

NEW YORK STATE SCIENCE & TECHNOLOGY LAW CENTER
AT SYRACUSE UNIVERSITY COLLEGE OF LAW

*Research Project For
New York State Foundation for Science, Technology and Innovation:*

Sponsored Research Agreement Template

February 19, 2010

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Introduction

The following is a template for an agreement between a university and a sponsor, wherein the sponsor agrees to provide funding to the university for the purpose of research. This template provides sets of alternative clause language which can be included in a sponsored research agreement. A sponsored research agreement can be easily created by cutting and pasting the desired clause language into a new document. Approximately 40 sponsored research agreements were examined to determine the most common clauses and significant variations among universities. Each section of the report explains the purpose of the clause and the significance of the variations between the universities.

1. Recitals

This section of the agreement lays the foundation for the sponsored research agreement. The different University agreements typically identify the Sponsor, the University as a non-profit institution, and the department of the University where the research is conducted.

1.1. Syracuse University:

THIS AGREEMENT is entered into by and between Sponsor and Syracuse University, a non-profit, educational institution having corporate powers under the laws of the State of New York.

1.2. Syracuse University:

WHEREAS, the effort contemplated by this Agreement is of mutual interest and benefit to the University and to the Sponsor, will further instructional and/or research objectives of the University in a manner consistent with its status as a non-profit, tax-exempt, educational institution, and may derive benefits for both the Sponsor and the University through inventions, improvements, and/or discoveries.

1.3. Syracuse University:

WHEREAS, University, through the [xxxx] Department, in the College of [xxxx] has valuable experience, skill and ability in performing research in the area of [xxxx].

1.4. Syracuse University:

WHEREAS, Sponsor desires to have University undertake a project in accordance with the scope of work described in Exhibit A (“Statement of Work”).

2. Scope of Work/Work

This section essentially names the research project and incorporates a separate appendix that will contain a more detailed agreement with regard to the details of the project.

2.1. Syracuse University

The University agrees to use reasonable efforts to perform the Project. "Project" shall mean the work funded under this Agreement as described in Exhibit A.

2.2. Rochester Institute of Technology:

RIT shall use its reasonable efforts to perform research entitled [xxxx] as described in Appendix A. Substantive changes to the Research require prior written approval of the Sponsor.

3. Key Personnel

This section determines the research principal investigator that will lead the sponsored research project. Issues may arise when the person agreed upon to lead the project is no longer able to do so. UCF only designates who will lead the project and does not determine a procedure if a replacement is needed. Washington State allows the university to pick a replacement subject to the sponsor's approval. The University of Toledo and Syracuse University require the university and the sponsor to come together and agree upon a replacement. Most of the agreements state that if an agreement on a replacement cannot be reached, either party may elect to terminate the sponsored research agreement.

3.1. University of Central Florida:

ADMINISTRATIVE PERSONNEL

University of Central Florida:
Technical:
Principle Investigator:
Department:
University of Central Florida
4000 Central Florida Boulevard
Orlando, FL 32816
Phone:
Fax:
E-Mail:

SUBCONTRACTOR:
Technical:
Subcontractor Information:

Phone:
Fax:
E-Mail:

Contractual:
Contract Manager:
University of Central Florida
Office of Sponsored Research
12443 Research Parkway, Ste. 207
Orlando, FL 32826-0150

Contractual:
Contract Manager:
Subcontractor Information:

Phone:
Fax:
E-mail:

Phone:
Fax:
E-mail:

3.2. Washington State University:

The Project Director may select and supervise other project staff as needed. No other person will be substituted for the Project Director except with Sponsor's approval. Sponsor may exercise Termination for Convenience provisions of this Agreement if a satisfactory substitute is not identified.

3.3. University of Toledo:

"Principal Investigator" or "PI" is the person, designated by UT, and accepted by Company, who is directly responsible for executing, directing, overseeing and reporting such Sponsored Research under this Agreement.

If the services of the PI become unavailable to UT for any reason, UT shall be entitled to designate another member of its faculty, who is acceptable to both Parties, to serve as the PI of the Sponsored Research. This acceptance is not to be unreasonably withheld. If a substitute PI is not designated within sixty (60) days after the original PI ceases his or her services under this Agreement, either Party may terminate this Agreement, subject to the provisions of Article 9 hereof

3.4. Syracuse University:

The following individuals are identified as key personnel for the performance of the Project:

[xxxx], Principal Investigator

If for any reason the Principal Investigator or any other key personnel becomes unable to continue the Project the University and Sponsor shall attempt to agree upon a successor. If the parties are unable to agree upon a successor, this Agreement shall be terminated in accordance with Article 12: Termination for Convenience.

4. Period of Performance

The period of performance sets the duration of the contract. The performance period may be established for a certain set term or may be set to expire at the completion of the desired research. This section will tie into a termination clause with regard to the substantive means of terminating the contract.

4.1. Syracuse University:

The period of performance of this Agreement will be [start date] through [end date].

or

This Agreement shall begin on the effective date first hereinabove written, and shall continue for a period of ten (~~X10~~) years, unless earlier terminated in accordance with Termination article hereunder. Specific periods of performance will be associated with each Research Project Initiative issued hereunder.

4.2. University of Iowa:

This Agreement shall become effective upon the date first hereinabove written and shall continue in effect for the full duration of the Contract Period unless sooner terminated in accordance with the provisions of this Article. The parties hereto may, however, extend the term of this Agreement for additional periods as desired under mutually agreeable terms and conditions which the parties reduce to writing and sign. Either party may terminate this Agreement upon sixty (60) days prior written notice to the other.

5. Reports

The Reports section determines what technical information the Sponsor is entitled to receive and how often the University will provide the reports. Iowa states that the University provides reports to the Sponsor at least every six months and forty-five days prior to the end of the agreement. The University of Central Florida clause favors the University by providing the Sponsor with reports at the University's discretion. Typically, as in the Chicago agreement, the University provides the Sponsor with reports annually. The University of Pennsylvania requires the University to keep progress reports that are readily available to the Sponsor during regular business hours.

