



RESEARCH FUNDING AGREEMENT

made and entered into by and between

XXX

represented herein by _____ in his/her capacity as

(“XXX”)

And

THE UNIVERSITY OF KWAZULU-NATAL

a public higher education institution and a juristic person established in terms of the

Higher Education Act 101 of 1997 as amended

represented herein by _____ in his/her capacity as

(“UKZN”)

Hereafter collectively referred to as ‘the Parties’

WHEREAS

UKZN has submitted a proposal with project title : XXX to XXX (**Funder details**) and XXX (**Funder details**) is desirous of having UKZN execute the project.

AND WHEREAS

UKZN has the necessary skills and expertise to carry out the project.

AND WHEREAS

The Parties have reached agreement as to the arrangement between them, and wish to record this agreement in writing,

NOW THEREFORE IT IS AGREED AS FOLLOWS**1. DEFINITIONS**

- 1.1 Unless the context otherwise indicates, a reference to the masculine gender shall include a reference to all other genders, the singular shall include the plural, and any reference to a person or party shall include both natural and juristic persons.
- 1.2 The headings in this Agreement are for reference purposes only, and shall not be used as an aid to the interpretation of this Agreement.
- 1.3 This Agreement shall be adjudicated and interpreted according to the laws of South Africa.
- 1.4 The following words or phrases shall bear the following special meaning assigned to them below, and shall be interpreted as such for the purposes of this Agreement,

even if such interpretation is contrary to the ordinary grammatical meaning of the words and phrases:

Agreement shall refer to this Agreement and shall include the title page, the objects clauses, the main heads of agreement and the annexures attached thereto, which annexures shall form an integral part of this Agreement.

Agreement

Amount shall refer to XXXX (incl VAT), which is the full amount made available to UKZN for the Project, set out in Annexure B.

Commencement Date

shall refer to the XXXX;

Budget

shall refer to the budget contained in Annexure B;

Information

includes, but is not limited to, data owned by the Parties at the commencement of this Agreement, data gathered as a result of the Services, and Intellectual Property;

Intellectual

Property

shall mean any technical or commercial information including, without limitation, computer software, drawings, designs, improvements, inventions, patents, developments, additions and know-how and the rights attaching thereto;

Principal

Investigator/s

shall refer to XXX, employee of UKZN.

Project

shall refer to XXX as further described in the Proposal attached to the as Annexure A.

Scope of Work shall refer to the scope of work set out in Annexure A;

Termination
Date shall refer to **XXX**;

2. SCOPE OF AGREEMENT

- 2.1 UKZN shall perform the scope of work in accordance with the terms and conditions of this Agreement.
- 2.2 The Scope of Work to be rendered shall be as detailed in Annexure A of this Agreement. UKZN shall thus be responsible for carrying out the activities and achieving the outputs listed in the scope of work set out in Annexure A.
- 2.3 UKZN shall discharge its obligations and deliverables in terms of this Agreement through the Principal Investigator/s. Should the Principal Investigator/s be unable to discharge these responsibilities, **XXX (Funder details)** and the UKZN shall agree on a suitable alternative.
- 2.4 **XXX (Funder details)** shall make all payments due by it on the terms and conditions of this Agreement.
- 2.5 The Parties relationship shall in all respects remain that of independent contractors. Nothing in this Agreement shall be taken to construe a partnership, or agency or any other legal relationship as existing between the Parties, and the Parties shall not be legally entitled to represent each other except as provided for in this Agreement.

2.6 The Parties undertake to recognise and to abide by each other's Mission Statements, and any other code of conduct or policy which the Parties may from time to time have in place, and each party hereby undertakes to ensure that their staff members, and / or students, and / or associates, as the case may be, honour and abide by the other parties Mission Statement, codes of conduct or policies, particularly when staff employed by one party, or the students or the associates of that party, as the case may be, are hosted at the institution of the other party.

3. DURATION, TERMINATION AND SURVIVABILITY

3.1 Notwithstanding the date of signature hereof, this Agreement comes into effect on the Commencement Date and unless terminated earlier in terms hereof, shall remain in force until the Termination Date.

3.2 The Parties may terminate this Agreement at any time by giving the other party 90 (ninety) days' notice in writing, provided that should **XXX (Funder details)** elect to terminate this Agreement in terms of this clause, **XXX (Funder details)** shall make payment to the UKZN for all work satisfactorily completed prior to the date that such notice becomes effective, provided further that such termination is not due to any conduct on the part of UKZN.

3.3 In the event of either party being unable to perform their obligations for a period of six (6) months due to any *force majeure*, this Agreement may be terminated by either party, by giving ten (10) days written notice to the other party.

3.4 The Parties may elect to renew this Agreement for such period of time and on such additional terms and conditions as may be negotiated between them.

3.5 The provisions of this Agreement relating to confidentiality, intellectual property, dispute resolution shall survive the termination of this Agreement.

