

[This template can be used for any Federal flow thru that flows to UNCC as a fixed fee agreement. If it's not a SBIR, then just remove the SBIR reference.]

RESEARCH AGREEMENT # _____
SBIR Phase I: _____

THIS FIXED FEE AGREEMENT, made and entered into this ___ day of _____, _____ by and between _____ (hereinafter called "**Sponsor**") and the University of North Carolina at Charlotte, (hereinafter called "**Subcontractor**").

WHEREAS, **Sponsor** has entered into an agreement with _____ (hereinafter "**Agency**"), an agency of the United States Federal government, for research entitled " _____ " under SBIR Phase I **Contract No.** _____ (hereinafter "**Contract**") and,

WHEREAS, **Sponsor** desires to contract with **Subcontractor** to perform certain technical or professional services related to the **Project** as hereinafter described; and,

WHEREAS, **Subcontractor** desires to contract with **Sponsor** to perform such services under the terms and conditions as set forth below;

NOW, THEREFORE, in consideration of the mutual promises and such other valuable consideration as shall be set out herein, the parties hereto mutually agree to the following terms and conditions;

1) Statement of Work

Subcontractor agrees to use reasonable efforts to perform certain technical or professional services as described in the attached Statement of Work, **Attachment A**.

2) Period of Performance

The period of this Agreement begins on _____ and expires on _____, unless terminated earlier or extended by the mutual written agreement of both parties.

3) Fiscal Consideration

Sponsor agrees to pay to **Subcontractor** an amount not to exceed \$ _____ (XXX Thousand XXXX hundred, XXX and xx/100 dollars) for these services. SPONSOR agrees to pay the sum of \$ _____ upon approval of this agreement and the remainder according to the following schedule:

[Date] _____ \$ _____
[Date] _____ \$ _____
[Date] _____ \$ _____

[Fixed fee must have advanced payment upfront. Typically it's either:
25% at start, 50% at midway point, 25% upon completion of the project
Or
1/3 up front, 1/3 midway, and 1/3 at final report.
Odd payment terms should be approved by OSP.]

Sponsor agrees to pay said invoices within 30 days of the invoice date. **Subcontractor** reserves the right to discontinue work if **Sponsor** fails to pay invoices rendered by **Subcontractor** within the time herein specified.

4) Communications

Sponsor:

Contract Administrator:

Name:
Dept:
Company
Address:
Charlotte, NC 28223-0001
Email:
Telephone:
Fax:

Project Director:

Name:
Dept:
Company
Address:
Charlotte, NC 28223-0001
Email:
Telephone:
Fax:

Subcontractor:

Contract Administrator:

Name:
Dept:
The University of NC at Charlotte
Address:
Charlotte, NC 28223-0001
Email: @uncc.edu
Telephone: (704)687-xxxx
Fax: (704)687-xxxx

Project Director:

The University of NC at Charlotte
Charlotte, NC 28223-0001
Email: @uncc.edu
Telephone: (704) 687-
Fax: (704) 687-

5) Regulatory Data

The **Sponsor** was awarded the **Agency's Contract** under SBIR No _____ from _____. All federal administration requirements and regulatory data required by **Agency** and **Sponsor** shall be applicable to this Agreement as appropriate. All conditions in the **Contract** binding on **Agency** and delegated to **Sponsor** by the **Agency** in the **Contract**, as set forth in **Attachment B**, shall become binding upon **Subcontractor**.

6) Clauses incorporated from Agency

Other than Section 6 of the **Contract**, the obligations of which **Subcontractor** may fulfill by reporting inventions to the Office of Naval Research via the federal government's iEdison system, the government clauses in Attachment B, as appropriately modified for educational institutions and as applicable to this Agreement as a mandatory flow down to Subcontractor, are hereby incorporated either in full text or by reference and made part of this Agreement. Those incorporated by reference shall have the same force and effect as though set forth in full text herein. Unless the text in these clauses clearly reserves rights in the Government (e.g. all clauses whose subject matter is intellectual property including, but not limited to patents and rights in data), the terms "Subcontract" shall be substituted for "Contract", "Contractor" for "Government" or "Contracting Officer," and "Subcontractor" for "Contractor".

7) 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. T

8) Confidentiality

It is agreed that **Subcontractor** or **Sponsor** may, from time to time, make available to the other party's employees or students confidential information. Confidential information means information disclosed to the other party's personnel which is designated by the disclosing party 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. Confidential information also includes information which becomes known to the other party's employees or students as a consequence of their involvement in research activities subject to the Agreement and not generally known, including, but not limited to, information relating to trade secrets or other proprietary information. It is further agreed that such confidential information disclosed to or obtained by the other party will be treated as confidential and that the other party's personnel will use all reasonable efforts to avoid, directly or indirectly, without the prior written consent of the disclosing party, developing, disclosing, offer to divulge, furnishing, or making 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. 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 receiving party by a third party entitled to disclose.
- c. Information already known to the receiving party or information independently developed by the receiving party without the assistance of the disclosing party's confidential information as evidenced by written records of the receiving party's personnel.
- d. Information which is required by law to be disclosed; provided that the receiving party will give the disclosing party reasonable notice of any such request prior to making the disclosure.

