



## Key Contract Positions in Industry Sponsored Research

### **Intellectual Property**

Clemson University's standard position is that it will license to an industry research sponsor the right to commercialize its intellectual property and inventions (IP) but does not relinquish ownership of or assign away its rights to such IP.\* The University has developed license options to streamline contract negotiations and remove downstream uncertainty for industry sponsors. (See "CUIC Options" for Industry)

\* Research Services Exception: The University acknowledges that special provisions will apply for Research Services Agreements (RSAs). For these agreements, which may be used when the University is using its unique capabilities to provide services (e.g., University is performing testing of sponsor materials at University-approved rates or University makes available for sponsor's use unique facilities or equipment), the sponsor typically owns data and results.

### **Publication**

A primary responsibility of an institution of higher education is the development, cultivation and dissemination of new knowledge resulting from its research programs, and in accordance with said responsibility, any persons engaged by Clemson University in the performance of a research project will have the right to present or publish the results of the project. However, the University acknowledges the need for a sponsor to preserve intellectual property rights and protect its proprietary information and provides a period for review (usually 60 days) to allow for the protection of sponsor's proprietary, confidential, or patentable information.

### **Use of Names**

Clemson University allows the use of its name or the names of its employees in any press releases, advertising, or promotional materials only with prior written authorization of an authorized signatory for the University. The authorized signatory for industry sponsored research is the Vice President for Research.

### **Dispute Resolution**

Clemson University, as an agency of the State of South Carolina, does not waive its right to litigation. The University does not commit to binding arbitration; however, the University may agree to non-binding mediation.

### **Governing Law**

Clemson University, as an agency of the State of South Carolina, does not enter into industry sponsored research agreements that are governed by the laws of another state or country.

### **Warranty/Guarantee**

The work performed by Clemson University is experimental in nature. It is the

University's policy not to make any warranties or guarantees regarding the results of a research project. The University also does not warrant or guarantee an anticipated outcome of a project, but does represent that it will use reasonable efforts to perform a research project in accordance with a statement of work and within the estimated budget.

### **Indemnification**

University indemnifying Sponsor:

Clemson University, as an agency of the State of South Carolina and by opinion of the South Carolina Attorney General, **cannot** indemnify, defend, or hold harmless other parties. The University is not attempting to avoid liability for its wrongdoing and is not asserting that it cannot be held liable for injury or damages it causes. The University may be held liable under the SC Tort Claims Act when there is a finding of negligence of an employee which results in injury or damage.

Sponsor indemnifying University:

Clemson University requires that outside parties indemnify the University in industry sponsored research agreements. This is required in order to protect the University and its public services. Standard contract provision:

Sponsor will indemnify, defend, and hold harmless University, its trustees, officers, employees and agents from and against any liabilities, damages, or claims (including attorneys' fees) arising out of injury (including death) or property damage suffered by any person arising out of Sponsor's breach of its obligations hereunder, its acts or omissions, and use or possession by Sponsor or any third party acting on behalf of or under authorization from Sponsor of any and all information, reports, data, materials, services, intellectual property and other property, and deliverables produced hereunder, excepting for any such liability, damages or claims (including attorneys' fees) resulting from negligence or willful malfeasance by University, its employees, officers and agents.

### **Termination**

Sponsored research agreements typically allow either party to terminate with written notice to the other party. If the sponsor terminates for its convenience, sponsor pays all costs incurred by University as of the date of termination and any non-cancelable obligations, including any obligations for postdoctoral associates or graduate student stipends, which shall be dismissed no sooner than the end of the University's academic year during which termination occurs.