5.1. University of Iowa:

Written program reports shall be provided by University to Sponsor every six (6) months, and a final report shall be submitted by University within forty-five (45) days of the conclusion of the Contract Period, or the earlier termination of this Agreement

During the term of this Agreement, representatives of University will meet with representatives of Sponsor at times and places mutually agreed upon to discuss the progress and results, as well as ongoing plans, or changes therein, of the Project to be performed hereunder.

5.2. University of Central Florida:

SUBCONTRACTOR shall render to UCF's contractual representative technical progress reports as delineated in Appendix A.

5.3. University of Chicago:

REPORTS: The University shall furnish annual technical and financial reports and/or final reports in such form as Company may request, of its findings and progress made during the term of the contract.

5.4. University of Pennsylvania:

Principal Investigator shall maintain records of the results of the Sponsored Research and shall provide Sponsor with reports of the progress and results of the Sponsored Research in accordance with Attachment A. Institution shall maintain records of the use of the funds provided by Sponsor and shall make such records available to Sponsor upon reasonable notice during Institution's normal business hours, but not more frequently than each anniversary of the Effective Date.

6. Records

This section contemplates a University's duty to compile records and account for the use of the Sponsor's funds. As in the Drexel agreement, this duty may be incorporated into a clause outlining the duty to report technological progress. Some master agreements, such as the UNC agreement, are permissive of the Sponsor's oversight and ability to audit spending. The other agreements limit the Sponsor's oversight temporally or limit Sponsor access under certain funding agreements.

6.1. Drexel:

Principle Investigator shall maintain records of the results of sponsored research and shall provide Sponsor with reports of the progress and results of the sponsored research in accordance with attachment A. Drexel shall maintain records of the use of the funds provided by Sponsor and shall make such records available to Sponsor upon reasonable notice during Drexel's normal business hours, but not more frequently than once each calendar year.

6.2. University of Connecticut:

- 1) Fixed Price Term Sponsorship: No financial reporting of expenditures is required.
- 2) Cost Reimbursement Sponsorship: A cumulative report of expenditures and final invoice will be provided to Sponsor within ninety days following the completion of the research program.
- 3) Rebudgeting: The Principal Investigator (PI), working within the policies of the University of Connecticut, is best qualified to determine how to use the project funds most effectively in accomplishing the stated plan of work. Therefore, the PI may use such funds without strictly adhering to the original approved budget estimates for each category of direct costs. The program's budget will be amended by the University's Office for Sponsored Programs to meet the needs of the PI in

conducting the work under this Agreement. The University is, however, required to seek prior approval from Sponsor for significant project changes, as follows;

- (a) Transfer of substantial portion of the project effort;
- (b) Substantial change in objective or scope;
- (c) Absence or change of PI.

6.3. University of North Carolina:

The Recipient must retain financial records, supporting documents and other records pertinent to a Subagreement in accordance with applicable laws and policies, but in any event for a period not less than three years from the date of submission of the final expenditure report. Records pertaining to audits, appeals, litigation or settlement of claims arising out of performance of a Subagreement must be retained in accordance with applicable laws and policies, but in any event until such audits, appeals, litigation or claims have been settled. All financial records, supporting documents and other documents applicable to a Subagreement must be available at all reasonable times for inspection review and audit by the Funding Institution and its authorized representative, unless such disclosure is prohibited by law.

7. Costs and Payments

The sponsored research agreement will likely address the amount of money that the Sponsor intends to pay and the process for making such payments. Sponsorship may be on a cost-basis, where the Sponsor agrees to pay for all expenditures incurred in conducting the contracted research. As demonstrated in the Pennsylvania clause, a Sponsor can protect itself from cost overruns by including an upper bound on the amount it is willing to pay.

On the other hand, the Sponsor can choose to contract on fixed price terms. Such an arrangement can allow the Sponsor to limit its financial liability to set contract terms. The WSU contract demonstrates such an arrangement. Further, as demonstrated in the USC clause, the Sponsor can link additional payments to the completion of certain milestones or to a suitable final report.

Presumably all billing transactions by a University will be completed via invoice. The Connecticut and WSU agreements both outline the acceptable timeframe for paying invoices and the WSU agreement sets liquidated damages for late payment. Because industry practice may be highly variable with regard to customary payment terms, a prudent drafter should include such express language in the final contract.

7.1. University of Pennsylvania:

Sponsor shall reimburse the institution for an amount equal to its expenditures and reasonable overhead incurred in the conduct of the Sponsored Research in an amount not to exceed the total amount of \$[xxxx] as set forth in Attachment A. Sponsor acknowledges that this amount is a good faith estimate only and not a guarantee of the

cost to conduct the Sponsored Research. If at any time Institution determines that it will require additional funds for the Sponsored Research, it shall notify Sponsor and provide an estimate of the additional amount. Sponsor shall not be liable for any costs in excess of the amount of \$[xxxx] unless it has agreed in writing to provide additional funds.

Sponsor shall make payments in advance to Institution in accordance with the payment schedule set forth in Attachment A. All payments shall clearly identify the Principal Investigator and Sponsored Research. All payments are to be made by check payable in United States dollars, to "The Trustees of the University of Pennsylvania."

7.2. University of Connecticut:

- 1) Under a Fixed Price Term Sponsorship: INVOICING. Payments will be due in advance, in equal amounts, upon execution of this agreement and quarterly thereafter, or in accordance with the schedule specified in ATTACHMENT A. The University will invoice the Sponsor, and the Sponsor agrees to pay these invoices, within thirty days of the invoice date, to the Executive Director.
- 2) Under a Cost Reimbursement Sponsorship: INVOICING. The University will invoice the Sponsor, and the Sponsor agrees to pay these invoices, within thirty days of the invoice date, to the Executive Director.

