



MHI and CICMHE Research Funding Program

Initial Terms and Conditions for Research Spark Grants

2017 Solicitation

SPONSORED RESEARCH AGREEMENT

July 6, 2017

This Sponsored Research Agreement (“Agreement”) is made this ____ day of _____, 20__, by and between _____ (hereinafter referred to as “University”) and The Material Handling Industry (“MHI”) by and through its constituent Council, the College-Industry Council on Material Handling Education (“CICMHE”) (hereinafter collectively referred to as “Sponsor”).

WITNESSETH:

WHEREAS, University has research personnel and facilities that would allow the investigation and study entitled _____ as described in Exhibit 1 (hereinafter referred to as “Research”), a copy of which is attached hereto and incorporated herein by reference;

WHEREAS, Sponsor desires to support the Research; and

WHEREAS, both Sponsor and University consider it necessary and desirable to perform the Research.

NOW, THEREFORE, the parties agree as follows:

1. **Sponsorship**. Sponsor agrees to engage the services of University as an independent contractor to perform the Research. The Research will be under the supervision of _____ (Principal Investigator(s)) at University, with the assistance of appropriate associates and colleagues at University as may be required. Principal Investigator(s) and/or University shall have the sole responsibility for selecting and supervising all personnel engaged in the Research and ensuring their compliance with applicable research protocols and all applicable laws and regulations.

2. **Research**. University agrees as an independent contractor to use its best efforts to perform the Research. The University warrants that the Research has been approved by University in accordance with applicable University policy and may be subsequently amended only by the written agreement of University and Sponsor as provided in this Agreement.

a. University shall commence the performance of Research on _____, and shall use its best efforts to perform such Research in accordance with the terms and conditions of this Agreement.

b. In the event the Principal Investigators become unable to continue the Research, University shall use its best efforts to obtain a mutually acceptable substitute. If a mutually acceptable substitute cannot be obtained and University is unable to complete the Research in accordance with this Agreement, University and/or Sponsor

shall have the option to terminate the Research upon thirty-days written notice. In the event of termination under this Article 2(b), University shall reimburse Sponsor for all remaining research funds. Upon direction of Sponsor, University shall also use all reasonable efforts and good faith to transition the Research to any substitute researcher retained by Sponsor.

c. At least quarterly, written program reports containing reasonable detail shall be provided by University to Sponsor. A final written program report shall be submitted by University to Sponsor within forty-five (45) days of the conclusion of the Research or as soon as possible following early termination of this Agreement.

3. **Award and Payment.** Sponsor agrees to pay University up to _____ on a fixed cost basis for reasonable expenses and other related costs incurred in conjunction with the Research. This cost, as shown by approximate category of expense in the attached Exhibit 1, shall be payable in full within thirty (30) days after receipt by Sponsor of University invoice.

4. **Term.** University shall complete the Research _____. The term of this Agreement may be extended, modified or amended by a writing signed by University and Sponsor.

5. **Inventions and Patents.**

a. For all purposes herein, "Invention" shall mean any discovery, concept or idea whether or not patentable or copyrightable, which (i) arises out of work performed pursuant to the obligations of this Agreement; (ii) is conceived and reduced to practice during the Term of the Agreement as defined in Article 4 hereinabove; and (iii) includes but is not limited to processes, methods, software, formulae, techniques, compositions of matter, devices, and improvements thereof and know-how relating thereto. Inventions made solely by the Principal Investigators and/or employees or agents of University shall be the sole property of University. Inventions made solely by Sponsor and/or employees or agents of Sponsor shall be the sole property of Sponsor. Inventions made jointly by employees or agents of University and Sponsor shall be jointly owned by University and Sponsor.

b. In the event an Invention is made, either solely by employees or agents of University or jointly by employees or agents of University and Sponsor, University and Sponsor agree to give written notice of each Invention to each other within ninety (90) days of the identification of each Invention. Within one-hundred twenty (120) days of notice of an Invention, University and Sponsor will use their best efforts and will cooperate with each other in good faith to investigate, evaluate and determine the rights to the Invention, including whether, by whom and where any patent applications are to be filed.

c. If, after consultation with Sponsor, it is agreed by the parties that a patent application should be filed, University will prepare and file any appropriate United States

and/or foreign patent applications on Inventions relating to this Agreement, and Sponsor will pay the cost of preparing, filing and maintenance of any such patent application. If Sponsor notifies University that it does not intend to pay the costs of an application, then University may file such application at its own expense, and Sponsor shall have no rights to such Invention. University will provide Sponsor a copy of the application filed for which Sponsor has paid the cost of filing, as well as copies of any documents received or filed during prosecution thereof. Sponsor agrees to maintain any such application in confidence until it is published by University or by the respective patent office.

