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### Routing/Review Approval of Personnel Settlement Agreement

Please sign/date where indicated below noting the approval or denial of the attached proposed Personnel Settlement Agreement. \*\*After signing, please return to the attention of BOR – General Counsel. \*\* If "denied," please return to BOR – General Counsel.

In the matter of: Iowa State University v. Daniel Attinger, Docket No. 18ISU0001  
Daniel Attinger v. Iowa State University et al., Case No. 4:18-cv-00047

Institutional Staff: ISU Office of University Counsel – Mike Norton, Heather Smith,  
Drew Nishiyama

#### Office of the Attorney General

Reviewed by (Print Name): Jeffrey Thompson

Reviewer's Signature: [Signature]

Date: 7/19/18 Reviewed:  Redacted:

Institution: Iowa State University

Institutional Head's Printed Name: Wendy Wintersteen

Institutional Head's Signature: [Signature]

Date: 7/17/2018 Approve:  Deny:

#### Board of Regents

Executive Director's Printed Name: Mark Braun

Executive Director's Signature: [Signature]

Date: 7/24/18 Approve:  Deny:

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made and entered into on the last date written below by and between Dr. Daniel Attinger ("Attinger") and Iowa State University of Science and Technology, its current and former successors, assigns, subsidiaries, divisions, affiliates, officers, directors, employees, agents, and representatives (collectively "the University"), on behalf of itself and the Board of Regents, State of Iowa ("the Board of Regents") (collectively referred to herein as "the Parties" or "the Released Parties").

### RECITALS

WHEREAS, the University is the Petitioner and Attinger is the Respondent in a complaint pending before the Iowa Department of Inspections and Appeals, Administrative Hearings Division, Docket No. 18ISU0001 (the "Complaint");

WHEREAS, Attinger is the Plaintiff, and the University, Steven Leath, Wendy Wintersteen, Jonathan Wickert, and Caroline Hayes are the Defendants, in an action pending in the United States District Court for the Southern District of Iowa, Case Number 4:18-cv-00047 (the "Lawsuit");

WHEREAS, the Parties have a mutual interest in amicably resolving any and all disputes between them;

WHEREAS, the Parties have negotiated this Agreement in good faith to fully settle all differences between them including, but not limited to, those differences embodied in the Complaint and the Lawsuit;

WHEREAS, the Parties acknowledge and agree that this Agreement does not constitute any admission of wrong-doing or any admission of violations of applicable law, rule or policy by either Party; and

WHEREAS, the Parties agree that the terms and conditions contained herein are fair, reasonable, and equitable and are the result of an arm's length negotiation between the parties.

NOW, THEREFORE, in exchange for their mutual promises and for other good and valuable consideration and intended to be legally bound herein, the Parties agree as follows:

### AGREEMENT

1. Attinger's Employment. Attinger shall be employed by the University through June 30, 2021 at his full rate of pay. For the period of the last date written below through June 30, 2020, Attinger shall be employed by the University on campus ("On-Campus Employment Period"); with access to his current office and current laboratory facilities in which to conduct his research. During the On-Campus Employment Period, no change shall be made to the location of Attinger's office and laboratory facilities unless mutually agreed to by the parties. For the

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period of July 1, 2020 through June 30, 2021, Attinger shall be employed by the University off campus ("Off-Campus Employment Period"). During Attinger's Off-Campus Employment Period, he shall not have an office or research facilities. During the term of Attinger's employment with the University, except as specifically set forth below, Attinger shall be subject to the same employment policies, procedures, rights, responsibilities, terms, conditions, benefits, and privileges, as other faculty members employed by the University.

2. **Supervision.** The Parties agree that during the term of Attinger's employment with the University, Attinger will be supervised by Dr. Arun Somani which supervision will include, but not be limited to, conducting annual performance evaluations of Attinger. In the event Dr. Somani retires or otherwise separates from the University before the end of Attinger's term of employment, the University's College of Engineering will assign a new supervisor at the level of associate or assistant dean. At no time during the term of Attinger's employment will Attinger be supervised by Dr. Caroline Hayes.

