

WASHINGTON STATE UNIVERSITY

Ins & Outs of Contracts

Office of Research Support & Operations

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October 2017

**Recording date of this workshop is
 October 27, 2017**

**Some of the rules and procedures discussed
 in this workshop are subject to change.**

**Please check university resources
 before relying exclusively
 on this recorded presentation.**

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Today's Content:

- What is a contract?
- What types of research contracts are there?
- What are the University's priorities in contracting?
- How are agreements processed?




What is a Contract?

- A contract is an agreement creating obligations that are enforceable by law.

*"A contract is a promise or a set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty."
Restatement (Second) of Contracts §1 (1981)*

- 4 Basic Elements of a Contract
 - Mutual Assent
 - Consideration
 - Capacity
 - Legality

What is a Contract?

4 Basic Elements of a Contract

- **Mutual Assent:** "a meeting of the minds"
 - Both parties exhibit "contractual intent"
 - Terms of the offer are clear and definite.
 - Acceptance must be clearly communicated.
- Consideration
- Capacity
- Legality

What is a Contract?

Mutual Assent: Terms are Clear and Definite

Key Areas:

- Parties
- Purpose
- Period of Performance
- Price

What is a Contract?
Mutual Assent: Terms are Clear and Definite

Key Areas:

- **Parties:** Who is bound by this agreement?
 - Should be identified up front
 - WSU's legal status – an agency of the State of Washington and institution of higher education
 - WSU is NOT a non-profit/501(c)(3)
 - WSU Foundation is a separate entity
- Purpose
- Period of Performance
- Price

What is a Contract?
Mutual Assent: Terms are Clear and Definite

Key Areas:

- Parties
- **Purpose:** Why are we doing this?
 - Scope of work and budget must be clear.
 - For no-money agreements, the scope is also important—how can the material be used/transferred, what information is protected under an NDA, etc.
 - Other clauses of the agreement must be consistent with the purpose, e.g. publication rights.
- Period of Performance
- Price

What is a Contract?
Mutual Assent: Terms are Clear and Definite

Key Areas:

- Parties
- Purpose
- **Period of Performance:**
 - Start date: important to properly charge effort & expenditures; some sponsors allow pre-award costs.
 - End date: check for reasonableness to avoid needing to secure extensions.
 - Cannot expend funds outside performance period.
- Price

What is a Contract?
Mutual Assent: Terms are Clear and Definite

Key Areas:

- Parties
- Purpose
- Period of Performance
- Price:
 - Structure: cost-reimbursement vs. fixed price
 - Invoice schedule should align with payment schedule. For example, are monthly invoices really needed for with 50% upfront, 50% final payment?
 - Price as reflected in the agreement may vary from WSU official budget categories: lump sum, hourly rate, and summary budgets are all options.

What is a Contract?
4 Basic Elements of a Contract

- Mutual Assent
- **Consideration:** Something bargained for and received by a promisor from a promisee.
 - Examples: \$\$\$, a promise, an act, or agreement to voluntarily refrain from doing something.
- Capacity
- Legality

What is a Contract?
4 Basic Elements of a Contract

- Mutual Assent
- Consideration
- **Capacity:** A person's ability to satisfy the elements required to enter into binding contracts.
 - Agreements are made by WSU, not individuals or components, and signed are by an authorized institutional official. Colleges, departments, professors, etc. cannot bind WSU by contract.
 - Authorized officials must be designated signature authority through a letter from the University President.
 - Dan Nordquist, Associate V-P, ORSO, is the institutional official for sponsored project activity.
- Legality

What is a Contract?
4 Basic Elements of a Contract

- Mutual Assent
- Consideration
- Capacity
- **Legality:** An agreement is legal and enforceable only if it complies with the law of the land and public policy. Any agreement is not legally binding if for illegal purpose.

Contract Types:
What types of research related contracts might you see?

Two Types of Contract

Funding Agreements

- Grant
- Contract
- Cooperative Agreement
- Sub-award
- Facility Use Agreement
- Special Agreements:
 - E.g. CRADA

No-Money Agreements
AKA Alphabet Soup

- Master Agreement
- MOA: Memorandum of Agreement
- NDA: Non-Disclosure Agreement
- MTA: Material Transfer Agreement
- DUA/DSA: Data Use/Sharing Agreement
- Teaming Agreement
- Equipment Loan Agreement

Funding Agreements: Federal

- In general*, Federal Agencies can transfer funding to non-federal entities in two ways: grants/cooperative agreements and procurement contracts.
- Both are “contracts” in the general sense, but they are different legal instruments in gov’t contracting.
- The Federal Grant and Cooperative Agreement Act of 1977 (31 USC 6301 et seq.) establishes the basic distinctions between procurement contracts, grants, and cooperative agreements.