d. University hereby grants Sponsor an option to acquire an exclusive, world-wide, royalty-bearing license to University's ownership interest in any Invention, including the right to sub-license (as well as patent applications, patents, and copyrights thereof) for commercial purposes; provided Sponsor shall pay all costs and expenses associated with patent and copyright filing, prosecution, issuance and maintenance (or a non-exclusive license without payment of patent costs). Sponsor shall have one-hundred twenty (120) days from the date of notice of any Invention from University pursuant to Article 5(b) to give written notice to University exercising the option in this Article 5(d).

e. In the event Sponsor exercises its option to acquire a license as provided in Article 5(d), the parties shall negotiate in good faith regarding the other terms and conditions of the license, including term, fee rates and other payments that are commercially fair and reasonable to both parties.

6. **Confidentiality**. Because University and Sponsor will be cooperating with each other in the Research and because each may reveal to the other in the course of the Research certain confidential information, University and Sponsor agree to hold any confidential information which (a) is obtained during the course of this work and (b) is related thereto in confidence, and each party will not disclose same to any third party without the express written consent of the other party to this Agreement. This requirement shall remain in full force for five (5) years following completion of Research under this Agreement. Confidential information shall be disclosed to the other party in writing and clearly marked as confidential, or if disclosed orally or in other than documentary form shall be reduced to writing and marked appropriately thirty (30) days thereafter. Information which is not in oral or written form, such as, but not limited to data tapes, shall be designated in writing as confidential within thirty (30) days after disclosure. Within sixty (60) days of the expiration or termination of this Agreement, University shall return to Sponsor all confidential information provided under this Agreement, including all copies of all confidential information in whatever form. Confidential information provided under this Agreement shall be used solely for the research project contemplated herein and for no other purpose. All investigators, students, University representatives and other persons receiving confidential information under this Agreement agree to be bound by this Article 6.

Nothing in this Article 6 shall in any way restrict the rights of either University or Sponsor to use, disclose or otherwise deal with any information which:

a. Can be demonstrated to have been in public domain as of the effective date of this Agreement or comes into the public domain through the term of this Agreement through no act of the recipient; or

b. Can be demonstrated to have been known to the recipient prior to the execution of this Agreement; or

c. Can be demonstrated to have been rightfully received by the recipient after disclosure under this Agreement from a third party who did not require the recipient to hold it in confidence or limit its use and who did not acquire it, directly or indirectly, under obligation of confidentiality to the disclosing party; or

d. Shall be required for disclosure to Federal regulatory agencies pursuant to approval for use; or

e. Can be demonstrated to have been independently invented by researchers of the recipient who have not had access to the Information provided to the recipient hereunder.

Nothing herein is intended to give Sponsor the right to use for any purpose pre-existing confidential information of University. Nothing herein shall prevent University from using any information generated under this Agreement; provided such information does not disclose confidential information of Sponsor.

7. **Publication Rights.** University may publish scientific papers relating to the Research under this Agreement. In the event University wishes to publish scientific papers relating to the Research, University shall notify Sponsor of its desire to publish at least thirty (30) days in advance of publication and shall furnish to Sponsor a written description of the subject matter of the publication. Sponsor shall have the right to review and comment on the paper. Unless otherwise agreed by the parties, University shall protect from disclosure any confidential information of Sponsor.

8. **Publicity.** University acknowledges Sponsor's intention to distribute periodically releases and announcements to the media regarding the progress of the Research. Sponsor shall not release such materials containing the name of University or any of its employees without prior written approval by an authorized representative of University, which approval shall not be unreasonably withheld. To the extent possible, Sponsor's releases and announcements shall meet accepted practices. Sponsor reserves the same right in the event University desires to distribute a release or announcement concerning the Research. Nothing herein shall be construed as prohibiting University or Sponsor from reporting on the Research to a governmental agency.

9. **Responsibility.** The parties each agree to assume individual responsibility for the actions and omissions of their respective employees, agents and assigns in conjunction with the Research.

10. **Independent Contractor.** The parties do not have the right to direct or control the activities of each other in performing the obligations under this Agreement, and each party shall perform the obligations hereunder only as an independent contractor, and nothing herein contained shall be construed to be inconsistent with this relationship or status. Under no circumstances shall either party be considered to be an employee or agent of the other party. This Agreement shall not constitute, create or in any way be interpreted as a joint venture, partnership or formal business organization of any kind. Neither party shall have any right whatsoever to incur any liabilities or obligations on behalf of the other party. Neither party shall represent the other party in any manner.