3. **Resignation.** Attinger will tender his resignation from employment with the University effective June 30, 2021. Attinger agrees not to seek or accept employment with the University at any time in the future. If Attinger obtains new full-time employment prior to June 30, 2021, the University's obligation to pay Attinger his full rate of pay in accordance with Paragraph 1 shall cease as of the commencement date of Attinger's new full-time employment. At the time of his resignation, Attinger may set up an "out of office" auto-response message in his University-issued email account to provide updated contact information (e.g., providing another email address, mailing address, personal phone number(s), etc.). This auto-response message shall remain active until six months after the date of Attinger's resignation. Attinger shall not have access to his University-issued email account after the date of his resignation from employment.

4. **Committees and Administrative Functions.** Attinger agrees that during the term of his employment with the University, he shall not participate in any departmental, college or university committees or other administrative functions.

5. **Interim Actions.** The Parties agree that the interim actions instituted December 8, 2016, as amended April 24, 2017, shall remain in place during the term of Attinger's employment with the University.

6. **Hiring of Staff.** The Parties agree that if Attinger's grant and/or award funds allow, Attinger may hire a staff person or persons (Merit and/or Professional & Scientific) to assist him in his laboratory. The salary and benefits of any staff person(s) shall be paid by Attinger's grants and/or awards, or jointly from such funds and those of any other faculty members with whom Attinger collaborates.

7. **Position Responsibility Statement.** The Parties agree that Attinger's Position Responsibility Statement (PRS) will be revised to reflect 100% research. Attinger shall not engage or participate in teaching or service duties or responsibilities at the University.

8. **Post-Tenure Review.** The University agrees to rescind Attinger's Post-Tenure Review issued on March 9, 2018.

9. **Buy-Back.** The Parties agree to negotiate, in good faith, the buy-back of Attinger's research equipment and books at the end of Attinger's employment with the University, pursuant to the University's Equipment Transfers and Sales Policy and/or the Equipment/Excess Property Disposal, as applicable. Should the Parties fail to come to an agreement on the buy-back, this Settlement Agreement and Release shall survive.

10. **Grants and Awards.** The Parties agree to work, in good faith, to transition Attinger's grants and awards to another institution or entity at the end of Attinger's employment with the University. Attinger shall have staff available to assist him with pre- and post-award tasks. All pre- and post-award tasks shall be managed through the College of Engineering's Engineering Research Institute.

11. **Dismissal with Prejudice.** The Parties stipulate that subsequent to the execution of this Agreement, the University will file a motion to dismiss the Complaint with prejudice, and it shall provide that each party will bear its or his own attorney fees and costs. The Parties further stipulate that subsequent to the execution of this Agreement, Attinger will dismiss with prejudice the Lawsuit, each party to bear its and his own attorney fees and costs.

12. **Covenant Not to Sue.** In consideration of the terms and conditions set forth in this Agreement, the sufficiency of which the Parties acknowledge, Attinger agrees, promises and covenants that neither he, nor any person, organization or any other entity acting on his behalf will file, charge, claim, sue, cause or permit to be filed, charged, or claimed, any action for damages or other relief (including injunctive, declaratory, monetary relief, or other) against the University, including its respective affiliates, successors, officers, directors, employees, agents, current or former students, and representatives, involving any matter which occurred in the past up to the date of this Agreement, including any continuing effects thereof, or otherwise involving any claims, demands, causes of action, obligations, damages, or liabilities which are the subject of this Agreement, with the exception of any amounts due for any worker's compensation or unemployment compensation claims, or claims under any insurance policy, plan or contract arising before the effective date of this Agreement. Attinger agrees and acknowledges that he has notified the University of any such claims.

