

Flow-Through Clauses

Date

Sponsor Name

Address

RE: RFP or Award Reference

Dear XXXXXXXXXXXX,

As I mentioned briefly on the phone today, intellectual property and publication waivers continue to be more increasingly difficult to obtain. XXXXXXXXXXXX greatly appreciates consideration being given to revising the language for these two items, in addition to other language revision requests. Below, please find rationales for requested deviations and suggested alternative language based on previous awards:

Reference:

Indemnification:

Rationale for requested change: XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX
XXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX. Insert organization's name
respectfully requests the following language be used:

Suggested Alternative Language:

Contractor shall defend, indemnify and hold harmless the Sponsor, its officers, employees and agents from and against any and all liability, loss, expense, attorney's fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the Contractor, its officers, agents or employees.

Sponsor shall defend, indemnify and hold harmless Contractor, San Diego State University, Trustees of the CSU, the State of California, its officers, employees and agents from and against any and all liability, loss, expense, attorney's fees, or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorney's fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Sponsor, its officers, agents or employees.

Publication Rights–

Rationale for requested change: Article XX also restricts XXXXXXXXXXXX's ability to publish, which violates XXXXXXXXXXXX policy prohibiting the acceptance of sponsored programs with restrictions on publication. Additionally, XXXXXXXXXXXX cannot waive its right to ownership rights of intellectual property, including those funded with Federal financial participation. The XXXXXXXXXXXX policy does allow for brief delays in the publication for intellectual property concerns, redaction of proprietary or sensitive information and/or other propriety purposes or for sponsor review and comment on manuscripts (not to exceed 90 days) provided that the sponsor agree that no changes in the manuscript be made without the consent of the author.

Suggested Alternative Language:

Contractor reserves the right to make or permit to be made scholarly disclosures of the results of the Project, including without limitation, publication in scholarly journals, presentations at academic and other conferences, disclosures to Contractor and non- Contractor scholars, and disclosures in grant and funding applications. Contractor shall provide the Sponsor a copy or notice of any disclosure of the results of the Project. No less than 30 business days prior to public disclosure of any results of the project, Principal Investigator will provide the Sponsor a manuscript or other draft of the proposed public disclosure. Within 15 business days following receipt thereof, the Sponsor will notify Project Director in writing if the proposed disclosure contains any information which could adversely affect any rights granted under any license granted to the Sponsor by Contractor, or the Sponsor confidential information, and specify the portions of the proposed disclosure requiring redaction. In the event the Sponsor identifies Intellectual Property in which the Sponsor has rights and which is likely to be adversely affected by such disclosure, the Sponsor may request that the public disclosure be delayed or amended for an additional 60 days to allow the filing of appropriate Intellectual Property protection. If the Sponsor fails to notify Project Director in writing and in a timely manner of any objections to the proposed disclosure, the Sponsor's right to object under this provision will be deemed to be conclusively waived. Contractor further agrees to provide, in accordance with customary standards, an appropriate acknowledgement in any such publication of the Sponsor's support or other role in the Project.

Please feel free to contact me should you have any questions or require additional information.

Best Regards,

Name
Title

cc: