

CLEMSON UNIVERSITY
INSTITUTE FOR NUTRACEUTICAL RESEARCH

MEMBERSHIP CONDITIONS AND AGREEMENT

I. THE PARTIES TO THIS AGREEMENT ARE:

- A. Clemson University, a South Carolina public, post-secondary education, research and service institution represented by its Institute for Nutraceutical Research, 115 Lehotsky Hall, Clemson University, Clemson, SC 29634 (hereinafter, 'INR') and
- B. _____ with business offices at _____ (hereinafter, "Member")

II. PREMISES

- A. WHEREAS, INR has recognized, technical expertise in and is engaged in education, research, and service related to the nutraceutical industry; and
- B. WHEREAS, Member has technical and commercial interests related to the nutraceutical industry as well as certain technical expertise; and
- C. WHEREAS, membership and participation in an organization established and sponsored by Clemson University may benefit Member, INR, and the industry in general; and
- D. WHEREAS, the anticipated roles, programs, and activities of INR are fully compatible with the educational, research, and service missions and goals of Clemson University;

NOW, THEREFORE, the parties recognize and accept the following facts and conditions, and in consideration of these facts and conditions, and in anticipation of benefits therefrom, the adequacy of which is acknowledged by each party, INR and Member agree as follows.

III. INR ADMINISTRATION

A. Establishment

By this document, which has received appropriate administrative approval and endorsements, Clemson University establishes the Institute for Nutraceutical Research (INR).

B. Purpose

Creating industrial partnerships which provide clinicians and the healthcare industry with scientific data for the use of nutraceuticals in wellness and disease prevention.

C. Mission

Establishing Clemson University as a national leader in nutraceutical research.

D. Vision

Uniting academia, government and industry in the promotion of nutraceuticals in mainstream American healthcare.

E. Goals

- To assist the nutraceutical industry in their efforts to provide consumers greater confidence in product quality and effectiveness.
- To enhance consumer demand for nutraceutical products.
- To develop economic opportunities for rural farming communities.

IV. DEFINITIONS

A. Proprietary information or material is information or material developed by either party prior to, or independent of, the party's relation with INR. Proprietary information includes, but is not limited to research and test results, business plans and records of all types, as well as plans, prototypes, and models, plus concepts and ideas related to the above and expressed or summarized in tangible form.

B. Confidential information includes designated proprietary information and all information characterized in more detail in Article VIII hereof, research and test results that are a product or direct result of the relationship between INR and any Member, or any information identified at the time of its disclosure by the disclosing party as confidential either by labeling it as confidential if it is disclosed in a tangible form, or by identifying it as confidential at the time of disclosure and within 10 days following such disclosure sending a

written, signed summary of the information claiming confidentiality, and naming the individual to whom such disclosure was made, citing also the time and place of the initial disclosure.

- C. Intellectual property is the manifestation, most commonly in tangible form, of the creative efforts and activities of an individual or of a group, each member of which has made an identifiable contribution. As defined, intellectual property is generally subject to and eligible for protection under federal patent and/or copyright laws. As used herein, intellectual property does not include ideas or general concepts; however, ideally such ideas and concepts may be proprietary information. Intellectual property is proprietary in nature.
- D. Patent and all related legal terms, including foreign terms, are given the definitions established by statute, rules, or regulations, including the definitions inherent in or implied by U.S. patent law.
- E. Industrial Advisory Committee (IAC) is a standing committee of INR comprising one representative from each member of the Center, the primary function of which is to advise INR personnel in relation to research objectives, practices, and priorities.
- F. Member is any individual or entity that satisfies all criteria for at least one category of membership as described herein below in Section V.
- G. Intellectual Property Committee is a Clemson University Standing Committee that evaluates patent disclosures made by University personnel and makes recommendations concerning domestic and foreign patent prosecution.
- H. INR Services - services provided by INR, such as those described in Section III. C. 4., above. A current list of INR Services and members' prices will be published at least twice per year.

