



EDUCATION AND TRAINING PROGRAMS TERMS OF APPOINTMENT

Oak Ridge Associated Universities (ORAU) administers educational appointments for students, faculty, teachers, and postgraduates (hereinafter referred to as Participants) at sponsor-approved host facilities under programmatic guidelines and approved funding. The following Terms of Appointment are applicable to such appointments.

PERIOD OF APPOINTMENT

The appointment period is defined in the Appointment Letter, in which these Terms of Appointment are incorporated by reference, and may be extended by ORAU for specific periods. All appointments are subject to the continuing availability of appropriated funds. In the event that appropriated funding is not available, the Participant will be notified as soon as possible about the procedures for ending the appointment.

FINANCIAL SUPPORT

The amount of award, any allowable travel reimbursement, and applicable payment of tuition and fees during the period of appointment are as stated in the Appointment Letter. All reimbursement of travel expenses will be based on the ORAU Travel Policy.

DUPLICATION OF BENEFITS

Because the educational benefits of the appointment are the primary focus of the program, the Participant may not provide services for compensation to a third party that conflict with the appointment. Awards, prizes, scholarships, Veterans Administration benefits, and other payments may be accepted by the Participant provided they do not represent dual payment for the same activity.

RESERVATIONS

Appointments are accepted subject to the conditions that they will not be vacated or the program changed without consent of ORAU. ORAU reserves the right to make appropriate changes in the statement of these Terms of Appointment as the result of new legislation or experience in administering the programs. ORAU also reserves the right to cancel or terminate an appointment that was made as a result of misinformation given by the candidate or any reference, or as a result of any person withholding information that would have prevented the appointment. If, for any reason, the Participant becomes unable or refuses to adequately carry out the terms or objectives of this appointment, ORAU will withdraw or terminate the appointment upon such basis as it deems proper.

ACCESS AUTHORIZATION

In some cases, access to restricted areas or restricted data may be necessary. Where so required, neither the appointment nor its acceptance by the Participant shall become effective until the sponsoring agency or the sponsor-approved host facility has granted the appropriate access authorization (security clearance) to the Participant in accordance with the provisions of existing law and regulation.

ACCESS TO FACILITIES

The award and acceptance of this appointment are subject to completion of arrangements between the Participant and the host facility regarding the conditions under which the Participant may have access to the facility during the appointment. A Participant shall at all times observe and conform to all applicable rules, regulations, and requirements of the facility to which assigned, including, but not limited to, those respecting environment, safety and health (ES&H) and ES&H training requirements; security, operating and health physics procedures; drug free workplace notification requirements; and conduct. Failure of the Participant to maintain access to the facility to which assigned shall result in termination of the appointment.

HEALTH INSURANCE

During the term of the appointment, the Participant is required to have health insurance coverage. The insurance company, name of insured person, and insurance contract number must be provided to ORAU before the appointment can begin.

OBLIGATIONS

During the appointment, each Participant is a member of the professional community of the facility to which assigned and is subject to the rules, privileges, and responsibilities of that community. Failure to meet the attendance schedule or to adhere to program requirements will, at the option of ORAU, be a basis for revocation of the appointment and cessation of any further award payments by ORAU. Since the Participant is not an employee, s/he does not accumulate annual or sick leave. The Participant may, however, at the mentor's discretion, be excused from participation for brief periods due to illness, personal emergencies, maternity, or similar circumstances. Participants may also be excused for a period of personal time without cessation of award payments provided it is agreed to by the mentor and is not inconsistent with activities associated with the educational nature of the program.

NATURE OF APPOINTMENT

By accepting this appointment, the Participant acknowledges understanding and agreement that this is NOT a contract of employment, and nothing contained in the appointment documents or in the performance of the appointment is intended or shall be construed to create or infer an employment relationship between the Participant and ORAU, the host facility, or the sponsoring agency. Participant acknowledges and agrees that s/he is engaged in an educational experience for a specific term, and is not providing services to, is not receiving wages from, and is not working for ORAU. Therefore, by accepting this appointment, the Participant acknowledges and agrees that no employment related benefits, obligations, or programs (including, but not limited to, paid vacations, sick pay, bonuses, worker's compensation, or unemployment compensation) are appropriate or applicable to this appointment. Participant agrees that the fact that s/he administratively receives stipend payments from ORAU shall not be construed as an indication of an employment relationship under the "paymaster" or any other theory. Participant further agrees that the parties intend that this paragraph shall be conclusive regarding the relationship of the parties before any administrative tribunal, regulatory or taxing agency, court proceeding, or otherwise, and agrees to take no future action contrary to this paragraph.

TAXABILITY OF STIPENDS AND OTHER PAYMENTS

This statement is provided for information purposes only. It is not intended as legal or tax advice, or a definitive interpretation of the law.

