

MASTER SPONSORED RESEARCH AGREEMENT

This Sponsored Research Agreement ("Agreement") is entered into by and between North Dakota State University, Fargo, North Dakota ("NDSU") and _____, a _____ corporation having a place of business at _____ ("Sponsor").

Sponsor desires NDSU conduct certain research in accordance with the scope of work in one or more Research Project(s), which will become attached to and incorporated into this Agreement. The Research Projects contemplated by this Agreement are of mutual interest and benefit to NDSU and Sponsor, and will further the instructional and research objectives of NDSU in a manner consistent with its status as a non-profit, tax-exempt educational institution.

NOW, THEREFORE, NDSU and Sponsor (the "Parties") agree as follows:

1. PERFORMANCE OF RESEARCH

A. Research Projects. A Research Project is defined as written plan for NDSU to conduct specified research under the terms of this Agreement which will be attached hereto as an Appendix. NDSU will perform research as described in one or more corresponding Research Projects. This Agreement's terms will govern all Research Projects which are fully executed during the Term. Each Research Project shall be detailed in the form of the Exemplary Appendix A to this Agreement and sequentially numbered as Appendix A Research Project No 1, Appendix A Research Project No 2, Appendix A Research Project No 3, and so forth to request specific research.

B. Term. This Agreement shall become effective as of _____ (hereinafter "Effective Date") and shall remain in full force and effect for a period of five years unless earlier terminated by a party. Each Research Project will have a defined period of performance which will be detailed in the corresponding Appendix.

C. Reports. NDSU will provide Sponsor with a comprehensive final report upon completion or early termination of a Research Project and such other interim reports as detailed in the corresponding Appendix.

D. Technical Contacts. The NDSU Principal Investigator for the Research Project will be named in the corresponding Appendix and will direct and supervise all aspects of the Research Project for NDSU. The Sponsor's project manager will be named in the corresponding Appendix and will manage all aspect of the Research Project for Sponsor. All communications to Sponsor regarding reports, budget, and intellectual property related to a Research Project should be directed to the named project manager or such other individual as Sponsor may designate in writing.

2. CONSIDERATION In consideration of NDSU's performance of a Research Project, Sponsor agrees to reimburse NDSU for all costs incurred up to the agreed upon amount as set forth in each corresponding Appendix. Invoices will be paid by Sponsor within 30 days of receipt. In the event of early termination of any Research Project, Sponsor will reimburse NDSU for all reasonable costs incurred and all reasonable non-cancellable commitments for such Research Project.

3. CONFIDENTIAL INFORMATION

A. Close cooperation between NDSU and Sponsor in the conduct of a Research Project may require the disclosure by one party (disclosing party) to the other party (receiving party) of certain proprietary information which is hereafter referred to as "Confidential Information." Confidential Information shall be marked as "Confidential" at the time of disclosure to the receiving party. If Confidential Information is disclosed verbally, it shall be identified as confidential at the time of

Commented [A1]: NDSU policy and ND Open Records requirements prevent NDSU from maintaining the existence of any contract, or the terms thereof, as confidential.

Commented [A2]: Payment terms are adjusted to suit sponsor's need. Projects can be either cost reimbursable or fixed-price.

Commented [A3]: NDSU would prefer not to receive any trade secret (TS) information at this time. In the event that the disclosure of TS information becomes necessary, NDSU would be open to the negotiation of an amendment which covers notice and marking for TS information.

Commented [A4]: NDSU policy requires that information provided to it which is deemed confidential must be identified as such. This is really a best practice since in the event of an Open Records request, the NDSU Attorney General's Office will make all determinations as to which records must be provided, not NDSU.

disclosure and later reduced to writing, marked as "Confidential" and provided to receiving party within fourteen (14) days after initial disclosure. A receiving party has the right to decline receipt of Confidential Information if they deem it unnecessary to the completion of the Research Project or for any other reason.

- B. A receiving party may use, disclose, or grant use of Confidential Information only for the limited purposes of this Research Project. A receiving party may not use a disclosing party's Confidential Information for any other purpose without the express written permission of the disclosing party.
- C. Confidential Information does not include information which:
 - 1. was already rightfully in the possession of the receiving party prior to the disclosure thereof by the other party;
 - 2. is obtained from a third person who, insofar as is known, is not prohibited from transmitting the information by a contractual, legal or fiduciary obligation to the other;
 - 3. through no act of omission of the receiving party, is or hereafter becomes part of the public domain;
 - 4. the receiving party can prove was developed independently and not based, in whole or in any part, on any Confidential Information furnished by the other party;
 - 5. is subject to another agreement between the parties which permits use and/or disclosures; or
 - 6. is determined to be an open record under the laws of the State of North Dakota.
- D. Each party will use at least the same standard of care as it uses to protect its own Confidential Information to ensure that employees, students, interns, agents and consultants do not disclose or make any unauthorized use of disclosing party's Confidential Information. Any employee, student, intern, agent, or consultant of the receiving party must be notified of the restrictions on the use of the disclosing party's Confidential Information and must agree with those restrictions before being allowed access to the Confidential Information. Each party will promptly notify the other upon discovery of any unauthorized use or disclosure of the other party's Confidential Information.
- E. Unless Confidential Information falls within an exception under Article 3(C), the receiving Party will maintain in confidence and shall not disclose any Confidential Information received in connection with this Agreement for a period of three (3) years following the end of the Research Term or any extension thereof.