* Some federal agencies are authorized to enter into agreements other than traditional mechanisms, known as “other transaction authority”, but these are comparatively rare. For more information, see: <http://www.gao.gov/assets/680/674534.pdf>.

Funding Agreements: Federal
Comparing Procurement Contracts, Grants, & Cooperative Agreements

- **Procurement Contract:**
 - (1) The principal purpose is to acquire property or services for the direct benefit or use of the U.S. Government; **or**
 - (2) the agency decides in a specific instance that the use of a procurement contract is appropriate.
- **Grant/Cooperative Agreement:**
The principal purpose is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by law.
 - Grant = no substantial involvement of the federal sponsor in carrying out the contemplated activity.
 - Cooperative Agreement = substantial involvement of the federal sponsor is expected.

Funding Agreements: Federal
Comparing Procurement Contracts, Grants, & Cooperative Agreements

	Grants	Contracts
Authority	Specific legislation authorizing federal financial assistance	General authority if in compliance with acquisition law and regulations and for a purpose authorized by law
Purpose	Used to support or stimulate an activity to advance a public purpose	Used to acquire goods/services for the direct benefit of the Government
Announcement	Funding Opportunity Announcement	Solicitation
Scope of Work	Applicant defines SOW	Government initiated
Basis for Award	Technical Merit	Solicitation Criteria. Must incl. both technical evaluation & price/cost
Contract	Award with terms	Contract with clauses
Payment	Usually in advance	Varies by contract type and terms
Regulations	Uniform Guidance, CFR Title 2	Federal Acquisition Regulations

Funding Agreements: Federal
Procurement Contract Types

Contract Types:

- **Firm Fixed Price:** risk of loss on contractor = incentive to control costs; imposes the least administrative burden; invoices based on milestones or deliverables.
- **Cost Reimbursement/Cost Plus Fee:** payment of allowable incurred costs; incremental funding; "Because the absence of precise specifications and difficulties in estimating costs with accuracy...normally precludes using fixed-price contracting for R&D, the use of cost-reimbursement contracts is usually appropriate." - FAR 35.006(c)
- **Time-and-Materials/Labor-Hour:** fixed hourly rates; used when not possible to confidently estimate duration of work or costs.
- **Indefinite-Delivery/Quantity:** can be cost-reimbursement or fixed-price; task orders issued under a base contract with general terms and conditions; task orders may contain additional T&C.

Funding Agreements: Federal
Cooperative Research & Development Agreements: a Special Case

- A CRADA is an agreement between a federal research organization and one or more federal or non-federal parties to work together on a research project of mutual interest.
- The Government may provide personnel, facilities, equipment or other resources with or without reimbursement (but **not funds** to non-federal parties).
- The non-federal parties provide personnel, funds, services, facilities, equipment or other resources to conduct specific research or development efforts that are consistent with the mission of the federal research organization.
- For us, these most often occur related to sub-awards to federal research organizations (i.e. DOD research labs).

Funding Agreements: Non-Federal Sponsors

- **Other Sponsor Types:** Private industry, non-profit organizations and foundations, state and local government entities.
- Non-federal sponsors often have more flexibility on terms, but their standard templates are generally written for suppliers or service providers rather than research, which can result in problematic terms.
- State government agencies can be difficult to negotiate with due to their own internal restrictions. Some are resistant to negotiating their template agreements.

Funding Agreements: Where to go?

ORSO	Business Office (Contracts)	Business Office (Purchasing)
<ul style="list-style-type: none"> • Agreements regarding: <ul style="list-style-type: none"> - Research, teaching or other scholarly activity; - Testing or services work without an authorized service center. • Subcontracts: transfers a portion of the research or substantive effort to another organization. 	<ul style="list-style-type: none"> • Agreements related to business or administrative activities (e.g. real estate, facilities use, inter-local agreements, etc.). • Service Center agreements. 	<ul style="list-style-type: none"> • Personal services contracts: not substantive programmatic work but beyond routine work-for-hire. • Purchase orders for goods and services. • Equipment maintenance agreements.

No Money Agreements

“Consideration” is more than just money. It can be a promise, act, or forbearance.

There are three general categories:

- Agreements that transfer something from one entity to the other for a particular purpose.
- Agreements that memorialize a relationship between the parties.
- Agreements that protect proprietary information.

