

How to Work with an Industry Sponsor?

Research Office
Wilson College of Textiles
North Carolina State University

There are different types of agreements that can be used for working with industry sponsors. The first step is to determine whether or not a confidentiality agreement is needed. In accordance with REG 01.20.02, the authority to negotiate and execute a confidential agreement rests with the Office of Technology Commercialization and New Ventures (OTCNV). Therefore, the PI should NOT discuss or negotiate the confidential agreement (or any intellectual property related issues) with any potential industry sponsor. Instead, the PI must send a request to Gerry Sasser (gerry_sasser@ncsu.edu) at OTCNV, who will take the lead to negotiate and execute a confidentiality agreement if appropriate.

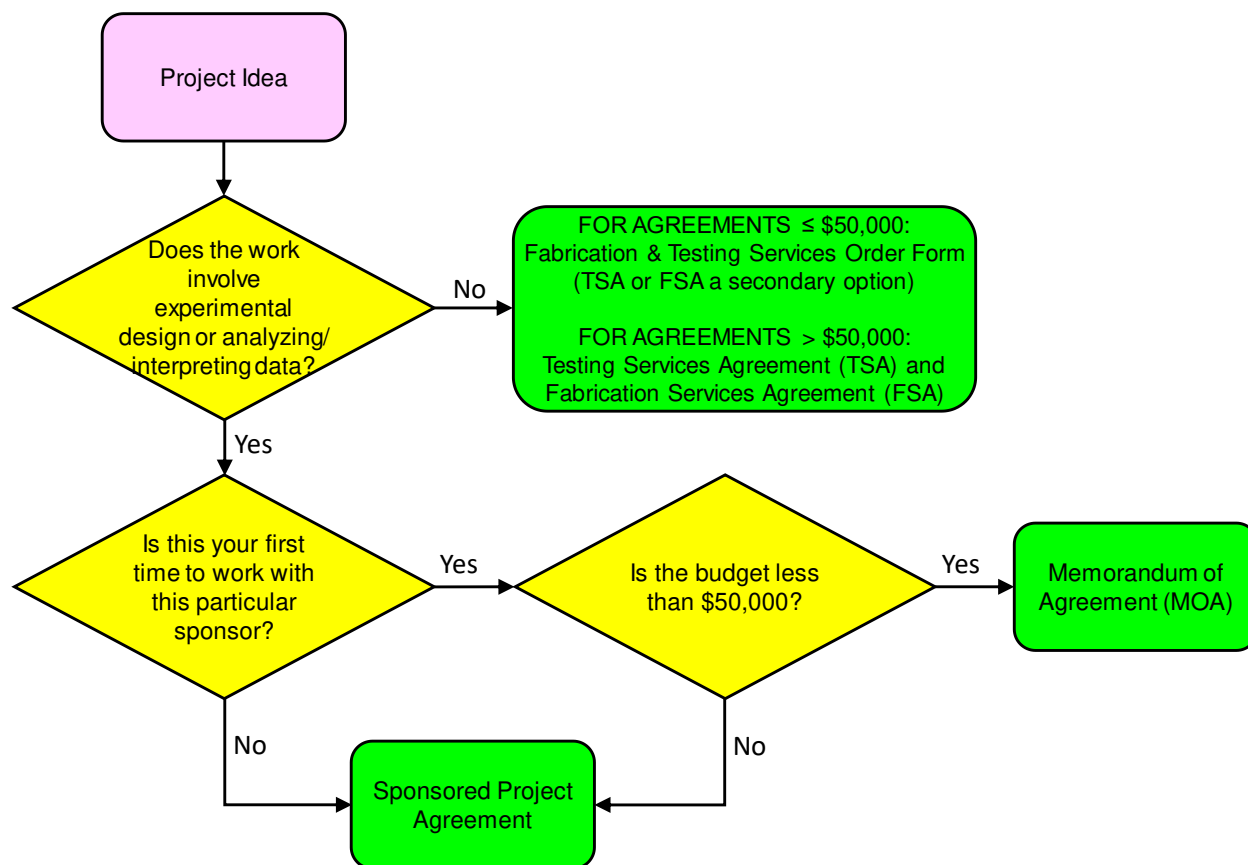


Figure 1. Flow chart for determining the appropriate type of agreement for working with the industry.

After an appropriate confidentiality agreement is executed, the PI can then discuss specifics with the industry sponsor to develop a statement of work or proposal. Depending on the nature and scope of the work, the PI needs to select the correct agreement type. The most commonly used agreements include the Wilson College of Textiles Fabrication & Testing Services Order Form (SOF), the Testing Services Agreement (TSA), the Fabrication Services Agreement (FSA), the Memorandum of Agreement (MOA), and the Sponsored Project Agreement. The SOF is a simplified version of TSA or FSA, and it is to be used for Centers including ZTE and TPACC ONLY for agreements up to a maximum of \$50,000. Figure 1 shows a flow chart that provides the basics guideline on how to select an appropriate agreement type. Additional information on these agreements is given below.

1. Wilson College of Textiles Fabrication & Testing Services Order Form (SOF)

The SOF is an agreement that offer external firms and agencies the opportunity to capitalize on the occasional unused capacity of specialized services and facilities of the University. These services and facilities include but are not limited to machine shops, and specialized scientific and analytic instrumentation. These services are driven by protocols and specifications normally established by external firms and contain no experimental design. In addition, they should not include analyzing or interpreting data generated by performing the services.

The SOF is a simplified version of TSA or FSA and it to be used for Centers including ZTE and T-PACC ONLY. If no changes to the terms and conditions are required, the Directors for ZTE and T-PACC can execute the agreement up to a maximum of \$50,000. If changes are required, and/or if the Not to Exceed Cost is above \$50,000, the agreement cannot be executed by the Director and will need to be submitted in PINS for review and execution by SPARCS.

- **Not to Exceed Cost:** While there is no limit on the Not to Exceed Cost on the agreement, the Center Director can only execute those up to a maximum of \$50,000 that do not require changes to the terms and conditions. Agreements in excess of \$50,000 must be submitted via PINS to SPARCS for review and execution.
- **F&A Rate:** No F&A will be assessed unless the client wants to negotiate the Terms & Conditions. If the University negotiates, an F&A rate of 33.6% will be assessed to the client on top of the service center fees.
- **Procedure:**
 1. The PI should share the SOF template with the client and strongly encourage them to accept the terms and conditions as written. If changes are requested, the PI should remind the client that the University may assess an additional fee of 33.6% on top of the service center's billing and if acceptable, the agreement should be marked up.
 2. If the client is in agreement with the terms, the PI should complete the template by filling in ALL information on the top of page one. This includes adding the client's information to the form and preparing a statement of work included under Description of Requested Services. It is important to ensure that this statement does not indicate research by using such terms as: develop, development, research, experiment, IP, interpret, interpretation of data, follow on testing, create, or consult. Payment terms should be NET30 unless the client requests different terms.

3. Once the client signs and returns the SOF to the PI, the PI should then forward the contract to the Center Director for execution. The Center Director should verify all fields on page one of the agreement are correctly filled out and that no research is being performed. Once the review is complete and the information deemed accurate, the Director can execute the agreement on page two.
4. A PDF copy of the executed contract should be sent to Patricia Watson (pmwatso2@ncsu.edu) and Jennifer Clark (jmclark9@ncsu.edu) who log it in a Google Doc and upload a copy to the Google Drive. Funding for standard SOPs are administered via ledger 3-accounts. When the client is to be invoiced, the PI needs to submit a statement to Patricia to initiate the invoice process. The statement should be supported by daily logs kept to record facility use. Patricia Watson will bill the client upon receiving the statement from the PI.

2. Testing Services Agreement (TSA) and Fabrication Services Agreement (FSA)

As with the SOF, the TSA and FSA are contracts that offer external firms and agencies the opportunity to capitalize on the occasional unused capacity of specialized services and facilities of the University. These services and facilities include but are not limited to panels of trained subject-area experts, machine shops, specialized scientific and analytic instrumentation. These services are driven by protocols and specifications normally established by external firms and contain no experimental design. In addition, they should not include analyzing or interpreting data generated by performing the services.

The TSA and FSA are only to be used by Centers including ZTE and T-PACC if a client requests so many changes to the SOF that using a more robust agreement is advantageous. The key question here is will there be more or less points of negotiation with the TSA or FSA?

If the TECS or TATM department needs to engage with an external client to perform testing or fabrication services, they must use either the TSA or FSA.

- **Budget:** There is no cap on the budget. Examples of budget items in a services agreement would be labor and/or lab supplies.
- **F&A Rate:** No F&A will be assessed unless the sponsor wants to negotiate Terms and Conditions. When the Terms and Conditions are negotiated, the F&A rate will be 33.6%.
- **Procedure:**
 1. The PI should share the TSA or FSA template with the client. This action would allow the PI to confirm in advance that the client is accepting of the University's terms and conditions contained in the TSA or FSA template and thus may avoid miscommunication further in the process.
 2. If the client is in agreement with the terms, the PI should complete the template by adding the client's information to the form and preparing a statement of work which will be identified as Attachment A and appended to the TSA or FSA. It is important to ensure that the Statement of Work does not indicate research. Terms that might be an indication: develop, research, experiment, development, IP, interpret, interpretation of data, follow on testing, create, consult. In addition, an extensive statement of work needs to be scrutinized as TSA statements of work are typically

simple. Also at minimum, the statement of work should contain at least one sentence stating how much the work will cost.

