of time for a sponsor to review a publication and give them the right to request removal of any trade secrets or proprietary information owned by the sponsor. This time period of review will also provide sponsor time to elect to protect intellectual property. System members usually allow thirty days (30) for period of review. The period of review is not intended to block publications by the System member. Never allow the sponsor to approve the System member's publication. If patentable information is identified, an additional delay of publication of no more than 60 days is acceptable.

Always:

- *Insert a publication clause whenever an agreement contains confidentiality provisions*
- *Protect the student's rights to publish*
- *Provide a preliminary copy for sponsor to review and comment but NOT APPROVE*

Never:

- *Never allow sponsor to control publications*
- *Never agree to lengthy delays for period of review (no more than 30 days) - except where patentable information is identified, as stated above.*

Confidentiality

System members, as institutions of higher education, engage in research activities compatible, consistent, and beneficial to their role and mission. Therefore, significant results of research must be reasonably available for publication and dissemination. However, in working with third parties and sponsors, provisions for reasonable confidentiality requirements may be included in agreements. If confidential information will not be involved in the work, a confidential information provision does not need to be included in an agreement.

Requirements for confidentiality should be limited to the proprietary information of a party (Disclosing Party) which is provided to another party (Receiving Party) in order for the agreed upon work to be conducted. The results of the research or information/data created in the conduct of the sponsored project should not be considered confidential information.

The agreement should address the time period during which the Recipient must protect the Discloser's Confidential Information. This should be reasonable based on the circumstances but should not exceed five years. Any longer period of time should be approved by the System member. All confidentiality requirements should be pointed out to the Principal Investigator.

The following exceptions to confidentiality should also be included in agreements:

- i. is now, or hereafter becomes, publicly known or available through no act or failure to act on the part of the Receiving Party;
- ii. was known by the Receiving Party at the time of receipt of such information as evidenced by its records;
- iii. is hereafter furnished to the Receiving Party by a third party as a matter of right and without violating any confidentiality obligation to the Disclosing Party; or
- iv. was independently developed by employees of the Receiving Party without use or knowledge of the Confidential Information of the Disclosing Party

Additionally, as state institutions, disclosure of information may be required under the Texas Public Information Act, Chapter 552, *Texas Government Code*. Therefore, a provision that addresses any required disclosures should be included in agreements. The language in SRS' research agreement template follows:

“Required Disclosure: If a Receiving Party is legally required by court order, law, or other governmental regulation or authority to disclose certain Confidential Information received from a Disclosing Party, such disclosure may be made only after giving written notice to the Disclosing Party and providing a reasonable opportunity for pursuit of appropriate process to prevent or limit such disclosure. In any event, required disclosure shall be limited to only that portion of the Confidential Information which is legally required to be disclosed. The Receiving Party is not however, required to pursue any claim, defense, cause of action, or legal process or proceeding on the Disclosing Party's behalf.”

Termination

The system member should have the ability to terminate the agreement. If the agreement does not include language allowing the system member to terminate, the Contract Negotiator should seek to have that language inserted. If the negotiation for the inclusion of that language is unsuccessful, the Negotiator must obtain the approval of the System member to proceed without it. If the agreement moves forward with no termination language for the System member, the Negotiator should include a Force Majeure clause in the agreement.

Upon early termination, the termination language should allow the System member to be reimbursed for all work completed and any non-cancellable commitments (note that there should be no requirement for audit or extensive financial reporting required for System member to receive payment in case of the termination of a fixed price agreement).

Example:

Performance under this Agreement may be terminated for convenience by either Party upon 30 days written notice. Upon termination, SPONSOR shall reimburse (SYSTEM MEMBER) for all costs and non-cancelable commitments incurred in the performance of the Research up to the date of termination, such reimbursement shall not exceed the total award amount specified within the Agreement. Upon early termination, (SYSTEM MEMBER) agrees to reimburse SPONSOR any funds that have been received but remain unexpended at the time of termination, except for those funds needed to pay for non-cancelable obligations.

Indemnification

An indemnity is an assurance by one party to compensate for the damage caused by another; a security against or an exemption from legal responsibility for one's actions.

To indemnify is to protect someone by promising to pay for the cost of possible future damage, loss, or injury. The party agreeing to indemnify another party is agreeing to be responsible for paying the losses or damages resulting from certain circumstances.

The Texas Constitution Article III, Section 49 and Article IV Section 22 indicate that only the Legislature can create a debt on behalf of the State of Texas. Any attempt by any System member would be unconstitutional. Therefore, any agreement language that permits the System member to indemnify another party in a manner that creates a liability or a potential liability on behalf of the System member is invalid.

The Contract Negotiator (CN) should request the deletion of indemnity language requiring the System member to indemnify a sponsor – or any party. If the sponsor does not accept deletion of indemnification language, the CN should limit the indemnity “to the extent authorized by the laws and Constitution of the State of Texas”, and to the System member’s negligent performance and willful misconduct during the period of performance of the agreement.

Disputes and Dispute Resolution

The purpose of this procedure is to provide information and alternatives regarding various dispute options and processes available to both contracting entities and/or sponsors concerning the *alternative dispute resolution (ADR)* process concerning The Texas A&M University System members when contracting for goods or services.

Applicable Law

Chapter 2260, subchapter C, of the Texas Government Code is a mandatory prerequisite to suing The Texas A&M University System (whether stated in the contract or not) and applies to all written contracts between System members and a contractor. This provision is the contractor’s sole and exclusive process for seeking a remedy for any alleged breach of contract by a Texas A&M University System member.

SRS’ standard dispute language in sponsored agreements follows:

SPONSOR shall use the dispute resolution process provided in Chapter 2260 of the Texas Government Code to attempt to resolve a dispute arising under this contract and such process is a required prerequisite to suit in accordance with Chapter 107, Texas Civil Practice and Remedies Code.

SPONSOR must submit written notice of a claim of breach of contract under this chapter to [This person or title to be added varies by system member].

It is acceptable to remain silent and not include a provision addressing disputes in the agreement.

Another alternative is to include wording to the effect that ‘should good faith discussions prove unable to resolve the issue(s), then each party has the right to pursue all legal remedies allowed by law’.

Where Chapter 2260 does not apply to a contract claim against the State, the private party’s only option is to obtain legislative consent to sue under Chapter 107 of the Texas Civil Practice and Remedies Code.

Option

Texas A&M University System members may not enter into binding arbitration, but may enter into nonbinding Alternative Dispute Resolution (ADR) methods, such as mediation.

Applicable Contract Clauses

BINDING ARBITRATION – TAMUS members may not enter into binding arbitration, but may enter into non-binding ADR, such as mediation. System Member approval should be obtained before accepting a requirement for non-binding arbitration or mediation.

DISPUTES, LAWSUIT – Disputes are handled via a mandatory prerequisite to bringing suit as specified in Texas Government Code Chapter 2260, subchapter C. Contained therein is the contracting Party’s exclusive process for seeking remedy via lawsuit from The Texas A&M University System. When Chapter 2260 is nonapplicable, the private party’s only option is to obtain legislative consent to sue under Chapter 107 of the Texas Civil Practice and Remedies Code. Language in contracts

pertaining to lawsuits should be referenced to “a court of competent jurisdiction”, if mentioned at all. It is preferred to be moot on this matter.

FOREIGN SPONSORS – TAMUS’ standard dispute language (Chapter 2260) may not be acceptable language to a foreign sponsor. Alternative language may be agreed upon. The CN should work with OGC (Office of General Counsel) to draft an acceptable alternative and obtain System member approval for non-standard language.

When binding arbitration is an option, the provision should be qualified with “to the extent authorized under Texas law”. The System member should also be made aware of the risks and acknowledge them in writing. The disadvantages of arbitration in general are that it is non-appealable; the arbitrator’s decision would not be enforceable against a state agency in Texas courts, yet agency assets outside Texas, especially outside the U. S., may be at risk; and there are associated costs to such actions (such as, outside counsel, travel . . .).

MUTUAL TERMINATION – Any termination clause should be mutual for the benefit of both parties.

Insurance

All parties involved in sponsored research work should have insurance coverage to cover any harm arising from the work. Some classes of insurance coverage are mandated by law (e.g. Worker’s Compensation, auto liability, etc.) while other types of coverage should be acquired due to the nature of operations or project requirements (e.g. maritime insurance). As an agency of the State of Texas, The Texas A&M University System is protected by the doctrine of sovereign immunity and is self-insured as described in [Appendix A](#). The Texas A&M University System is self-insured for Worker’s Compensation Insurance provided by Chapter 502 of the Texas Labor Code. Benefits are provided in accordance with the provisions of that law.

CONSIDERATIONS: Review all insurance requirements to make sure they do not exceed the level of The Texas A&M University System requirements. Insurance requirements that exceed TAMUS limits should be reviewed by The Texas A&M University System Risk Management Office. It is best to delete all references in an agreement to insurance and replace with The Texas A&M University System insurance language and reference to the insurance letter provided by TAMUS Risk Management ([APPENDIX A](#)). If the sponsor requires additional insurance, then ask the sponsor if they are willing to pay for the additional premiums. The steps to follow when negotiating insurance requirements are as follows in order of preference:

1. Provide the self-insurance provision letter (Appendix A). The provision letter can be found at the following website:
<http://www.tamus.edu/assets/files/safety/pdf/StandardProvisionLetterUpdated.pdf>
2. If questions arise in regards to auto coverage, use the attached certificate to further outline our auto insurance (Appendix B).
3. Incorporate the commercial SRS/TAMRF insurance program to cover other lines of insurance as needed. If this step is needed contact System Risk Management.
4. Provide System Risk Management with contracting party’s risk management contact information. System Risk Management will contact the sponsor on behalf of SRS.
5. Procure additional insurance as needed. Attempt to get sponsor approval to include the additional insurance premiums as a direct expense on the sponsored project. System member approval will be required if this step is needed. System Risk Management will procure the additional insurance.