4. REMUNERATION AND PAYMENT

- 4.1 As entire remuneration and compensation for project, **XXX (Funder details)** shall pay UKZN the amount set out in Annexure B.
- 4.2 The amount referred to in clause 4.1 above shall be paid by means of electronic transfer as follows:

Account name: UKZN Main
Name of bank: Standard Bank
Account Number: 05 308 0998
Branch name: Westville
Branch code: 04 5426

- 4.3 If this Agreement is terminated for whatever reason, by either of the Parties, the **XXX (Funder details)** shall compensate UKZN for all work satisfactorily undertaken in terms of this Agreement up to the date of termination.
- 4.4 Unless specifically stated to the contrary, any amounts quoted in this Agreement are inclusive of all taxes and costs applicable.

5. OBLIGATIONS OF THE UKZN

- 5.1 In addition to any other obligations that UKZN may incur in terms of this Agreement, UKZN shall:
- 5.1.1 Conduct the Project in accordance with the proposal and submit the deliverables as set out in Annexure A, and shall duly and expeditiously comply with any reporting requirements as required;
- 5.1.2 Ensure that final deliverables are submitted within the Agreement period;

5.1.3 Submit to the audit if the Project has been selected for an audit and make all records available. In this respect, UKZN shall keep full records including but not limited to time sheets or monthly records of the estimated time researchers spent on the Project, all applicable financial records relating to the Project (invoices for running expenses and equipment etc).

5.1.4 Comply with the requirements of the Intellectual Property Rights from Publicly Funded Research and Development Act 51 of 2008.

6. CONFIDENTIALITY

6.1 The Parties may disclose confidential Information to one another to facilitate work under this Agreement, on the understanding that such Information shall be safeguarded, used only for the legitimate purposes of this Agreement and not disclosed to anyone without a 'need to know'.

6.2 The Parties shall treat all Information passed between them in the course of the Services as being confidential, and it shall not be necessary for the disclosing party to designate any Information so supplied as confidential.

6.3 The confidentiality obligation contained in Clauses 6.1 and 6.2 above shall not apply where:

6.3.1 the Information is or becomes generally available to the public through no fault of the receiving party or its employees, agents or s; or

6.3.2 the Information was already in the possession of the receiving party without restriction as to confidentiality at the time of the disclosure as evidenced by reasonable written records; or

- 6.3.3 the Information is subsequently received by the receiving party from a third party without restriction and without breaching any confidentiality obligations between a third party and the disclosing party in terms of this Agreement.
- 6.4 The ownership of any Information supplied by the Parties to this Agreement shall remain the sole property of the party disclosing such information, and the disclosure of such information shall not be interpreted to mean that the ownership of such Information has been surrendered by the disclosing party.
- 6.5 The Parties shall ensure that their servants, employees, representatives, agents, and/or s are aware of and are bound by this duty of confidentiality, by ensuring that such persons sign a subsidiary confidentiality agreement, in terms of which the provisions of this Agreement relating to confidentiality become binding on such third party.
- 6.6 In addition to the above provisions, the issues of publicity and publication shall be governed by the relevant terms of the Prior Agreement.

7. INTELLECTUAL PROPERTY RIGHTS & PUBLICATIONS

- 7.1 All intellectual Property rights owned by the parties prior to entering this agreement shall remain so vested in the parties.
- 7.2 All intellectual property generated under this agreement shall be dealt with in terms of the Intellectual Property Rights from Publicly Funded Research and Development Act 51 of 2008.
- 7.3 Any publication, presentation or release of information to the press (whether in written or verbal format) in connection with the Project (each a "Communication") shall be made in accordance with the following:

- 7.3.1 The Party wishing to make the Communication (the “Publishing Party”) shall acknowledge the contribution and support of the **XXX (Funder details)** to the Project in its Communication;
- 7.3.2 Any publication must acknowledge the financial support of the **XXX (Funder details)** and, unless other wording is agreed, contain the following disclaimer wording:

*“This research was commissioned by the **XXX (Funder details)**. The views expressed in this publication are those of the author(s) and not necessarily those of the **XXX (Funder details)**.”*

8. PERFORMANCE AND BREACH

- 8.1 In addition to their specific obligations as outlined elsewhere in this Agreement, the Parties shall use their best endeavours to ensure that the terms and conditions of this Agreement are adhered to and carried out. Should any Party deviate from these terms and conditions, that Party shall take all reasonable measures to remedy such deviance within a reasonable time.
- 8.2 In the event of a Party (the defaulting party) not performing its obligations to the satisfaction of the other Party (the aggrieved party), the aggrieved party shall give the defaulting party written notice detailing such failure. Upon receipt of such notice, the defaulting party shall have thirty (30) days from the date of receipt, to remedy the defect.
- 8.3 In the event of a defaulting party's failure to remedy any defect after receiving written notice to do so, the aggrieved party shall have the right, at its option, without detracting from any other rights that it may have in terms of this Agreement or otherwise, to cancel the Agreement, and to pursue any remedies available to it for breach of contract.