No Money Agreements

Materials, Data, and Equipment

- A **material transfer agreement** transfers some item (plasmids, mice, seeds, etc.) for a particular purpose (research) subject to certain limitations (forbearance). May require return or destruction of material at conclusion of research or prohibit transfers to other entities.
- **Data use agreements** are like MTAs but for data, often data that is sensitive or proprietary.
- **Equipment loan agreements** allow one party to temporarily transfer equipment to another. This may involve transport costs or liability for loss or damage. If WSU will be assuming liability for loss or damage, this must be approved by the department or college.

No Money Agreements
Relationships


- **Teaming agreements** generally arise as part of large federal proposals. It is an agreement to work together for the purpose of preparing and submitting a proposal.
- A **Memorandum of Understanding or Agreement** is a formal agreement which establishes a partnership for a particular purpose. These agreements are not legally binding and do not obligate the parties to enter into further agreements. An MOU may be a stand alone agreement or may be required for a proposal submission. MOUs are **NOT** used to transfer funding.
* Despite the name, the CAHNRS Gift/Grant Agreements are different altogether. Please direct questions to CAHNRS Business Center.
- **Intellectual Property Management Plans** are related to SBIR/STTR applications or awards. They address the allocation of intellectual property rights, if any, and the right to carry out follow-on research development, or commercialization.

No Money Agreements
Proprietary or Confidential Information

- For all agreements that impose confidentiality obligations, these obligations must not inhibit scholarly activity.
- **Non-Disclosure or Confidential Disclosure Agreements** memorialize the agreement of the parties to maintain the confidentiality of certain information exchanged.
 - They should define (1) the scope of the information that should be treated as confidential, (2) the time period for exchange, (3) the time period for which the information must be kept confidential, and (4) the final disposition of the information.
 - These agreements are used to allow discussion of a potential project or proposal or to facilitate information exchange during a collaborative project.
- **MTAs/DUAs** may also have significant confidentiality obligations.

No Money Agreements: Where to go?

- In general, no-money agreements are processed through ORSO.
- However, agreements relating to work conducted by an approved service center through a service center agreement will be processed by the Business Office.

 **Contract Analysis:**
 What are the University's priorities in contracting?

 **Our Mission**

Washington State University is a **public research university** committed to its land-grant heritage and tradition of **service to society**

- To *advance knowledge* through creative **research and scholarship** across a wide range of academic disciplines
- To *extend knowledge* through innovative **educational programs in which emerging scholars are mentored to realize their highest potential** and assume roles of *leadership, responsibility, and service to society*
- To *apply knowledge* through **local and global engagement** that will *improve quality of life and enhance the economy* of the state, nation, and world

 **Our Mission**

- All agreements entered into by the University **MUST** be consistent with our mission and our authorizing legislation as a state agency.
- Key Concepts:
 - Public
 - Service to Society/Application of Knowledge
 - Research and Scholarship
 - Education

Our Mission

...as a Public University and State Agency

As a State Agency, WSU has only the powers that have been granted by the legislature. We also must be mindful of preserving our sovereign immunity.

Where does this come up?

- **Indemnification:** In Washington, state agencies must be specifically empowered to indemnify—we are not. Preferred language: *Each party will be responsible for the acts and omissions of its employees, etc.*
- **Governing Law:** As a state agency, it is problematic for us to agree to governing law or exclusive jurisdiction in another state.
- **Insurance:** Some agreements seek to impose specific insurance requirements. WSU is self-insured through the State.

Our Mission

...as a Public University and State Agency (Pt. 2)

As a State Agency, WSU has only the powers that have been granted by the legislature. We also must be mindful of preserving our sovereign immunity.

Where does this come up?

- **Injunctive Relief:** NDAs may include a clause stating that breach *will* result in irreparable harm which *will* be entitled to injunctive relief. Agreeing to this language could be read as a waiver of our sovereign immunity, which is bad.
- **Confidentiality:** Due to the Washington Public Records Act, confidentiality obligations must allow disclosures required by operation of law. We also need to ensure that our partners are aware of our obligations under the Act and what can be done to protect their information.

Our Mission

...In Service to Society

Our mission is to serve the people of the state, not advance or subsidize the interests of our sponsors.

Where does this come up?

- **Budgets:** Indirect costs must be subsidized by the state if they are not fully compensated in our Agreements.
- **Liability Issues:** In reviewing agreements we are cognizant of potential legal risk to WSU. We are not a profit-based organization.
- **Technology Transfer:** By partnering with companies, we can find new applications for discoveries made at WSU.
- **Licenses:** Some sponsors request a license in exchange for research funding. This is negotiable, but licenses do have value and are not part of the project budget. If a license is granted, the sponsor pays patent expenses.

