

NORTH CAROLINA STATE UNIVERSITY
Sponsored Project Agreement (v 10.2.2008)
Number: [RADAR/PINS HERE]

This Sponsored Project Agreement is entered into by and between North Carolina State University, Raleigh North Carolina (hereinafter called "University"), and _____ with a principal place of business at _____ (hereinafter called "Sponsor") (collectively hereinafter called "Parties").

RECITALS

- A. The project contemplated by this Agreement is of mutual interest and benefit to University and Sponsor and will further the instruction, research and public service objectives of University in a manner consistent with its status as a public educational institution; and
- B. Sponsor desires to provide funding in support of this project in exchange for receiving certain rights in the results.

NOW, THEREFORE, the Parties agree as follows:

1. Project Field of Research

University agrees to use reasonable effort to conduct the project as described in the proposal entitled "___", (hereinafter called "Project") that is hereby incorporated into this Agreement as Appendix "A."

2. Principal Investigator

_____ will serve as Principal Investigator and will supervise the Project. If for any reason the Principal Investigator is unable to continue to serve and a successor acceptable to both Parties is not available, this Agreement may be terminated as hereinafter provided.

3. Period of Performance

The Project will begin on XX /XXXX. It will be completed by XX/XXXX. This period of performance will be subject to renewal or extension only by written modification in accordance with Article 18.

4. Payment of Costs

In consideration of University's performance hereunder, Sponsor agrees to reimburse the University for all costs incurred up to the agreed upon amount of \$XXX,XXX. This amount can be changed by a written modification signed by both parties. Invoices will be sent at least quarterly and no more frequently than monthly and should be paid by Sponsor within 30 days of receipt. For payment by check, the remittance address is shown below. For payment by electronic funds transfer, contact the below office at 919-515-2153.

North Carolina State University
Office of Contracts and Grants
Box 7214, 2701 Sullivan Dr.
Raleigh, NC 27695-7214

Or

4. Payments, Fixed Price

- (a) In consideration of University's performance hereunder, Sponsor agrees to pay the University the firm fixed price of \$XXX,XXX. University agrees not to exceed this amount without prior written authorization of Sponsor. Sponsor agrees to automatically make payments to University without requiring invoices in accordance with the following schedule:
- \$XX upon execution of this Agreement
 - \$XX six months after execution of this Agreement
 - \$XX within thirty (30) days of submission of the final report.

Submit Payments to the below address.

North Carolina State University
Office of Contracts and Grants
Box 7214, 2701 Sullivan Dr.
Raleigh, NC 27695-7214

- (b) The Sponsor understands and expressly agrees that this is a "fixed price" agreement. University is under no obligation to provide the Sponsor with any kind of financial reporting, supporting documentation, or justification of expenditures made in the performance of the Project as a condition of payment.

5. Export Controls and Confidentiality

- (a) The Sponsor does not anticipate exchanging any information, data or software that is Export Controlled under the Export Administration Regulations (EAR), Title 15, sections 730-774 of the Code of Federal Regulations (CFR) or the International Traffic in Arms Regulations (ITAR), 22 CFR §§ 120-130. Sponsor agrees that in addition to the requirements of paragraph (b), Sponsor will give

University 15 days advance written notice of their intention to deliver any information, data, software, technology, or material that is Export Controlled.

- (b) In the performance of the Project, it may be necessary for one party to disclose information that is proprietary and confidential to the disclosing party. All such information must be disclosed in writing and designated as confidential or, if disclosed orally, must be identified as confidential at the time of disclosure and confirmed in writing and designated as confidential within thirty (30) days of such disclosure. Except as otherwise provided herein, for a period of Three (3) years following the date of such disclosure, the receiving party agrees to use the confidential information only for purposes of this Agreement and further agrees that it will not disclose or publish such information except that the restrictions of this §5(b) do not apply to:
 - (i) information that is or becomes publicly known through no fault of the receiving party;
 - (ii) information learned from a third party entitled to disclose it;
 - (iii) information already known to or developed by receiving party before receipt from disclosing party, as shown by receiving party's prior written records;
 - (iv) information for which receiving party obtains the disclosing party's prior written permission to publish;
 - (v) information required to be disclosed by court order or operation of law, including, but not limited to, the North Carolina Public Records Law; or
 - (vi) information that is independently developed by the receiving party's personnel who are not privy to the disclosing party's confidential information.
- (c) The receiving party must use a reasonable degree of care to prevent the inadvertent, accidental, unauthorized or mistaken disclosure or use by its employees of confidential information disclosed hereunder.