Professional liability limits may differ from general liability limits. Worker’s compensation and unemployment should be limited to those amounts “as required by law”. Most insurance provisions do

not protect an institution or its officers or employees from acts that are willful, fraudulent or intentional. In such situations, you would want to make sure the Indemnity Clause also covers this type of eventuality.

Always:

If special insurance is required (i.e. Clinical trials, research performed in foreign country) CN should negotiate with sponsor to determine if sponsor is willing to cover the additional cost.

Never:

Never agree to unemployment compensation or automobile insurance of another state

Example:

Sponsor acknowledges that, because [MEMBER] is an agency of the State of Texas, liability for the tortious conduct of the agents and employees of [MEMBER] or for injuries caused by conditions of tangible state property is provided solely by the provisions of the Texas Tort Claims Act (***TEXAS CIVIL PRACTICE AND REMEDIES CODE***, Chapters 101 and 104), and that Workers' Compensation Insurance coverage for employees of [MEMBER] is provided by [MEMBER] as mandated by the provisions of Chapter 502, ***TEXAS LABOR CODE***. [MEMBER] shall have the right, at its option, to (a) obtain liability insurance protecting [MEMBER] and its employees and property insurance protecting [MEMBER]'s buildings and contents, to the extent authorized by Section 51.966, ***TEXAS EDUCATION CODE***, or other law, or (b) self-insure against any risk that may be incurred by [MEMBER] as a result of its operations under this Agreement.

Notes:

For all other inquiries refer to the Texas A&M University System Risk Management website:

<https://www.tamus.edu/offices/risk/>

APPENDIX A

To Whom It May Concern:

The above-mentioned Member of the Texas A&M University System has requested we provide you with information regarding the insurance provisions of The Texas A&M University System.

The Texas A&M University System is self-insured for Workers' Compensation Insurance provided by Chapter 502 of the Texas Labor Code. Benefits are provided in accordance with the provisions of that law.

State-owned vehicles of universities and agencies of the Texas A&M University System are exempt from compulsory liability insurance requirements of the State of Texas. This exemption appears in Subtitle D Motor Vehicle Safety Responsibility; Chapter 601 Motor Vehicle Safety Responsibility Act; Subchapter A General Provisions; Section 007 Applicability of Chapter to Government Vehicle.

The liability of The Texas A&M University System for personal injury and property damage is controlled by the Texas Tort Claims Act, V.T.C.A. Civil Practice and Remedies Code, Chapter 101, Section 101.021. The limits of liability are \$250,000 for each person, \$500,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property. Following this limited exposure, the System as a state agency, is protected by the doctrine of sovereign immunity, and as such, is self-insured up to the aforementioned limits.

We trust the above information will provide the necessary insurance information needed by your organization. If we can be of any further assistance, please let us know.

Sincerely,

Henry D. Judah, CPCU CLU ChFC
Risk Manager

APPENDIX B

TO WHOM IT MAY CONCERN:

Subject: The Texas A&M University System Auto Plan
October 1, 2014 to October 1, 2015

This memo has applicability to the following universities and agencies of The Texas A&M University System:

Universities

Texas A&M University
Tarleton State University
Prairie View A&M University
Texas A&M University-Galveston
Texas A&M University-Corpus Christi
Texas A&M International University
Texas A&M University-Kingsville
West Texas A&M University
Texas A&M University-Commerce
Texas A&M University-Texarkana
Texas A&M Health Science Center
Texas A&M University-Central Texas
Texas A&M University-San Antonio

Agencies

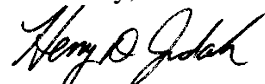
Texas A&M AgriLife Research
Texas A&M AgriLife Extension Service
Texas A&M Engineering Experiment Station
Texas A&M Engineering Extension Service
Texas A&M Forest Service
Texas A&M Transportation Institute
Texas A&M Veterinary Medical Diagnostic Laboratory

The Texas A&M University System
Texas A&M System Sponsored Research Services

State-owned vehicles of the above mentioned universities and agencies of The Texas A&M University System are exempt from compulsory liability insurance requirements of the State of Texas. This exemption appears in The Texas Transportation Code; Subtitle D Motor Vehicle Safety Responsibility; Chapter 601 Motor Vehicle Safety Responsibility Act; Subchapter A General Provisions; Section 007 Applicability of Chapter to Government Vehicle. As such, auto liability coverage is provided under The Texas A&M University System Auto Liability Plan with the following limits of \$250,000/\$500,000/\$100,000.

Website link: <http://www.statutes.legis.state.tx.us/Docs/TN/htm/TN.601.htm#601.007>

Sincerely,



Henry Judah, CLU CPCUC hFC

Associate Director
The Texas A&M University System
979-458-6330 or rms-insurance@tamus.edu

Governing Law

Members of the Texas A&M University System, as agencies of the State of Texas are not allowed to accept the governing law of other US States or Foreign Counties. Applicable US Federal Laws are acceptable. The standard language in regard governing law is as follows:

The validity, interpretation, and enforcement of this Agreement shall be governed and determined by the laws of the State of Texas without regard to its conflicts of laws principles, and venue for any action brought hereunder shall be as provided by Texas law.

Laws of Another Country

Members of the Texas A&M University System cannot agree to accept the governing law of foreign countries. If the other party will not accept Texas Law, the only option is to delete any reference to governing law and remain silent.

Laws of Another State

If the other party is also an agency of another state, they may also be operating under similar limitation when it comes to accepting the laws of the State of Texas and private entities may also have restrictions against accepting the laws of the State of Texas. When this is the case, the best options are to negotiate for the deletion of any reference to governing law, and remain silent, or substitute the following language.

The validity, interpretation, and enforcement of this Agreement shall be governed and determined by applicable Federal Law and laws as per state courts having applicable jurisdiction.

Negotiators should also review for agreement terms that require the System member to comply with specific provisions of the legal or educational code of another state. Such terms are in effect introducing the governing laws of another state. Such terms should be deleted, or substituted with the equivalent Texas legal or educational code if such exists.

Local Government Codes

Agreements with local governmental entities in Texas may include references to terms and conditions of the local governmental codes (municipal codes, county codes) as applying to the agreement.

Negotiators should try to have such references deleted, otherwise these local governmental codes will have to be reviewed to determine if there are conflicts with System member and SRS policies.

Exceptions

Any acceptance of the laws of other US States or foreign counties would have to be made at the specific direction of an authorized official of the System member.

Venue

Venue indicates the county or district within which a criminal or civil case must be heard.

Normally, the venue in a criminal case is the judicial district or county where the crime was committed. For civil cases, venue is usually the district or county which is the residence of a principal defendant, where a contract was executed or is to be performed, or where an accident took place.

For system members, state law mandates venue and it is not negotiable. Venue for suits is the county where the member's CEO has their main office (see Sec. 85.18, Tex. Educ. Code). However,

agreements do not need to address venue. Many times other universities and state entities also have venue requirements and it is best to remain silent. If an issue arises, the venue can be addressed at a later date.

Sec. 85.18, Tex. Educ. Code

§ 85.18. MANDATORY VENUE. (a) Venue for a suit filed against the board or a member of the board in the member's official capacity is in Brazos County.

(b) Venue for a suit filed against The Texas A&M University System, any component of The Texas A&M University System, or any officer or employee of The Texas A&M University System is in the county in which the primary office of the chief executive officer of the system or component, as applicable, is located.

(c) This section does not waive any defense to or immunity from suit or liability that may be asserted by an entity or individual described by this section.

(d) In case of a conflict between this section and any other law, this section controls.

(e) The changes in law made by the adoption of this section apply only to an action brought on or after September 1, 2003.

Added by Acts 2003, 78th Leg., ch. 1266, § 4.10, eff. June 20, 2003.

Exceptions

If conflicts arise regarding venue, remaining silent on venue is the basic fallback position. Acceptance of a venue conflicting with Sec. 85.18, Tex. Educ. Code would have to be approved by the system member.

Equipment

The TAMU System prefers members retain ownership of all Sponsored Research equipment purchases. If an agreement stipulates the title to equipment purchases vests with the Sponsor, the Principal Investigator and system member should be contacted to confirm that is acceptable.

Sample Language:

TITLE TO EQUIPMENT. (SYSTEM MEMBER) shall retain title to all equipment, supplies and other items purchased and/or fabricated with funds provided by SPONSOR under this Agreement except those expressly made part of a deliverable.

Contract Approval Authority

Review the current system member's Delegation of Authority to identify the highest level of reviews and approvals required by each system member before SRS can enter into an agreement. Certain specific high-risk or non-standard terms and conditions require system member's approval. The Delegation of Authority for each system member is located at [K:\Member Delegations of Authority](#).

SRS can sign up to \$500K for most system members for each contract action. For an individual contract action over \$500K, the system member is required to sign.

Other examples of terms and conditions requiring system member approval include waivers of intellectual property, fixed price agreements exceeding \$500K, restrictions on publications, non-standard intellectual property terms and conditions, exception to advance payment requirements for industry sponsors, and non-standard termination language.

Force Majeure

Force majeure "superior force", also known as *cas fortuit* (French) or *casus fortuitus* (Latin) "chance occurrence, unavoidable accident", is a common clause in [contracts](#) that essentially frees both parties from [liability](#) or obligation when an extraordinary event or circumstance beyond the control of the parties, such as a [war](#), [strike](#), [riot](#), crime, or an event described by the legal term [act of God](#) (such as [hurricane](#), [flooding](#), [earthquake](#), [volcanic eruption](#), etc.), prevents one or both parties from fulfilling their obligations under the contract. In practice, most force majeure clauses do not excuse a party's non-performance entirely, but only suspends it for the duration of the force majeure. ⁽¹⁾

⁽¹⁾ Source: Wikipedia.