Our Mission
To Advance Knowledge Through Creative Research and Scholarship

Where does this come up?

- **Publication Restriction:**
 - Publications and presentations are a major priority.
 - Academic freedom and advancement of knowledge are fundamental to our mission, and without this, projects are of questionable value to the university.
 - Allowing the sponsor to quash unfavorable results implicates our academic integrity.
 - We offer pre-publication review for confidential information or patentable discoveries. Any redaction will be done by our researchers.

Our Mission
To Advance Knowledge Through Creative Research and Scholarship (Pt. 2)

Where does this come up?

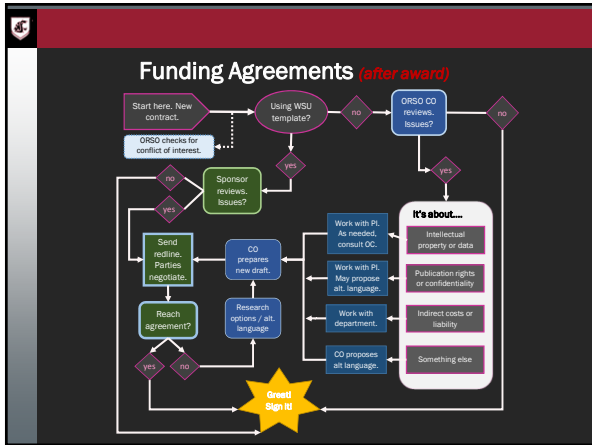
- **Data Rights:** In general, WSU retains the ownership of research data. At the minimum we retain the right to use the data for our internal research and teaching purposes.
- **Confidentiality:** The definition of confidential information must not include the research results.

Our Mission
...Education

Where does this come up?

- **Confidentiality/Publications:** It is critically important that sponsored project agreement terms and conditions not impose upon the ability of graduate students to publish or complete a thesis project.
- **Data Rights:** Faculty need to be able to use the results of their research for their normal teaching, research, and public service activities without hindrance.

Workflows:
How are research contracts negotiated?



No Money Agreements
Internal Forms

Material Transfer Agreements: requires an MTA information sheet. <https://orso.or.wsu.edu/forms.asp>

Outgoing Material Transfer Agreements: please contact the Office of Commercialization for *outgoing* MTAs. <https://commercialization.wsu.edu/Resources/Documents.html>

Non-Disclosure Agreements: require the NDA approval form. <https://orso.or.wsu.edu/forms.asp>

Subawards: require a subaward initiation form. <http://orso.or.wsu.edu/documents/SubcontractInitiation.xlsx>

WASHINGTON STATE UNIVERSITY



**This has been a
WSU Training
Videoconference**

**If you attended this live training session
and wish to have your attendance
documented in your training history,
please notify Human Resource Services
within 24 hours of today's date:**

hrstraining@wsu.edu

Example 1:

Apple Advocacy Alliance
123 Sigma Rd.
Bravo Town, WA 99110

Washington State University
Lighty 280, PO Box 641060
Pullman, WA 99164-1060

Dear Mr. Nordquist:

We are happy to inform you that the proposal entitled, "Analysis of Apple seed varieties", submitted on behalf of Professor Roy Hinkley, has been approved for funding at the originally proposed amount of \$60,000. Please provide banking information for the transfer of funding. To confirm your acceptance of this award, please sign below where indicated and return to me.

Upon completion of the project, the final report may be submitted to the address listed above.

Sincerely,

Mr. Robert Langdon

For Washington State University: _____
Dan Nordquist Date

Example 2: PLANT MATERIAL TRANSFER/CONFIDENTIALITY AGREEMENT

Between
ORGANIZATION
(hereinafter - “**Provider**”)
and
Washington State University (WSU)
(hereinafter - “**Recipient**”)

This agreement serves to acknowledge that the Provider, as the owner of the Plant Material as defined herein below, is hereby willing to transfer the Plant Material to the Recipient under the terms of this Agreement.

The Recipient wishes to obtain the Plant Material through their representative, Dr. Roy Hinkley, Washington State University provided that the Plant Material and related information are used solely for the purpose specified in this agreement below and subject to its terms and conditions.

1. Definitions

“**Plant Material**” shall mean breeder’s lines of PLANT in the quantity of ca. 50 accessions

“**Testing area**” shall mean greenhouses and lab facilities at the WSU Mount Vernon.