7.3. Washington State University:

Total Costs: Sponsor agrees to reimburse University for services performed under this Agreement in the amount of \$[xxxx] in accordance with the following payment schedule:

Project Budget: Attachment B sets forth the Project Budget. Deviation from this Project Budget may be made to and from any expenditure object within the University system as long as such deviation is reasonable and necessary in the pursuit of the Scope of Work. The total amount identified above may not be exceeded without prior written amendment to this Agreement signed by the Parties.

Invoices: Periodic invoices will be provided in accordance with [the payment schedule] but not more often than monthly, using the standard University invoice. Payments are due to University within forty-five days from the University invoice date.

The balance of any amounts which remain unpaid more than thirty days after they are due to the University shall accrue interest at the lesser of one and one-half percent per month or the maximum allowed under applicable law. However, in no event shall this interest provision be construed as a grant of permission for any payment delay.

7.4. University of Southern California:

It is agreed and understood by the parties hereto that the price for performing the Research shall be \$[xxxx] in accordance with Exhibit B (Budget). Payment shall be made by Sponsor according to the following schedule:

- (a) \$[xxxx] upon execution of this Agreement (*usually 50% of the price or greater*)
- (b) \$[xxxx] at some date or completion of a milestone
- (c) \$[xxxx] upon submission of the final report

8. Equipment

The majority of sponsored research contracts grant to the University the title to equipment purchased pursuant to the sponsored research agreement. This default clause is demonstrated in the Vermont agreement. The Cal Poly clause offers a more sophisticated agreement outlining the responsibilities of each party with regard to Sponsor-loaned equipment. Likewise, the UCF clause suggests the University's willingness (and may impart a good-faith obligation) to bargain with the Sponsor with regard to equipment ownership upon completion of research.

8.1. University of Vermont:

Equipment: UVM shall retain title to any equipment purchased with the funds provided under this Agreement.

8.2. California Polytechnic State University:

- 1) Title to equipment purchased by Corporation in connection with Work Project Proposal shall remain with Corporation. Such equipment shall be used first for the purposes of this Agreement and its Work Project Proposal, and then in support of University instructional and research objectives.
- 2) Title to equipment loaned by Sponsor under this Agreement shall remain with Sponsor. Corporation shall be liable for any loss or destruction or damage to property loaned to Corporation by Sponsor and shall be responsible for returning any such property in as good condition as when received except for reasonable wear and tear or for the utilization of it in accordance with the provisions of this Agreement.
 - (a) The Corporation represents that adequate space, power and cooling means, incidental facilities, and access for installation and maintenance to support the installation and operation of such equipment during the term of this Agreement.

- (b) The Corporation represents that adequate Sponsor equipment, programs, documentation, and other materials protection will be provided.
 - (c) For such loaned equipment, Sponsor will provide for transportation to and from Sponsor's site, packaging, installation, insurance for loss or damage while in transit, and appropriate instruction in the operation of such equipment for purposes of this Agreement, and any related Work Project Proposals.
- 3) The Corporation represents that any alterations or attachments to or removal of equipment from the University's premises require prior written approval of Sponsor.

8.3. University of Central Florida:

UCF will be accountable for and hold title to all equipment purchased under this Agreement and will be responsible for employing it for the overall purpose of the project. SUBCONTRACTOR agrees to maintain sufficient records to enable UCF to fulfill its accountability. Upon termination of the final project period, SUBCONTRACTOR may request title to equipment purchased under this Agreement, and UCF will consider and respond in writing within 60 days to such request.

9. Publicity

This section addresses the right of the parties to control their own publicity. As evidenced in the below samples, either the University or both parties can require prior approval before their name(s) can be used in advertisement or promotions by the other party.

9.1. Washington State University:

PUBLICITY: Sponsor shall not include the name of Washington State University, Washington State University Research Foundation or any of either entity's Trademarks in any advertising, sales promotion, or other publicity matter without prior written approval of the President of the University or his or her designee.

9.2. Rochester:

PUBLICITY. Neither party shall use the name, trade names or trademarks of the other party or the other party's employees in connection with any products, promotion, or advertising without the prior written permission of an authorized representative of the other party. The foregoing shall not, however, preclude any legally required disclosure, reports generated in the normal course of business, or acknowledgement of sponsorship as required by the guidelines of an academic organization.

9.3. Drexel University:

Drexel shall not use Sponsor's name without Sponsor's prior written consent except that Drexel may acknowledge Sponsor's funding of Sponsored Research in scientific publications and in listings of sponsored research projects. Sponsor shall not use Drexel's name, or the name of any trustee, officer, faculty member, student or employee thereof, without Drexel's prior written consent.

10. Publication

This section addresses each party's rights with regard to publication or presentation of the information discovered in performing the sponsored research. Industry-university collaboration has the potential for conflict because the University's interest in publishing scholarly materials may conflict with the sponsor's interest in business secrecy.

The Drexel and USC clauses demonstrate University favorable terms. Drexel allows the University unconditional publication rights, while USC allows the sponsor to temporarily delay publication. The Chicago and Miami clauses are more industry sympathetic allowing the sponsor to review and withhold certain information from publication.

10.1. University of Southern California:

USC shall have the right, at its discretion, to release information or to publish any material resulting from the Project. USC shall furnish Sponsor with a copy of any proposed publication thirty (30) days prior to submission for publication for review and comment. Sponsor may request USC to delay publishing such proposed publication for a maximum of an additional sixty (60) days in order to protect the potential patentability of any invention described therein.

10.2. University of Chicago:

PUBLICATION: The University of Chicago agrees to preserve as confidential any and all trade secrets, privileged records and other proprietary information belonging to the Company and disclosed to the University or its employees during the course of the project covered by this Agreement. The University and its employees shall have the right, consistent with academic standards, to publish the results of research performed under this Agreement, provided such publication does not disclose proprietary trade secrets or confidential information of the Company. The University agrees that, prior to submission of a manuscript describing the results for publication, the University shall forward to the Company a copy of the manuscript to be submitted and shall allow the Company 30 days to determine whether a patent application or other intellectual property protection should be sought prior to publication in order to protect the Company's proprietary interest in any product or invention developed in connection with this project. In addition, with reasonable justification, the University agrees to withhold such publication an additional 60 days, if required, to obtain patent protection. At this time the University shall be free to submit the manuscript and publish results in any manner consistent with academic standards. The Company will have the right to

request deletion of any trade secret, proprietary, or confidential information supplied by them to the University.