TAMUS members generally find this following paragraph to be acceptable wording for inclusion in agreements:

If either Party fails to fulfill its obligations hereunder (other than an obligation for the payment of money), when such failure is due to an act of God, or other circumstance beyond its reasonable control, including but not limited to fire, flood, civil commotion, riot, war (declared and undeclared), revolution, acts of foreign or domestic terrorism, or embargos, then said failure shall be excused for the duration of such event and for such a time thereafter as is reasonable to enable the Parties to resume performance under this Agreement, provided however, that in no event shall such time extend for period or more than 30 days.

Inclusion of this provision is especially desirable when no clause is present in an agreement for "termination for convenience".

Severability

DEFINITION AND PURPOSE: In the event a provision of an agreement is determined to be void because it is against public policy or for some other legal reason, a severability provision allows the rest of the agreement to remain intact and binding. This clause protects the integrity of the agreement by allowing invalid provisions to be ignored without invalidating the entire agreement.

Example:

If any provision of this agreement is held to be unenforceable by a court of law or equity, this agreement shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this agreement unenforceable.

Non-waiver of Performance/Breach

Failure of either party to require performance or allow breach by the other party of any provision of this Agreement will in no way affect the right to require performance or allow succeeding breach at a later time.

Effect: This means that allowing a party to not perform or comply with the terms of an agreement in one instance does not mean that blanket approval is given for such non-performance or non-compliance in the future.

As found in the MISCELLANEOUS section of the SRS Sponsored Research Agreement template it is rendered as:

This Agreement is binding upon and shall inure to the benefit of the Parties, their representatives, successors and permitted assigns. No failure or successive failures on the part of SPONSOR, its successors or assigns, to enforce any covenant or agreement, and no waiver or successive waivers on its or their part of any condition of this Agreement shall operate as a discharge of such covenant, agreement, or condition, or render the same invalid, or impair the right of SPONSOR, its successors and assigns, to enforce the same in the event of any subsequent breach or breaches by (SYSTEM MEMBER), its successors or assigns. Contract Negotiators may encounter identical language or language having the same effect in incoming awards. Such language is acceptable. However, if the Non-waiver of Performance/Breach language is not included in an incoming award, negotiating its inclusion is not required.

Assignment

Assignment is the legal transfer from one party to another of all or part of a party's rights and obligations under a contract or agreement. In many situations, unless the contract states otherwise, the rights and obligations arising under a contract are assignable, with or without the other party's consent.

A prohibition on the assignment of "the contract" applies only to the delegation of the performance of a duty or condition unless otherwise stated in the agreement. If the prohibition should apply to something more than this, it must be stated in the agreement. SRS' preferred language, below, prohibits assignment without consent except to a successor to all of the party's business and assets.

A prohibition on assignment does not normally void the assignment unless specifically stated in the clause. A breach will only give rise to a right to damages for the wrongful assignment, but will not treat the assignment as void. It may be difficult to actually prove any damages for the wrongful breach. To remedy this, the clause can specifically state that any attempt to assign the agreement (or any other restriction on assignment) will be void.

SRS Template Clause:

This Agreement may not be assigned in whole or in part by any of the Parties without prior written consent of the other Party, except to a successor to all or substantially all of its business and assets.

Non-waiver of State Agency Immunities

If possible, Contract Negotiators should seek to insert the following language into system member agreements “**System Member** is an agency of the State of Texas, and nothing in this Agreement waives or relinquishes the right of **System Member** to claim any exemptions, privileges, and immunities as may be provided by law.”; **System Member** being the appropriate system member's name. It is permissible to be silent on this language, because this will be the case with or without the language in the agreement. Including this language is preferable, because it puts the other Party on notice; they are entering an agreement with a State Agency, and any legal recourse they pursue must follow the laws of the State of Texas.

Counterparts

Agreements are often executed in counterparts, meaning each party to the agreement signs separate but identical copies of the same document. The signed copies together will form a single binding agreement. This expedites execution of the agreement if originals are required, if the parties are in separate

locations, or if there are more than two contracting parties involved. SRS standard research agreement language states, “The Agreement may be executed in duplicate counterparts, which taken together shall constitute one single representation between the Parties.”

Export Controls

Exports are both the shipment of materials to another country and/or the disclosure of controlled information to foreign persons and entities (deemed exports) located in the United States.

Exports are regulated by several federal agencies. While the conduct, products, and results of fundamental research are generally excluded from federal export or deemed export controls, there may be some activities that would not be excluded and would require an export license.

Under federal law, the export of certain goods and technologies must be authorized through the issuance of an export license. In addition, the export of technical data – including communication by any means to foreign nationals, whether in the United States or abroad, also may require an export license.

A foreign national or foreign person is defined as a non-US citizen, green card holder {aliens who are “Lawful Permanent Residents” [8 USC § 1101(a)(20)]}, and/or immigrants {including other “Protected Individuals” under the Immigration and Naturalization Act [8 USC § 1324b(a)(3)] designated an asylee, refugee, or a temporary resident under amnesty provisions}.

A foreign national also means any foreign corporation, business association, partnership or any other entity or group that is not incorporated to do business in the US. Under ITAR, the term “foreign person” is used, but has the same definition as “foreign national” herein.

Contract Negotiators should be alert to non-standard contractual terms and publication restrictions that would impact the fundamental research exemption.

Following is acceptable sample contractual language taken from the SRS Research Agreement Template:

EXPORT ADMINISTRATION. The results of the Research obtained by (SYSTEM MEMBER) are expected to be ordinarily published and shared broadly with the scientific community, and therefore are expected to constitute “fundamental research” as defined under the International Traffic in Arms Regulations (ITAR, 22 CFR Sections 120-130) and the Export Administration Regulations (EAR, 15 CFR Sections 730-774). If SPONSOR discloses to (SYSTEM MEMBER) any Confidential Information that is subject to export control, SPONSOR will alert (SYSTEM MEMBER) in writing at the time of disclosure, at which time (SYSTEM MEMBER) will advise SPONSOR if it desires to take receipt of the export-controlled materials. Neither Party shall export or re-export any United States-origin technology, software, or products, or the direct products of that technology, software or products under this Agreement, in violation of United States export control regulations.

OR:

EXPORT ADMINISTRATION. It is understood that SYSTEM MEMBER is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities, and that its obligations hereunder are contingent upon compliance with applicable United States export laws and regulations. Furthermore, it is understood that the transfer of certain technical data and commodities may require a license from one or more agencies of the United States Government. Each Party will comply with

applicable U.S. export control laws including without limitation the Export Administration Regulations and the International Traffic in Arms Regulations as currently codified or later amended. This section survives any termination of this Agreement.

If it is determined that the scope of work will be subject to export control, the Principal Investigator may need to work with the Member's Export Control Officer to develop a Technology Control Plan (TCP).

Export Control Laws and Regulations

EAR – Export Administration Regulations (Department of Commerce) was implemented as a result of the Export Administration Act of 1979.

ITAR – International Traffic in Arms Regulations (Department of State) resulted from the *Arms Export Control Act* of 1976.

OFAC – Office of Foreign Assets Control (Department of the Treasury) administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.

What Does it Mean to Export?

Any shipment, transfer, or transmission of commodities, technology, software out of the US is exporting. This includes any transfer to any person – either within or outside of the US – of these items by physical, electronic, oral, or visual means with the knowledge that it will be exported. Disclosure of technical data to a foreign national within or outside the US is also considered exporting. Even transfer of data over a satellite or instruments in orbit qualifies.

Why Be Concerned?

Control over the dissemination of “technical data” limits the freedom to publish and discuss research. Restrictions on access to information by foreign nationals (including faculty, student, and graduate students) prohibits these individuals from working on research projects. Foreign visitors and collaborators have restrictions on their visas which prohibit their visits to laboratories and project sites. Publication restrictions of research results require time delays, reviews, and approvals.

Restrictions even extend to attendance at conferences and seminars which prohibit presentation of results or project discussions to audiences where there are foreign nationals within the US and abroad. Exporting of “dual-use” goods and technologies (like satellite hardware and related technologies) are also controlled.

Keep it Fundamental

Both fundamental research and fundamental data are exempt from export control regulation. “Fundamental Research” is basic and applied research in science and engineering where the resulting information is ordinarily published and shared within the scientific community.

Contract restrictions can change fundamental research into technical data. Avoid the following: restrictions on publications; allowing projects to be classified; acceptance of national security controls; and development of proprietary information.

Exclusions

FRE or Fundamental Research Exclusion –

Fundamental Research is defined by the National Security Decision Directive 189 (NSDD189) as “any basic or applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community...” In order to qualify as Fundamental Research, the research must be conducted free of any publication restrictions and without any access or dissemination restrictions.

Research that qualifies as Fundamental Research is **NOT** subject to export controls as provided for under the federal regulations (15 CFR§734.8). NOTE that FRE will be lost if a researcher agrees to any “side-deals” allowing sponsors the ability to review and approve publications or to control access to the project or project results. Loss of the Fundamental Research Exclusion can quickly put your research in jeopardy of non-compliance with export controls.

Public Domain

Publically available information may also qualify as an export. The federal government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the US in the interest of national security, economic, and/or foreign policy concerns.

System Member Export Control Officials (ECO)

Texas A&M University	TEES	PVAMU
Rose Ndegwal	Lisa Akin	Marcia Shelton
rose.ndegwa@tamu.edu	lisaakin@tamu.edu	mcselton@pvamu.edu
(979) 458-4290	(979) 458-7473	(936) 261-1588

TEXAS A&M AgriLife	Texas Transportation Institute
Lauren Schroeder	Joe Dunn
clschroeder@ag.tamu.edu	jdunn@tamu.edu
(979) 458-3289	(979) 862-3669

Helpful Reference Information

ITAR Clauses

52.227-17	Rights in Data
252.204-7000	Disclosure of Information
252.204-7008	Export-Controlled items
5352.227-9000 AFMC	Export-Controlled Data Restrictions
5353.227-9000 Air Force	Export-Controlled Data Restrictions
Foreign Nationals –	
52.04-4401 Army	Release of Information
52.004-4400 ARL	Foreign Nationals Performing Under Contract
52.005-4401 ARL	Release of Information
52.215-9530 FAR	Foreign Nationals Subject to Export Controls

TAMU STANDARD ADMINISTRATIVE PROCEDURE

Technology Control Guidelines

15.02.99.E1 – Export Controls

Technology Control Plan (TCP) Briefing & Certification on the Handling of Export-Controlled Information, Items, Technology and Software

BACKGROUND

The subject matter of the Technology Control Plan (TCP) identified below may involve the use of export-controlled information, technology, items or software. The International Traffic in Arms Regulations (ITAR), enforced by the Department of State, and the Export Administration Regulations (EAR), enforced by the Department of Commerce, prohibit sending or taking export-controlled information, items, technology or software out of the U.S. and disclosing or transferring export-controlled information to a Foreign Person inside or outside the U.S. Verbal and visual disclosures are equally prohibited.

