

RESEARCH PERFORMANCE AGREEMENT CLEMSON UNIVERSITY

This contract is entered into between _____, hereinafter referred to as the Sponsor, and Clemson University, Office for Sponsored Programs, Box 345702, Clemson, S.C. 29634-5702, an Institution of Higher Education of the State of South Carolina hereinafter referred to as the University.

Whereas the Sponsor desires research services in accordance with the scope of work outlined within this agreement, and Clemson University's proposal entitled, "_____", hereinafter referred to as Attachment A and made part of this agreement.

Whereas the performance of such research is consistent, compatible and beneficial to the academic role and mission of the University as an Institution of Higher Education;

NOW, THEREFORE, in consideration of these premises, and of the mutual promises and covenants contained herein, the parties hereto agree as follows:

ARTICLE I. SCOPE OF WORK (SOW)

University agrees to perform on a "best efforts" basis subject to the terms herein and limitations of the estimated costs, the research as described in Attachment A hereto, under the direction and supervision of _____, principal investigator.

ARTICLE II. CONTRACT PERIOD

This contract shall become effective on _____ and shall be completed on _____ unless subsequent time extension is mutually agreed upon in writing between the parties. University is authorized to initiate project performance up to ninety (90) days prior to start date.

ARTICLE III. COMPENSATION

Sponsor agrees to reimburse the University for services performed under this agreement which sum unless changed by written amendment to this agreement shall not exceed the sum of \$ _____ (US Dollars) in accordance with the budget included in Attachment A and to provide payment in accordance with the following schedule: 25% upon execution of this agreement; 50% upon receipt of invoices provided on the following dates _____; 25% within 30 days of completion by the University of all contract obligation, including presentation of all deliverables. Other than interim reports, the University will not submit any final report or transfer any deliverables specified in the SOW until at least 75% of the contract amount has been paid. The University reserves the right to change budget categories unless specifically prohibited by the Sponsor. Unless otherwise specified in ARTICLE XIII. SPECIAL CONDITIONS, title to equipment included in the budget vests with the University upon purchase.

ARTICLE IV. TECHNICAL REPORTS AND CONSULTATIONS

Upon completion of the work as set forth herein University will furnish Sponsor with a final written summary report containing results of the work and conclusions in respects thereof, as well as recommendations as to any possible additional work which may be desirable in view of what is learned as a result of the work hereunder. During the term of this Agreement the Principal Investigator will consult with representatives of Sponsor at times and places mutually agreed upon to discuss the progress and results, as well as ongoing plans, or significant changes therein, of Project to be performed hereunder.

ARTICLE V. PUBLICATION

A. A primary responsibility of an institution of higher education is the development, cultivation and dissemination of new knowledge resulting from its research programs, and in accordance with said responsibility the University retains the authority to present those results and/or findings at symposia, national, or regional professional meetings, or to publish results or findings in journals, theses or dissertations.

B. An allowance of thirty days will be provided to the Sponsor for advance review of any proposed publication or presentation to a journal, or other third party and for submission of a written request for an appropriate delay necessary to protect Sponsor's documented vested interest.

Upon receipt of Sponsor's request for delay, an additional time up to, but not exceeding 90 days from date of Sponsor's request, will be mutually agreed to in writing, for the filing of necessary patent application(s).

D. Sponsor acknowledges that any opinions, results, positions or statements taken or made by the Principal Investigator or any other University employee related to this Project are the personal opinion, positions and statements of those individuals and these individuals are not necessarily acting as spokespersons for the University. Sponsor and project personnel will indicate, when appropriate, that any such statements, opinions, positions or statements do not necessarily represent an official position of the University.

ARTICLE VI. COMPLIANCE WITH LAWS

University agrees that it will comply with all applicable federal, state and local laws, codes, regulations, rules and orders. This agreement shall be governed and construed in accordance with the laws of the State of South Carolina.

ARTICLE VII. ASSIGNMENT

Neither party shall assign or transfer any interest in this contract, nor assign any claims for money due or to become due under this contract without the prior written approval of the other party.

ARTICLE VIII. INTELLECTUAL PROPERTY

A. Ownership

(1) University shall retain title to all intellectual property including supporting data for all discoveries and/or inventions made exclusively by University faculty, students, or employees of University.

(2) University shall share ownership of intellectual property including supporting data for all discoveries and/or inventions made jointly by any employee of Sponsor and by any faculty member, student, or employee of University.

(3) Sponsor shall retain title to all intellectual property including supporting data for all discoveries and/or inventions made exclusively by Sponsor's employees, officers or agents.