4. INTELLECTUAL PROPERTY.

- A. Title to all inventions and discoveries made solely by NDSU inventors resulting from the performance of a Research Project shall reside in NDSU; title to all inventions and discoveries made solely by Sponsor inventors resulting from the performance of a Research Project shall reside in Sponsor; title to all inventions and discoveries made jointly by NDSU and Sponsor inventors resulting from a Research Program shall reside jointly in NDSU and Sponsor. Inventorship shall be determined in accordance with U.S. Patent Law.
- B. The Parties shall disclose to one another any inventions or discoveries resulting from the Research Project within sixty (60) days of the Party's reporting of such to its appropriate personnel.
- C. NDSU grants Sponsor a first option to negotiate a royalty-bearing license to make, use or sell under any invention or discovery owned wholly or partly by NDSU and made or conceived and reduced to practice during the Term of this Agreement which is a direct result of the performance of a Research Project. Sponsor shall have three (3) months from disclosure of any invention or

Commented [A5]: North Dakota Open Records laws are codified at NDCC §44-04-18 (<https://www.legis.nd.gov/cencode/t44c04.pdf>).

Commented [A6]: This IP provision is consistent with Federal grant policy and prevailing higher education practices. NDSU does offer alternative IP licensing strategies, information on which is available on the NDSU IEIP website (https://www.ndsu.edu/research/for_industry/engaging_in_research/).

discovery to notify NDSU of its desire to enter into such option agreement or a license agreement, and the parties shall negotiate in good faith for a period not to exceed three (3) months after that notification, or such period of time as to which the parties shall mutually agree.

- D. If Sponsor and NDSU fail to enter into an agreement during that period of time, NDSU's rights to such invention or discovery shall be disposed of in accordance with NDSU policies with no further obligation to Sponsor.
- F. In the event that any intellectual property of a party that was created, conceived and/or otherwise invented prior to the Term of this Agreement or created, conceived and/or otherwise invented independently and without reference to a Research Project (hereinafter "Background Intellectual Property"), such Background Intellectual Property may be utilized in the performance of a Research Project and should be identified in the corresponding Appendix. Each party shall maintain all ownership and control of its respective Background Intellectual Property but grants to the other party a limited license only for the performance of the corresponding Appendix.

5. PUBLICATION. The Principal Investigator has the right to publish or otherwise publicly disclose information gained in the course of a Research Project. In order to avoid loss of patent rights as a result of premature public disclosure of patentable information, NDSU will submit any prepublication materials to Sponsor for review and comment at least thirty (30) days prior to planned submission for publication. Sponsor shall notify NDSU within twenty (20) days of receipt of such materials whether they describe any inventions or discoveries subject to the parties' rights under Section 4 which Sponsor desires to protect from public disclosure. NDSU will, upon request, agree to delay publication for up to sixty (60) days to allow for filing of a patent application. NDSU shall have the final authority to determine the scope and content of any publications so long as no Sponsor Confidential Information is contained therein.

6. TERMINATION

- A. This Agreement may be terminated by the written agreement of both parties.
- B. In the event that either party shall be in default of its material obligations under this Agreement and shall fail to remedy such default within sixty (60) days after receipt of written notice thereof, this Agreement shall terminate upon expiration of the sixty (60) day period.
- C. Termination or cancellation of this Agreement shall not affect the rights and obligations of the parties accrued prior to termination. Upon termination, Sponsor shall pay University for all reasonable expenses incurred or committed to be expended as of the effective termination date, including salaries for appointees for the remainder of their appointment.
- D. Any provisions of this Agreement which by their nature extend beyond termination shall survive such termination.

7. Warranties/Limitation of Liability. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PARTIES, THEIR TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, AND AFFILIATES MAKE NO REPRESENTATIONS AND EXTEND NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, VALIDITY OF PATENT RIGHTS CLAIMS, ISSUED OR PENDING, AND THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A REPRESENTATION MADE OR WARRANTY GIVEN BY EITHER PARTY TO THE OTHER THAT THE PRACTICE BY EITHER OF ANY RIGHTS GRANTED HEREUNDER OR RESEARCH RESULTS SHALL NOT INFRINGE THE PATENT RIGHTS OF ANY THIRD PARTY. EXCEPT WITH REGARD TO CLAIMS ARISING FROM A BREACH OF SECTION 3 OF THIS AGREEMENT, NEITHER PARTY, THEIR TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES AND AFFILIATES BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGE

OR INJURY TO PROPERTY AND LOST PROFITS, REGARDLESS OF WHETHER EITHER PARTY SHALL BE ADVISED, SHALL HAVE OTHER REASON TO KNOW, OR IN FACT SHALL KNOW OF THE POSSIBILITY.

