

Agreement # _____

Between

The University of North Carolina at Charlotte (University)

And

_____ (Prime)

WHEREAS, the United States Government (the “**Government**”) has awarded proposal dated _____, 20__, under Contract _____ dated _____, 2009 to **Prime** to procure services for the project known as “_____” (the “**Project**”); and

WHEREAS, this Agreement is entered into to enable each party to enjoy the benefits of the other parties’ capabilities in areas of work which are not independently available within the respective organizations;

WHEREAS, this Agreement provides the programmatic, fiscal, and administrative arrangement for the participation of **University**, ensuring the compliance with all pertinent Federal regulations and policies and facilitating a smoothly functioning agreement.

NOW, THEREFORE, the parties agree as follows:

1. Statement of Work: **University** will use reasonable efforts to perform research as described in its Statement of Work which is attached hereto as **Exhibit "A"** and incorporated by reference.

2. Period of Performance: The period of performance for this Subcontract is _____, 2009 through _____, 2009, unless amended in writing by mutual agreement of the parties and signed by an authorized official for each party. .

3. Programmatic Consideration: The Principal Investigator for the project is _____ of **University**, who will provide overall direction of the project and will represent the **University** in all programmatic matters. The Principal Investigator for the **Prime** component of the project is _____ who will provide direction for the **Prime** portion of the **Project**. Specific tasks to be performed by **University** under this **Project**, incorporated herein as **Exhibit “A”** shall become binding upon **University**.

4. Communications

SPONSOR:

Contract Administrator:

Technical Representative

PRIME
ADDRESS
CITY, STATE, ZIP
Email:
Telephone: (704) -
Fax: (704) -

PRIME
ADDRESS
CITY, STATE, ZIP
Email:
Telephone: (704) -
Fax: (704) -

UNIVERSITY

Sub Contract Administrator:

Technical Representative

The University of NC at Charlotte
9201 University City Boulevard
Charlotte, NC 28223
Email _____
Telephone: (704) 687-
Fax: (704) 687-

The University of NC at Charlotte
9201 University City Boulevard
Charlotte, NC 28223
Email _____
Telephone: (704) 687-
Fax: (704) 687-

5. Reporting Procedure University agrees to provide **Prime** with all documentation and reports necessary for **Sponsor** to complete, in a timely manner, all reports required by the Agencies **Contract**, incorporated herein as Exhibit B.

6. Financial Considerations **Prime** agrees to pay to **University** its actual fully burdened costs incurred in the performance of the efforts set forth in Article 1 "Statement of Work" above, provided, **Prime** will not be obligated to pay **University** any sums in excess of _____ and no/100 dollars (\$**000,000.00**), nor will **University** be obligated to incur costs in excess of said sum without the written consent of **Prime**.

Prime agrees to Reimbursement of expenses in accordance with the approved budget, which are "not to exceed" figures, attached herein as Exhibit "A", and shall be invoiced by the **University** in the following manner:

University will submit monthly invoices for each subsequent month to **Prime** detailing the costs involved to accomplish the University portion of the project as reflected herein as Exhibit "A," which shall provide for costs incurred in accordance with the budget categories in the initial budget set forth in Exhibit "A."

A final invoice for expenditures must be submitted within 45 days from the date this agreement expires.

University Financial Representative
Name
Title
The University of North Carolina at Charlotte
9201 University City Boulevard
Charlotte, NC 28223-0001
Phone
Email

7. Administrative Considerations: The administrative policies of **University** will apply to the **University** portion of the **Project**, with the assurance that the policies comply with Circular OMB A-21 and Circular A-110. The parties hereto acknowledge that the **University** is subject to federal cost accounting principles under OMB Circular A-21 "Cost Principles for Educational Institutions."

8. Use of Names in Publicity **Prime** agrees that no advertising or publicity matter having or containing reference to **University** will be disseminated without the prior written consent of **University**

9. Insurance: The University and its employees are insured for coverage of bodily injury and Property damage liability by the North Carolina State Tort Claims Act (N.C. Gen. Stat. §143-291 et

seq.) and for worker's compensation by the State of North Carolina. This is recognized and accepted in place of similar commercial insurance.

10. Assurances: By acceptance of this agreement, **University** agrees that it will comply with the following terms and conditions incorporated by reference, except as modified by the terms of this Agreement.