10.3. Miami:

Publication Rights: University shall have publication privileges in reference to the Scope. Company shall have the right to review and approve such publication with respect to disclosure of confidential material prior to submission for publication. Such approval will not be unreasonably withheld, and will be provided within thirty (30) calendar days from the date of submission to Company. In the event Company does not respond to the submission within such time, approval will be deemed to have been given. University shall furnish all data resulting from this Scope to the Company.

10.4. Drexel University:

Drexel shall be free to publish the results of the Sponsored Research; a copy of each publication will be provided to the Sponsor.

11. Confidential Information

This section governs how confidential information will be controlled at the outset of the agreement, during the agreement, and after the agreement has been ended.

By clearly stating the guidelines for what will be deemed confidential, a drafter can limit the possibility of erroneously releasing confidential information. Identification of confidential materials is usually accomplished by placing a standard mark on project documents. The Rochester Institute of Technology has instituted another safeguard against unwanted dissemination of confidential information by requiring the party receiving documents not in tangible form (typically oral) to confirm with the delivering party within 10 days whether the information is confidential or not.

Defining what is not confidential information may be just as important as stating what is confidential information. With both lines clearly drawn, both parties understand what is and what is not deemed to be confidential. Many universities opt not to have confidentiality clauses placed in their sponsored research agreements, rather their sponsored research agreements lay out the procedure for executing non-disclosure agreements or other forms of confidentiality agreements, at a later time.

11.1. Rochester Institute of Technology:

Confidentiality – Either party may disclose information to the other party under this Agreement that it identifies as confidential at the time of disclosure and that is required for the conduct of the Research, according to the following provisions:

- 1) Confidential Information disclosed in a tangible form shall be clearly labeled by the Discloser as “confidential” or “proprietary” or with a similar marking, and if

disclosed initially in any other form, it must be confirmed in writing as confidential within ten (10) business days of the initial disclosure.

- 2) Confidential Information shall not include any information that: i) is already in the possession of Receiver; ii) becomes publicly available through no fault of Receiver; iii) is independently developed by Receiver without reliance on the Confidential Information of Discloser; iv) is received without the obligation of confidentiality from a third party with no known duty of confidentiality to Discloser; or v) is required to be disclosed by a government authority or a court, provided, however, that Receiver shall promptly notify Discloser of such request or order and shall cooperate with Discloser to limit the disclosure of Confidential Information hereunder.
- 3) Receiver shall maintain the strict confidentiality of the Confidential Information with the same degree of care it uses to protect its own confidential information and shall not disclose it to third parties without the written approval of Discloser. Receiver shall use reasonable care in the selection of individuals with access to the Confidential Information and remind them of their obligations to protect the confidentiality of the Confidential Information.
- 4) Neither RIT nor Sponsor is obligated to supply any Confidential Information under this Agreement. Receiver acquires no rights to manufacture, license, or otherwise to use or disclose the Confidential Information except as expressly granted hereunder.
- 5) The parties designate the individuals below to coordinate the disclosure and/or receipt of Confidential Information:
- 6) The obligation to protect Confidential Information pursuant to Paragraphs 7a – 7e shall continue in effect for one year after the Expiration Date of this Agreement or after its termination for any reason. Receiver shall return any and all Confidential Information (including all copies in whole or in part) to Discloser upon request at time of expiration.

11.2. University of Pennsylvania:

- 1) Institution shall not be obligated to accept any confidential information from Sponsor. If Sponsor desires to furnish any confidential information to the Principal Investigator, Sponsor may request the Principal Investigator to sign the “Agreement between Sponsor and Principal Investigator concerning Sponsor’s Confidential Information” that is attached as Attachment B. Institution bears no responsibility for maintaining the confidentiality of any confidential information of Sponsor provided under such an individual agreement.
- 2) In order to preserve the patentability of Institution Intellectual Property, Sponsor shall maintain Institution Intellectual Property and information provided pursuant to the Sponsored Research (whether oral or written) as confidential and shall not

disclose such information to any third party until the publication of such information by the Principal Investigator or until Institution provides Sponsor with written verification that all desirable patentable inventions have been protected, whichever occurs sooner.

- 3) Institution shall be free to publish, present or otherwise disclose Research Results or other information and material resulting from the Sponsored Research for any purpose. Institution shall furnish the Sponsor with a copy of any proposed publication or presentation at least thirty (30) days in advance of the submission of said proposed publication in order for Sponsor to review and comment on said proposed publication.
- 4) Institution shall not use Sponsor's name without Sponsor's prior written consent except that Institution may acknowledge Sponsor's funding of this Sponsored Research and any scientific contributions in scientific publications and in listings of sponsored research projects. Sponsor shall not use Institution's name, mark or symbol, or the name of any trustee, officer, faculty member, student or employee thereof, without Institution's prior written consent.

11.3. Oklahoma State University:

It is anticipated that no Confidential/Proprietary Information will be disclosed between the parties in the performance of the work described in EXHIBIT A. Therefore, neither party shall be responsible for the protection of such Confidential/Proprietary Information. However, if the need to disclose proprietary information arises, a separate Confidentiality Agreement will be executed between the parties and incorporated into this Agreement through written modification to this Agreement.

