

PROFESSIONAL SERVICES CONSULTING AGREEMENT

THIS AGREEMENT, effective as of the date of the last signatory hereto (the "Effective Date"), is by and between **New Jersey Institute of Technology** ("NJIT"), a public research university, located at University Heights, Newark, New Jersey 07102, and ("Consultant"), an individual residing at .

WHEREAS, NJIT requires consulting services in the scientific areas of , and Consultant represents that he has the education, training, and experience required by NJIT for this effort;

WHEREAS, this Agreement is of mutual interest and benefit to NJIT and Consultant and will further the research objectives of NJIT in a manner consistent with its status as a non-profit, tax-exempt public research university;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties hereto agree to the following:

- 1. Services:** During the term of this Agreement, Consultant will provide consultation, guidance and technical assistance to NJIT as outlined in the Scope of Work attached hereto as **Exhibit A**, which is incorporated by reference as if set forth at length herein. At the sole discretion of NJIT, this Scope of Work may be reasonably modified, reduced or expanded. Consultant may be requested to work on other matters, programs and/or projects. All requests by NJIT for additional professional services shall be subject to the review and approval of NJIT'S Senior Vice President for Research and Development.
- 2. Term of Agreement/Termination:** The term of this Agreement shall be for () months beginning from the Effective Date, unless terminated earlier as provided herein. NJIT may terminate this Agreement for any reason or no reason, upon twenty (20) days advance written notice to Consultant. Consultant may terminate this Agreement in the event that NJIT commits a breach of its material obligations hereunder, upon twenty (20) days advance written notice and where NJIT does not cure the breach.
- 3. Compliance With All Laws:** Consultant agrees to perform all services required under this Agreement at the highest standard of quality, and in accordance with NJIT policy and all applicable local, state and federal requirements and executive orders applicable to the Work, as these requirements may be amended from time to time, including but not limited to: (a) Non-Discrimination In Employment and Equal Employment Opportunity (NJS 10:2-1 through 10:2-4 and NJS 10:5-31 et seq; Titles VI and VII of the Civil Rights Act of 1964; Executive Orders 11246 and 11375 as implemented by 41 CFR Part 60; Rehabilitation Act of 1973, Section 504; Age Discrimination Act of 1976; and Title IX of Higher Education Act of 1972);

(b) Drug-Free Workplace Act of 1988 (34 CFR Part 85); (c) Byrd Anti-Lobbying Amendment (31 USC 1352); (d) Protection of Human Subjects (45 CFR Part 46); (e) Clean Air Act (42 USC 7401 et seq.); (f) Water Pollution Control Act (33 USC 1251 et seq.); (g) Notification of Employee Rights Concerning Payment Of Union Dues (Executive Order 13201 as implemented by 29 CFR Part 470); (h) Fair Labor Standards Act of 1938 (29 CFR Part 5); and (i) US Export Control (Arms Export Control Act, 22 USC 2751-2794; International Traffic and Arms Regulation, 22 CFR Part 120; Arms Administration Act, 50 USC 2401-2420; and Export Administration Regulations 15 CFR 730-774). This provision shall be included in all sub-award documents related to this Agreement at all tiers.

4. Payment: NJIT will pay Consultant at the rate of _____ per eight (8) hour day devoted exclusively to Consultant's performance of this Agreement (Saturdays and Sundays excluded) or to the extent applicable, the maximum per diem amount permitted by the U.S. and/or state government sponsor, whichever amount is less. Such U.S. and/or state sponsor's prime contract and/or grant is attached hereto as **Exhibit B** (if any). NJIT should be invoiced for consulting fees in an amount not to exceed _____. Invoicing should be on a monthly basis, beginning after the Consultant has completed his first four (4) weeks of service. Under no circumstances shall Consultant perform work having a value (based on the agreed upon per diem rate) in excess of the maximum permitted fee. Payment by NJIT is due within thirty (30) days from receipt of an approved invoice. The above fees describe the entire financial obligation of NJIT under this Agreement or otherwise. No additional fees will be paid by NJIT to consultant for travel expenses, accommodations, meals, mileage, telephone, and the like unless approved in writing by NJIT in advance of Consultant incurring the same.

5. Invoices/Reporting: All invoices submitted to NJIT by Consultant for payment must include a written, task based report detailing the services actually and reasonably provided by Consultant to NJIT along with the time spent by Consultant performing the same. Consultant shall certify in writing that each such invoice is complete and accurate. Payment is contingent on provision of such invoices. Consultant's tax identification number and the period of performance for which the invoice is submitted, should also be contained on the same. Consultant shall provide technical reports in accordance with the Scope of Work attached as **Exhibit A** or as otherwise required by the prime contract and/or grant attached hereto as **Exhibit B**.

6. Independent Contractor/No Agent: Consultant is and shall be an independent contractor and not an employee. As such, Consultant shall not be entitled to any right or benefit applicable to NJIT employees including, without limitation, vacation, sick, or administrative days; medical, dental, or life insurance or benefits; or pension benefits. Consultant understands and agrees that because he is an independent contractor, NJIT will make no deduction from payment hereunder on account of federal or state income tax, social security, disability or unemployment insurance, or the like. Consultant is solely responsible for payment of all governmental obligations arising in connection with this Agreement. Neither party nor any of their respective employees or independent contractors 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, except as specifically allowed

herein and limited to the narrowest construction thereof. Neither shall be bound by the acts or conduct of the other. Consultant covenants that he will not at any time represent himself, either directly or by implication, as an agent of NJIT or as having authority to bind NJIT.