“**Testing Period**” shall mean the period starting on October 2016 and ending on July 2017

“**Confidential Information**” shall mean all information pertaining to or connected with the Plant Material or its derivatives which is disclosed by the Provider in a hard or electronic copy and marked or conveyed verbally as “confidential”, “proprietary” or by similar designation and all other information and documents not so marked, but which the recipient believes or reasonably should believe are confidential or proprietary information of the Provider. Confidential Information shall include preparation methods/practices/techniques and/or processes, analysis results, trade secrets, and all other compilations or information which relate to the use, application or provision of the Plant Material and/or derivatives, or to the business of the Provider.

2. Purpose

The Provider, as the owner of the Plant Material and any mutation and / or variety which may be created therefrom, will provide the Recipient with the Plant Material for the sole purpose of conducting field tests, greenhouse tests, or laboratory trials, or small-scale processing trials, with a view to evaluating the Plant Material in the Testing Area as specified above.

3. Transfer of the Plant Material

3.1 The Provider shall transfer the Plant Material and necessary documentation to the Recipient’s representative according to the Recipient’s request.

3.2 For the avoidance of doubt, the transfer of the Plant Material does not in any way constitute a license, or represent an implied license from Provider to Recipient to propagate Plant Material, sell it for commercial purpose or use it in any other way.

4. Confidentiality obligations

The Recipient acknowledges that the Confidential Information is a valuable proprietary asset of the Provider and, for the term of this agreement and thereafter, shall-

4.1 Maintain the Confidential Information in secret and use at least the same degree of care to avoid unauthorized disclosure, use or publication of the Confidential Information as it employs with respect to its own most valued Confidential Information.

4.2 The Recipient shall NOT disclose the Confidential Information to any third party without the prior written consent of the Provider and without first obtaining from each such person or entity a confidentiality agreement approved by the Provider.

4.3 The Recipient shall NOT print or copy, in whole or in part, or otherwise use or dispose of any document or magnetic media containing any of the Confidential Information without the prior written consent of the Provider.

4.4 The Confidential Information shall NOT be used to file a patent application or any other type of intellectual property protection application in any country or to provoke an interference with any such application filed by the Provider.

4.5 Upon the termination of this Agreement, or at the Provider's request, the Recipient shall return to the Provider all materials in whatever form (including copies) comprising or including the Confidential Information.

5. Restrictions on access and use

5.1 The Recipient hereby states that the use of the Plant Material will be only for the Purpose as specified in this Agreement above and in compliance with all applicable laws, relevant governmental regulations and guidelines including, but not limited to, Plant breeder's right law and UPOV convention,.

5.2 The Recipient shall NOT sell or otherwise distribute the Plant Material to any third party for any purpose during term of Agreement and thereafter.

5.3 The Recipient shall NOT, without prior written consent of the Provider, reproduce Plant Material or any mutation or variety which may be created during the Testing Period, nor propagate therefrom nor use it for propagation purposes, nor for the best of its ability permit others to do so; Nor will the Recipient use any of the above for breeding purposes as a male or female parent.

5.4 The Recipient shall use its best efforts to preserve the condition of the Plant Material and prevent unauthorized persons from obtaining any Plant Material and Information.

5.5 The recipient shall not use the Plant Material and/or Information for any commercial purpose. The transfer of Plant Material to the Recipient does not in any way constitute a license or represents an implied license from Provider to Recipient to make, use and/or propagate the Plant Material.

6. Recipient's obligations

The Recipient will enable the Provider to visit the Testing Area, subject to a pre notice of 14 working days. The Recipient shall furnish the Provider with report on plant development, testing procedure and results.

7. Breach

A breach of any of the provisions of sections 5 and 6 of this agreement shall entitle the Provider to a penalty of US \$10.000. The aforesaid in this section shall not derogate nor limit the Provider's rights in taking any legal cause of action available under any law.

8. Disclaimer

The Provider hereby states and the Recipient hereby acknowledges that the Plant Material hereby provided is experimental in nature, and though it has been tested successfully in Israel, is provided without any warranties.

9. Termination

9.1 The Provider shall be entitled, on 30 days written notice, to terminate this Agreement and claim damages and/or any other remedy. For removal of doubt, termination of this Agreement for any reason shall not relieve the Recipient from its obligations under this Agreement which occur or are due. The Provider shall also be entitled to enforce any or all of the provisions of this Agreement by injunctive or other equitable relief ordered by any court of competent jurisdiction.

9.2 Upon completion or termination of the Testing period, the Recipient undertakes to immediately destroy all Plant Material or derivatives in his possession, according to the Provider's instructions.

10. Liability

The Recipient accepts full liability for any damage or losses of any kind caused to a person or entity and will indemnify the provider from any claims or demands.

