

INDEPENDENT RESEARCH AGREEMENT

PROJECT TITLE:

This Contract is made and entered into as of the _____ day of _____, by and between the New Horizons Foundation (NHF) and. The foregoing entities or individuals may be referred to as either (1) a "Party" in their individual capacity or (2) the "Parties" in their collective capacity.

WITNESSETH

WHEREAS, NHF is a not-for-profit corporation organized and existing under the laws of the State of Minnesota for the purpose of promoting education and research activities in the field of HVAC and Sheet Metal Industries.

WHEREAS, NHF makes grants and awards to qualified recipients to engage in research and other activities which benefit the HVAC and Sheet Metal Industries.

WHEREAS, Recipient has submitted a proposal entitled," (the "Proposal"), attached as Exhibit A.

WHEREAS, Recipient desires to receive funds to perform the activities described in the Proposal.

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the Parties agree as follows:

AGREEMENT

1. SCOPE OF WORK

Recipient shall perform the activities and obligations described as Phase One in the Proposal (the "Work") and this Contract.

2. TRAVEL REIMBURSEMENT POLICY

The policy for the reimbursement for travel expenses to NHF meetings requires air travel on a coach fare or lower fare basis if available. The reason for this policy is to increase the organization's buying power.

The lower fare basis is defined to mean super saver or reduced fares that are available and provide the most direct and convenient travel arrangements for scheduled meeting. The fare basis does not require stopping through a hub should a direct flight be available.

When submitting expenses for reimbursement, include the receipt coupon from the airline.

3. DELIVERABLES

Recipient shall complete, prepare and deliver to NHF the items specified in Schedule A, "Deliverables," in accordance with the Descriptions and Delivery Dates specified therein.

4. REVIEW

The final content and format of each item specified in Schedule A shall be subject to review and acceptance by NHF.

5. FUNDING

NHF shall fund the Work as specified in Schedule B, "Method of Payment." In no event shall NHF have any obligation to disburse further funds if (1) the Delivery Dates specified in Schedule A are not met or (2) the deliverables are not in conformance with Schedule A.

For the purpose of this Section 4, NHF will be deemed to have accepted a deliverable unless, within 15 days of its receipt thereof, NHF informs the Recipient that its content or format is unacceptable. After acceptance by NHF as to content and format, the Recipient will give prompt and fair consideration to any editorial changes requested or suggested by NHF. Re-submittal will lead to automatic acceptance of delivery by NHF.

6. PERSONNEL

Recipient agrees that this Contract is of a personal nature and that the personnel specified in the Proposal shall perform the Work. The personnel specified in the Proposal shall not be changed without the prior written consent of NHF.

7. TITLE AND COPYRIGHT ASSIGNMENT

- a. Recipient and NHF intend this to be a contract for services and each considers the products and results of the services to be rendered by Recipient hereunder (the "Work") to be a work made for hire. Recipient acknowledges and agrees that the Work and all rights therein, including, without limitation, copyright belongs to and shall be the sole and exclusive property of New Horizons Foundation.
- b. If for any reason the Work would not be considered a work made for hire under applicable law, Recipient does hereby sell, assign, and transfer to New Horizons Foundation, its successors and assigns, the entire right, title and interest in and to the copyright in the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing throughout the world.
- c. If the Work is one to which the provisions of 17 U.S.C. 106A apply, the Recipient hereby waives and appoints New Horizons Foundation to assert on the Recipient's behalf the Recipient's moral rights or any equivalent rights regarding the form or extent of any alteration to the Work including, without limitation, removal or destruction or the making of any derivative works based on the Work, including, without limitation, photographs, drawings or other visual reproductions or the Work, in any medium, for New Horizons Foundation purposes. Subject to any express provisions to the contrary set forth in this Agreement, New Horizons Foundation shall have the unrestricted right, but not the obligation, to make any changes in, deletions from or additions to the Work, or any part thereof. New Horizons Foundation shall have the unrestrained right to use the Work or any version thereof for any and all purposes throughout the universe in perpetuity in any and all media now existing or hereafter devised

- d. Recipient agrees to execute all papers and to perform such other proper acts as New Horizons Foundation may deem necessary to secure for New Horizons Foundation or its designee the rights herein assigned.
- e. NHF recognizes that under Recipient policy the results of work performed under this Agreement must be publishable and agrees that Recipient and its employees and students engaged in work under this Agreement shall be free to present at symposia or professional meetings, and to publish in journals, theses or dissertations, or otherwise of their own choosing, methods and results of the work performed under this Agreement. Upon written request by Recipient, copies of proposed manuscripts will be furnished to NHF for review prior to publication. In no event will Recipient delay publication for more than thirty (30) days from date of submittal of manuscript for NHF review.