V. MEMBERSHIP

- A. Conditions - Membership in the Center shall be open to any individual, agency, or organization that completes an application and that agrees by completing the application to accept the terms and conditions herein described.
- B. Category - Three levels or categories of membership, based on total financial support of INR are defined and recognized as follows:
 - 1. Basic Member - entity that contributes in-kind services or equipment to INR's facilities or operations as follows:

\$5,000 of such contributions within one fiscal year (July 1 to June 30) entitles the entity to one year of Basic Membership; \$10,000 to two years, and \$15,000 or more to three years. Entities that have made such contributions prior to establishment of INR shall be recognized as if such contributions had been made during the first year of operation of INR. An entity may also secure Basic Member status by an annual cash payment of five thousand (5,000.00) dollars.

2. Supporting Member - entity that commits a minimum total of thirty thousand (30,000) dollars, payable in three equal, annual installments. To maintain the privileges of a Supporting Membership, for the initial three-year term, by the end of the second year, the entity must have made a firm commitment for an additional successive three year term, and by the end of the fifth year (second year of the second, successive, three-year term), the entity must have made a continuing commitment for another three-year term, and so on. Failure to make the above described, rolling commitment will result in the loss of Supporting Members' privileges and the associated benefits, specifically reduced service rates, in the third year of any current period.
3. Participating Member – entity that in addition to satisfying Supporting Member's requirements, annually pays at least an additional ten thousand (10,000) dollars in support of specified research in a designated area or by a specified faculty member. As described in Section V. D. 4. herein below, such fees shall include University overhead charges.

C. Term of Membership

1. For any of the above-described categories of membership, a Founding Member shall be any entity that has made the minimum payment for that category prior to February 1, 2005, and requested designation as a Founding Member.
2. Membership shall be on a fiscal year basis of July 1 through the following June 30, annually, with the three-year roll-over provision described for Supporting Members following the same schedule.
3. Membership fees will not be pro-rated; fees paid will be applied to the "current year" (or triennial terms) as described above.

4. All Members shall enjoy a one (1) month grace period within which to pay any renewal fees.
5. Except for signs and obligations of any executed license agreement and obligations of confidentiality, all annual rights and responsibilities of membership expire annually on June 30.
6. Any Member may move to the next highest category of membership at any time during a given fiscal year by payment of the full membership fee for that category.
 - a. Any entity may pay membership fees for more than one year.
 - b. The Clemson University Research Foundation (CURF) acts as the fiscal agent for INR.
 - c. Payment of membership fees should be made to **CURF** and sent to **INR**, 130 Lehotsky Hall, Clemson University, Clemson, SC 29634.

D. Membership Rights and Privileges

1. Membership rights and privileges vary with the category of membership and include certain rights to negotiate licenses to intellectual property owned by Clemson University.
2. Basic Members
 - a. Appropriate public acknowledgment of membership/support of INR;
 - b. Subscriptions to INR research reports and summaries;
 - c. Notice of and admission to seminars by INR faculty and visiting professionals;
 - d. Opportunities to participate and present in INR meetings and programs, including reduced meeting and program registration fees, if applicable;
 - e. Assistance in scheduling interviews with students and related placement assistance; and

- f. Representative membership on the Industrial Advisory Committee.

3. Supporting Member

- a. All rights and privileges of basic membership; and
- b. Credit of 100% of Supporting Members fees for INR services (provided both on and off campus by INR affiliates) at published rates below those available to non-members.
- c. Licensing privileges as described in Section VI . E. below.

4. Participating Member

- a. All rights and privileges of Supporting Member.
- b. Right to designate 100 percent of fee paid in excess of supporting Member fee for support of research in specific area, with provision that designated fees will be subject to payment of University overhead.
- c. Preferential rights to negotiate licenses for rights to specified intellectual property.

VI. INTELLECTUAL PROPERTY

- A. Clemson University shall retain ownership of all intellectual property developed exclusively by its faculty, other employees, or designated students; intellectual property developed jointly by Clemson University and an employee of any Member entity shall be jointly owned.
- B. In the absence of a specific, separate, prior agreement to the contrary, because of potential federal support of research conducted by INR, all licenses of technology developed by INR may be subject to federal rights to a non-exclusive license to Clemson's rights in such technology.
- C. Regardless of the category of membership, any Member with rights to license any technology must exercise those rights within 60 days of notification from INR of the rights. Notification of rights to the entity with the highest priority shall be made in writing within 10 days of full

disclosure of the technology to the Office of Technology Transfer, Clemson University. Normally, technology will not be licensed prior to filing at least a provisional, United States patent.