11.4. Case Western Reserve University:

Confidentiality. The University and the Company agree to advise their respective employees that it is necessary to hold in confidence all technical information and knowhow (collectively "Knowledge") received from the other party in connection with the Research Program for a period of three (3) years from the date of written disclosure. All Knowledge deemed confidential will be marked "Confidential" by the disclosing party. Oral disclosures will not be considered confidential unless so designated at the time of disclosure and confirmed in writing within thirty (30) days thereafter. The University and the Company will use reasonable efforts to prevent disclosure of such Knowledge during the three (3) year period, except for disclosures by publications as provided in Section 5.2 below. Knowledge that becomes the subject matter of a license will be governed by the terms of the license agreement. This Section will not apply, however, to Knowledge which:

- (a) is now in or will enter the public domain as the result of its disclosure in a publication, the issuance of a patent, or otherwise without the legal fault of the receiving party;
- (b) the receiving party can prove was in its possession in written form at the time of the disclosure by the other party;
- (c) comes into the hands of the receiving party by means of a third party who is entitled to make such disclosure and who has no obligation of confidentiality toward the disclosing party; or
- (d) must be disclosed pursuant to a court order or as otherwise required by law.

12. Intellectual Property

The intellectual property section governs ownership of intellectual property discovered during the course of the sponsored research project. In most situations, intellectual property will entail patents, but there may be instances where ownership of copyrights and trademarks may be involved. Additionally, the agreement may outline the procedure for prosecuting patents. Most Universities assert that the United States patent law will govern the intellectual property produced over the course of the agreement.

Generally, the parties are compelled to disclose research discoveries to each other. In most scenarios the University's office of sponsored research will issue a formal document (usually called the "Initial Disclosure"). At that point, a term is set during which the Sponsor may exclusively negotiate a licensing agreement with the University (usually 3 months). Once the allotted time for negotiations has expired the University is free to negotiate license agreements with other parties.

As demonstrated in the Stanford agreement, intellectual property licenses can be structured as either non-exclusive license or an exclusive license. Both options may have specific benefits and disadvantages to either party depending on the context surrounding the agreement. Also note the Rutgers license clause's withholding of a royalty-free license in certain circumstances to the U.S. Government in order to comply with the Bayh-Dole Act.

12.1. University of Southern California:

All rights, title and interest to USC Intellectual Property shall belong to USC and shall be subject to the terms and conditions of this Agreement. To the extent Sponsor has any rights, title, or interest in any USC Intellectual Property, through this or any other arrangement, Sponsor hereby irrevocably assigns and transfers such rights to USC.

- 1) USC will promptly notify Sponsor of any USC Intellectual Property. Sponsor shall, upon reviewing such notification, determine whether to request USC to file, prosecute and maintain any patent application or application for other intellectual property protection, domestic or foreign, in USC's name. Sponsor shall bear all reasonable costs incurred in connection with such preparation, filing, prosecution and maintenance directed to said USC Intellectual Property. USC shall keep

Sponsor advised as to all developments with respect to such applications and Sponsor shall be given an opportunity to review and comment thereon.

- 2) If Sponsor elects not to exercise its option in accordance with Section 11 of this Agreement or decides to discontinue the financial support of the application for intellectual property protection, USC shall be free to file or continue prosecution and maintenance on any such application, at USC's sole expense. If Sponsor elects to discontinue the financial support of the application for intellectual property protection prior to issuance of a valid patent, Sponsor thereby waives and gives up any right it may have under this Agreement to license the USC Intellectual Property under Section 11 below.

12.2. Rutgers University:

All rights in inventions and discoveries created during the term of this Agreement in the course of and within the scope of the Research (hereafter "Intellectual property") shall be the property of RUTGERS. RUTGERS shall promptly report any such Intellectual Property to SPONSOR upon receipt by its Office Technology Commercialization of a completed written disclosure (hereafter the "Initial Disclosure") thereof from the Principal Investigator.

- 1) Patents: If, within forty-five (45) days after the date that an Initial Disclosure is provided to SPONSOR, SPONSOR notifies RUTGERS that it elects to negotiate a license and pay patent fees for the Intellectual Property described in the Initial Disclosure, RUTGERS shall cause patent applications to be filed and prosecuted in its name at SPONSOR's expense. After filing, RUTGERS will promptly advise SPONSOR and provide SPONSOR a copy of any such patent application. SPONSOR shall reimburse RUTGERS (or at the option of RUTGERS make payment directly to the vendor), within thirty (30) days of receipt of invoice from RUTGERS, all patent costs incurred by RUTGERS during the earliest to expire of the following periods beginning on the date SPONSOR notifies RUTGERS of its election to exercise its negotiation rights and ending on i) the expiration of the applicable three (3) month negotiation period described in b) below, ii) the execution date of the definitive license agreement between the parties or iii) the effective date of notice by SPONSOR to RUTGERS relinquishing SPONSOR's negotiation rights with respect to the applicable Intellectual Property. In the event SPONSOR does not agree within forty-five (45) days after receipt of the initial Disclosure to support the filing of a patent application on such Intellectual property, and forfeit its rights to a license, RUTGERS may file a patent application on such Intellectual Property at its own expense, and SPONSOR shall have no further rights in that Intellectual Property or that patent application.
- 2) License: From the date of SPONSOR's notification in a) above to pay patent costs and negotiate a license for the Intellectual property described in the Initial Disclosure, SPONSOR shall have a three (3) month period to negotiate the terms of a license agreement and RUTGERS agrees to negotiate these license terms in good

faith. During this period, RUTGERS will not offer a commercial license to any other party. If the parties do not execute a license agreement within this three (3) month period, RUTGERS is free to offer a license to such Intellectual Property to others and SPONSOR shall no longer thereafter have any negotiation or other rights with respect to the applicable Intellectual Property. Any licenses granted to SPONSOR will provide (i) for SPONSOR (and its sub-licensees, if any) to diligently exert its best efforts to introduce products utilizing the licensed technology into public use as rapidly as practicable on terms acceptable to RUTGERS; (ii) 4 for a royalty and other consideration that is usual and customary in the trade; (iii) for termination in the event SPONSOR has not introduced licensed products into public use within a time period commensurate with industry standards that is acceptable to RUTGERS; (iv) for indemnity and insurance terms acceptable to RUTGERS' insurance carrier; (v) for RUTGERS to retain a non-exclusive license, with the right to grant sublicenses, for publication, research and internal use purposes only; (vi) that the rights of the United States of America as set forth under Public Laws 96-517 and 98-620 are specifically reserved. (These rights include, without limitation, a royalty free license to the U.S. Government of inventions made resulting from research which it sponsors partially or wholly with federal funds).