8. DELIVERY OF THE WORK

- a. The Recipient will deliver to the New Horizons Foundation before December 31, 2014 the completed Work with all illustrations, charts, graphs, and other material, including syllabi, handouts, reference lists, etc., in the medium mutually agreed upon for the Work in form and content satisfactory to the New Horizons Foundation.
- b. If the Recipient fails to deliver the Work on time, the New Horizons Foundation will have the right to terminate this agreement and to recover from the Recipient any sums advanced in connection with the Work. Upon such termination, the Recipient may not have the Work published elsewhere until such advances have been repaid.

9. MATERIAL USED IN WORK

With the exception of short excerpts from others' works, which constitute fair use, the Work will contain no material from other copyrighted works without a written consent of the copyright holder. The Recipient will obtain such consents at his or her own expense after consultation with the New Horizons Foundation and will file them with the New Horizons Foundation at the time the Work is delivered. Any obligations associated with permissions will be the responsibility of the Recipient.

10. RECIPIENT WARRANTY

The Recipient warrants that he or she is the sole owner of the Work and has full power and authority to make this agreement; that the Work does not infringe any copyright, violate any property rights, or contain any scandalous, libelous, or unlawful matter.

11. CONSIDERATION

In consideration for delivery of the Work in accordance with the provisions of this Agreement, New Horizons Foundation shall pay Recipient as provided in Schedule B.

12. AMENDMENTS

The written provisions contained in this agreement constitute the sole and entire agreement made between the Recipient and the New Horizons Foundation concerning this Work, and any amendments to this agreement shall not be valid unless made in writing and signed by both parties.

13. CONSTRUCTION, BINDING EFFECT, AND ASSIGNMENT

This agreement shall be construed and interpreted according to the laws of the State of Arizona and shall be binding upon the parties hereto, their heirs, successors, assigns, and personal representatives; and references to the Recipient and to the New Horizons Foundation shall include their heirs, successors, assigns, and personal representatives.

14. PROTECTION OF CONFIDENTIAL INFORMATION

Recipient acknowledges that, in the course of performing this Contract, Recipient may obtain information relating to the business or expertise of NHF, or relating to third parties working with or through NHF in connection with this Contract, which is of a secret, confidential, or proprietary nature. Accordingly, the Parties agree as follows:

- a. Any written or graphic information provided or disclosed to Recipient by NHF or by a third party designated by NHF, which NHF or such third party desires not be disclosed to any other third party shall be marked or stamped "CONFIDENTIAL." Any information disclosed orally to Recipient by NHF, or by a third party designated by NHF as being involved with it in connection to the Contract which NHF or such third party desires not be disclosed to any other third party, shall be identified as confidential prior to or in the course of such oral communications and marked or stamped "CONFIDENTIAL" within ten (10) days of disclosure.
- b. Upon receiving confidential information, Recipient shall keep in confidence and not disclose such information to any person or entity not bound by this Agreement. Recipient will make NHF's such confidential information available only to those of its employees or agents having a need to know in order to carry out the purposes of the Contract. Further, Recipient shall not use such confidential information except for the purposes of the Contract without the prior written approval of NHF. Recipient shall be deemed to have discharged its obligation under this section if it exercises the same degree of care to preserve and guard against disclosure of NHF's confidential information as it uses to preserve and guard against disclosure with respect to its own confidential or proprietary information, but in no event less than reasonable care.
- c. The obligations of Recipient with respect to confidential information and restricted use thereof set forth herein shall survive the termination of this Contract for a period of three (3) years.
- d. The Party's obligations hereunder shall not apply to information that: (i) is already in the receiving Party's possession at the time of disclosure; or, (ii) is or later becomes part of the public domain through no fault of the receiving Party; or, (iii) is received from a third party with no duty of confidentiality to the disclosing party; or, (iv) was developed independently by the receiving party prior to disclosure; or, (v) is required to be disclosed by law or regulation.

Recipient shall retain the right to refuse acceptance of such Confidential Information which is not required for the purposes of this Agreement.

15. REPRESENTATIONS

Recipient represents and warrants that all Work shall be performed in a timely manner.

Recipient represents and warrants that all funds shall be used in connection with the performance of the Work. Recipient further represents and warrants that all funds shall be used as specified in the Proposal. Recipient represents and warrants that all deliverables shall be as specified in Schedule A.

16. AUTHORIZED REPRESENTATIVES

NHF hereby appoints _____ as its representative authorized to prepare, negotiate, execute and deliver or receive any amendments, changes, waivers or notices relating to or required under the provisions of this Contract.

Recipient hereby appoints _____ as its representative authorized to prepare, negotiate, execute and deliver or receive any amendments, changes, waivers or notices relating to or required under the provisions of this Contract.