13. **Attinger's Full and Comprehensive Release of Claims.** Attinger agrees, on behalf of himself, his heirs, executors, administrators, attorneys, and assigns, to hereby waive, release, and forever discharge the Board of Regents and/or the University, including their respective affiliates, successors, officers, directors, employees, agents, current and former students, and representatives, from any and all known or unknown actions, causes of action, claims, or liabilities of any kind that have or could be asserted against the Board of Regents and/or the University, and/or any party released herein, arising out of or related to his employment with the University, including but not limited to:

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- (a) Any claims arising from any alleged violation by the Board of Regents and/or the University of any federal, state or local statutes, ordinances or common laws, including, but not limited to, the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq.; Title VII of the Civil Rights Act of 1964; 42 U.S.C. § 2000e et seq.; the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 et seq.; the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.; the Equal Pay Act, 29 U.S.C. § 206(d) et seq.; and the Iowa Civil Rights Act of 1965, Iowa Code Chapter 216. Attinger further waives his right to monetary or other recovery should any federal, state or local administrative agency pursue any claims on his behalf arising out of or related to his employment with the University. Attinger further agrees to waive all rights to use any internal grievance or appeal procedure offered by the University with respect to any act or omission that has occurred up to and including the date Attinger signs this Agreement.
- (b) Claims, actions, causes of action or liabilities arising under any other federal, state, municipal, or local statutes, law, ordinance, or regulation; and/or
- (c) Any other claim whatsoever including, but not limited to: claims for severance pay, sick pay, unpaid wages, unpaid bonuses, unpaid time off, claims based upon breach of contract, breach of the covenant of good faith and fair dealing, wrongful termination, defamation, interference with contract, intentional, and/or negligent infliction of emotional distress, fraud, tort, personal injury, invasion of privacy, violation of public policy, negligence, and/or any other common law, statutory, or other claim whatsoever arising out of or relating to his employment with the University. Notwithstanding the above, it is agreed and understood that the releases contained in this Paragraph 13 do not cover any claims which by law Attinger cannot waive and any claims to enforce the terms of this Agreement.

14. Waiver of Rights under the ADEA. In consideration of the actions described herein of the Board of Regents and the University, Attinger voluntarily and knowingly waives any and all rights and claims under the ADEA that may exist before the signing of this Agreement. Attinger is hereby advised that he has the right under the ADEA to consult an attorney prior to signing this Agreement (which Attinger has been encouraged to do) that he has a period of at least twenty-one (21) calendar days to consider this Agreement and to the extent that he has signed the Agreement prior to the expiration of that period, he has done so knowingly and voluntarily, and that he is permitted to revoke this Agreement for a period of up to seven (7) calendar days following the signing of this Agreement.

15. Full and Comprehensive Release of Potential Claims against Attinger; Covenant Not to Sue. The Board of Regents and the University hereby covenant and agree that in consideration of the terms of this Agreement, it waives, fully releases, and forever discharges Attinger of and from any and every claim, demand, and cause of action of whatsoever nature which they now have, or may in the past have had, including, but not limited to, any and every claim, demand, and cause of action arising out of Attinger's duties and obligations related to his

employment with the University and promises and covenants not to file, charge, claim, sue, cause or permit to be filed, charged, or claimed, any action for damages or other relief (including injunctive, declaratory, monetary relief, or other) against Attinger. Notwithstanding the above, it is agreed and understood that the releases contained in this Paragraph 15 do not cover any claims which by law the University cannot waive, and any claims to enforce the terms of this Settlement Agreement and Release.

16. **No Admission of Liability.** This Agreement is not, and shall not in any way be, construed as an admission of any of the Parties that any of the Parties violated any federal, state or local laws, or University rules or policies. The Parties have entered into this Agreement for the sole purpose of resolving the employment concerns so as to avoid the burden, expense, delay, and uncertainties of proceeding through a formal legal process.