D. Regardless of any licensing provisions or rights, Clemson University retains a fee-free, fully paid, irrevocable, non-exclusive license to all technology for which a Clemson employee, including students, is an inventor or co-inventor. This license is limited to using the invention in the ongoing, teaching, research, and service programs of Clemson University.

E. Intellectual Property developed exclusively by Clemson.

1. Based on disclosure, Intellectual Property Committee recommends securing patent protection.

a. Single Participating Member has provided designated funds for research and desires an exclusive license.

(1) INR notifies Member of rights to negotiate license.

(2) Terms and conditions of license to be established by good faith negotiations between parties.

(3) If an exclusive license is negotiated, Member will have input as to filing foreign patent applications, with responsibilities to pay for same, and Member will pay all costs of prosecuting of U.S. patent.

(4) If member declines to exercise its option for an exclusive license, INR will offer all Supporting Members the option to negotiate a license.

(5) If all supporting Members decline option to license, technology will be listed as “available” by Clemson University or University may abandon patent prosecution at its option.

b. Single Participating Member has provided designated funds for research and declines an exclusive license.

(1) INR notifies Member of rights to negotiate license.

- (2) Member declines right to negotiate any license, or considers only non-exclusive license.
 - (3) INR notifies all Supporting Members of option for non-exclusive license.
 - (4) If no Member exercises option for non-exclusive license, Clemson University may offer exclusive license on competitive basis to any entity.
 2. Based on disclosure, Intellectual Property Committee does not recommend prosecuting patent protection.
 - a. Inventors enjoy right of first refusal to prosecute patent following established Clemson University policy.
 - b. University retains ownership.
 - c. Subject to recovery of expenses by inventors, Member retains rights to license.
- F. Intellectual Property developed jointly by Member and Clemson University.
1. Member has statutory inventor's non-exclusive rights.
 2. Member has rights to negotiate license to Clemson's rights pursuant to E, above.

VII. INDUSTRIAL ADVISORY COMMITTEE

- A. Each Member, regardless of category, may designate a representative to serve on this Committee.
- B. Each Member shall set the term of its representative.
- C. Voting will be weight by membership category in the ratio of 1:3:4 for Basic Members, Supporting Members, and Participating Members, respectively.
- D. The Committee shall select its officers and shall meet at least annually with the Directors of INR.

VIII. CONFIDENTIALITY

- A. The purpose of INR is to facilitate exchange of information; however, from time-to-time, a Member may wish to direct that certain information be treated as confidential.
- B. Confidentiality will be established by the Member and Clemson University executing duplicate originals of the Clemson University Mutual Non-Disclosure Agreement, a copy of which is attached hereto as Appendix A and made part hereof.

IX. ADDITIONAL TERMS AND CONDITIONS

- A. Membership establishes no special relationship between Clemson and any Member, or among the Members.
- B. Membership establishes no agency relationship between the parties; as to Clemson and any and all Members, each to the other is related only as an independent contractor.
- C. Employees, representatives, and agents of Members have no rights to employment or employee benefits with Clemson, nor do Clemson employees by virtue of this Agreement have any rights, duties, or privileges with or due to Member.
- D. Each party shall be responsible for the acts of its employees, duties, and obligations of its agents carried out as part of their employment responsibilities as such may relate to this Agreement.
- E. WITH RESPECT TO ANY INTELLECTUAL PROPERTY PRODUCED, DISCOVERED, OR INVENTED AS A RESULT IN ANY WAY OF THIS AGREEMENT, CLEMSON MAKES NO WARRANTY OF THE MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE OF SAID INTELLECTUAL PROPERTY. IN ADDITION, MEMBER, AS A LICENSEE, ASSUMES ALL RISK OF PERSONAL AND PROPERTY DAMAGES THAT MIGHT ARISE FROM ITS USE OR MANUFACTURER OF THE INTELLECTUAL PROPERTY.
- F. With respect of this Agreement, the parties agree that time is of the essence and further that this is the complete and entire agreement between them related to the subject hereof and that this document replaces all prior agreements written or oral. They further agree that this agreement may be modified only by the terms of a written, mutually signed amendment.

X. Approvals and Adoption

A. For the Institute for Nutraceutical Research

_____ Date: _____

B. For _____

_____ Date: _____