

PARTNERSHIP AGREEMENT

This Partnership Agreement ("Agreement"), effective as of the date last signed below ("Effective Date"), is entered into by and between North Dakota State University, a public institution of higher education ("NDSU") and _____, a North Dakota corporation with a principal place of business at _____, North Dakota ("SPONSOR").

WHEREAS, NDSU is actively engaged in conducting _____ research;

WHEREAS, SPONSOR is in the business of _____ and has an interest in the proposed research and is willing to provide resources for the fulfillment of the proposed research project;

AND WHEREAS, NDSU and SPONSOR now agree to the following in support of an application for funding from the Research North Dakota Grant program.

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. During the term hereof, the Parties shall cooperate to submit a joint proposal for external funding from the North Dakota Department of Commerce under the Research ND program (hereinafter "Funding") to pursue the research project detailed in its application (hereinafter "Project").
2. The term of this Agreement shall commence on the Effective Date and, unless earlier terminated by either party, will expire upon the earlier of 1) a denial from Research ND for Funding or 2) conclusion of the Project.
3. If Project is selected for Funding, NDSU and SPONSOR will enter into an agreement with the North Dakota Department of Commerce which will incorporate the terms and conditions set forth in this Agreement.
4. To the extent covered by at least one exception to North Dakota's open records laws, information disclosed by one party in furtherance of this Agreement and concerning the Project and application ("Confidential Information") shall be deemed confidential and treated as such by the receiving party. Neither party shall disclose any of the other party's Confidential Information to any third party without express written permission of the disclosing party. Neither party may use the Confidential Information of the other for any purpose except as specifically set forth herein.
5. Nothing in this Agreement shall be construed to limit the freedom of NDSU or Sponsor from engaging in similar inquiries or research under the Research ND program or otherwise with other parties.
6. The Scope of Work for the Project agreed to by the parties for submission to Research ND is attached hereto as Exhibit A and fully incorporated herein.
7. The Project shall be completed substantially within the State of North Dakota.
8. The Budget for the Project agreed to by the parties for submission to Research ND is attached hereto as Exhibit B and fully incorporated herein.

9. The parties agree that ownership rights in any Intellectual Property utilized in the Project and/or developed in the performance of the Project will be determined as follows:

Definitions

- a. "Intellectual Property" means and includes all patent rights, copyrights, or other legal rights resulting from research or other intellectual activity.
- b. "*Sponsor Intellectual Property*" means and includes all Intellectual Property conceived and reduced to practice solely by Sponsor Personnel.
- b. "*NDSU Intellectual Property*" means and includes all Intellectual Property conceived and reduced to practice solely by NDSU Personnel.
- c. "*Joint Intellectual Property*" shall mean any and all Intellectual Property, which is created, developed or invented jointly by NDSU personnel and Sponsor personnel in the performance of the Project.
- d. "*NDSU Background Intellectual Property*" shall mean, individually and collectively:
 - 1. Any and all NDSU Intellectual Property that was created, invented, conceived and/or made prior to the effective date of a subsequent agreement for the performance of the Project; and
 - 2. Any and all NDSU Intellectual Property created, invented, conceived and/or made independently and without reference to the Project at any time.
- e. "*Sponsor Background Intellectual Property*" shall mean, individually and collectively:
 - 1. Any and all Sponsor Intellectual Property that was created, invented, conceived and/or made prior to the effective date of a subsequent agreement for the performance of the Project; and
 - 2. Any and all Sponsor Intellectual Property created, invented, conceived and/or made independently and without reference to the Project at any time.

Background Intellectual Property. NDSU shall own or continue to own and control all NDSU Background Intellectual Property. Sponsor shall own or continue to own and control all Sponsor Background Intellectual Property. For any Sponsor Background Intellectual Property or NDSU Background Intellectual Property that is mutually agreed by the parties as being required for the performance of the Project, the owning Party hereby grants to the other Party a limited, non-exclusive, royalty-free license to practice and use such Background Intellectual Property for the sole purpose(s) as set forth within the Scope of Work.