11. Miscellaneous

11.1 This Agreement shall be governed and construed in accordance with the laws of Israel and the district courts of Tel-Aviv district will have jurisdiction upon this agreement

11.2 This Agreement does not exhaust the terms and conditions for the parties' Collaboration and represents preliminary understandings only. All terms and conditions for the parties' Collaboration shall be defined and detailed in a commercial License Agreement which shall be based, inter alia, on the preliminary understandings as stated above in this Agreement.

11.3 This Agreement is not assignable by the Recipient to any third party.

IN WITNESS WHEREOF, the parties hereto have respectively caused this agreement to be signed by their duly authorized representatives on the day herein before set forth.

For and on behalf of the Recipient

Today, the _____ of _____, 2016

For and on behalf of the Provider

For and on behalf of the Recipient

Principal Investigator

Professor

Professor Lucy Jaggat

Roy Hinkley

Head of R & D Applications

Director, WSU Mount Vernon NWREC

Gavin Belson

Mr. Robert Langdon

Example 3:

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) is made as of [date] (“**Effective Date**”) by and between Sponsor Corp., a Delaware corporation having a place of business at 1 Rocket Road, Anytown, AA 90000 (“**Company**”), and Washington State University (“**Consultant**”) (each a “**Party**” and together the “**Parties**”). Company desires to retain as an independent contractor to perform services for the Company and Consultant is willing to perform such services on terms set forth more fully below. In consideration of the mutual promises contained herein, the Parties agree as follows:

ENGAGEMENT OF SERVICES. Consultant agrees to provide services to Company as described in **Attachment A** attached hereto (collectively, the “**Services**”). Consultant may not subcontract or otherwise delegate its obligations under this Agreement without Company’s prior written consent.

COMPENSATION. As sole compensation for the performance of the Services, Company will pay to Consultant the fee specified in **Attachment A** hereto. Payment of Consultant’s fees will be in accordance with the terms and conditions set forth below and in **Attachment A**.

Consultant shall invoice Company in accordance with Attachment A. Invoices shall include payment instructions and be submitted electronically to invoices@sponsorcorp.com and/or sent to:

Accounts Payable
Sponsor Corp.
1 Rocket Road,
Anytown, AA 90000

Payments shall be made net sixty (60) days of Company’s receipt of Consultant’s invoice, unless such invoice is disputed by Company in good faith.

INDEPENDENT CONTRACTOR RELATIONSHIP. Consultant’s relationship with Company will be that of an independent contractor. Because Consultant is an independent contractor, Company will not withhold or make payments for social security, make unemployment insurance or disability insurance contributions, obtain worker’s compensation insurance on Consultant’s behalf, or withhold state and federal income taxes from its payments to Consultant. Consultant accepts exclusive liability for complying with all applicable state and federal laws governing self-employed individuals and agrees to indemnify and defend Company against any and all such taxes or contributions, including penalties and interest.

TRADE SECRETS; INTELLECTUAL PROPERTY RIGHTS.

Proprietary Information. The Parties each agree during the term of this Agreement and thereafter that it will take all steps reasonably necessary to hold each other’s proprietary and confidential information in trust and strict confidence in accordance with the Mutual Nondisclosure Agreement entered into between the parties on [date].

Third Party Information. Consultant understands that Company might have received and may in the future receive from third parties confidential or proprietary information (“**Third Party Information**”) subject to a duty on Company’s part to maintain the confidentiality of such information and use it only for certain limited purposes. Consultant agrees to hold Third Party Information in confidence and to use such Third Party Information only in connection with Consultant’s work for Company as set out in this Agreement, unless expressly authorized in writing by an authorized representative of Company.

No Conflict of Interest. Consultant agrees during the term of this Agreement not to accept work or enter into a contract or accept an obligation, inconsistent or incompatible with Consultant’s obligations under this Agreement or the scope of services rendered for Company. Consultant warrants that to the best of its knowledge, there is no other existing contract or duty on Consultant’s part inconsistent with this Agreement. Consultant agrees not to disclose to Company, or bring onto Company’s premises, or induce Company to use any confidential information that belongs to anyone other than Company or Consultant.

Work Product. As used in this Agreement, the term “**Work Product**” means all work product, deliverables, information, data, discoveries, concepts, ideas, inventions (whether or not patentable), developments, designs, know-how, trade secrets, improvements, works of authorship, reports, documents, computer programs, source and object code, mask works and any other materials solely or jointly conceived, written, created, prepared, made, reduced to practice, or learned by Consultant in the course of any Services performed for Company and all Intellectual Property Rights (defined below) related to and contained therein. Consultant agrees to disclose all Work Product to Company promptly and in writing. Consultant agrees that any and all Work Product shall be the property of Company. “**Intellectual Property Rights**” means all trade secret, copyright, trademark, mask work, patent and moral rights, and all other intellectual property or proprietary rights recognized by the laws of any country.