6. Reporting

University must deliver to Sponsor a final report showing the results of the work performed in accordance with Appendix A, within 90 days following termination of this Agreement.

7. Intellectual Property

- (a) "Intellectual Property" means all forms of intellectual property under the laws of any state or country, including but not limited to, patentable inventions, patentable plants, copyrightable works, mask works, novel plant varieties, trademarks, service marks, and trade secrets.

- (b) University and/or Sponsor own any Intellectual Property made or conceived in the performance of the Project in accordance with the following criteria:
 - (i) University or Sponsor exclusively owns title to any Intellectual Property made or conceived solely by their respective employees in the performance of the Project.
 - (ii) University and Sponsor jointly own title to any Intellectual Property made or conceived by one or more University employee and one or more Sponsor employee in the performance of the Project (hereinafter called "Joint Intellectual Property").
- (c) Each Party has the right to file and prosecute intellectual property applications on any Intellectual Property to which it holds exclusive title.
- (d) The parties shall agree on the procedure to be used for the protection and administration of Joint Intellectual Property.
 - (i) If one party does not wish to participate in the preparation, prosecution, and maintenance of intellectual property protection, that party shall assign all its right, title and interest to the party electing to pursue intellectual property protection. The assigning party will retain a non-exclusive, royalty free license to use the intellectual property for its own internal research and educational use.
 - (ii) If the parties agree to pursue intellectual property protection jointly, they will enter into an administration agreement which will include rights and responsibilities of the parties with respect to intellectual property prosecution, marketing, royalty sharing, and defense of patents or other intellectual property rights.

8. License

- (a) In consideration for sponsoring the Project, the University shall grant to Sponsor a fully paid-up, non-exclusive, non-transferable, royalty-free license (without the right to sublicense) to use all results of the Research owned by University, either solely or jointly, exclusively for Sponsor's own internal, research and development purposes.
- (b) Sponsor also has the first right to negotiate for a fee or royalty-bearing exclusive license or fee bearing option to any University and/or University's interest in Joint Intellectual Property, provided that Sponsor pays all costs for the preparation, filing, prosecution and maintenance of any patents on such Intellectual Property ("Negotiation Right"). Sponsor has 90 days following disclosure of an Intellectual Property by the University to exercise its Negotiation Right (the "Negotiation Period"). The Sponsor must submit a written notice to the University, within the Negotiation Period, in order to exercise their Negotiation Right. If the Negotiation Period expires before University receives the Sponsor's written notice exercising

the Negotiation Right or as provided below, the Sponsor shall have no further rights to the Intellectual Property.

- (c) If Sponsor has not begun good faith, substantive negotiations with University for an option or license to such Intellectual Property within 90 days of the date of Sponsor's exercising its Negotiation Right in accordance paragraph 8(b), the University may, in its sole and unfettered discretion, terminate Sponsor's Negotiation Right.
- (d) Further, if Sponsor and University have not negotiated a mutually agreeable license agreement on or before twelve months from the disclosure of the Intellectual Property by the University, then University may, in its sole and unfettered discretion, terminate Sponsor's Negotiation Right. Sponsor is only obligated to pay expenses incurred and noncancelable obligations that have accrued up to the date that University terminates Sponsor's Negotiation Right.

9. Publications

University has the right to publish any of the results of the Project. University must furnish Sponsor with a copy of any proposed publication or public disclosure, at least 60 days in advance of the proposed publication date to allow for the protection of Sponsor's proprietary, confidential, or patentable information.