3. Once the client signs and returns the TSA or FSA to the PI, the PI should then create and route a PINS. The partially-executed TSA or FSA (including the statement of work) should be attached to the PINS record. The PINS record will be routed to Sponsored Programs. An authorized official from Sponsored Programs will review and sign the document. Sponsored Programs will email the fully-executed TSA or FSA to the client, the PI, Jennifer Clark (jmclark9@ncsu.edu), and Patricia Watson (pmwatso2@ncsu.edu). Funding for standard TSAs and FSAs are administered via ledger 3-accounts. When the client is to be invoiced, the PI needs to submit a statement to Patricia to initiate the invoice process. Patricia Watson will bill the client upon receiving an invoice from the PI.

3. Memorandum of Agreement (MOA)

MOA is a standard document format and policy for the establishment of research agreements under which the Vice Chancellor for Research, Outreach, and Extension has delegated authority to the Wilson College to sign standard MOA agreements on behalf of the University in order to expedite the processing and handling of these agreements. MOA should only be used once with an industry sponsor to attract the sponsor to do work with the university. The standard delegated MOA is to be used for one-time projects with sponsors not to exceed a direct cost cap of \$50,000 (rev May 2014) and to include F&A at a rate 15% applied to total direct costs. **Any modification to the language contained in an MOA will render the agreement to be treated as a sponsored activity whereby it is processed as a standard proposal and the University's full federally negotiated rate is applied. Therefore, negotiations are not permitted with the use of MOA.**

The Delegated MOA may be used only: 1) once per PI-sponsor relationship irrespective of scope of work; 2) once per university-sponsor relationship for same or substantially similar scope of work; and 3) when there are no government funds involved directly or as a flow-through component of the funding.

- **Budget:** The total cost allowable under an MOA is capped at \$50,000, including direct cost and F&A.
- **F&A Rate:** The F&A rate is 15%.
- **Procedure:**
 1. The PI will need to notify Jennifer Clark (jmclark9@ncsu.edu) and request the MOA template to be shared with the sponsor. This action would allow us to confirm in advance that the sponsor is accepting of the University's terms and conditions contained in the MOA and thus may avoid miscommunication further in the process.
 2. If the sponsor is in agreement with the terms, the PI should complete the MOA template by adding the particulars of the agreement, i.e., sponsor contact information, title of project, start/end dates, amount of agreement, technical reporting requirements, etc. The PI should also prepare a statement of work, budget, and budget justification which will be identified as Attachment A and appended to the MOA template. The MOA package should then be forwarded to

Mark so that he can review the materials and obtain signature from one of the Associate Deans for Research. The partially-executed MOA should then be forwarded to the sponsor.

3. Once the sponsor returns the fully-executed MOA to the PI, he/she will need to create and route a PINS record. When the PINS record reaches the College level for approval, we will review and approve and attach the MOA with original signature and request for SPARCS to process for award. SPARCS will review, approve and authorize Contracts and Grants to establish a ledger 5-account of which we will notify our PI of as soon as the account has been set-up.

4. Sponsored Project Agreement

Sponsored Project Agreement is a contract between NC State University and a sponsor for the purposes of funding and conducting research at NC State University. This is a standardized and preferred agreement for sponsored projects.

- **Budget:** There is no cap on the budget.
- **F&A Rate:** The F&A rate for on-campus research is 52%. F&A rates for other activities can be found at <https://research.ncsu.edu/sparcs/budgeting-guidelines/budgeting-f-and-a/>.
- **Procedure:** The PI will need to notify Jennifer Clark (jmclark9@ncsu.edu) and create a PINS record to obtain the proper administrative approvals (i.e. Department Head, College Research Office, and Sponsored Programs) prior to submitting proposals to sponsors. The PI can discuss with the sponsor on the proposal and/or statement of work. However, the negotiation of the terms and conditions in the Sponsored Project Agreement must be conducted by Sponsored Programs. Once a project is selected for award and a sponsored research agreement is fully-executed, Sponsored Programs will award the project and a ledger 5-account number will be established by the Office of Contracts & Grants.