

DRAFT DRAFT DRAFT

British Petroleum Project Agreement

This Agreement is entered into and by and between the University of South Alabama (USA) and the sponsor British Petroleum (BP), jointly referred to as the "Parties."

Whereas this Project contemplated by this Agreement is of mutual benefit to USA and BP, and will further the instructional, research and public service objectives of USA in a manner consistent with its status as a public educational institution.

USA will use its best efforts to perform activities as described in the Project entitled "_____ " which is attached hereto as Appendix "A" and hereby made part of this Agreement.

The activities of this project shall be conducted during the period beginning ____200_ and ending _____200_.

1. Payment

The total **cost** of the project is \$_____. BP will pay 60% after signing the Agreement and 20% will be due at the mid-term project report. The balance will be due at the time of the final technical report submission. Payment shall be made upon receipt of the USA invoice. Under no circumstance will work begin until the initial payment is received.

2. Patents and Copyrights

Only the research supported by BP under this Agreement shall be subject to the terms below. This Agreement will not include research carried out under separate contract(s), supported by public funds, or carried out by any other sponsoring entity.

Title to any invention or discovery made or conceived in the performance of this Agreement solely by a USA employee or student shall remain with USA, provided, however, that USA shall grant to BP a non-exclusive, royalty-free license for its internal research and development use (but not to make, use, or sell products or processes for commercial purposes) of such invention or discovery. This license may be extended to BP's affiliates without additional charge, and there shall be no right to grant sublicenses under this license.

If an invention or discovery is made solely by an employee of BP as a direct result of such employee's participation in this Agreement, the title to the invention shall remain with BP, and BP shall grant to USA a non-exclusive, royalty-free license for use of invention or discovery for its own internal non-commercial educational and research purposes.

Any invention or discovery made or conceived in the performance of this Agreement jointly by employees of USA and employees of BP shall be deemed a joint invention with both Parties sharing therein the rights thereto according to U.S. patent law.

USA inventions resulting from BP research Agreements shall be promptly disclosed to BP in writing on a confidential basis. USA shall file for and prosecute patent applications on behalf of USA if patent protection is deemed desirable. USA shall consult with BP regarding the manner and extent of filing and prosecuting the patent and its subsequent maintenance. BP shall have sixty (60) days from receipt of the USA invention disclosure to notify USA of BP's interest in acquiring license rights beyond those provided for non-commercial use, and BP's willingness to support the cost of patent filings. BP agreeing to share in the costs of patenting such inventions shall have certain rights and options as delineated in the subsequent sections of this Agreement.

If BP participates in the costs of filing, prosecuting and maintaining a patent application in respect to USA inventions, BP shall have an option for a period of six (6) months after filing of the patent application to acquire an exclusive royalty-bearing license to make, have made, use and sell products or processes for commercial purposes including the right to sublicense exclusively.

If no exclusive license is granted to BP within two years of the filing of the last-filed patent application, then USA may terminate the option to grant BP an exclusive license upon written notification, and license the USA patent to entity and in any manner that it sees fit. BP is responsible for the payment of its share of the patent costs and expenses incurred up to the effective date of termination and accordingly such patent costs and expense already paid by BP will not be refunded. Upon termination of support, BP will retain the internal research and development rights described in aforementioned sections of this Agreement.

3. Publications

A publication shall be deemed to mean any written, oral or other public disclosure of research results, including the public use or sale of an invention based on the research results, if that event could bar the availability of protection in foreign jurisdictions or trigger the one-year grace period in the U.S. within which a U.S. patent application must be filed, then "publish" shall have a corresponding meaning.

USA shall be free to use the results of this Agreement for its own teaching and educational purposes without payment of royalties or other fees provided that it does nothing which could bar the availability of patent protection in respect of a USA, BP or joint inventions. USA is free to publish at its own discretion the research results of this Agreement except in the circumstance where publication would constitute an enabling disclosure of BP's invention on which a patent application has not been filed. In such cases, USA may not publish without the prior written consent of BP following a ninety (90) day review period of the full text to be published. USA will grant BP a sixty (60) day period of review of any manuscript generated as a result of this Agreement prior to the time of submission to any journal or other publication, including conference abstract collections.

Under no circumstances will publication of a student's thesis for which funds are derived from this Agreement be delayed for longer than ninety (90) days after conferral of his or her degree.

4. Confidentiality

In the normal and routine operation of the research detailed in this Agreement, there may be the need for one party to disclose information that is proprietary and confidential to the disclosing party. All such information must be disclosed by the disclosing party in writing and designated as confidential or, if disclosed orally, must be identified as confidential at the time of disclosure and confirmed in writing as being confidential within thirty (30) days of such disclosure. Except as otherwise provided herein, for a period of three (3) years following the date of such disclosure, the receiving party agrees to the use of the confidential information only for purposes of this Agreement and further agrees that it will not publish or otherwise disclose such information. The restrictions above shall not apply to:

- (i) Information which is or becomes publicly known through no fault of the receiving party;
- (ii) Information learned from a third party entitled to disclose it;
- (iii) Information already known to or developed by receiving party before receipt from disclosing party, as shown by receiving party's prior written records;
- (iv) Information for which receiving party obtains the disclosing party's prior written permission to publish or which is disclosed in the necessary course of the prosecution of patent applications based upon inventions developed pursuant to this Agreement.
- (v) Information required to be disclosed by court order or operation of law, including, but not limited to, Public Records Laws or Acts; or
- (vi) Information that is independently developed by the receiving party's personnel who are not privy to the disclosing party's confidential information.

The receiving party must use a reasonable degree of care to prevent the inadvertent, accidental, unauthorized or mistaken disclosure or use by its employees of confidential information disclosed hereunder.

5. Termination

Performance under this Agreement may be terminated by BP at any time upon sixty (60) days written notice to USA. Upon receipt of notification, USA must proceed in an orderly fashion to limit or terminate any outstanding commitments and/or to conclude the research project. USA must be reimbursed by BP for all costs and on-cancelable commitments incurred in performance of the work prior to receipt of termination notice pro-rated based on BP's portion of the total costs. USA may terminate performance if circumstances beyond its control preclude the continuation of the research. If USA terminates, USA must reimburse BP for all unexpended funds pro-rated based on BP's portion of the total costs, except for those funds needed to pay for non-cancelable commitments.

6. Relationship of Parties

The relationships between the Parties shall be that of independent contractors. No joint venture, partnership, employment, agency or similar arrangement is created between the Parties. No Party has the right or power to act for or on behalf of the other or to bind the other in any respect other than as expressly provided for in this Agreement. This Agreement shall not be construed to limit the freedom of either party to engage in any research outside the research Project in Appendix A under this Agreement.

7. Governing Law

This Agreement shall in all respects be exclusively governed by and interpreted according to the substantive laws of the State of Alabama. The Parties further agree and understand that nothing contained herein shall be construed, or interpreted as waiving the sovereign immunity provided to USA under Section 14 of the Alabama Constitution of 1901.

In witness whereof, the Parties hereto have executed this Agreement effective as of the last hereinafter written.

British Petroleum

University of South Alabama

By:_____

By:_____

Title:_____

Title:_____

Date:_____

Date:_____