12.3. Stanford University:

- 1) Ownership of Technology. Stanford owns the entire right, title, and interest, including all patents, copyrights, and other intellectual property rights, in and to all Technology developed using Stanford facilities and by Stanford personnel ("Stanford Technology") under this Agreement. Sponsor owns all interests, including all patents, copyrights, and other intellectual property rights, in and to all Technology developed using Sponsor facilities and by Sponsor personnel under this Agreement ("Sponsor Technology"). Technology that is jointly developed by Stanford and Sponsor personnel will be jointly owned ("Joint Technology").
- 2) Disclosure. Stanford will provide Sponsor with a complete, written, confidential disclosure of any Stanford Technology after the disclosure is received by the Stanford Office of Technology Licensing.
- 3) Patent Filing and Expenses. Stanford may file patent applications at its own discretion and expense, or at the request of Sponsor at Sponsor's expense. If Sponsor elects to license Stanford Technology, Sponsor will pay for the costs of patent filing, prosecution and maintenance in the United States and any foreign country.
- 4) License Election. By giving written notice to Stanford within 3 months after notice of patentable Stanford Technology, Sponsor may elect one of the following alternatives:
 - (a) Non Exclusive License. A nonexclusive, nontransferable (without the right to sublicense), worldwide license in a designated field of use to

make, have made, use, and sell products covered by the patent application on terms to be negotiated. Stanford may at its option discontinue patent prosecution or maintenance of any invention licensed to Sponsor under this alternative for which Stanford is paying patent-related costs; or

- (b) Exclusive License. A royalty-bearing, limited-term, exclusive, field-of-use license (subject to third-party rights, if any), including the right to sublicense, in the United States or any other country elected by Sponsor to make, have made, use, and sell products covered by the patent application, in exchange for Sponsor's agreement to diligently commercialize the invention and that any licensed products sold in the United States will be substantially manufactured in the United States.
- 5) License Terms and Conditions. All licenses of this section elected by Sponsor are effective as of the date the parties negotiate and sign a subsequent license agreement, which will contain indemnity, insurance, and no-warranty provisions, in addition to other customary terms and conditions.
 - 6) License to Joint Technology. Sponsor may, at its option under [4](b), exclusively license Stanford's rights in Joint Technology.
 - 7) Foreign-Filing Election. Sponsor will notify Stanford of those other countries in which it desires a license in sufficient time for Stanford to satisfy the patent-law requirements of those countries. Sponsor will reimburse Stanford for out-of-pocket costs related to those foreign filings, including patent filing, prosecution, and maintenance fees.
 - 8) Copyright Licenses. Sponsor may elect to negotiate a nonexclusive or exclusive (subject to third party rights, if any) royalty-bearing license to use, reproduce, display, distribute and perform computer software and its documentation for commercial purposes in a designated field of use. Sponsor must elect within 3 months of notice of Technology disclosure of copyrightable material. Computer software for which a patent application is filed is subject to Paragraph [4].
 - 9) Non-Election. If Sponsor does not provide written notice to Stanford within 3 months of a written disclosure under Paragraph [4], [6] or [8], Stanford has no further obligations to the Sponsor and may license the Stanford Technology to third parties.
 - 10) Assignment. Stanford represents that all of its employees, students, and consultants who participate in the Research Program will be obligated to assign to Stanford all their rights in patentable or copyrightable Technology.

12.4. University of Connecticut

- 1) Inventorship shall be determined according to United States patent law, and based on such the following definitions shall apply:
 - (a) Inventions made during the performance of the Project solely by legal inventors or authors who are University employees will be owned by University (“University IP”). By statute, University employee inventors are required to assign their rights to such inventions to University.
 - (b) Inventions made during the performance of the Project solely by legal inventors or authors who are Sponsor’s employees will be owned by Sponsor (“Sponsor IP”).
 - (c) Inventions made during the performance of the Project jointly by legal inventors who are University’s employees and Sponsor’s employees will be owned jointly by University and Sponsor (“Joint IP”). By statute, University employee inventors are required to assign their rights to such inventions to University.
- 2) University agrees to promptly provide Sponsor a copy of any complete invention disclosure submitted to it by the PI describing a sole University or a joint invention made during the term of this Agreement. Sponsor agrees to promptly provide University a copy of any complete invention disclosure or comparable document submitted to it describing a joint invention(s).
- 3) Sponsor may, at any time, request University to file a patent application on University IP or Joint IP.
 - (a) If such a request is made, Sponsor agrees to reimburse University for all patent costs. Sponsor has the right to review all filings and office actions related to the patent applications, provided, however, that in an emergency when immediate action is needed to protect University IP or Joint IP, documents may be filed prior to review by the Sponsor and in such event, telephone or facsimile notice shall be given promptly by University or University’s counsel of such action. University will use reasonable efforts to avoid emergency situations in cases where they have control over the timing of steps involved in protecting University IP or Joint IP.
- 4) In consideration of Sponsor’s support of this Project and to the extent that University has a right to grant such license, Sponsor shall be entitled to an option to negotiate a royalty-bearing license to University IP and/or University’s interest in Joint IP, so long as Sponsor agrees to reimburse University for all patent costs during the term of the option. Failure to reimburse University’s patent costs will result in termination of the option.

