

## INDUSTRIAL 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”).

The research contemplated by this Agreement is of mutual interest and benefit to NDSU and Sponsor, 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. RESEARCH

A. Scope of Work. NDSU will perform research as described in the proposal entitled “\_\_\_\_\_” (“Research Project”) which is Attachment B to this Agreement and incorporated herein by reference.

B. Research Term. The Research Project will be conducted during a period from \_\_\_\_\_, 20XX through and including \_\_\_\_\_, 20XX and may be extended only by the Parties’ mutual written agreement. Any dates set forth in the attachments are hereby modified, if necessary, to be consistent with this provision.

C. Reports. NDSU will provide Sponsor with a comprehensive final report upon completion or early termination of the Research Project and such other interim reports as Sponsor may reasonably request.

D. Technical Contacts. \_\_\_\_\_ will serve as the NDSU Principal Investigator for the Research Project and will direct and supervise all aspects of the Research Project for NDSU. \_\_\_\_\_ will serve as the Sponsor Program Manager for the Research Project and will manage all aspect of the Research Project for Sponsor. All communications to Sponsor regarding reports, budget, and intellectual property related to the Research Project should be directed to the Sponsor Program Manager or such other individual as Sponsor may designate in writing.

2. CONSIDERATION In consideration of NDSU's performance hereunder, Sponsor agrees to reimburse NDSU for all costs incurred up to the agreed upon amount of \$XXX,000 which includes a Facilities and Administrative rate computed at the rate of 45% of the direct costs of the Research Project. Invoices will be paid by Sponsor within 30 days of receipt. Invoices will be sent at least quarterly and no more frequently than monthly and should be delivered to the following Sponsor address: \_\_\_\_\_.

### 3. CONFIDENTIAL INFORMATION

A. Close cooperation between NDSU and Sponsor in the conduct of the 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 disclosure and later reduced to writing, marked as “Confidential” and provided to receiving party within thirty (30) 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 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 Research Project shall reside in NDSU; title to all inventions and discoveries made solely by Sponsor inventors resulting from the Research Project shall reside in Sponsor; title to all inventions and discoveries made jointly by NDSU and Sponsor inventors resulting from the Research Program shall reside jointly in NDSU and Sponsor. Inventorship shall be determined in accordance with U.S. Patent Law.
- B. NDSU will disclose to Sponsor any inventions or discoveries resulting from the Research Project as soon as possible after creation and reduction to practice.
- 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 Research Project. Sponsor shall have three (3) months from disclosure of any invention or discovery to notify NDSU of its desire to enter into such option agreement or a license agreement.

- D. If Sponsor and NDSU fail to enter into an agreement during that period of time, NDSU's rights to such invention or discovery may be disposed of in accordance with NDSU policies with no further obligation to Sponsor.

**5. PUBLICATION.** The Principal Investigator has the right to publish or otherwise publicly disclose information gained in the course of the 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 publication. Sponsor shall notify University 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 by Sponsor. NDSU shall have the final authority to determine the scope and content of any publications.

## **6. TERM AND TERMINATION**

- A. This Agreement may be terminated by either party upon notice to the other party..
- 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 SHALL NOT INFRINGE THE PATENT RIGHTS OF ANY THIRD PARTY. EXCEPT WITH REGARD TO CLAIMS ARISING FROM A BREACH OF SECTION 4 OF THIS AGREEMENT WHICH SECTION SHALL BE LIMITED BY SECTION 15 HEREIN, 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.L. Love  
NDSU Dept. 4000  
P.O. Box 6050  
Fargo, ND 58105-6050  
Email: [NDSU.Research@ndsu.edu](mailto:NDSU.Research@ndsu.edu)  
[Joycelyn.Lucke@ndsu.edu](mailto:Joycelyn.Lucke@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.

**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.

**14. EXPORT CONTROL.** The Parties to this Agreement will comply with all applicable United States export laws and regulations, including, *inter alia*, those that may relate to the export or re-export of technical data and information, source code, commodities, materials, equipment, and other items under the International Traffic in Arms Regulations ("ITAR") and/or the Export Administration Act/Regulations ("EAR"). No Party will export, directly or indirectly, certain technical data and commodities without first obtaining any required export license(s) or Government approval(s). In the event any information/data or materials/commodities exchanged between the Parties is export-controlled, the disclosing Party shall provide the receiving Party with written notice containing the nature of the export controls prior to any exchange of said export-controlled data or commodities.

**15. 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.

**16. 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.

**17. 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 including, without limitation, changes in the field of research, total estimated cost, and period of performance, 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.

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

**NORTH DAKOTA STATE UNIVERSITY**

**SPONSOR**

By \_\_\_\_\_  
Joycelyn R L Love  
Assistant Director  
Business Development

By \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**Attachments**

- Attachment A: Project Approval**
- Attachment B: Scope of Work**
- Attachment C: Budget**

**Attachment A**

**INDUSTRIAL SPONSORED RESEARCH AGREEMENT**

**Project Approval**

**AGREED TO AND ACCEPTED:**

As the NDSU Principal Investigator for this Research Project, I affirm that I have read, understood and agree to be bound by the terms and conditions set out in this Agreement and all attachments hereto, including the obligation to protect Confidential Information and disposition of rights in inventions, discoveries and other results as provided by this Agreement. Further, I will ensure that any faculty, staff or student working on this Research Project or having reasonable access to any Confidential Information are aware of the terms of this Agreement and that they will agree to abide by them.

\_\_\_\_\_  
NDSU Principal Investigator

\_\_\_\_\_  
Date

**Project Approval:**

Department Chair/Head

Dean of College

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Attachment B**

INDUSTRIAL SPONSORED RESEARCH AGREEMENT

Scope of Work

SAMPLE

**ATTACHMENT C**

INDUSTRIAL SPONSORED RESEARCH AGREEMENT

Budget

SAMPLE