A “Foreign Person” is defined as any person who is not a U.S. citizen or legal permanent resident of the U.S. There are no exceptions for foreign graduate students or visiting scholars.

Generally, export-controlled means that the information item,, technology and software related to the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, operation, modification, demilitarization, destruction, processing, or use items with a capacity for substantial military application utility requires an export license, or license exception, before it may be physically exported or discussed or disclosed to a Foreign Person. Export-controlled information does not include basic marketing information about function or purpose, general system descriptions, or information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities or information in the public domain. It does not matter whether the actual intended use of export-controlled information is military or civil in nature.

PARTICIPANTS RESPONSIBILITIES

Participants may be held personally liable for violations of the EAR and the ITAR, with significant financial and criminal penalties as a result. With that in mind, it is extremely important that Participants exercise care and caution in using, disclosing or transferring export-controlled information, items, technology or software with others inside the U.S. and outside without prior authorization from the appropriate federal agency. For example, Participants must identify who among proposed research project personnel and collaborators are Foreign Persons. If a Foreign Person does not have security clearance, the State Department or the Department of Commerce (depending on whether the ITAR or the EAR controls the technology) must grant a license authorizing that person access to export-controlled information. Participants must secure access to export-controlled information, items, technology or software to prevent unauthorized access or use. They must clearly identify export-controlled information, items, technology or software and make copies of export controlled information only when absolutely necessary. Participants must securely store export-controlled information in locked filing cabinets, locked drawers, or under password-protected computer files. Participants shall avoid moving export-controlled information from one location to another, if at all possible.

CRIMINAL/CIVIL LIABILITY AND PENALTIES

The penalty for unlawful export and disclosure of export-controlled information under the ITAR is up to two (2) years imprisonment and/or a fine of one hundred thousand dollars (\$100,000). The penalty for unlawful export and disclosure of information controlled under the EAR is the greater of either a fine of up to one million dollars (\$1,000,000) or five (5) times the value of the exports for a corporation and imprisonment of up to ten (10) years and/or a fine of up to two hundred fifty thousand dollars

(\$250,000) for an individual. *It is very important to remember that individuals may be held personally liable for export control violations even when performing a project that is funded through the University.*

Principal Investigator/Responsible Official: _____
Department/Unit: _____
Title of Project/Activity: _____
Technology Control Plan Number: _____

TCP CERTIFICATION

- I hereby certify that I have read and understand this Briefing and Certification. I understand that I could be held personally liable if I unlawfully allow access to or disclose, regardless of form or format, export-controlled information, technology, software, or items to unauthorized persons.
- I understand that the law makes no specific exceptions for non-US students, visitors, staff, postdocs or any other person not pre-authorized under a TCP to access export controlled information, technology, software or items.
- I also acknowledge that I have read the Texas A&M University Technology Control Plan for this project/activity and have discussed the plan with my supervisor (if not the PI / Responsible Individual) and that I agree to comply with the requirements in the TCP.
- Furthermore, I have taken the University's Export Control Training as set forth in the TCP and as prescribed by University Rule 15.02.99.M1 *Export Controls*. I agree to immediately contact the Texas A&M Export Controls Program at (979)458-1467 or exportcontrols@tamu.edu, with any questions I may have regarding the designation, protection, or use of export-controlled information, technology, software, or items.

Participant Name:	TCP Number:
Participant Signature:	Date:

*Print and execute this **BRIEFING and CERTIFICATION** for each person who will have access to the export controlled subject matter.

Contract Changes

When negotiating a contract, or after a contract has been signed, you may have reason to want to **modify**, or change, the contract. In general, contract modifications require the agreement of all parties to the contract. Contract changes may be requested by either the Sponsor or Principal Investigator (PI). Once the contract has been signed, then it typically cannot be changed unless all parties to the contract agree to the modifications. The modification must be in writing and the modification must be signed by all parties. A contract can be modified in whole or in part, depending on the needs of the parties.

There are many reasons why you might want to modify a contract. Some of those would include:

- To extend a contract
- To change the quantity items that fall under the scope of work, or changes to the scope of work in general
- Add or delete items to the contract
- Change payment terms of the contract
- Change delivery of goods
- Change reporting requirements
- Change dollar amount of contract

Example:

The parties mutually agree to revise and amend the following respects and none other:

Example:

Sponsor wishes to amend the Testing Agreement signed on (insert date). The modification will add \$XXXXXX to the original budget. The adjusted total project costs will be \$ XXXXXX. A Budget Addendum for the additional amount is attached and is hereby made part of the original Testing Agreement.

Attachments/Exhibits/Appendices

Addendum – An addendum is an additional document not included in the main part of the contract. It is an ad hoc item, usually compiled and executed after the main document, which contains additional terms, obligations or information. The following are examples of types of addenda:

Exhibits - Something that's referred to in the agreement/contract document and is attached to the end of the document so that the reader can see it for himself (so the document can say " as per the _____, attached as exhibit A"). Making something an exhibit makes it part of the agreement/contract document itself - something essential to the document. In sponsored research agreements some commonly included Exhibits are Scopes of Work, Statements of Terms and Conditions, Non-Disclosure Agreements, Master Agreements, Prime Agreements, and Materials Transfer Agreements. Do not overlook documents that are referenced as a website link. These have the full force and effect of documents that are visibly attached.

Since exhibits are part of the agreement/contract they must be reviewed for compliance with System Member/ SRS policy with the same scrutiny as the main agreement/contract. One of the main considerations when reviewing exhibits is the degree to which they alter the effect of the agreement/contract and if the exhibit has terms and conditions that conflict with those stated elsewhere in the agreement/contract. There should be a clear order of precedence statement in the agreement/contract that addresses conflicting terms and conditions. In sponsored research agreements the order of precedence should typically be the agreement/contract, the recipient's scope of work, exhibits, attachments, and appendices.

Appendix - Something that is attached at the end to supplement the agreement, usually for reference (so it's a list of similar things, a bibliography, a study, etc.) You don't have to read the appendix to be able to understand the agreement. It's just additional reference information. An appendix should not change the terms and effect of the agreement/contract.

Attachments - Something required to be attached, that's not an exhibit and not an appendix and that does not change the terms and effect of the agreement/contract. Examples could include Vendor Information Forms, Sample Invoices, FFATA Certifications, System Member W9 Form, Indirect Rate Statements, Insurance Certificates and Letters of Self-Insurance. Attachments should be reviewed to determine if in fact they do not change the terms of the agreement, effect the performance or administration of a project, or conflict with System Member/SRS policy.

Note that in practice, you may see agreements and contracts in which the terms exhibit, appendix, attachment and addendum are used interchangeably. All documents included with an agreement or contract should be reviewed for its effect regardless of whether it is labeled an exhibit, appendix, attachment, addendum, or something else.

The complete contract including all exhibits, appendices and attachments should be saved in Maestro as part of the fully-executed document.

Federal Acquisition Regulation (FAR) Clauses

FAR clauses are federal contracting clauses contained in federal or federal flow-through contracts. The FAR is the primary regulation for use by all Federal Executive agencies in their acquisition of supplies and services with appropriated funds. FAR clauses are not applicable to financial assistance agreements (grants and cooperative agreements).

The Federal Acquisition Regulations System is promulgated in Title 48 of the U.S. Code of Federal Regulations (<http://www.ecfr.gov/>). The Federal Acquisition Regulation is the primary document (Chapter 1) and agency acquisition regulations that implement or supplement the FAR are contained in subsequent chapters.

The FAR can also be accessed at the following websites: <http://farsite.hill.af.mil/VFFARA.HTM> and <https://acquisition.gov/far/>. The FARsite website also houses FAR supplements for the different federal agencies. The acquisition central website provides the option of HTML or PDF formats and archived FAR versions.

Many FAR clauses have variations for certain types of recipients with some clauses specifically tailored for educational and other nonprofit institutions. In addition, many clauses contain various alternates to be used based on the scope of work, recipient entity, etc. Contract Negotiators (CN) review clauses for applicability to the work and for risk to the system member. If a clause is appropriately included by the federal agency and risk is involved, system member review and approval for acceptance is requested by the CN.

Through a committee of negotiators, SRS maintains a FAR Matrix tool to assist negotiators with contract review. This tool contains common FAR clauses and indicates whether specific clauses are acceptable or unacceptable. The tool is located at <K://Contracts & Grants/Contract Negotiations/FAR Matrix Tool/OSRS FAR and Federal Clause Matrix>.

Travel Policy

It is acceptable to remain silent on travel policy in contracts (i.e., not to include the policy). Sponsored Research Services has a travel policy, and SRS provides a webpage at our website (<https://srs.tamus.edu/business-services/travel/>) with a link to the travel policy and links to other resources. In some cases, a Sponsor may require that we follow their travel policy. Contract Negotiators should seek to insert SRS travel policy, but if that is not possible, we may agree to the policy as long as there are no major conflicts with SRS policy. Any deviation from standard SRS policy should be discussed with the Principal Investigator to make sure they are aware of the non-SRS travel policy particulars.