10. Termination

- (a) Sponsor may terminate performance under this Agreement at any time upon 60 days written notice to University. Upon receipt of notification, University must proceed in an orderly fashion to limit or terminate any outstanding commitments and/or to conclude the Project. Sponsor agrees to reimburse University for all costs and noncancelable obligations incurred in performance of the Project prior to receipt of termination notice.
- (b) University may terminate performance if circumstances beyond its control preclude the continuation of the Project. If University terminates, Sponsor agrees to reimburse University for all costs and noncancelable obligations incurred in performance of the Project prior to issuing the termination notice. University agrees to reimburse Sponsor any funds that have been received but remain unexpended at the time of termination, except for those funds needed to pay for noncancelable obligations.

11. Use of Names

Neither party will use the name of the other in any form of advertising or publicity related to commercial sales without the express written permission of the other party. Sponsor is advised that this Agreement is subject to the North Carolina Public Records Law and as such, the existence of this Agreement is recorded in a database accessible to the public.

12. Notices

Any notices required to be given or which may be given under this Agreement must be in writing delivered by private overnight mail service, first-class mail, facsimile, or by electronic mail (email) addressed to the Parties as follows:

For University:

For Sponsor:

Office of Sponsored Programs
and Regulatory Compliance Services
North Carolina State University
2701 Sullivan Drive, Suite 240
Campus Box 7514
Raleigh, North Carolina 27695-7514
Ph.: 919-515-2444, Fax: (919) 515-7721

13. Independent Parties

For purposes of this Agreement the Parties are independent contractors and neither may be considered an agent or an employee of the other at any time or for any purpose. No joint venture, partnership or like relationship is created between the Parties by this Agreement.

14. Assignment

This Agreement is binding upon and inures to the benefit of the Parties and may be assigned only to the successors to substantially the entire business and assets of the respective Parties. Any other assignment by either party without the prior written consent of the other party is void.

15. Governing Law

This Agreement is acknowledged to have been made and must be construed and interpreted in accordance with the laws of the State of North Carolina, without regard for its conflict of laws provisions, provided that all questions concerning the construction or effect of patent applications and patents shall be decided in accordance with the laws of the country in which the particular patent application or patent concerned has been filed or granted, as the case may be.

16. Liability

- (a) The Sponsor will indemnify and hold harmless University, its trustees, officers, employees and agents from and against any liabilities, damages, or claims (including attorneys' fees) arising out of injuries (including death) or property damage suffered by any person arising out of Sponsor's use or possession of the

results or Inventions produced hereunder or as a result of Sponsor's negligence or willful misconduct in the performance of this Agreement.

- (b) Notwithstanding any other provision of this Agreement, the liability of the University, as an agency of the State of North Carolina, for any injury or damage arising out of this Agreement or the University's performance of the Project is subject to the immunities, procedures and limitations of the North Carolina Tort Claims Act, GS §143-291 et seq. The University does not waive any rights or defenses under this Act.

17. Order of Precedence

If any provisions stated in this Agreement, resulting Sponsor purchase orders, and/or Appendix A are in conflict, the order of precedence, beginning with the first to last, shall be (1) this Agreement, (2) Appendix A, and (3) the Sponsor purchase order. The Parties understand and agree that any purchase order or similar document issued by Sponsor will be for the sole purpose of establishing a mechanism for payment of any sums due and owing hereunder. Notwithstanding any of the terms and conditions contained in said purchase order, the purchase order will in no way modify or add to the terms and conditions of this Agreement.

18. Entire Agreement

Unless otherwise specified herein, this Agreement, including Appendix A, embodies the entire understanding of the Parties for this project, superseding any prior or contemporaneous representations, either oral or written regarding this matter. Only written modifications, signed by both Parties will affect changes to this Agreement including, without limitation, changes in the field of research, total estimated cost, and period of performance.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date written in Article 3.

NORTH CAROLINA STATE UNIVERSITY

SPONSOR

By: _____

By: _____

Name

Name: _____

Title:

Title: _____

Date: _____

Date: _____