- **University** shall be subject to the audit requirements as described in OMB Circular A-133.
- All Government terms and conditions referenced in the **Government** contract will apply to **University** only when such provisions are required mandatory flow-downs to **University**, (**Exhibit "B"**). All such clauses are to be read as appropriately modified for educational institutions and as applicable to this subcontract, are hereby incorporated either in full text or by reference and made part of this subcontract. Those incorporated by reference shall have the same force and effect as though set forth in full text herein.

11. Order of Precedence: The documents listed below are hereby incorporated by reference. In the event of an inconsistency or conflict between or among the provisions of this Subcontract, the inconsistency shall be resolved by giving precedence in the following order:

Subcontract _____
Exhibit A: University Statement of Work
Exhibit B: Prime agency contract

12. Intellectual Property

12.1 Unless otherwise specified in the **Prime** agency contract, the following terms shall obtain with respect to patentable inventions conceived or first reduced to practice in the performance of this Subcontract.

12.2 The parties acknowledge that ownership and licensing of Subject Inventions (as defined in 35 U.S.C. §201(e)) is established under the Bayh-Dole Act (35 U.S.C. 200-212) with implementing regulations set forth in 37 CFR 401. Prime intends to honor and comply with the Bayh-Dole Act and will work with and support the **University** should any conflict or disagreement arise with the Government related to rights, title, ownership or licensing of intellectual property developed for this Project.

12.2.1 Title to any invention first conceived or reduced to practice solely by employees or agents of the **University** in the performance of research conducted pursuant to this Agreement shall remain with the **University**, which shall have the sole right to determine the disposition of any such inventions or other rights resulting there from, including the right to determine whether or not a patent application shall be filed, and **University** shall so notify the **Prime**.

12.2.2 Title to any invention first conceived or reduced to practice in the performance of research conducted pursuant to this Agreement by employees or agents of the University and employees or agents of the **Prime** shall belong jointly to **University** and **Prime**, and each as joint owner thereof may file for patents worldwide, use or dispose of the same in its discretion without the prior written consent of, or any accounting to, the other.

12.2.3 Title to any other inventions first conceived or reduced to practice in the performance

of work under this Agreement solely by **Prime** or its employees or agents shall belong to **Prime**, and **University** and its employees or agents shall have no right, title, or interest therein.

13. Confidentiality. The parties agree as follows:

a. It is agreed that **University** or **Prime** may, from time to time, make available to the other party's employees, agents, or students confidential information. Confidential information means information disclosed to the other party's personnel which is designated by the disclosing party at the time of disclosure either orally or in writing as confidential information. Verbal notification as to the confidential nature of the information disclosed will be confirmed by written notice to the other party within 15 days of disclosure. It is the responsibility of the disclosing party to clearly and unambiguously identify to the receiving party any and all classified information disclosed under this Subcontract at the time of disclosure and to ensure that all marking requirements are met so that classified information will be treated as Confidential Information. Confidential Information will only be disclosed to a party's employees, agents, or students as needed to fulfill the obligations of this Subcontract. It is further agreed that such confidential information disclosed to or obtained by the other party will be treated as strictly confidential and that the other party's personnel will not at any time directly or indirectly, without the prior written consent of the disclosing party, develop, disclose, offer to divulge, furnish, or make known or accessible to anyone whatsoever for the use or benefit of anyone other than the disclosing party any such information. All records, in whatsoever form disclosed, containing such information or copies thereof shall be and remain the property of the disclosing party and shall be returned to that party upon request or at the termination of the Agreement for any reason. Subcontractor shall not disclose information concerning work under this Subcontract to any third party, unless such disclosure is necessary for the performance of the subcontract effort. No news releases, public announcement, denial, or confirmation of any part of the subject matter of this Subcontract or any phase of any program hereunder shall be made without prior written consent of **Prime**. Failure to comply with the provisions of this Clause may be cause for termination of this subcontract. This confidentiality obligation shall survive termination of the Agreement for a period of five (5) years.

The obligations of confidentiality and nondisclosure shall not apply to:

- a. Information which is or becomes public knowledge through no fault of the party to whom it was disclosed as confidential.
- b. Information disclosed to the second party by a third party entitled to disclose.
- c. Information already known to the second party or information independently developed by the second party without the assistance of the disclosing party's confidential information as evidenced by written records of the second party's personnel.
- d. Information which is required by law to be disclosed; provided that the second party shall give the disclosing party as much advance notice as possible of any such request.