B. License Rights in Intellectual Property

(1) University retains a fully- paid, royalty-free, non-exclusive, irrevocable license to use all discoveries and inventions in its educational and research programs and activities.

(2) University retains title to all inventions made exclusively by University faculty, students

employees. Sponsor, at Sponsor's election may pay all costs and expenses of prosecuting and maintaining patent protection and thereby will be entitled to a fee-free, license with the field(s) of use and royalty rates to be determined by good faith negotiations which shall consider Sponsors total support of the development of the discovery or invention. Should Sponsor decline to pay the above cited costs and expenses, any license to Sponsor may include payment of an initial license fee as well as royalties, both of which shall be established by good faith negotiations between the parties and which negotiations shall consider the potential commercial value of the discovery or invention, the scope or extent of the licensed interests, and similar factors.

(3) For jointly owned discoveries, if Sponsor pays all fees and costs for prosecuting and maintaining patent protection, Sponsor shall enjoy the right of first refusal to an exclusive license of University's Interest in the discovery or invention. Such license shall be fee-free with royalty rates and other license terms and conditions to be established by good faith negotiations between the parties. Should Sponsor decline to pay all costs and expenses of prosecuting and maintaining appropriate protection for the discovery or invention and should University successfully prosecute patent protection, University shall enjoy the right to grant exclusive license to any party with terms and conditions to be established by negotiations.

ARTICLE IX. PRESS RELEASES

Statements from the Sponsor concerning the research project conducted under this agreement *wherein the name of the University* is identified shall not be made or released to any medium of public communication by the Sponsor, except with the prior, written consent of the Vice President for Research. Statements from the University concerning the research project conducted under this agreement *wherein the name of the Sponsor* is identified shall not be made or released to any medium of public communication by the University, except with the prior, written consent of the Sponsor. However, exception is made hereunder to the regular reports of the University, which may include the name of the Principal Investigator, the title of the project, the name of the Sponsor, and the amount of funding provided.

ARTICLE X. INDEPENDENT CONTRACTOR

In the performance of all services hereunder University shall be deemed to be and shall be an independent contractor and, as such, University shall not be entitled to any benefits applicable to employees of Sponsor. Neither party is authorized or empowered to act as agent for the other for any purpose and shall not on behalf of the other enter into any contract, warranty, or representation as to any matter. Neither party shall be bound by the acts or conduct of the other.

ARTICLE XI. LIABILITY

Both parties represents that each has adequate liability insurance, such protection being applicable to officers, employees, and agents which acting within the scope of their employment. Each party hereby assumes any and all risks of personal injury and property damage attributable to the negligent acts or omission of that party and the officers, employees, and agents thereof.

University represents University has no liability insurance policy as such that can extend protection to Sponsor.

ARTICLE XII. TERMINATION

This contract may be terminated by either parties hereto upon written notice delivered to the other party at least thirty (30) days prior to intended date of termination. By such terminations, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. Should termination occur for convenience of Sponsor, it is agreed that payment will be received for all costs accrued

by University as of the date of termination, including non-cancelable obligations, which shall include all non-cancelable contracts, fellowships, graduate student stipends or postdoctoral associate appointments called for in Attachment A. Obligations for project-related fellowships, postdoctoral associate, or graduate student stipends shall be discharged no sooner than the end of University's academic year during which a termination was effected for convenience of Sponsor.

ARTICLE XIII. Special Conditions

ARTICLE XIV. Merger Clause

Superseding and replacing all other agreements written or oral, this is the complete and entire agreement between the parties regarding the subject hereof and it may be modified or amended only by a mutually signed writing.

ARTICLE XV. Acknowledge and Acceptance

Now, therefore and in consideration of the parties hereto have caused this contract to be executed as of the date set forth herein below by the duly authorized representatives.

CLEMSON UNIVERSITY

SPONSORING AGENCY

Christian E.G. Przirembel Date
Vice President for Research and
Economic Development

Name Date

Title

CONTRACT NEGOTIATIONS:
Office of Sponsored Programs
Clemson University
300 Brackett Hall
Box 355702
Clemson, SC 29634-5702
Phone: 864 656 2424
Fax: 864 656 0881

PROJECT ACCOUNTING AND INVOICING:
Sponsored Programs Accounting and Administration
Administrative Services Building
Silas Pearman Boulevard
Box 345355
Clemson, SC 29634-5355
Phone: 864 656 4352
Fax: 864 656 0806