9) Reporting Procedure

Subcontractor agrees to provide **Sponsor** with all documentation and reports necessary for **Sponsor** to complete, in a timely manner, all reports required by the **Agency Contract**, incorporated herein as **Attachment B**.

10) Termination

If the **Contract** should be terminated during the performance of this Agreement, or should the **Contract** funding for support be deleted or reduced, **Sponsor** may, by written notice to **Subcontractor**, terminate this Agreement upon reasonable notice consistent with the termination of the Agency **Contract**.

Either party may terminate this Agreement at any time, for any reason, upon no fewer than thirty (30) days' notice in writing to the other party. Upon termination by either party, the **Subcontractor** will be paid in an amount which bears the same ratio to the total compensation as does the service actually performed to the total service originally contemplated in this Agreement.

11) Amendments

Amendments to this Agreement may be made only in writing signed by **Sponsor** and **Subcontractor**. This Agreement embodies the entire understanding and undertaking of the parties, and no amendment to this Agreement shall be valid unless in writing signed by **Sponsor** and **Subcontractor**.

12) Assignment

Subcontractor is an independent agent and not an employee or agent of **Sponsor**, and **Sponsor** shall not be liable for the actions of **Subcontractor** nor shall **Subcontractor** be liable for the actions of **Sponsor**. It is understood that **Subcontractor**, an agency of the State of North Carolina, is limited in any claims that may be made against it in accordance with the North Carolina State Tort Claims Act.

13) Intellectual Property

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). Sponsor 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**.

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

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 **Subcontractor** and employees or agents of the **Sponsor** shall belong jointly to **Subcontractor** and **Sponsor**, 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.

Title to any other inventions first conceived or reduced to practice in the performance of work under this Agreement solely by **Sponsor** or its employees or agents shall belong to **Sponsor**, and **Subcontractor** and its employees or agents shall have no right, title or interest therein.

14) Warranties

SUBCONTRACTOR 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. **SUBCONTRACTOR** SHALL NOT BE LIABLE FOR ANY DIRECT CONSEQUENTIAL, OR OTHER DAMAGES SUFFERED BY **SPONSOR** OR BY ANY THIRD PARTY RESULTING FROM THE USE OF THE WORK PRODUCED BY **SUBCONTRACTOR** UNDER THIS AGREEMENT, AND **SPONSOR** AGREES TO HOLD HARMLESS AND INDEMNIFY **SUBCONTRACTOR** FOR ALL DEMANDS, EXPENSES, AND LOSSES ARISING OUT OF THE USE BY **SPONSOR** OR ANY THIRD PARTY USING OR RELYING ON THE WORK PRODUCED BY **SUBCONTRACTOR** UNDER THIS AGREEMENT.

15) Governing Law

This agreement is acknowledged to have been made and shall be construed and interpreted in accordance with the laws of the State of North Carolina.

16) 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 either party, unless and until such terms and conditions have been specifically accepted in writing by both parties. Any purchase order issued shall be for fiscal purposes only. The terms and conditions appearing in this Agreement supersede and replace any and all terms and conditions contained in any previous agreement between the parties.

UNC CHARLOTTE

By: _____
UNCC signatory
Title and dept

Date: _____

SPONSOR

By: _____
Authorized signatory
Title

Date: _____

**ATTACHMENT “A”
UNCC STATEMENT OF WORK**

NOTE: Review for terms or statements added that will have a bearing on contract such as publication restriction (i.e. approval to publish)

ATTACHMENT "B"
FEDERAL AGENCY CONTRACT

NOTE: Federal prime award must be reviewed for terms

AMENDMENT I

To: Research Project Agreement Number _____
Title: “ _____ ”

Between: The University of North Carolina at Charlotte
And

This amendment provides for _____ as follows:

1) Statement of Work

Subcontractor agrees to use reasonable efforts to perform certain technical or professional services as described in the attached Statement of Work, **Attachment A**.

2) Period of Performance

The period of this Agreement begins on _____ and expires on _____, unless terminated earlier or extended by the mutual written agreement of both parties.

3) Fiscal Consideration

Sponsor agrees to pay to **Subcontractor** an amount not to exceed \$ _____ (XXX Thousand XXXX hundred, XXX and xx/100 dollars) for these services. SPONSOR agrees to pay the sum of \$ _____ upon approval of this agreement and the remainder according to the following schedule:

[Date] _____ \$ _____
[Date] _____ \$ _____
[Date] _____ \$ _____

Sponsor agrees to pay said invoices within 30 days of the invoice date. **Subcontractor** reserves the right to discontinue work if **Sponsor** fails to pay invoices rendered by **Subcontractor** within the time herein specified.

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

SPONSOR

THE UNIVERSITY OF NORTH CAROLINA AT
CHARLOTTE

Authorized signing official
By: _____

Authorized signing official
By: _____

Title: _____

Title: _____

Date: _____

Date: _____