8. **NOTICES.** Any notices which are required to be given in accordance with this Agreement, must be in writing delivered by first-class mail addressed to the Parties as follows:

For Sponsor:

For NDSU:

Joycelyn R. Lucke
NDSU Dept. 4000
P.O. Box 6050
Fargo, ND 58105-6050
Email: NDSU.Research@ndsu.edu
Facsimile No:701-231-5624

"Notice" herein shall not include notice of claims for money damages or other legal proceeding against NDSU or the State of North Dakota, which shall instead be governed by applicable law.

Commented [A7]: The ND Attorney General requires this provision in all contracts with "notice" provisions.

9. **Title to Equipment.** NDSU shall retain title to any supplies, materials, tools or equipment purchased and/or fabricated by it with funds provided by Sponsor under this Agreement.

10. **Use of Names.** Neither Party will use the name, logo, trademark or trade name of the other Party in any form of advertising, publicity, or news release or in any way imply endorsement of the first Party without the express prior written permission of an authorized representative of the second Party, except as required by the North Dakota State Board of Higher Education or other law or regulation. NDSU, however, may acknowledge Sponsor's support of the Research Program in scientific or academic publications or communications without Sponsor's prior approval. In any permitted statements, the parties shall describe the scope and nature of their participation accurately and appropriately.

11. **Independent Parties.** For purposes of this Agreement, the Parties hereto will be independent contractors and neither will at any time be considered an agent of the other. No joint venture, partnership or like relationship is created between the Parties by this Agreement.

12. **Delegation and Assignment.** Each Party is empowered to authorize and perform their obligations and duties hereunder. This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

13. **Liability and Indemnification.** NDSU and Sponsor each agrees to assume its own liability for bodily injury, including death, personal injury, and property damage, other claims, demands, suits, fees (including attorney's fees), costs, or judgments which result from or arise out of the performance of this Research Project.

Commented [A8]: As a state entity, NDSU's liability is governed by state law at NDCC 32-12.2 (<https://www.ndlegis.gov/cencode/t32c12-2.pdf>).

14. **Purchase Order.** In the event that a Sponsor issues a purchase order for any payment associated with this Agreement, the terms of the purchase order are deleted in their entirety and are invalid.

15. **Entire Agreement.** Unless otherwise specified herein, this Agreement (including all attachments hereto) embodies the entire understanding of the Parties with respect to the Research Project, and any prior or contemporaneous representations, either oral or written, are hereby superseded. Specifically, any Confidential Disclosure Agreement or similar agreement in effect between the Parties with respect to the subject matter of the Research Project is superseded as to disclosures made on or after the effective date of this Agreement.

No amendments or changes to this Agreement or a Research Project Appendix will be effective unless made in writing and signed by authorized representative of the Parties. In the event of a conflict between the terms of this Agreement and any attachment hereto, the terms of this Agreement will control.

16. Governing Law and Jurisdiction. This Agreement is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be adjudicated exclusively in the state District Court of Cass County, North Dakota.

17. Miscellaneous. If any term of this Agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms will not be affected and, if possible, the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain that term.

In witness whereof, the Parties have executed this Agreement by their duly authorized representatives.

NORTH DAKOTA STATE UNIVERSITY

SPONSOR

By _____

By _____

Date _____

Date _____

SAMPLE

Commented [A9]: As a state entity, NDSU cannot contractually agree to utilize any other country or US state for choice of law or venue provisions. If you would prefer not to utilize North Dakota, NDSU can agree to remain silent on this issue and simply delete the provision.

Commented [A10]: As a state entity, NDSU is not subject to the jurisdiction of the federal courts

**EXEMPLARY APPENDIX A
RESEARCH PROJECT NO. __**

This is a Research Project pursuant to the Master Sponsored Research Agreement (hereinafter "Agreement") with an effective date of _____, between North Dakota State University (hereinafter "NDSU") and _____ (hereinafter "Sponsor"). Upon execution by both parties, this Research Project and any attachments shall become attached to and incorporated into that Agreement and this Research Project shall be performed in accordance with those terms and conditions.

NDSU PRINCIPAL INVESTIGATOR:

SPONSOR PROJECT MANAGER:

PROJECT SCOPE OF WORK: See Attached

STARTING DATE OF RESEARCH PROJECT:

COMPLETION DATE OF RESEARCH PROJECT:

COMPENSATION AND PAYMENT SCHEDULE: The total project cost shall consist of the direct project costs and applicable F&A and shall be in the amount of \$_____. An invoice for the full amount payable or other scheduled payments hereunder shall be sent to Sponsor upon full execution of this Appendix at the address specified below:

Attn.:

REPORT SCHEDULE:

BACKGROUND INTELLECTUAL PROPERTY: None identified at this time

AS AGREED TO BY AND BETWEEN:

NORTH DAKOTA STATE UNIVERSITY

Date: _____

Date: _____