14. Export Controls: It is understood that both parties are subject to U.S. laws and regulations controlling the export of certain items, commodities, defense articles, Confidential Information, proprietary technical data, or source code, collectively hereafter referred to as "Items." Each party

is obligated to comply with applicable U.S. export laws and regulations (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979). Prior to providing any Items which are subject to U.S. export laws and regulations, and prior to furnishing any Items where oral instruction or inspection may disclose technical data subject to such export controls, the disclosing party shall notify receiving party's contracting officer in writing of the Items and applicable export controls. Receiving party shall have the right to decline or limit the receipt of such Items, and any task requiring receipt of such Items. The transfer of Items may require a license from the cognizant agency of the U.S. government. The parties agree to cooperate in securing any license which the cognizant agency deems necessary in connection with this Subcontract.

15. Independent Contractor. The relationship of **Prime** to **University** shall be that of an independent contractor. None of the provisions of this Agreement are intended to create, nor shall they be construed to create an agency, partnership, joint venture or employer/employee relationship between **University** and **Prime**.

16. Warranties **UNIVERSITY** MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE WORK OR ANY PRODUCT OR DELIVERABLE, TANGIBLE OR INTANGIBLE, DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP OR FITNESS FOR A PARTICULAR PURPOSE OF ANY SUCH PRODUCT OR DELIVERABLE. **UNIVERSITY** SHALL NOT BE LIABLE FOR ANY DIRECT CONSEQUENTIAL, OR OTHER DAMAGES SUFFERED BY **PRIME** OR BY ANY THIRD PARTY RESULTING FROM THE USE OF THE WORK PRODUCED BY **UNIVERSITY** UNDER THIS AGREEMENT, AND **PRIME** AGREES TO HOLD HARMLESS AND INDEMNIFY **UNIVERSITY** FOR ALL DEMANDS, EXPENSES, AND LOSSES ARISING OUT OF THE USE BY **PRIME** OR ANY THIRD PARTY USING OR RELYING ON THE WORK PRODUCED BY **UNIVERSITY** UNDER THIS AGREEMENT.

17. Termination: This agreement may be terminated by any party upon 30 days written notice to the other parties, in the event of any other party's breach of or failure to comply with the terms of this agreement. In the event of termination prior to the expiration date, **University** shall be reimbursed for all allowable, allocable, and reasonable costs incurred through the date of termination

18. Entire Agreement: This Agreement constitutes the entire understanding between the parties. No other terms and conditions, be they consistent, inconsistent, or additional to those contained herein, shall be binding upon **University** or **Prime**, unless and until such terms and conditions have been specifically mutually accepted in writing by an authorized signatory of both parties. The terms and conditions appearing in this Agreement shall supersede and replace any and all terms and conditions contained in any previous agreement between the parties. Any Purchase order issued shall be for fiscal purposes only.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date indicated

The University of North Carolina at Charlotte

Signed: _____
print name, Contracts Manager

Date: _____

SPONSOR NAME

Signed: _____
print name, title

Date: _____

Exhibit A: University Statement of Work & BUDGET

Exhibit B: Prime agency contract

AMENDMENT I

To: Agreement Number _____
Title: “ _____ ”

Between: _____
And
The University of North Carolina at Charlotte

This amendment provides for _____ as follows:

1. Statement of Work: University will use reasonable efforts to perform research as described in its Statement of Work which is attached hereto as **Exhibit "A"** and incorporated by reference.

2. Period of Performance: The period of performance for this Subcontract is _____, 20__ through _____, 20__, unless amended in writing by mutual agreement of the parties and signed by an authorized official for each party. .

3. Programmatic Consideration: The Principal Investigator for the project is _____ of University, who will provide overall direction of the project and will represent the University in all programmatic matters. The Principal Investigator for the **Prime** component of the project is _____ who will provide direction for the **Prime** portion of the **Project**. Specific tasks to be performed by University under this **Project**, incorporated herein as **Exhibit "A"** shall become binding upon University.

All other terms, conditions, and items of the contract remain unchanged.

The University of North Carolina at Charlotte

Signed: _____ Date: _____
print name, title

SPONSOR NAME

Signed: _____ Date: _____
print name, title