Either Party may change its authorized representative by notifying the other Party's authorized representative of such change.

17. TERMINATION

Either party may at any time terminate this Agreement by giving the other party not less than thirty (30) days prior written notice. In the event this Agreement is canceled by NHF (other than for a material breach of this Agreement by Recipient), NHF shall remain responsible for payment to Recipient for all work performed through the date of termination. In the event Recipient terminates this Agreement unearned funds from the advance will be returned. Upon termination, property purchased in furtherance of this Agreement will remain the property of the purchasing party, unless expressly specified otherwise.

18. MODIFICATION/WAIVER

Neither this Contract nor any provision hereof may be changed, waived, discharged, or terminated orally. Only a statement in writing, signed by the Party against which enforcement of the change, waiver, discharge or termination is sought, shall be effective.

19. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

20. HEADINGS

The headings, titles of sections and subsections, and organization of this Contract are for convenience and reference only and are not to be considered in construing this Contract.

21. SEVERABILITY

If any provision of this Contract shall be declared invalid, illegal, or unenforceable, that provision will be deemed amended to achieve as nearly as possible the same legal effect as the original provision and, in any event, the remainder of this Contract shall remain in full force and effect.

22. DISCREPANCIES

In the event of a discrepancy of conflict between this Contract and any other document referenced by this Contract, the provisions of this Contract shall govern. Except as provided in the foregoing sentence, schedules attached to this Contract shall be deemed as fully a part of this Contract as if set forth in full herein.

23. BINDING EFFECT

This Contract shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns.

24. INDEPENDENT CONTRACTOR

RECIPIENT is an independent contractor and shall be free to exercise its discretion and independent judgment as to the method and means of performance of its work hereunder. RECIPIENT employees shall not be considered employees of NHF, and neither RECIPIENT nor NHF personnel will, by virtue of this Agreement, be entitled or eligible, by reason of this Agreement, to participate in any benefits or privileges given or extended by the other party to its employees.

25. INSURANCE

RECIPIENT maintains general liability insurance and worker's compensation coverage as required by state law and pertinent federal laws and regulations under the State of Arizona Risk Management Plan.

26. NEWS RELEASE

NHF may not use the name of RECIPIENT in news releases, publicity, advertising, or other promotion, without the prior written consent of RECIPIENT, except for documents used for internal consumption by NHF.

27. SERVICE MARKS AND TRADEMARKS

Neither party shall use any service marks, trademarks, logos or other marks of the other party without the express written approval of the other party. The use of any marks must comply with the owner's requirements, including using the "circle R" indication of a registered trademark.

28. NONDISCRIMINATION

In accordance with ARS 41-1461, NHF shall provide equal employment opportunities for all persons, regardless of race, color, creed, religion, sex, age, national origin, disability or political affiliation. NHF will comply with the Americans with Disabilities Act. In accordance with 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), NHF and RECIPIENT shall abide by these regulations, which prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. These regulations require NHF and RECIPIENT to take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

29. CONFLICT OF INTEREST

RECIPIENT's participation in this Agreement is subject to _____ which provides that this Agreement may be cancelled if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of RECIPIENT is, at any time while this Agreement or any extension thereof is in effect, an employee or agent of the other party to this Agreement in any capacity or a consultant to any other party with respect to the subject matter of this Agreement.

30. NOTICE OF ARBITRATION STATUTES

IN WITNESS WHEREOF, the undersigned are authorized by the respective Parties to execute this Contract as of the day and year first above written.

New Horizons Foundation
By: _____
(Signature)

State University
By: _____
(Signature)

Schedule A

DELIVERABLES

New Horizons Foundation

The following items shall constitute deliverables under the above referenced contract and shall be delivered to the New Horizons Foundation, Inc. on or before the specified Deliver Date:

1. Title: Start of Project
2. Title: Status Report #1
3. Title: Status Report #2
4. Title: Receipt and Acceptance of Final Report

Schedule B

METHOD OF PAYMENT

New Horizons Foundation

1. Initial Funding
Upon the completion, delivery, and acceptance of item 1, as specified in Schedule A ("Deliverables") of the referenced contract, NHF will disburse ___ dollars to the Recipient.
2. Subsequent Funding
Upon the completion, delivery, and acceptance of item 2, as specified in Schedule A ("Deliverables") of the referenced contract, NHF will disburse ___ dollars to the Recipient.
3. Subsequent Funding
Upon the completion, delivery, and acceptance of item 3, as specified in Schedule A ("Deliverables") of the referenced contract, NHF will disburse ___ dollars to the Recipient.
4. Final Disbursement
Upon the completion, delivery, and acceptance of item 4, as specified in Schedule A ("Deliverables") of the referenced contract, NHF will disburse ___ dollars to the Recipient.