11. **Title to Equipment.** University shall retain title to all equipment purchased and/or fabricated by it with funds provided by Sponsor under this Agreement.

12. **Survivorship.** The provisions of Article 5, 7, 8, 14 and 15 shall survive any expiration or termination of this Agreement.

13. **Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other party; provided, however, that Sponsor may assign this Agreement to any purchaser or transferee of all or substantially all of Sponsor's business upon prior written notice to University.

14. **Intellectual Property Rights.** With respect to loss, expense, damage, liability, claims or demands either at law or in equity, for actual or alleged patent, trademark, copyright or other property right infringement arising from the Research performed under this Agreement by University and its employees or agents, University agrees that: (a) it will cooperate with Sponsor in the defense of any action or claim brought against Sponsor seeking the foregoing damages or relief; (b) it will in good faith cooperate with Sponsor should Sponsor present any claims of the foregoing nature against University; (c) it will not take any action to frustrate or delay the prompt hearing on claims of the foregoing nature and will make reasonable efforts to expedite said hearing; provided, however, University reserves its right to assert in good faith all claims and defenses available to it in any proceeding or other appropriate forum.

15. **Hold Harmless.**

a. The Parties shall assume all liability attributable to their own acts or omissions and those of their own agents/assigns.

b. Sponsor shall hold the University harmless against any legal action, expense, or claim, including legal and extra-legal costs related to any such legal action and/or claim for damage that may arise from or in relation to this Agreement for activities relating to the performance or non-performance of duties by Sponsor and/or its agents.

c. The University shall hold Sponsor harmless against any legal action, expense, or claim, including legal and extra-legal costs related to any such legal action and/or claim for damage that may arise from or in relation to this Agreement for activities

relating to the performance or non-performance of duties by the University and/or its agents.

d. In no event shall either Party be liable to the other, or to any other person or entity, for any lost profits or consequential, incidental, indirect, exemplary, punitive, special or similar damages, including, without limitation, damages for loss of goodwill, work stoppage, loss of work product, loss of use, or any and all other commercial damages or losses whether directly or indirectly caused, whether in tort, contract or otherwise.

16. **Default and Termination.** In the event that either party to this Agreement shall be in default of any of its material obligations under this Agreement and shall fail to remedy such default within thirty (30) days after receipt of written notice thereof, the party not in default shall have the option of terminating this Agreement by giving written notice thereof, notwithstanding anything to the contrary contained in this Agreement. Termination of this Agreement shall not affect the rights and obligations of the parties that accrued prior to the effective date of termination. Provided University is not in default of any of its material obligations under this Agreement, Sponsor shall pay University for all reasonable expenses incurred or committed to be expended as of the effective termination date, subject to the maximum amount specified in Article 3.

17. **Entire Agreement.** The parties acknowledge that this Agreement and the attached Exhibit 1 represent the sole and entire Agreement between the parties pertaining to the Research. This Agreement supersedes all prior or contemporaneous agreements, understandings, negotiations and discussions between the parties relating to the Research, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter of this Agreement except as specifically set forth herein. No supplement, amendment, alteration, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the parties hereto.

18. **Reform of Agreement.** If any provision of this Agreement is, becomes or is deemed invalid, illegal or unenforceable in any United States jurisdiction, such provision shall be deemed amended to conform to applicable laws so as to be valid and enforceable; or if it cannot be so amended without materially altering the intention of the parties, it shall be stricken, and the remainder of this Agreement shall remain in full force and effect.

19. **Notices.** Any notices, statements, payments, or reports required by this Agreement shall be considered given if sent by United States Certified Mail, postage prepaid or by private courier with evidence of delivery and addressed as follows:

If to University:

If to Sponsor:

Material Handling Industry
CICMHE Managing Director
8720 Red Oak Blvd., Suite 201
Charlotte, NC 28217

For notices, statements and reports, electronic mail and facsimile transmission may be used if agreed by the parties.

20. **Captions.** The captions in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement.

21. **Counterparts.** This Agreement may be executed by the parties in counterparts.

IN WITNESS WHEREOF, University and Sponsor enter into this Agreement effective as of the date first written above and have executed two (2) originals.

SPONSOR

UNIVERSITY

By: _____

By: _____

Name/Title: _____

Name/Title: _____

Date: _____

Date: _____