License of Patent. Consultant grants Company a nonexclusive, worldwide, royalty free, fully paid up, transferable, sublicenseable, perpetual, irrevocable license to copy, display, upload, perform, distribute, store, modify, prepare derivative works and otherwise use any Consultant pre-existing Intellectual Property incorporated into any Work Product delivered to Company under this Agreement, and the right to allow others to do the same, solely as incorporated into such Work Product. This license will be deemed revoked if Company terminates this Agreement for its convenience. This license shall remain in effect if Consultant files or has filed against it a petition in bankruptcy, becomes insolvent, or suffers a material adverse change in financial condition, regardless of whether the Agreement is therefore terminated.

TERMINATION.

Default. Company, by written notice, may terminate this Agreement for default, in whole or in part, if Consultant (i) materially fails to comply with any of the terms of this Agreement; (ii) fails to make progress so as to endanger performance of this Agreement; (iii) fails to provide adequate assurance of future performance; (iv) files or has filed against it a petition in bankruptcy; or (v) becomes insolvent or suffers a material adverse change in financial condition. Consultant shall have ten (10) days (or such longer period as Company may authorize in writing) to cure any such failure after receipt of notice from Company. Consultant shall continue all Services not terminated or cancelled. Default involving bankruptcy or adverse change in financial condition shall not be subject to the cure provision. Following a termination for default of this Agreement, Consultant shall be compensated only for Services actually delivered and accepted. Upon the occurrence and during the continuation of a default, Company may exercise any and all rights and remedies available to it under applicable law and equity, including without limitation, cancellation of this Agreement. If after termination for default under this Agreement, it is determined that Consultant was not in default, such termination shall be deemed a termination for convenience.

Consultant, by written notice, may terminate this Agreement for default if Company materially fails to comply with any terms of this Agreement. Company shall have ten (10) days to cure any such failure.

Termination for Convenience. Company reserves the right to terminate this Agreement, or any part hereof, for its convenience. Company shall terminate by delivering to Consultant a notice of termination specifying the extent of termination and the effective date. In the event of such termination, Consultant shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Agreement, Consultant shall be paid a percentage of the fees set out in Exhibit A reflecting the percentage of the Services performed prior to the notice of termination, plus reasonable charges Consultant can demonstrate to the satisfaction of Company using its standard record keeping system have resulted from the termination. Consultant shall not be paid for any Services performed or costs incurred following such termination that reasonably could have been avoided. In no event shall Company be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total fees set out in Exhibit A. Consultant’s termination claim shall be submitted within forty-five (45) days from the effective date of the termination. Consultant shall continue all Services not terminated.

Noninterference with Business. During the term of this Agreement and for a period of one (1) year immediately following termination of this Agreement, Consultant agrees not to solicit or induce any employee or independent contractor to terminate or breach an employment, contractual, or other relationship with Company.

Return of Company Property. Upon termination or expiration of the Agreement or earlier as requested by Company, Consultant will deliver to Company any and all drawings, notes, memoranda, specifications, devices, formulas, and documents, together with all copies thereof, and any other material containing or disclosing any Work Product, Third Party Information, or Proprietary Information of Company.

Survival. Sections 4, 5.3, 5.4, 5.5, 6, 7, 9 and 10 shall survive termination of this Agreement.

INDEMNIFICATION. Consultant agrees to indemnify, defend and hold harmless Company and its directors, officers and employees from and against all claims, taxes, losses, damages, liabilities, costs and expenses, including attorneys' fees and other legal expenses ("Losses"), arising directly or indirectly from or in connection with (i) any negligent, reckless or intentionally wrongful act of Consultant or its assistants, employees, subcontractors, or agents, (ii) a determination by a court or agency that the Consultant is not an independent contractor, (iii) any breach by Consultant or its assistants, employees or agents of any of the covenants or warranties contained in this Agreement, (iv) any failure of Consultant to perform the Services in accordance with all applicable laws, rules and regulations, or (v) any violation or alleged violation of a third party's rights (including without limitation infringement of copyright or patent rights, or misappropriation of trade secrets) resulting in whole or in part from Company's use of the Work Product of Consultant under this Agreement.

