

Guidelines for Testing Service Agreement (TSA) Activities

The TSA contractual template was developed by the Office of Legal Affairs (OLA) and the Office of Technology Transfer (OTT) for use by university departments in providing testing services. TSAs do not involve an expenditure of 'intellectual capital'. Therefore, TSAs are designed for efforts that do not have any research component. The TSA contractual template may be used when the university is using its unique equipment and capabilities to provide testing services which do not involve research, and when the provision of such services does not violate the Umstead Act.

Specifically, the TSA document shall be used when:

- 1.) industry-standard testing is applied to a client's materials using equipment unique to NCSU and in accordance with a protocol specified by the client;
- 2.) unique testing capabilities of NCSU are used in accordance with a protocol specified by the client;
- 3.) no federal funding is involved.

In those cases, and as described in the standard TSA document, the client may own the intellectual property (IP) made by university employees if and only if:

- 1.) the invention is an improvement to or new use of the client's pre-existing technology (as defined in the TSA); and,
- 2.) the intellectual property is a direct result of and is anticipated by the client-generated protocol.

TSAs shall only be used where:

- NCSU has unique equipment and capabilities and where the client has a plan to utilize these unique resources. The client shall design the experiments without NCSU input. NCSU works as the 'hands' for the client. The client shall specify exactly the steps to be taken in running a pilot trial (i.e., trial plan). The resulting product is returned to the client along with the results of the testing. The pilot facility will not keep any of the materials produced.
- NCSU performs a standard industry test without any analysis of results. The deliverable is raw data generated by the standard test and not an interpretation of the data.

Individuals who:

- 1.) supervise staff and/or students;
- 2.) determine use rates, or;
- 3.) administer contracts involving the facility performing the testing services, SHALL NOT work as a consultant for the same client for the purpose of interpreting or analyzing the data delivered under the TSA. Avoidance of such situations shall be handled under the university's conflict of interest policy and with the use of an

appropriate management plan developed by the individual and approved by the department head and dean of the college.

All work SHALL be done by trained university personnel and not by the client. The client may be present and observe and supervise the testing when necessary. Under no circumstances shall the client's personnel be involved in running any equipment.

While on premises, both the client and client's personnel shall cooperate and adhere to university safety practices, including the wearing of personal protective equipment where required.

Procedures:

The following procedures must be observed in all labs in any university college that engages in TSA activities:

- 1.) All TSAs shall be routed through the College's Research Office, and include a valid statement of work (SOW) as 'Attachment A' that follows the guidelines specified above. The Associate Dean of Research in the college shall review the TSA, especially 'Attachment A', to ascertain whether or not all of the conditions above are met and, importantly, to ensure that no university research will be conducted under the TSA.
- 2.) It is preferred that the standard language of the TSA contractual template not be changed. The language is neither onerous nor burdensome for a public institution like NCSU. In the event that the client requests modifications to the TSA template, such modifications must be approved, in advance, by NCSU. Any modifications to the TSA template must be acceptable to Contract Management (CM), the Office of Technology Transfer (OTT), and the Office of Legal Affairs (OLA) when appropriate. NCSU's ability to accept modifications to the TSA template is very limited, and discussions with a potential client should include that information.
- 3.) Work SHALL NOT begin unless a TSA document has been signed off by Contract Management (CM).
- 4.) A valid and current facility use rate SHALL be in place before a TSA is executed. All facility use rates shall be reviewed and renewed annually by laboratory personnel and the College.
- 5.) The revenues generated by a lab shall be used for the upgrade of the facility, repairs to the facility, and salaries of the personnel in that lab.

- 6.) In the case of personnel paid from ledger 2 (State) accounts, the State account shall be reimbursed the amount of the applicable salaries from revenues generated.

Routing:

- a.) Using the most current TSA contractual template, the PI prepares the TSA, and the appropriate statement of work is provided as 'Attachment A'.
- b.) The TSA is reviewed by the appropriate department/unit head.
- c.) The TSA is forwarded to the College's Research Office for review and approval.
- d.) The College's Research Office processes the TSA and will inform the PI when the TSA is signed off by Contract Management (CM).