BACKGROUND AND PURPOSE

1. In the process of conducting research, personnel at the University are often requested to conduct "research-related services" for an outside company. The provision of such services fits with the research and service missions of the University when: 1) the University is uniquely qualified to offer such special "services"; 2) those services provide additional research and experience for the University’s faculty, staff, and students; and 3) access to those services or specialized equipment is not readily available through private industry means. These services may include the utilization of specialized expertise of the faculty or specialized instrumentation that may be offered to the company. Quite often, this will include testing of certain materials for the outside company (sponsor).

2. Industrial Testing Services (ITS) are to be used only on those Projects involving testing, and/or diagnostics of Sponsor-provided material or information. No applied or basic research shall be provided by the University involved in this Project and, therefore, it is not likely that there will be creation of new knowledge and/or technologies by University personnel. As such, the provisions of an ITS related agreement, University Industry Service Agreement (UISA) vary from a Sponsored Research Agreement and it is imperative that the UISA be used properly and not substituted for a Sponsored Research Agreement.

DEFINITIONS AND DESCRIPTIONS

3. Services - For purposes of this type of agreement, services involve classification, diagnostics, or testing of a sponsor's data, samples, mechanisms, procedures, or products as part of a "small, specifically-designed" project. These services are performed using University resources, including personnel, equipment, or facilities. These services must be unique in some fashion. The rationale for University involvement in this kind of service or testing is that because University faculty conduct research that is often on the leading edge of scientific investigations, they are uniquely qualified to provide certain kinds of services that may not be readily available in the private sector.

4. Limits - UNDER $25,000: Ordinarily, ITS projects are defined as "small, specifically-designed testing" projects and usually are less than $25,000. In
some instances, larger projects may be considered for processing under this agreement. Rationale should be provided as to why the larger project should fall under this consideration and approval must be provided from Office of Commercialization and Industrial Relations (OCIR) prior to use of a UISA.

5. Limits – OVER $25,000: Projects exceeding a cost of $25,000 usually are more extensive then "small, specifically-designed testing” projects. These agreements will usually require the use of a Sponsored Research Agreement. See UPPS 02.02.01.

6. Confidentiality: If the service(s) contemplated require the provision of Sponsor's proprietary information, the terms of confidentiality shall be set forth in a Confidentiality Agreement executed by both parties as an attachment to the UISA.

7. Patent Rights: In performance of a UISA, the University is simply involved in the provision of services involving sponsor-provided information and not in the creation of new knowledge or new technologies. Consequently, the University will make no claims on patent rights in regard to sponsor-owned materials or information provided for the Project. The concept here is that under a UISA, University personnel are providing testing or diagnostic services, not performing basic or applied research. However, the University will retain rights to inventions that are not related to a sponsor's product or processes or that fall outside the scope of the Project's Statement of Work.

   a. For instance, if University personnel are analyzing a sponsor’s material with a scanning electron microscope (SEM) and discover a new analytical method involving the SEM, the resulting method would belong to the University. The University does acknowledge the potential for its services (testing and diagnostics) to lead to small improvements to a sponsor’s material or product, but believe that such incremental advances should be the property of the sponsor. However, University personnel who are involved in such discoveries must be listed as co-inventors in accordance with U.S. patent law. The University shall also retain a right to use any such improvements for internal, research purposes.

EQUIPMENT USE AND MAINTENANCE

8. Rate calculation and approval – Approval to use equipment for ITS purposes must be obtained from the appropriate University responsible party. Most equipment used for ITSs will appear on official University property inventory records with a named responsible party. If the equipment is not listed on official university inventory records, written approval for its use must be obtained from the custodial department.

   a. Funding derived from ITS activities shall be used for:
      1. Consumables relating to the testing process or delivery of service
      2. The maintenance and upkeep of equipment used for ITS purposes
3. Equipment service agreements, as needed
4. Labor relating to the services provided (In the case of personnel paid from University accounts, the University account shall be reimbursed the amount of the applicable salaries and fringe from ITS revenues generated)
5. Upgrade and replacement of equipment and facility
6. Other necessary costs for operations