7. Intellectual Property: All data, improvements, discoveries, copyrightable material, and other intellectual property conceived, compiled, organized, created, improved, or reduced to practice by Consultant shall be the sole and exclusive property of NJIT, without royalty or payment obligation of any kind. Consultant agrees that each such work shall constitute a "work made for hire" pursuant to the U.S. copyright law. The Consultant may not publish the results of his findings or participation in the performance of this Agreement without the prior written approval of NJIT. Consultant hereby grants to NJIT a nonexclusive, perpetual, transferable, irrevocable and royalty free license to utilize any relevant Consultant preexisting intellectual property to the extent the same is incorporated, in whole or in part, into the deliverables of this Agreement.

8. Confidentiality: Consultant understands that, in the course of providing professional services hereunder, NJIT may disclose to Consultant certain sensitive, confidential personnel and financial information. All such information received, disclosed to, developed or created by Consultant in the course of providing services to NJIT shall be confidential and proprietary as to NJIT. Consultant shall not disclose confidential and proprietary information to any third party in a manner not directly related to the provision of services hereunder, except with the prior written consent of NJIT or where compelled by law. Consultant's confidentiality obligations described herein shall continue for the term of this Agreement and any renewal thereof, and for a period of three (3) years thereafter. With respect to trade secrets, the obligation shall last for so long as the information is treated as a secret by NJIT.

9. Non-Discrimination. Consultant promises that he will perform the Work without regard to the race, sex, sexual orientation, age, religion, ethnic or national origin, disability or veteran's status of any employee, student or representative of NJIT or any entity (and its employees) contracting with NJIT. Consultant promptly will report to NJIT any instance of such discrimination of which he becomes or reasonably should have become aware.

10. Assignment: NJIT has retained Consultant based, in part, upon his representation of personal skill and qualification to perform the Work. Consultant shall not assign his rights or obligations hereunder without the prior written consent of NJIT. Neither shall he subcontract, either directly or indirectly, any of his responsibilities hereunder without the prior written consent of NJIT.

11. Conflicts Of Interest: Consultant represents that there are no conflicts of interest, as defined by NJIT policy concerning the same, between services to be rendered under this Agreement and Consultant's services and employment with other parties. If, during the course of this Agreement, Consultant becomes aware of facts which constitute or may give rise to a conflict of interest, Consultant shall immediately advise NJIT, so that it may determine appropriate procedures for managing the same.

12. Indemnification/Hold-Harmless: Consultant shall at all times defend, indemnify and

hold harmless NJIT, from and against any and all third party claims, damages, liabilities, costs and expenses, whether in contract or tort, arising out of personal injury, including death, or property damage, sustained in whole or in part as a result of or arising out of any negligent and/or intentional act or omission of Consultant.

13. Insurance: Consultant shall procure and maintain during the entire term of this agreement, commercial general and/or professional liability insurance with NJIT named as an additional insured thereon with a limit of not less than \$1,000,000 per occurrence for bodily injury and property damage/\$2,000,000 aggregate. Consultant shall also procure and maintain during the term of this Agreement workers compensation and employers liability insurance at statutory limits for workers' compensation and no less than \$1,000,000 for employers' liability.

14. New Jersey Business Registration Requirement: Consultant is hereby given notice that a business organization or individual that fails to provide a copy of a business registration as required pursuant to section 1 of P.L.2001, c.134 (C.52:32-44 et al.) or subsection e. or f. of section 92 of P.L.1977, c.110 (C.5:12-92), or that provides false business registration information under the requirements of either of those sections, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a contracting agency such as NJIT. No payment shall be made by NJIT under this Agreement until Consultant provides an acceptable New Jersey Business Registration Certificate.

15. Prime Contract Obligations: All applicable provisions contained in the prime contract and/or grant attached hereto as **Exhibit B** (if any), shall be binding upon Consultant, and Consultant agrees to comply with same.

16. Limitation Of Liability: NJIT SHALL HAVE NO LIABILITY FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES EVEN IF NJIT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND OPPORTUNITY OR CLAIMS FOR SUCH DAMAGES BY CONSULTANT. IN ANY EVENT, THE LIABILITY OF NJIT FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE TOTAL AMOUNT OF THIS AGREEMENT.

17. General Provisions:

(a) The failure by either party to enforce any provision of this Agreement or to timely insist on performance shall not constitute or be construed as a waiver of any right to strictly enforce a contractual provision.

(b) Except as set forth in the Scope of Work attached as **Exhibit A**, Consultant warrants that its performance of this Agreement does not depend on the acquisition of rights from any third party and the conveyance of the deliverables described in the Scope of Work attached as **Exhibit A** will not knowingly infringe on the intellectual property rights of any third party.

(c) Any notice provided for in this Agreement shall be in writing and deemed to have been received if sent by United States certified mail, postage pre-paid.

(d) The provisions of this Agreement shall be governed by the laws of the State of New Jersey, and the parties agree that the exclusive forum for any dispute concerning this Agreement shall be the Superior Court of New Jersey, Essex County.

(e) This Agreement constitutes the entire understanding between the parties regarding this matter and merges any and all prior discussions, representations, promises, and warranties within its scope. There are no representations, warranties or promises not expressly set forth in this Agreement. Except as expressly set forth herein, this Agreement may not be modified, renewed, or extended, except in writing, signed by both parties.

(f) Any provisions of this Agreement, which by their nature extend beyond termination, e.g., without limitation, Articles 1, 3, 7, 8, 12, 13 and 16, shall survive such termination.

AGREED TO AND ACCEPTED BY:

NEW JERSEY INSTITUTE OF
TECHNOLOGY

Dr. Donald H. Sebastian
Sr. VP Research & Development

Dated: _____

Dated: _____

NJIT Account #

Signed and sworn to before me on:

Notary Public

(date)

EXHIBIT A

Scope Of Work

SAMPLE