REPRESENTATIONS AND WARRANTIES. Consultant represents and warrants that: (a) Consultant has the full right, authority, and competency to enter into this Agreement and perform its obligations hereunder, (b) Consultant has the right and unrestricted ability to license the rights as set forth in Section 4, and (c) the Work Product shall be performed in a good and workmanlike manner and shall not infringe, misappropriate or otherwise violate any confidential or proprietary information, copyright, moral right, patent, trademark, trade secret, mask work, right of publicity or privacy, or any other worldwide intellectual property or proprietary right of any entity, whether contractual, statutory or common law.

EXPORT/IMPORT CONTROL

Consultant agrees to comply with all applicable U.S. export and import control laws and regulations, specifically including, but not limited to, the requirements of [laws and regs]; including the requirement for obtaining any export or import license or other written authorization, if applicable. Without limiting the foregoing, Consultant agrees that it will not transfer any export-controlled item, data, or services, to include transfer or disclosure (including oral or visual disclosure) to any foreign person employed by or associated with, or under contract to Consultant or Consultant's lower-tier suppliers (whether in the United States or abroad), without the authority of an export license, agreement, or applicable exemption or exception.

Consultant agrees to notify Company if any deliverable under this Agreement is restricted by export control laws or regulations.

Consultant shall immediately notify a Company authorized representative if Consultant is, or becomes, listed in any Denied Parties List or if Consultant's export privileges are otherwise restricted, suspended or revoked in whole or in part by any U.S. Government entity or agency.

Consultant shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Consultant, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

GENERAL PROVISIONS.

Release of Information. No public release of any information with respect to this Agreement or the subject matter hereof, will be made by Consultant without the prior written approval of Company.

Severability. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. If moreover, any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical scope, activity, or subject, it shall be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable law as it shall then appear.

Assignment. This Agreement may not be assigned by Consultant without Company's consent, and any such attempted assignment shall be void. Company may assign this Agreement, and any duties and rights hereunder, to any entity that directly or indirectly controls, is controlled by, or is under common control with Company.

Notices. All formal notices under this Agreement must be in writing and must be mailed by registered or certified mail, postage prepaid and return receipt requested, or delivered by hand to the Party to whom such notice is required or permitted to be given. Any such notice will be considered to have been given when the original and any copy is received by the Party to whom notice is given, as evidenced by written and dated receipt of the receiving Party. Other requests and communications may be submitted through electronic means to the relevant individual(s) of the other Party including the Technical Point of Contact for each Party identified in Exhibit A.

Governing Law This Agreement will be governed and construed in accordance with the laws of the State of California, without regard to its conflict of laws provisions.

Applicable Laws. Consultant, in the performance of this Agreement, agrees to comply with all applicable local, state, and federal laws, orders, rules, regulations, and ordinances. Consultant shall procure all licenses/permits, and pay all fees, and other required charges, and shall comply with all applicable guidelines and directives of any local, state, and/or federal governmental authority. If, as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by Consultant, its officers, employees, agents, suppliers, or subcontractors at any tier: (i) Company's contract price or fee is reduced; (ii) Company's costs are determined to be unallowable; (iii) any fines, penalties, or interest are assessed on Company; or (iv) Company incurs any other costs or damages; Company may make a reduction of corresponding amounts (in whole or in part) owed under this Agreement or any other contract with Consultant, and/or may demand payment (in whole or in part) of the corresponding amounts. Consultant shall promptly pay amounts so demanded.

Injunctive Relief. A breach of any of the promises or agreements contained in this Agreement will result in irreparable and continuing damage to Company for which there is no adequate remedy at law, and Company is therefore entitled to injunctive relief as well as such other and further relief as may be appropriate.

Waiver. No waiver of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver by Company of any right under this Agreement shall be construed as a waiver of any other right. Company shall not be required to give notice to enforce strict adherence to all terms of this Agreement. A waiver must be provided in writing by an authorized representative of Company or Consultant to be effective.

Entire Agreement. This Agreement, and any attachments, either enclosed herein or incorporated by reference, represent the final, complete, and exclusive agreement of the parties with respect to the subject matter hereof. This Agreement supersedes all prior discussions between the Parties. No modification of or amendment to this Agreement be effective unless in writing and signed by the Party to be charged. The terms of this Agreement will govern all Services undertaken by Consultant for Company.

Counterparts. This Agreement may be executed in counterparts and may be exchanged by facsimile or electronically scanned copy exchanged via email, each of which shall be deemed to be an original and all of which together shall constitute one and the same Agreement.

In Witness Whereof, the Parties have caused this Consulting Agreement to be executed by their duly authorized representatives.

SPONSOR CORP.

**WASHINGTON STATE UNIVERSITY,
DEPARTMENT OF SCIENCE**

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____