Note that while a travel policy may not be included in the contract, if there are subrecipient agreements involved, the SRS Subrecipient Monitoring Group will need to know the travel policy to appropriately monitor it for subrecipients. Subcontract Negotiator will refer to the terms and conditions entered into Maestro by the SRS Project Administrator (and check with the Project Administrator if such terms are not listed).

Audit Language

OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations* states that entities receiving federal funds are subject to audit requirements that are commonly referred to as single audits. The audits are intended to promote sound financial management, including effective internal

control, with respect to federal awards administered by state and local governments and non-profit organizations. The threshold for when an entity is required to have an audit is annual expenditures totaling \$500,000 in Federal awards. The Texas A&M University System members' audits are part of a statewide Single Audit by the State and can be found on the Texas State Auditor's Office web site. Contract Negotiators should not accept contract provisions requiring, or allowing the sponsor an option to require, additional independent audits to be performed unless the audit is at the sponsor's expense. In research agreements, financial records for cost-reimbursable payments can be audited since a budget is included in the agreement and since we are required to submit financial reports. Audit provisions allowing sponsors to audit costs under an agreement should not be included in fixed-price agreements. Once the fixed-price payment amount has been agreed upon, the costs incurred to perform the work should not be subject to audit or determination by the sponsor of allowability.

Intrasystem Agreements

Intrasystem agreements are agreements between members of The Texas A&M University System. Generally, the intrasystem agreements are utilized by SRS to transfer a portion of the scope of work, funding, and responsibility from a prime agreement to another system member. A matrix showing the requirements for an intrasystem agreement between members is attached. When SRS does not administer funding for both members of the agreement, the review process for the prime agreement follows standard process.

When SRS will be administering both the prime agreement funds and the subrecipient member's funds, the Contract Negotiator (CN) will review the prime agreement on behalf of the prime recipient member and the subrecipient System member during the review of the prime agreement. This eliminates the need to conduct a separate review on behalf of the subrecipient member when the subaward is issued. The following process is used:

- Upon reviewing a prime agreement, the CN will determine if any subrecipient System members (SRS administered) are included in the proposal/pending award. If so, the CN will request a set-up for the subrecipient member(s) from CGST. This establishes an M# to document approvals and FCOI compliance for the subrecipient member.
- The CN for the prime agreement will review the award on behalf of the receiving member and any subrecipient members. The CN will obtain any needed approvals from all system members. The CN will specifically review any intellectual property or licensing terms to confirm the terms are acceptable to all members. The recipient member is the final decision maker regarding prime terms and conditions; however, the CN will provide specific instructions to the subaward negotiator if variances to the prime terms are needed in the intrasystem agreement.
- When the prime agreement is finalized: (i) the prime agreement is tasked either to the PA or CGST per normal process; and (ii) the set-up for the subrecipient member is tasked to the PA for the subrecipient member. The status will be "In Negotiation" pending receipt of the fully-executed intrasystem agreement. The subrecipient member PA may either interim fund or suspense the file pending receipt of the fully-executed intrasystem agreement from CGST.
- Once an account is established for the prime recipient member, the PA will task SMG and a SN will prepare the intrasystem agreement that formally issues funding to the subrecipient member.

IS AN INTRASYSTEM SUBCONTRACT NECESSARY?

Sub to → Prime ↓	Adloc TAMU College of Engineering	Adloc TAMU College of Agriculture / Vet Medicine	Adloc TAMU All other Colleges	Adloc AgriLife Research	Adloc AgriLife Extension	Adloc TEES	Adloc TTI	Adloc A&M HSC	Adloc A&M Galveston	Adloc Prairie View A&M	Adloc A&M Corpus Christi	Adloc Tarleton State
TAMU	NO	NO	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES
AgriLife Research	YES	NO	YES		YES	YES	YES	YES	YES	YES	YES	YES
AgriLife Extension	YES	YES	YES	YES		YES	YES	YES	YES	YES	YES	YES
TEES	NO	NO	NO	NO	NO		NO	YES	YES	NO	NO	NO
TTI	NO	NO	NO	YES	YES	NO		YES	YES	YES	YES	YES
A&M HSC	YES	YES	YES	YES	YES	YES	YES		YES	YES	YES	YES
A&M Galveston	YES	YES	YES	YES	YES	YES	YES	YES		YES	YES	YES
Prairie View A&M	YES	YES	YES	YES	YES	YES	YES	YES	YES		YES	YES
A&M Corpus Christi	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES		YES
Tarleton State	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	

Indirect Costs on the first \$25,000 of an IntraSystem subcontract (when both members are headquartered in College Station) are waived.
(Exceptions: AgriLife Research's Institute for Infectious Animal Diseases is the prime and either TEES or TVMDL is the subcontractor – no waiver)

Indirect Costs on the first \$25,000 of an IntraSystem subcontract are charged when a regional System member is the collaborating institution.

Subcontracts are not necessary when the contribution of the collaborator is salary only and the collaborator is not listed as a co-Investigator or equivalent on the proposal budget.

Effective: Oct. 7, 2014

Interim Funding

Under certain conditions interim funding may be offered by each respective A&M System Member to investigators as a way to provide immediate funding and account set up on a new project that is still under negotiation. Interim funding is most often used when immediate obligations, such as payroll or equipment purchases need to be made. Note that all of the required compliance steps such as IRB approval and FCOI assurances/certifications must be in place prior to establishing an interim funding account. Some System members do not require a supporting account to which to charge the interim funded expenses if the agreement is not finalized, but others do. The Contract Negotiator (CN) should discuss such variances with their respective Project Administrator. The CN's function is to (1) inform the PI that interim funding may be an option, and (2) if requested by the Project Administrator, assist in the interim funding risk analysis. The CN should be familiar with the interim funding risk analysis found on the 2nd page of the SRS INTERIM FUNDING REQUEST FORM found at the following link:
<https://srs.tamus.edu/wp-content/uploads/2013/07/SRS-Interim-Funding-Request.pdf>

When the CN sends notice of receipt of an award to the Principal Investigator, the CN may include the following statement:

“Please be aware that under certain conditions (enter SYSTEM MEMBER), may offer interim funding to investigators as a way to provide immediate funding and account set up on a new project that is still under negotiation. If you would like to request interim funding for this project, please contact your SRS Project Administrator (name) at (email), or contact your departmental Business Administrator.”

Financial Conflict of Interest

The SRS Contract Negotiator (CN) is responsible for confirming compliance with federal regulations and System regulation 15.01.03 Financial Conflicts of Interest (FCOI) in Sponsored Research for negotiated agreements.

An agreement should not be signed and an interim funding account should not be established if all investigators have not completed the required training and financial disclosure with their System member's Conflict of Interest Official (COIO) or if a financial interest is being reviewed by the COIO. In the event the COIO has determined a related significant financial interest exists, CN's should notify the appropriate SRS Director and work with the COIO to determine what actions are needed prior to agreement signature.

In accordance with SRS' current FCOI procedure ([K:\Contracts and Grants\FCOI\ SRS FCOI Procedure 2013-11-19](#)), the CN will confirm and document FCOI compliance for all investigators identified by the Principal Investigator. The CN procedure is summarized below.

Negotiator (for negotiated awards) or Project Administrator (for non-negotiated awards) Responsibilities: Confirm FCOI compliance prior to account establishment in accordance with the following process:

1. FCOI compliance is required for all SRS research projects.* FCOI compliance is checked by the CN or PA one time prior to the establishment of the account. For accounts established prior to the current FCOI requirements, the CN or PA should review FCOI compliance with the next award action. If FCOI compliance was not previously checked, the CN or PA must verify FCOI compliance in accordance with the current requirements.

* The CN or PA should confirm FCOI compliance for all sponsored activity for Texas A&M AgriLife Extension Service (AgriLife Extension) regardless of the designated function. For all other System members, FCOI compliance requirements are not applicable to sponsored projects for non-research functions (public service, instruction, etc.).

2. Review the Negotiation General Info screen in Maestro and update the "FCOI Disclosure Required" field to "Yes" if needed. This field should be marked "Yes" for all research projects and AgriLife Extension projects.

General Info

ID M1301882
Project Number 4668910000
PI Norman Guinasso
Master ID
Parent ID
Function Research
Award Type Contract
Lead Organization TAMU Geochemical & Environme
Administer For Org
Center
Administrative Organization SRS
Start Date 27-Mar-2013
End Date 22-Apr-2013
Initial Amount
Nickname
Title Contract Services with LSU - Requisition 88608

Prime
Prime Award Number
CFDA Number
Restricted Sponsor
Restricted Title
Classified
Sub Recipient Exists
ARRA
FFATA
E-Verify
Negotiation Required No
FCOI Disclosure Required Yes
Status Fully Executed on 12-Apr-2013
Sub Awardee

Last updated on 12-Apr-2013 by Denise Mack

3. If FCOI Disclosure is required, request a list of all Investigators involved in the research from the PI using the below email template. Provide the names of Investigators listed in the Personnel screen in Maestro for the PI's reference.

Personnel

Current ID
ID M1301882 Sponsor 76288 Title Contract Services with LSU - Requisition 88608 Sponsor Louisiana State University PI Norman Guinasso Lead TAMU Geochemical & Environmental Organization Research Gro

Personnel

Name	Member	Organization	Project Role	Credit (%)	Key Personnel	Investigator
Norman Guinasso	TAMU	Geochemical & Environmental Re	PI	100.00		
Total Credit (%)				100.00		

Columns Hidden 6

Email Template

Subject: SRS Account number/Sponsor/Sponsor Award No.

Dr. _____

Prior to account set-up for the referenced project, I need to confirm compliance with the System's FCOI policy (<http://policies.tamus.edu/15-01-03.pdf>).

Please complete the list of investigators below for this project and return it to me via an email reply. Investigators listed in the proposal are noted but please update this information, if needed. Investigator is defined in the regulation as "the project director or principal Investigator and any other person, regardless of title or position, who is responsible for the design, conduct or reporting of Research or Research Activities." If there are no additional investigators, an email reply with "No Changes" is all that is required.