Sponsor Intellectual Property. All Sponsor Intellectual Property shall be solely owned by Sponsor. Sponsor shall have the right to (or not) protect, commercialize and/or license Sponsor Intellectual Property at the sole discretion of Sponsor, without any obligation or accountability to NDSU.

NDSU Intellectual Property. All NDSU Intellectual Property shall be solely owned by NDSU. NDSU shall have the right to (or not) protect, commercialize and/or license NDSU Intellectual Property at the sole discretion of NDSU, without any obligation or accountability to Sponsor, except as otherwise provided herein.

Joint Intellectual Property. Sponsor and NDSU shall jointly own all Joint Intellectual Property with no duty to account, and each Party shall have the right to use and exploit such Joint Intellectual Property in its sole discretion, except as otherwise provided herein.

Disclosure of Intellectual Property. Each Party shall disclose to the other any potential Intellectual Property made in the performance of the Project as soon as possible after creation and/or reduction to practice.

Grant of Option and License to Intellectual Property. NDSU grants Sponsor a non-transferable, first option to negotiate a royalty-bearing license to make, use or sell:

- a. NDSU Intellectual Property made or conceived and reduced to practice in the performance of the Project; and/or
- b. NDSU's undivided interest to any Joint Intellectual Property made or conceived and reduced to practice in the performance of the Project.

Sponsor shall have three (3) months from disclosure of any Intellectual Property developed in the performance of the Project to notify NDSU of its desire to enter into an option to license agreement or a license agreement. Upon notice to NDSU, 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. If Sponsor and NDSU fail to enter into an option (or license) agreement during that period of time, the rights to such Intellectual Property shall be disposed of in accordance with NDSU policies with no further obligation to Sponsor. If Sponsor and NDSU enter into a license agreement for any rights, NDSU shall retain, at a minimum, a non-exclusive license to such for teaching and internal research purposes.

NDSU will retain the ownership rights and control of all data and other research results collected in the performance of the Project. Sponsor shall have the right to use data collected in the performance of the Project solely for the purpose of meeting its obligations under the North Dakota Department of Commerce award and for other uses as agreed to in writing by NDSU.

10. The income from any intellectual property developed by NDSU in the actual performance of the Project will be distributed in accordance with NDSU Policy.

11. NDSU shall have the right to publish or otherwise publicly disclose information gained in the performance of Project. NDSU shall submit all prepublication materials to Sponsor for review at least thirty (30) days prior to planned publication. Sponsor shall notify NDSU within fifteen (15) days of receipt of prepublication materials of any claim that the prepublication materials contain any of Sponsor's confidential information. NDSU will agree to delay publication for up to ninety (90) days so that a patent application filing or other intellectual property protection for any technology(ies) that are disclosed in any proposed publication.

12. The parties are working as independent entities, with no actual or implied employment, agency or other relationship.

13. Each party shall be responsible for its own acts and omissions. NDSU's tort liability shall be determined in accordance with Chapter 32-12.2 of the North Dakota Century Code, and subject to the conditions and limitations set forth therein.

14. Neither party may assign or delegate any right or duty hereunder without the express written consent of the other party.

15. This Agreement shall be governed by and construed in accordance with the law of the State of North Dakota, without regard to any choice of law principle that would dictate the application of the law of another jurisdiction. Any action to enforce this contract must be brought in the District Courts of North Dakota and Sponsor hereby submits itself to the jurisdiction of such courts.

16. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the parties (whether written or oral) relating to the Research ND application for funding set forth herein.

Accepted and Agreed to by:

North Dakota State University

Signature: _____

By: _____

Title: _____

Date: _____

Sponsor

Signature: _____

By: _____

Title: _____

Date: _____

SAMPLE

EXHIBIT A
Scope of Work

SAMPLE

EXHIBIT B
BUDGET

SAMPLE