Participants in programs administered by ORAU receive award payments from ORAU. Awards paid to Participants will be reported to the Internal Revenue Service (IRS) by ORAU as Miscellaneous Income-prizes and awards as defined in IRS Code Section 74. To be consistent with ORAU reporting, **all payments by ORAU should be reported on the Federal income tax return, Form 1040, as "Other Income" and be identified as a "Fellowship Award."**

Since Participants are not employees (See Nature of Appointment, above), and since Participants receive awards (not wages), ORAU does not withhold state or Federal taxes, social security, workers compensation, or Medicare taxes from award payments. Participants, therefore, should consider filing Form 1040-ES on a quarterly basis and pay estimated Federal income taxes in order to avoid late payment penalties. Travel expense reimbursements (including relocation costs) for Participants are not reported to the IRS by ORAU.

By accepting this appointment, the Participant agrees that s/he is NOT an employee of ORAU. Participant understands and agrees that ORAU, therefore, will NOT treat Participants as employees for income tax withholding purposes. Participant acknowledges her/his understanding and agreement that s/he is personally responsible for her/his individual tax preparation and payment.

All of the statements in this section may not apply to some foreign national Participants. They should contact the IRS for information concerning taxability of the award.

REPORTS AND PUBLICATIONS

ORAU encourages Participants to publish reports and articles in scientific and engineering journals. All publications should show appropriate joint affiliation with the Participant and the facility at which the research was conducted. The Participant should acknowledge support by a statement identifying the specific program and the funding sponsor.

RESPONSIBILITY FOR PROPERTY

If the Participant is issued property or equipment by the host facility in connection with this assignment, the Participant recognizes his/her responsibility to protect, properly care for, and safeguard such property or equipment. The Participant further acknowledges that if such property or equipment is damaged, destroyed, stolen or lost as a result of the negligent actions or inactions of the Participant, the Participant is liable for the damage or loss, up to the fair market value of the property or equipment. The damage or loss may be recovered from awards hereunder.

DISCLAIMER OF LIABILITY

Neither ORAU, the host facility or its sponsoring agency, nor persons acting on their behalf, will be responsible for:

1. Any alleged or actual liability, cost or expense incurred as a result of personal injury to or death of persons, including the Participant, or damage to or destruction of property, or for any other loss, damage, or injury of any kind whatsoever, except where such death, injury, loss, or damage is the result of willful negligence or intentional misconduct of an officer, agent, or employee of ORAU, the host facility, or the facility's sponsoring agency or contractor.
2. Any claims, losses, expenses (except as otherwise provided in these Terms of Appointment) or damages, including but not limited to, bodily injury, death, or property damage, caused by the negligence or misconduct of the Participant.
3. Any claims, losses, expenses, or damages, including, but not limited to, bodily injury, death, or property damage, arising out of, or resulting in any way from, the use or misuse of information acquired by the Participant during the appointment.

Neither ORAU, the host facility, the facility's sponsoring agency or contractor, nor persons acting on their behalf, makes any warranty, express or implied, (i) with respect to the accuracy, completeness, or usefulness of any information acquired by the Participant during the appointment, (ii) that the use of any such information may not infringe upon privately owned rights, (iii) that the information acquired by the Participant during the appointment will not result in injury or damage when used for any purpose, or (iv) that information acquired by the Participant during the appointment will accomplish any particular results or are safe for any purpose, including the intended purpose.

PARTICIPANT DATA AGREEMENT

In consideration of this appointment, access to facilities of the sponsoring agency or its contractors or other sponsor-approved host facilities for study and research, and receipt of an award during the appointment, the Participant hereby agrees as follows:

1. The Participant shall provide the host facility in written form any and all Technical Data produced or generated during the course of the appointment in whatever form it may be recorded. If not recorded or written, the Participant shall (upon request) provide the host facility a written report of any Technical Data whatsoever generated by the Participant during the course of the appointment, and the host facility and/or sponsor and/or the Government of the United States shall have the right to use, duplicate or disclose such Technical Data, in whole or in part, in any manner and for any purpose whatsoever and to permit others to do so.
2. The Participant understands and agrees that the Participant shall respect any and all limitations to access to any Restricted Data or other classified information, proprietary information (including but not limited to proprietary data, trade secrets, or other information which is restrictively marked or designated), or any other Technical Data, commercial or financial information that is privileged or confidential, which the Participant receives during or as a result of such appointment, as may be established by the host facility or sponsor. In the event that the Participant should receive or in any way obtain access to any such information in connection with this appointment, whether by authorization, inadvertently, or otherwise, the Participant further understands that unauthorized disclosure of, or failure to safeguard, such information may subject the Participant to civil and/or criminal liability under applicable laws of the United States.
3. As used in this Agreement, the term "Technical Data" means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may be, for example, documented, experimental, or developmental research; demonstration or engineering work usable or to be used to design a process or to procure or produce materials; or support to maintain or operate a facility. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications, or related performance or design-type documents, or computer software (including computer programs, computer software data bases, and computer software documentation).

Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data as used herein does not include financial reports, costs analyses, or other information incidental to contract administration.

4. In recognition of the statutory intent set forth in Title 35 United States Code Section 212, this appointment is considered to be for educational purposes, and therefore, ORAU shall not assert any rights to inventions made by the awardee.