RATE REQUEST PROCEDURE

9. ITS Rate Request:
   a. Departmental Chair submits an ITS Rate Application form to the OCIR
   b. If approved, OCIR shall notify the Office of Sponsored Programs (OSP) in writing of application approval
   c. OSP will begin ITS Rate Calculation process (i thru iii) with department and assist department with ITS account setup.
      i. ITS Rate Calculation (Use-Rate): OSP will schedule a meeting with departmental faculty and personnel to review, discuss, and obtain costing information related to the equipment identified and services to be provided. Department Chair, or his/her designee, shall be named as account manager.
      ii. The ITS Rate shall be submitted to the Associate Vice President for Research (AVPR) for approval. The AVPR shall be responsible for any rate negotiations. Any changes to the rate shall be documented in writing and provided to OSP.
      iii. Once the account is established, the account manager shall work with OSP to establish initial budget. Thereafter, the account manager, OCIR, and OSP shall review established rate structure and budget annually, at a minimum. Based on this review, OCIR will make recommendations for appropriate changes in budget due to market conditions, expected usage differentials, changes in expenditures, etc.

ITS PROCEDURE

10. The processing of all UISAs are handled through the OCIR and shall include a valid statement of work (SOW) as ‘Attachment A’ and that follows the guidelines specified in the standard UISA.

11. The standard language of the UISA contract template should not be changed. The language is neither onerous nor burdensome for a public institution like Texas State. Any proposed changes to the template, or use of a sponsor’s form, require review and approval by the appropriate University offices through OCIR and Texas State University System Legal Services. In order not to delay approval of the Project, these changes must be submitted well in advance (at least four (4) weeks) of the proposed Project start date. Texas State’s ability to accept modifications to the template is very limited, and discussions with a potential client should include that information. Each UISA shall be identified by a specific number defined by OCIR.
12. Work shall not begin until an UISA has been executed by both parties.

13. A valid and current ITS rate shall be in place before an UISA can be executed.

14. If no rate exists for a specified piece of equipment, and the department or unit wishes to utilize the equipment for ITS purposes, the department or unit should contact the OSP to determine service rates for the specified piece of equipment (#9 above). In order not to delay approval of the Project, new rate requests should be submitted well in advance of the proposed Project start date to allow adequate time for review. As negotiations and discussions on these matters often take weeks to complete, any new proposed rates should be submitted to OCIR for review and consideration at least four (4) weeks in advance of the proposed Project start date.

15. Once the rate request has received approval, a UISA shall be prepared by departmental personnel.

16. Faculty and appropriate staff should conduct testing pursuant to the terms and conditions set forth in the SOW of the UISA.

17. Departments will be responsible for ensuring all applicable costs relating to the UISA execution are allocated to the ITS account.

18. Departmental personnel shall track and support all revenue/expenditure activities per project for evaluation. A recommended method of identifying support is to establish a numbering system per project and include that identifying number within the description of revenue received or expenditures incurred by that project.

19. Departmental personnel shall notify OCIR when the service(s) are complete or when an interim billing should occur. In addition, departmental personnel shall also provide usage data as a billing basis for OCIR. OCIR shall prepare an invoice in accordance with current university billing procedures. OCIR shall submit completed invoice to company within 14 days of receipt of billing data from department. A copy of the invoice shall be sent to OSP.

20. OCIR personnel shall monitor the receivable to ensure payment by the company.

21. When paid, OCIR personnel shall deposit the funds into the appropriate ITS account.

22. When each ITS project is complete, the account manager shall review all transactions to ensure all postings are reasonable, allocable, allowable, and complete; and that all revenue has been received.

23. Cautions –
a. University faculty should not co-mingle ITS projects with any other research activity within their labs.
b. Special attention should be given so as not to employ inventions or new technologies developed or created on federally-sponsored or company-sponsored research projects in such a way as to encumber these inventions by the terms of the UISA.
c. A complete segregation of service activities may be accomplished through the use of activity documentation.

24. Forms associated with this policy:
   a. ITS rate request (OSP-ITS)

CERTIFICATION STATEMENT

25. This PPS has been approved by the reviewer listed below and represents Texas State's Division of Academic Affairs policy and procedure from the date of this document until superseded.

Review Cycle: ________________________
Reviewer: ________________________________
Date: ________________________________

Approved: ________________________________
Date: ________________________________

Gene Bourgeois
Provost and Vice President for Academic Affairs

Texas State University-San Marcos
Provost and Vice President for Academic Affairs
Last Updated: January 23, 2013
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