- (a) Sponsor must exercise the option in writing to University within two (2) months of University's notification to Sponsor of any invention/discovery but no longer than four (4) months of the termination or expiration of the Project. A license must be negotiated in good faith within six (6) months of Sponsor's written notification that it wishes to exercise the option. Such time may be extended upon mutual written agreement of the parties. Said license shall provide:
- i. for Sponsor (and its sub-licensees, if any) to exert its best efforts to introduce products utilizing the licensed technology into public use as rapidly as practicable;
 - ii. for a royalty that is usual and customary in the trade;
 - iii. for termination in the event Sponsor has not introduced licensed products into public use, or is not actively seeking to do so, within a time period acceptable to University;
 - iv. for indemnity and insurance terms acceptable to University;
 - v. in the case of exclusive licenses, for University to retain a non-exclusive license, with the right to grant sub-licenses, for research purposes only; and
 - vi. that, if applicable, the rights of the United States Government pursuant to the provisions of 35 U.S.C. sections 200-212 and applicable regulations of Chapter 37 of the Code of Federal Regulations are specifically reserved.
- 5) Copyright and all other rights in any software created in the course of the Research shall be owned by University. Upon receipt of a copy of such software, Sponsor shall have a six (6) month period to negotiate the terms of a license agreement and University agrees to negotiate these license terms in good faith. During this period University shall not offer a commercial license to any other party.
- 6) If, after good faith negotiations, a license has not been negotiated, or if the Sponsor decides to forgo the option, University shall be free to offer commercial license rights to any third party or to dispose of its inventions or other rights resulting therefrom in any other way it deems appropriate.
- 7) Sponsor shall retain all invention disclosures submitted by University in confidence and use its best efforts to prevent disclosure to third parties. Sponsor shall be relieved of this obligation only when this information becomes publicly available through no fault of Sponsor.

12.5. Drexel University:

- 1) A PRINCIPAL INVESTIGATOR shall provide to DUCOM and SPONSOR a complete written disclosure of any DUCOM INTELLECTUAL PROPERTY reasonably considered patentable. SPONSOR shall advise DUCOM in writing, no later than thirty (30) days after receipt of such disclosure, whether it requests DUCOM to file and prosecute patent applications related to such DUCOM INTELLECTUAL PROPERTY. If SPONSOR does not request DUCOM to file and prosecute such patent applications, DUCOM may proceed with such preparation and prosecution at its own cost and expense; but such patent applications shall be excluded from SPONSOR's option under ARTICLE 7.
- 2) 6.2 DUCOM shall control the preparation and prosecution of all patent applications and the maintenance of all patents related to DUCOM INTELLECTUAL PROPERTY. SPONSOR shall reimburse DUCOM upon receipt of invoice for all documented expenses incurred in connection with the filing and prosecution of the patent applications and maintenance of the patents that SPONSOR has requested DUCOM to prosecute under Section [1].
- 3) The preparation, prosecution, and maintenance of copyright, trademark and other intellectual property applications for the DUCOM INTELLECTUAL PROPERTY shall be subject to the provisions of Section [1].
- 4) DUCOM shall retain all right, title and interest in and to the DUCOM INTELLECTUAL PROPERTY and any patents, copyrights and other intellectual property protections related thereto.
- 5) Rights to inventions, improvements and/or discoveries, whether patentable or copyrightable or not, relating to SPONSORED RESEARCH made solely by employees of SPONSOR using SPONSOR's facilities shall belong to SPONSOR.
- 6) Rights to inventions, improvements and/or discoveries relating to SPONSORED RESEARCH, whether or not patentable or copyrightable, which were made jointly during the performance of this AGREEMENT by the PRINCIPAL INVESTIGATOR or other inventors owing a duty to assign to DUCOM and by employees of SPONSOR shall belong jointly to DUCOM and to SPONSOR. Such inventions, improvements, and/or discoveries shall be subject to the terms and conditions of this AGREEMENT.

13. Termination

Many questions may arise with regard to termination: should an agreement need to be terminated prior to the completion of the project; who needs to pay for what, so the project can be continued; what can and cannot be disclosed; or what needs to be done to the work product that has been produced up to the date of termination? For protection, Universities try to anticipate issues that may arise and affirmatively address them within the master

agreement. This section outlines the procedure and qualifications for terminating the agreement.

Some Universities allow the party breaching the agreement the ability to cure their breach within a stated time period. Additionally, if the agreement cannot be salvaged, the termination section would guide how both parties will move forward.

13.1. University of Pennsylvania:

- 1) In addition to the termination right set forth in Section 2.2 hereof, either party may terminate this Agreement effective upon written notice to the other party, if the other party breaches any of the terms or conditions of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof. In the event of an incurable breach, the non-breaching party may terminate this Agreement effective immediately upon written notice to the breaching party.
- 2) In the event of termination of this Agreement prior to its stated term whether for breach or for any other reason whatsoever, Institution shall be entitled to retain from the payments made by Sponsor prior to termination Institution's reasonable costs of concluding the work in progress. Allowable costs include, without limitation, all costs or noncancellable commitments incurred prior to the receipt, or issuance, by Institution of the notice of termination, and the full cost of each employee, student and faculty member supported hereunder through the end of such commitments. In the event of termination, Institution shall submit a final report of all costs incurred and all funds received under this Agreement within ninety (90) days after the effective termination date. The report shall be accompanied by a check in the amount of any excess of funds advanced over costs and allowable commitments incurred. In case of a deficit of funds, Sponsor shall pay Institution the amount needed to cover costs and allowable commitments incurred by Institution under this Agreement.
- 3) Termination of this Agreement shall not affect the rights and obligations of the parties accrued prior to termination hereof. The provisions of Article 4, entitled Reimbursement of Costs, Payment; Article 6, entitled Sponsor's Rights in Research Results and Reports ; Article 7, entitled Intellectual Property; Article 8 entitled Confidentiality, Publication, Use of Name; Article 10, entitled Disclaimer of Warranties, Indemnification; and Article 11, entitled Additional Provisions, shall survive such termination.