17. **Representation of Attinger.** Attinger hereby represents and warrants that he (a) has authority to enter into this Agreement; (b) holds the claims free and clear of any liens and has not pledged or assigned those claims to any third party; (c) has not commenced or been subject to any bankruptcy or insolvency proceeding that affects or could affect his rights to accept payment and release claims under this Agreement; (d) has not received any promise of further consideration; and (e) does not know of any other person who holds any rights to sue for the causes of action either asserted in the Lawsuit or the claims subject to the releases made hereunder. Attinger further agrees to indemnify and hold harmless each of the Released Parties from and against any and all claims, actions, causes of actions, demands, rights, damages, costs, losses of services, expenses, compensation, taxes, or property damages (including attorneys' fees, expenses, and costs of defense) which any person, partnership, corporation, entity, association, agency, or other organization may bring against them alleging facts and circumstances that are contrary to, inconsistent with, or arising from the breach of, the representations and warranties of this Paragraph 17.

18. **Attinger Review.** Attinger acknowledges he was given at least twenty-one (21) days to review and consider this Agreement in its entirety. Attinger understands that he may voluntarily waive this review period by signing and returning the Agreement prior to the expiration of twenty-one (21) days. The Agreement waives no rights or claims that may arise after its execution.

19. **Counterparts.** This Agreement may be signed in counterparts.

20. **Governing Law and Venue.** This Agreement is made and entered into in Story County in the State of Iowa, and in all respects shall be interpreted, enforced, and governed by Iowa law. Any disputes arising out of this Agreement shall be subject to the jurisdiction of the federal or state courts of Iowa with Story County, Iowa as the venue.

21. **Severability.** Should a court of competent jurisdiction declare or determine any provision of this Agreement to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby. It is the Parties' intent that the part, term or provision declared or determined to be illegal or invalid shall be deemed not to be a part of this Agreement.

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22. **Public Record and Executive Order 85.** The Parties agree that this Agreement is a public record under Iowa Code Ch. 22. The Parties acknowledge that this Agreement is subject to Executive Order 85 and, as such, must be approved by the Executive Director of the Board of Regents and the President of the University, and be reviewed by the Iowa Attorney General, or his designee. This Agreement is not effective until it has received all necessary reviews and approvals. This Agreement will be posted on the Board of Regents' web page.

23. **Amendments.** None of the terms or conditions contained herein shall be altered, amended, waived or abandoned, except by prior written agreement of the Parties.

24. **Voluntary and Binding Agreement.** The Board of Regents and the University hereby advise Attinger, in writing, of his right to consult an attorney before signing the Agreement. By signing below, Attinger represents and certifies that he freely and voluntarily entered into this Agreement and with the full intent to be bound thereby.

25. **Entire Agreement.** This Agreement sets forth the entire agreement between the Parties hereto, and fully supersedes any and all prior agreements, discussions, or understanding between the Parties pertaining to the subject matter hereof.

**CAREFULLY READ THIS AGREEMENT; BY SIGNING BELOW YOU ARE RELEASING ALL KNOWN CLAIMS. YOU HAVE A PERIOD OF TWENTY-ONE (21) CALENDAR DAYS TO CONSIDER THIS RELEASE. IF YOU SIGN THIS AGREEMENT, YOU WILL HAVE UP TO SEVEN (7) CALENDAR DAYS FOLLOWING THE DATE YOU SIGN IT TO REVOKE YOUR SIGNATURE. THE RELEASE SHALL NOT BECOME EFFECTIVE OR ENFORCEABLE UNTIL THIS SEVEN (7) CALENDAR DAY PERIOD HAS EXPIRED.**

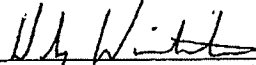
IN WITNESS WHEREOF, and intending to be legally bound hereby, Attinger and Iowa State University of Science and Technology, on its own behalf and the behalf of the Board of Regents, have executed the foregoing Settlement Agreement and Release.

[SIGNATURE PAGE FOLLOWS]

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Dr. Daniel Attinger  
Agreed to on this 12 day of July, 2018.



Wendy Wintersteen, President  
Iowa State University of Science and Technology  
Agreed to on this 17 day of July, 2018.

Approved as to legal form & content:



Amanda Jansen  
Attorney for Dr. Daniel Attinger  
On this 16 day of July, 2018.