Please note that the System FCOI policy is applicable to subrecipients for all sponsored research in which an Investigator subcontracts a portion of the research to a covered family member or an entity in which the Investigator or a covered family member has a financial interest. Notify your SRS Project Administrator if this is applicable to a subrecipient on this project.

Thank you.

List of Investigators for this Award:

Name	Affiliation (TAMUS System Member or Subrecipient name)	Employee Job Title	UIN

In compliance with TAMUS policy 15.01.03, the Office of Sponsored Research Services cannot authorize expenditures on any project unless all investigators involved in the proposed work have a financial conflict of interest disclosure on file with their System member and the required training has been completed.

4. Based on the Principal Investigator's feedback, the CN or PA updates the Personnel Screen in Maestro. Add additional Investigators' names and assign them the Project Role of "Other Personnel" and check the "Investigator" field. If an Investigator is listed in Maestro but the PI indicates he/she should be removed, delete that Investigator from the Personnel List. Please note that the removal of a Co-PI may require routing of a revised proposal and sponsor approval.

The screenshot shows the Maestro Personnel screen. The top section displays the 'Current ID' as M1301882, with a sponsor of Louisiana State University and a PI of Norman Guinasso. Below this, the 'Personnel' section shows a table with columns for Name, Member, Organization, Project Role, Credit (%), Key Personnel, and Investigator. The table lists Norman Guinasso as a PI with 100% credit. The bottom of the screen shows navigation buttons like Back, Save, and Cancel.

Name	Member	Organization	Project Role	Credit (%)	Key Personnel	Investigator
Norman Guinasso	TAMU	Geochemical & Environmental Research Group	PI	100.00		
Total Credit (%)				100.00		

5. After updating the Personnel screen, review the FCOI status of all of the Investigators in the FCOI Status Screen. The FCOI status shows if the Investigator has completed their training and annual disclosure form, and if an SFI exists. If an Investigator has not completed their training or disclosure, send a notification through Maestro. The notification is initiated from the Action field and is sent to the System member's COIO.

- Setup
 - Negotiator Assignmer
 - Maintain Status
 - Negotiation Team
- Negotiation Search
 - General
 - Personnel
 - FCOI Status**
 - Negotiation History
 - Negotiation Document
 - Tasks
 - Notes
 - Modification
 - Notification
 - Proposals
 - Task List

FCOI Status

Current ID

ID	M1301882	Sponsor Award #	76288	Title	Contract Services with LSU - Requisition 88608	Sponsor	Louisiana State University	PI	Norman Guinasso	Le	Organizati
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FCOI Status

Action View

Investigator	Training	Annual	Investigator's Disclosure	COIO Review	Review Status	COIO's Decision
Norman Guinasso Jr	Completed	Yes	No Related SFI	No		

Columns Hidden 4

COI Official

Action View

Member	COIO	Email Address	Work Phone
TAMU	Carol Cantrell	c-cantrell@tamu.edu	9798621478
TAMU	Leonarda Horvat	l-horvat@tamu.edu	9794588740
TAMU	Lesa Feldhousen	lfeldhousen@tamu.edu	9798627986

6. CN's and PA's should upload a PDF of the list of investigators email reply under the Other Related Documents section with the document type of "FCOI List of Investigators."

7. If an SFI exists for any personnel, a task is automatically forwarded by Maestro to the member's COIO at the following times: a) when the proposal starts routing; b) when a project is created from a proposal; and c) when a new investigator (with SFI) is added to the proposal/project. The COIO will then review the SFI and determine what actions are required, if any. The Review Status and COIO's Decision are reflected on this screen. The System member COIO contact information is listed on this screen and the COIO may be contacted for questions.

8. The agreement can be signed and an account can be established if either of the following FCOI statuses exists for all Investigators:

Training	Annual	Investigator's Disclosure	COIO Review	Review Status	COIO's Decision
Completed	Yes	No Related SFI	No	Null	Null

OR

Training	Annual	Investigator's Disclosure	COIO Review	Review Status	COIO's Decision
Completed	Yes	No Related SFI	Yes	Closed	No Related SFI

9. The agreement should not be signed and an account should not be established if:

- (i) the Training and Annual fields are not marked "Completed" and "Yes" respectively for all TAMUS Investigators; or,
- (ii) if COIO review is marked "Yes" and the Review Status is "Open" or "Pending PI Action"; or,
- (iii) if Review Status is Closed and the COIO's Decision is "Related SFI Exists."

For 9(i) and 9(ii), the CN/PA should continue to monitor the FCOI status until these items are finalized.

For 9(iii), the CN or PA should notify the appropriate SRS Director and work with the System member's COIO to determine what actions are needed prior to agreement signature or account set-up.

If the award activity or contract execution is time sensitive and FCOI Status is incomplete or a related SFI exists, the CN/PA will notify the System member's COIO of the urgency and follow-up with the SRS director, if needed.

Compliance Items Review

Review the Proposal Compliance Items screen in Maestro to see if the PI has identified any compliance issues. In addition, review the scope of work in the agreement to determine if there are compliance issues that were not identified by the PI in the proposal. If there are variances, the PI should correct and recertify the compliance statement, if needed.

Based on compliance review, determine if specific approvals or documentation is needed in order to proceed. Verify the proposal completed routing and is in conformance with agreement, and required compliance approvals are documented.

*If **Human Subjects** research is being conducted, an approved protocol must be on file before funds are set up involving human subjects.*

To find an approved IRB protocol, check the Research Compliance & Biosafety electronic portal Integrated Research Information Systems (iRIS) <https://imedris.tamu.edu/> *, contact the Principal Investigator, or send an email to irb@tamu.edu for a status update.

If an IRB protocol has not been approved, the Contract Negotiator (CN) continues processing the agreement for signature.

The CN also reviews the agreement to determine if language exists involving release of human subjects data or information. If language exists, notify the Compliance Office at irb@tamu.edu so a review can be conducted to make sure it is compatible with release language in the Consent Form.

Research projects involving obtaining protected health information (PHI) from a covered entity are subject to review by the System's Health Insurance Portability and Accountability Act (HIPAA) Compliance Officer, in addition to IRB review. Separate agreements covering PHI use, e.g. Business Associates Agreement, Data Use Agreements are administered by the System member and should be forwarded to the Member for processing.

*If **Animals (Vertebrates)** is checked, an Institutional Animal Care and Use Committee (IACUC) protocol and approval must be in place before work with animals can begin.*

To find an approved IACUC protocol, check the Research Compliance & Biosafety electronic portal Integrated Research Information Systems (iRIS) <https://imedris.tamu.edu/> *, contact the Principal Investigator, or send an email to animalcompliance@tamu.edu for a status update.

If an IACUC protocol has not been approved, the CN continues processing the agreement for signature. However, funds cannot be spent on any portion of the research project involving animals until an approved IACUC protocol is on file.

If Recombinant DNA and Transgenic Organisms, Biohazards, and/or Select Agents is checked, an Institutional Biosafety Committee (IBC) approval must be in place before work can begin in the PI's lab. If so, an approved IBC permit must be on file for the Principal Investigator's lab before funds are spent involving biohazards. Each lab shall be inspected and approved before the initiation of the research project.

To find an approved IBC permit, check the Research Compliance & Biosafety electronic portal Integrated Research Information Systems (iRIS) <https://imedris.tamu.edu/> *, contact the Principal Investigator, or send an email to ibc@tamu.edu for a status update.

If an IBC permit has not been approved, the CN continues processing the agreement for signature. However, funds cannot be spent until an approved IBC permit is on file.

AgriLife, TAMU, TEES, HSC, and TTI use the TAMU Research Compliance. For IBC approval at PVAMU, send requests via email to Kay Peavy, Director of Procurement, Contracts and Reconciliations, wkpeavy@pvamu.edu Tel: (936) 261-1933

iRIS (Integrated Research Information System)

Check all compliance approvals in iRIS at <https://imedris.tamu.edu/>. Log in and click Study Assistant, Find a Study, enter Principal Investigator's name, click Find, and select the appropriate approval listed in green as "Active". The compliance approval number and expiration date are then displayed. Click on Study Correspondence, View Outcome Letter Notification, and click Attachments to view the Outcome Letter.

For **Export Control** issues, a Technology Control Plan (TCP) may be required. Upon receiving an award for review the CN should:

Verify if any updates to the questions completed on the proposal compliance statement at the proposal stage are necessary based upon their review of the proposed agreement.

Perform a Restricted Party Screening (RPS) as needed.

Review the Contract/Agreement (including any cited federal regulations), budget and the scope of work and any related documents to determine if they contain any of the following:

- references U.S. export regulations in terms not equivalent to those in SRS contract templates
- restrictions on non-U.S. entity participation based on country of origin
- prohibits access by non-U.S. citizens to project information or the employment of non-U.S. citizens to work on the project
- publication restrictions that impinge on the "Fundamental Research Exclusion", (other than standard prepublication review for matters of patents and/or proprietary sponsor information)

- includes confidentiality or non-disclosure terms for proprietary or export controlled information, without identifying the specific terms
- the research activity is being funded by a foreign sponsor or involves the collaboration by a foreign person (excluding TAMU graduate students)
- budget includes shipping items to a foreign location
- SOW indicates research activities at a foreign location
- terms that differ significantly in effect from the Export Control Clauses in the SRS Agreement Templates
- terms that allow the Sponsor to transmit export controlled material or information to the System member without identifying it as such
- terms that do not give the System member the right to decline receipt of export controlled material or information
- terms that would put System member in breach or impose penalties for delays or nonperformance due to export control issues
- termination clauses that do not allow the System member to terminate due to export control issues. (The standard SRS Termination for Convenience is sufficient)

If the answer is “YES” to any of the questions above, and the sponsor will not modify the problematic terms, send the following information (as available) to the System member Export Control Official (ECO) for further review to determine if a Technology Control Plan (TCP) is needed or if other action is required.