- 8.4 Any indulgence given by any Party in respect of this clause shall not prejudice any other remedy that Party may have in respect of any continuing or other breach of the terms and conditions hereof.
- 8.5 Any other indulgence, favour, delay or relaxation of its powers and rights in terms of this Agreement by a Party shall not constitute a waiver of those powers and rights by that party, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof, or the exercise of any power or right under this Agreement.
- 8.6 None of the provisions of this Agreement shall be considered to have been waived by any Party unless such waiver is recorded in writing and presented to the other Party.
- 8.7 The above notwithstanding, neither Party shall be liable for a failure to perform on its part, where such failure is caused by circumstances reasonably beyond the control of that Party, the effect of which circumstances that Party has not been able to avoid by the exercise of due diligence.

9. INDEMNITY

- 9.1 The Parties indemnify each other against any claims from third parties which may arise as a result of their non-compliance with any provision of this Agreement, or any negligent act or omission by that Party, its employees, agents or representatives.
- 9.2 UKZN hereby warrants that it holds general public liability insurance, and will continue to hold such insurance for the duration of this Agreement.

9.3 The above provisions notwithstanding, **XXX (Funder details)** shall not be held liable for any loss or damages, whether direct or consequential, caused by any reliance placed on the results of the work carried out by the UKZN in terms of this Agreement, whether such damage is suffered by the UKZN, or by third parties, and UKZN hereby undertakes to indemnify **XXX (Funder details)** against any such claims, howsoever arising, save where such claims are directly caused by the intentional or negligent conduct of UKZN.

10. USE OF THE PARTIES' NAMES

10.1 The names of the Parties shall not be used in relation to any publication, product or service undertaken or offered as a result of the work of the Project, other than stated in clause 7, unless the written permission of the party to be so named is first sought and obtained. However, the Parties may furnish each other with blanket consent to make use of their names for specified purposes only.

11. DISPUTE RESOLUTION

11.1 The Parties shall attempt to resolve all disputes arising out of or relating to this Agreement by direct negotiation between themselves, within a reasonable time of such dispute arising.

11.2 Should the Parties be unsuccessful in settling a dispute in the manner contemplated in clause 11.1 either Party may, by written notice to the other Party, within sixty (60) days of the end of the unsuccessful dispute resolution, refer the matter to arbitration, to be conducted in Durban under the auspices of the Arbitration Foundation of South Africa, which shall also appoint the arbitrator.

11.3 The arbitration shall commence within thirty (30) days of the appointment of the arbitrator and shall be conducted in accordance with procedures settled by the arbitrator.

11.4 The decision of the arbitrator shall be final and binding, and may at the request of any of the parties involved in the dispute be made an Order of Court, in a Court of competent jurisdiction, and all of the parties involved in the dispute hereby agrees to submit themselves to the jurisdiction of such Court.

11.5 The costs of such arbitration shall be borne equally by the parties involved in the dispute.

12. GENERAL

12.1 This Agreement constitutes the entire agreement between the Parties. Any additional undertaking, representation or warranty shall not be binding unless reduced to writing, signed by all the Parties and attached to this Agreement as an addendum.

12.2 No renewal, extension, alteration, cancellation, variation or addition to this Agreement shall be of any force and effect unless reduced to writing, signed by all the Parties and attached to this Agreement as an addendum.

12.3 If any clause or term of this Agreement should be invalid, unenforceable or illegal, then the remaining terms and provisions of this Agreement shall be deemed to be severable therefrom and shall continue in full force and effect.

12.4 Save as provided for in this Agreement, neither this Agreement or any rights or obligations of any party hereunder shall be ceded, assigned or otherwise transferred by any party without the prior written consent of the other party, which consent shall not be unreasonably withheld.

13. DOMICILIUM AND NOTICES

13.1 The Parties hereto respectively choose domicilium citandi et executandi for all purposes of and in connection with this Agreement as follows:

13.1.1 **XXX (Funder details):**

XXX

Marked for the attention of: XXX

15.1..2 UKZN : The Registrar
c/o Legal Services
VC's House, University Road
Westville, 3629

Marked for the attention of: Name: Director – Legal Services
Tel: 031 260 1257
Fax: 031 260 3581
E-mail: legalservices@ukzn.ac.za

13.2 Each Party shall be entitled to change its domicilium from time to time, provided that any new domicilium selected by it shall be situated within the Republic of South Africa, and any such change shall only be effective upon receipt of notice of such change in writing by the other Party.

13.3 All notices to be given by the Parties to each other shall be given to the aforesaid addresses either by hand delivery or telefax, or by posting by prepaid registered mail. In the event of hand delivery or telefax, the date of receipt shall, unless and until the contrary is proved, be deemed to be the date of delivery or telefaxing. In the event of prepaid registered mail, the date of receipt shall, unless and until the contrary is proved, be deemed to be seven (7) days after such posting.

THIS DONE AND SIGNED AT.....ON THIS.....DAY
OF.....20

FOR XXX (Funder details)

.....

AS WITNESSES:

1.....

2.....

THIS DONE AND SIGNED ATON THIS..... DAY
OF..... 2017

FOR UKZN

.....

UKZN SIGNATORY DETAILS

duly authorised

AS WITNESSES:

1.....

2.....

Annexure A – Project proposal & Letter of Appointment

ANNEXURE B - BUDGET