- Note/Highlight or otherwise call out the specific problematic terms
- Copy of the Agreement/Contract
- Scope of Work (if separate from the Agreement/Contract)
- TEES Export Control Determination form (If it is a TEES Project)

Upload the ECO response in the “Other Related Documents” section of the “Negotiations Documents” in Maestro. If it is a TEES project you should upload the TEES Export Control Determination Form as returned by the ECO for TEES. If an email response is received, copy it into a pdf format and unload it as a “Document Type” of “Approval/Recommendations from System member”.

If the ECO indicates a technology control plan is needed, consult your Director as to their policy on signing an agreement before the TCP is finalized.

System Member Export Control Officials (ECO)

Texas A&M University	TEES	PVAMU
Rose Ndegwal	Lisa Akin	Marcia Shelton

rose.ndegwa@tamu.edu
(979) 458-4290

lisaakin@tamu.edu
(979) 458-7473

mcskelton@pvamu.edu
(936) 261-1588

TEXAS A&M AgriLife
Lauren Schroeder
clschroeder@ag.tamu.edu
(979) 458-3289

Texas Transportation Institute
Joe Dunn
jdunn@tamu.edu
(979) 862-3669

For additional information, see the SRS Export Control Screening Procedures located at [K:\Policies and Procedures\Exec Mgmt\C&G\Export Control Screening Procedure.](#)

Regulated Hazardous Materials

When the investigator identifies that hazardous materials will be involved in the proposal compliances statement in Maestro during the proposal preparation and submission process, an e-mail is generated notifying the respective System member's responsible party. A secondary email is generated if the proposal is awarded.

For TEES Projects:

A Project Safety Analysis (PSA) is needed for TEES projects involving hazardous chemicals.

The point of Contact for overseeing engineering safety is:

David Breeding
Director, Environmental Health, Safety & Security
Office of the Vice Chancellor for Engineering
TEES & Look College of Engineering
TAMU
College Station, TX 77843-3126
Phone: 979.845.4986
E-mail: bree@tamu.edu
Web: <http://engineering.tamu.edu/safety/>

The investigator will work with David Breeding to ensure that the PSA is established for the project period of performance.

If a PSA has not been approved, the Negotiator continues processing the agreement for signature but project set up will not be completed by the project administrator until the PSA is approved and a copy placed in the project file. Funds cannot be spent until an approved PSA is on file.

Sponsor Screening

(Not Applicable to Federal and State Sponsors)

Visual Compliance

The Restricted Party Screening function of Visual Compliance is used by Contract Negotiators to check sponsor to determine if there is some federal prohibition that would prevent the System member from doing business with the sponsor. These prohibitions may be due to export control issues, criminal activity, debarment and suspension, and other statutory prohibitions. Log on to Visual Compliance at www.visualcompliance.com, go to RPS tab, enter Company Screening information, and click "Screen".

If Restricted Party Screening indicates there is an issue with a Sponsor or Subcontractor, the CN should consult their Director in regard to what action to take. The System member's Research Compliance Office may need to be contacted. No agreement should be signed until the issue is resolved.

Vendor Hold

As an agency of the State of Texas, SRS reviews the State's vendor hold list prior to contracting with third parties. Payments may not be made to entities that are currently on Vendor Hold with the State of Texas. For sponsored agreements (incoming funds), this screening is utilized as a risk assessment tool.

SRS requires entities be screened prior to finalizing sponsored agreements and subagreements with non-state or non-federal entities to determine whether the entity is on Vendor Hold.

Vendor Hold Screening Methods include utilizing FAMIS FRS screen 171 or the State of Texas Comptroller of Public Accounts website: <https://cpafmprd.cpa.state.tx.us/tpis/search.html>.

Entities listed in FAMIS FRS 171 or on the Comptroller's website are currently on Vendor Hold. If an entity is on Vendor Hold, the set-up should be reviewed by the C&G director prior to continued processing.

Documentation – For non-affirmative results (no findings) update the routing sheet to note these items have been checked. For positive findings, document the resolution/director input.

E-Verify

Generally, prime federal contracts exceeding \$150,000, with a period of performance over 120 days, and subcontracts over \$3,000 for service or construction require recipients to utilize E-Verify to confirm the eligibility of employees. Federal Acquisition Regulation 52.222-54 Employment Eligibility Verification (or similar language) will be included in contracts and subcontracts that require utilization of E-Verify. Grants and cooperative agreements are excluded from this requirement.

The CN should determine if E-Verify is a contract requirement. If E-Verify is a requirement, The CN will note the requirement in Maestro (under Terms & Conditions) and will stamp the award routing sheet with "E-Verify."

Office of General Counsel Reviews

The Office of General Counsel is available to confirm sponsored agreements are in accordance with System requirements. System attorneys are located in the SRS offices to provide Contract Negotiators (CNs) guidance related to specific terms and conditions contained in agreements.

System attorneys can be queried via E-mail, through Cyndi Schoen (as described below), or by meeting in their offices.

Email requests for OGC review should be forwarded to: Cyndi Schoen at cschoen@tamus.edu. The agreement will be logged and assigned to the appropriate attorney according to the particular subject-matter area. Once assigned, the attorney name will be provided to requestor. For status on a review please contact the assigned attorney or the attorney's assistant. Contact information is located at <http://www.tamus.edu/offices/legal/contact/>. A copy of the fully executed agreement should be forwarded to the assigned attorney's assistant for OGC's file.

OGC review should be requested for agreements exceeding \$100,000 that are not with federal sponsors or other agencies of the State of Texas. However, sample language, agreement documents or templates that have been previously reviewed by OGC (e.g., “standard” templates) or agreement terms with equivalent effect do not require additional review. Agreements that contain specific “exceptional” clauses that have been previously reviewed and approved by OGC do not require additional review.

Any review comments from OGC should be documented and uploaded in Maestro.

Texas A&M System Technology Commercialization (TTC)

Texas A&M System Technology Commercialization (TTC) is responsible for assisting in the protection, licensing and commercialization of discoveries made by those associated with the System. Contact information for TTC can be found at (<http://otc.tamu.edu/>).

If a SRS Contract Negotiator (CN) receives an award that has terms granting the sponsor commercial rights to TAMU System Intellectual Property such as the granting of commercial licenses, patents, or royalty terms, then the CN should proceed as follows:

Contact the Principal Investigator (PI) to determine if the PI anticipates that the project will involve technology commercialization and confirm that the PI wants to pursue such commercialization with the sponsor. If this is the case;

1. Notify the system member that the PI has indicated that the project will involve technology commercialization and ask the system member if TTC should be consulted. Determine if the system member will take the lead in communications with TTC, or if SRS is to do so.
2. TTC and/or the system member will engage the sponsor directly in negotiating any agreements required for technology commercialization.
3. The SRS CN, with input from TTC and the system member, should determine if the award is not to be fully executed until a technology commercialization agreement is executed, or if SRS can proceed with the execution of the award if the sponsor will accept language referencing a “to be negotiated” technology commercialization agreement.
4. The CN should confirm that any technology commercialization agreement (TCA) generated by TTC is approved by the system member before the TCA is incorporated in an award agreement by reference or attachment.

Intellectual Property Waiver

Contract Negotiators (CNs) will negotiate all sponsored research agreements in accordance with [TAMUS Policy 17.01](#) “Intellectual Property Management and Commercialization”. In the case of a negotiated agreement which does not require ownership of intellectual property by the System, Section 2.4.3 of System Policy 17.01 must be utilized. Under TAMUS Policy 17.01 Section 2.4.3, the acceptance of a contract, grant, or agreement which does not require ownership of intellectual property by the system may be approved “if the benefit from the level of funding for proposed research and/or

other consideration from the Sponsor, license, or other party outweighs the potential value of system ownership.”

To make use of Section 2.4.3, a Waiver of Intellectual Property Rights must be obtained from the appropriate system member. The procedure for requesting a Waiver of Intellectual Property Rights varies among system members. The following information is a procedural guide for the different system members.

TEXAS A&M UNIVERSITY (TAMU)

The TAMU IP Waiver can be accessed via website at: <http://vpr.tamu.edu/resources/forms/intellectual-property-rights-waiver>

The Contract Negotiator will complete the following information:

- Proposal Number
- Sponsor
- Proposal Title
- PI Name
- Department
- Project Dollar Amount
- Description of Intellectual Property Rights required by Sponsor

The Principal Investigator will complete the following information on the form:

- Justification and Explanation for Waiver
- Nature of Contract Including Description of Anticipated Research Results
- The Principal Investigator will complete the certifications that are applicable to this request by marking them on the form. The boxes are located on the Request for Waiver of Intellectual Property Rights form.
- The PI will sign and date the document and route in accordance with the form’s requirements.

Record Retention of IP Waiver:

The approved waiver is uploaded by the CN in the “Documents” section of Maestro. The document type is Intellectual Property Waiver.

TEXAS ENGINEERING EXPERIMENT STATION (TEES)

The TEES IP Waiver can be accessed at: <K:\Contracts and Grants\Contract Negotiations\08-TEES\FORMS\IP Waiver Form 7-9-14>.

The Contract Negotiator will complete the following information:

- Proposal Number
- Sponsor
- Proposal Title
- PI Name
- Department
- Project Dollar Amount
- Description of Intellectual Property Rights required by Sponsor

The Principal Investigator will complete the following information on the form:

- Justification and Explanation for Waiver

- Nature of Contract Including Description of Anticipated Research Results
- The Principal Investigator will complete the certifications that are applicable to this request by marking them on the form. The boxes are located on the Request for Waiver of Intellectual Property Rights form.
- The PI will sign and date the document in the space designated for Principal Investigator. The PI will forward the document to the Department Head for signature. The Department Head will also date and sign in the space provided. The Department Head or Principal Investigator will forward the document (with both the PI and Department Head) signature to the TEES SRS Contract Negotiator. The document with supporting documentation (i.e., SOW draft, contract draft and copies of background IP) should then be forwarded to:
Mark Andrews (3470 TAMU or markandrews@tees.tam.us.edu for signature (TEES has their own Request for Waiver of Intellectual Property Rights form).

Record Retention of IP Waiver:

The approved waiver is uploaded by the CN in the documents section of Maestro. The document type is Intellectual Property Waiver.

TEXAS A&M AGRILIFE RESEARCH and TEXAS A&M AGRILIFE EXTENSION SERVICE

There is no IP Waiver Form for AgriLife. For approval of language allowing the Sponsor to retain ownership of IP, send email requests to the individual identified below.

Texas A&M AgriLife Research:

Once the PI and Department head have agreed to allow Sponsor to retain IP ownership, approval must be obtained from: For non-industry Agreements: Bill McCutchen, Executive Associate Director bmccutchen@tamu.edu (Jackie Slovacek, Executive Assistant, j-slovacek@tamu.edu, 979-845-8486) and Dr. Craig Nessler, Director cnessler@tamu.edu (Nancye Penn, Assistant to the Director, npenn@tamu.edu, 979-458-4765).

For Industry Agreements: Once the PI and Department Head have agreed to allow Sponsor to retain IP ownership, approval must be sent to Andrea Kuban at andrea.kuban@tamu.edu. Andrea will review and obtain the necessary approval from AgriLife administration. Andrea will then advise if the agreement is acceptable for Dr. Nessler to sign.

Texas A&M AgriLife Extension Service:

Once the PI and Department head have agreed to allow Sponsor to retain IP ownership, approval must be obtained from: Travis Miller, Interim Associate Director td-miller@tamu.edu

Record Retention of IP Waiver:

Approval documents will be scanned into Maestro under “Documents” by the Contract Negotiator. The document type is “Intellectual Property Waiver”.

TEXAS A&M HEALTH SCIENCE CENTER (TAMHSC)

There is no IP Waiver Form for TAMHSC. For approval of language allowing the Sponsor to retain ownership of IP, send email requests to:

Julie Bishop, Assistant Vice President for Research, bishop@tamhsc.edu, 979-458-7256) and Joe Jilka, (TAMHSC Technology Commercialization Manager)

Record Retention of IP Waiver:

Approval documents will be scanned into Maestro under “Documents” by the Contract Negotiator. The document type is “Intellectual Property Waiver”.

TEXAS A&M TRANSPORTATION INSTITUTE (TTI)

There is no IP Waiver Form for TTI. For approval of language allowing the Sponsor to retain ownership of IP, send requests via email to:

Research Development Office (RDO)

Record Retention of IP Waiver:

Approval documents will be scanned into Maestro under “Documents” by the Contract Negotiator. The document type is “Intellectual Property Waiver”.

PRAIRIE VIEW A&M UNIVERSITY (PVAMU)

There is no IP Waiver Form for PVAMU. For approval of language allowing the Sponsor to retain ownership of IP, send requests via email to:

Kay Peavy, Director of Procurement, Contracts and Reconciliations, wkpeavy@pvamu.edu Tel: (936) 261 1933.

Record Retention of IP Waiver:

Documents will be scanned into Maestro under “Documents” by the Contract Negotiator. The document type is “Intellectual Property Waiver”.

Federal Funding

Generally, federal awards to institutions of higher education for research activities fall into two categories:

- *Assistance awards*, identified as grants and cooperative agreements; and
- *Procurement awards*, identified as contracts.

Grants or cooperative agreements are used when the principal purpose of the activity is the transfer, rather than acquisition, of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by federal statute.

Contracts are used when the principal purpose of the activity is to acquire property or services for direct benefit or use by the federal government.

Assistance awards are governed by federal grant and agreement regulations codified in 2 CFR (http://www.ecfr.gov/cgi-bin/text-idx?SID=6b5fef8a533abd7fb475d3bb79860b32&tpl=/ecfrbrowse/Title02/2tab_02.tpl) and many times Government Research Terms and Conditions (<http://www.nsf.gov/awards/managing/rtc.jsp>) while *contracts* are governed by Federal Acquisition Regulations (FAR) codified in 48 CFR. *Assistance awards* are generally less restrictive than *contracts* and many times do not require negotiation.

Federal contracts require negotiation and review of FAR contract clauses. SRS maintains a FAR Matrix tool to assist CNs with determining appropriate FAR clauses for research work conducted by the System. This matrix is located at [K:\Contracts and Grants\Contract Negotiations\FAR Matrix Tool. Catalog of Federal Domestic Assistance \(CFDA\)](#) (<https://www.cfda.gov/>)

CFDA is a government-wide listing of Federal programs, projects, services, and activities that provide assistance or benefits to the American public. Each program is assigned a unique number by agency and program that follows the program throughout the assistance lifecycle enabling data and funding transparency. The complete CFDA number is a five digit number, XX.XXX, where the first two digits represent the Funding Agency and the second three digits represent the program.

For federal and federal flow-through funding, SRS requires a CFDA number be entered in Maestro in order to complete various reporting requirements. However, the government only assigns CFDA numbers to assistance funding – grants and cooperative agreements. The number will be included in the federal award document and should be provided by the Member’s sponsor for federal flow-through funding under assistance awards. For federal contracts and federal flow-through subcontracts, the CN will assign a generic code based on the federal agency to identify the funds as federal. Assigned codes are based on a two digit prefix used to represent the Funding Agency and zeroes to represent the program (XX.000). The agency code prefix can be found at: <https://www.cfda.gov/index?s=agency&tab=list&mode=list> (e.g. USAID prefix is 98; DOD prefix is 12).

Purchasing Agreements

SRS Purchasing occasionally receives agreements from vendors that require review. SRS buyers are responsible for reviewing the agreement. If the buyer needs assistance determining if specific terms are acceptable, the buyer will review the terms with Teresa O’Brien. If the buyer and Teresa determine that assistance from a Contract Negotiator (CN) is needed, the buyer should:

1. Email the appropriate CN for the department and copy Teresa.
2. Highlight the specific clause and include notes as to why they feel it may be problematic (CNs should not receive a request to review an entire agreement).

If Teresa was not copied on the email or if specific questions were not included, the CN should ask the buyer to send the email to Teresa for her review first.

If a CN is asked for an opinion on a clause for which they have no knowledge or expertise, the CN should let the buyer know. (The CN does not need to research the issue.) CN assistance is an in-house resource the buyer can utilize before pursuing other options such as working with OGC.

Signature and Suspense

Contract Negotiators (CNs) may use one of the following two options to obtain fully executed agreements.

Option #1 Utilize CGST’s Signature and Suspense (Electronic Delivery of Agreement):

Send an email to SO SRS Award Suspense at srsawardsuspense@tamus.edu with the following information:

Subject: Research Agreement – M1234567 – ABC Corporation – PI Dr. John Doe

CGST,

Please obtain the following C&G Director's signature on the referenced agreement placed on the CGST Suspense shelf:

1. *C&G Director's Name*

Please email the partially-executed agreement to the sponsor for execution:

2. *Jane Doe janedoe@abccompany.com*

*Thank you,
Contract Negotiator*

Initial the agreement/document and place the hard-copy work package on the shelf labeled "Signature and Suspense" located in CGST area.

(Hard Copy Mailing of Agreement):

Send an email to SO SRS Award Suspense at srsawardsuspense@tamus.edu with the following information:

Subject: Research Agreement – M1234567 – ABC Corporation – PI Dr. John Doe

CGST Award Suspense:

Please obtain the following C&G Director's signature for the agreement placed on the CGST Suspense Shelf:

1. *C&G Director's Name*

Then send 2 Signed Hard Copies copy via Fed-Ex to:

Provide Name, address and phone number for shipment

*Mail Method: ____Regular U.S. Postal Mail ____Fed Ex Overnight AM Delivery ____Fed Ex Overnight PM ***Delivery Note: For FedEx delivery, please provide telephone number and physical address for recipient. FedEx will not deliver to P.O. Boxes.***

*Thank you,
Contract Negotiator*

Initial the agreement/document and place the hard-copy work package on the shelf labeled "Signature and Suspense" located in CGST area.

Suspense & Follow up:

Partially-executed agreements are stored in the file cabinet drawers by CGST labeled "Suspense", ("Suspense Drawer"). Folders in the Suspense Drawer are labeled 1-31 with the days of the month, and Maestro will have a status indicating which day/date it was suspended.

If Sponsor has an inquiry regarding a partially-executed agreement that is located in the Suspense Drawer, the CN can pull the file. When you pull the file, document in Maestro that the file is located with you. When the file is returned to the Suspense Drawer, document in Maestro that you have returned the file to the Suspense Drawer.

If Sponsor sends fully executed agreement to CN (email or originals), forward the fully executed agreement to SO SRS Award Suspense in order for CGST to complete the suspense routing process.

**Note: Please make sure that the Maestro # is in the subject line of the e-mail prior to forwarding.*

Agreements will be initially suspended for 1 week. CGST will follow up with sponsor on the follow schedule thereafter and update the Negotiation/Review History of Maestro accordingly:

1. with an e-mail after 1 week,
2. with a phone call and e-mail after an additional 1 week
3. with a phone call and e-mail after an additional 1 week and, in addition CGST will bring the Agreement back to the CN for further follow up with the Parties to obtain execution or cancel the agreement.
4. After follow-up, CGST will move the files that were followed up on to the suspense file date that it was updated. CGST will note in Maestro the date of the update in order for the CN to be able to locate the file if required.

Option #2

CN will initial the award document and obtain signatures directly from the appropriate Director or System member signatory. CN will return a signed copy via email or hard copy as requested by Sponsor. CN will maintain the award file in their office until the fully executed award document is received.

CN will follow up with sponsor on the following schedule thereafter and update the Negotiation/Review History of Maestro accordingly:

1. with an e-mail after 1 week,
2. with a phone call and e-mail after each additional 1 week until the fully executed copy is obtained.
3. Fully executed award is uploaded into Maestro Final Documents and a Task is sent to the Project Administrator indicating the agreement is fully executed and ready for set up.