13.2. University of Vermont:

Termination. This Agreement may be terminated by either party upon thirty (30) days written notice to the other party. In the event of termination by either party, Sponsor shall reimburse UVM for all unreimbursed expenses and non-cancellable encumbrances reasonably or necessarily made prior to the effective date of termination, such reimbursement, in combination with prior payments, not to exceed the total specified in

Section 6 above. Conversely, UVM shall refund any amount paid by Sponsor in excess of all expenses and non-cancellable encumbrances reasonably or necessarily made prior to the effective date of termination. In the event of termination, UVM shall provide Sponsor with copies of work in progress under the agreement.

13.3. University of North Carolina:

- 1) A Subagreement may be terminated by either party, with or without cause, by giving thirty days written notice prior to the effective date of such termination delivered by fax, express, priority or first class mail. The recipient must immediately stop all work under the Subagreement on the date and to the extent specified in the notice of termination.
- 2) To the extent the Subagreement constitutes a cost-reimbursement relationship, upon termination by either party, Recipient will be reimbursed for all costs and noncancellable commitments incurred in performance under a Subagreement prior to the date of termination in an amount not to exceed the total commitment set forth in the Subagreement
- 3) To the extent the Subagreement constitutes a fixed price relationship, upon termination by either party, Recipient and Funding Institution must negotiate in good faith a settlement for actual costs incurred, as documented and illustrated by Recipient up to the date of termination. In no event may the total amount of negotiated settlement exceed the total commitment set forth in the Subagreement.

13.4. University of Chicago:

TERMINATION: Either party may terminate this Agreement upon thirty days written notice to the other party. In the event this Agreement is terminated, the University will be reimbursed for all non-cancellable costs incurred through the date of termination.

14. Independent Contractor

Many sponsored research agreements define the parties as independent contractors for the purposes of maintaining a certain degree of separation from each other. The purpose of these clauses is to attempt to limit the liability of one contractual party for the other's actions. It should be noted that the law does not generally recognize contractual disclaimers of a relationship. So, to the extent that these clauses do not in fact represent the true relationship between parties, their legal utility is limited.

14.1. University of Vermont:

Independent Contractors. For the purposes of this Agreement and all services to be provided hereunder, the parties shall be and shall be deemed to be independent contractors and not agents or employees of the other party. Neither party shall have the authority to make any statements, representations or commitments of any kind or to take

action which shall be binding on the other party, except as may be expressly provided for herein or authorized in writing.

14.2. Montana State University:

UNIVERSITY performs the services required under this agreement as an independent contractor. Under no circumstance shall UNIVERSITY or its personnel be considered an employee or agent of SPONSOR. This agreement shall not constitute, create or in any way be interpreted as a joint venture, partnership or formal business organization of any kind.

14.3. Oklahoma State University:

In the performance of all services hereunder:

- 1) In making and performing this Agreement, University and Sponsor act and shall act at all times as independent contractors and nothing contained in this Agreement shall be construed or implied to create an agency, partnership, joint venture, or employer and employee relationship between University and Sponsor.
- 2) Neither party is authorized or empowered to act as agent for the other for any purpose and shall not on behalf of the other enter into any contract, warranty, or representation as to any matter. Neither shall be bound by the acts or conduct of the other.

15. Insurance

Sponsored research agreements generally require the contracting parties to carry adequate insurance to cover liability that may arise in executing the contract. There are various types of insurance policies that may be applicable for purposes of executing the master agreement, such as workers compensation, commercial general liability insurance, property insurance, automobile insurance, personal injury insurance, product-liability insurance. The insurance clause should outline the type and amount of insurance deemed necessary within the particular research enterprise.

15.1. California Polytechnic State University:

- 1) Corporation represents that it has adequate liability insurance, such protection being applicable to its officers, employees, and agents while acting within the scope of their duties. Corporation represents that the following coverage shall be maintained in full force and effect during the term of this Agreement:
 - (a) Workers' Compensation and Employer's Liability insurance indicating compliance with any applicable labor codes, acts, laws, or statutes, whether federal or state, where Corporation or its subcontractors

operates, and Employers' Liability insurance of not less than \$1,000,000 for injury or death per accident.

- (b) Commercial/Comprehensive General Liability insurance of not less than \$1,000,000 combined single limit or equivalent for bodily injury, property damage and personal injury as a result of any one occurrence.
- (c) Commercial/Comprehensive Automobile Liability insurance of not less than \$1,000,000 combined single limit or equivalent for bodily injury and property damage as a result of any one occurrence including coverage for owned, hired and non-owned automobiles

- 2) Each party hereby assumes any and all risks of personal injury and property damage attributable to the negligent acts or omissions of itself and the officers, employees, and agents thereof.
- 3) Corporation has no liability insurance policy that can extend protection to any other person.

15.2. University of Vermont:

Insurance. Each party agrees to maintain commercial general liability insurance in an amount not less than \$1,000,000 per occurrence, combined single limit, for third party bodily injury and property damage liability, including products, completed operations and contractual liability.

15.3. Thomas Jefferson University:

Sponsor warrants that, during the term of this Agreement and for at least two years thereafter, it shall maintain a policy or program of insurance at levels sufficient to support the indemnification obligations assumed herein. Upon request Sponsor will provide evidence of its insurance.

This includes broad form and contractual liability and product liability, in a minimum amount of \$1,000,000 per single occurrence and \$3,000,000 in the aggregate with respect to personal injury, bodily injury and property damage.

16. Indemnity

Indemnity agreements require one party to take responsibility for another party's legal liabilities in certain situations. Sponsored research agreements generally include terms providing that the Sponsor will indemnify the University against any legal claims or judgments the University incurs as a result of the Sponsor's conduct. The exact scope of indemnity can be negotiated.

As evidenced in the Chicago and Vermont agreements Universities generally seek indemnification from the Sponsor for both legal liability and legal expenses. Likewise, the

agreements generally expressly state that the scope of indemnity extends only to liabilities arising from the contracted enterprise, and excludes negligent acts by the University.

The Michigan Tech clause goes further to ensure that the Sponsor indemnifies the University for damages arising from commercializing intellectual property and product liability. To the extent that these terms might leave a Sponsor liable for unforeseeable future costs, this clause can be construed as disfavorable to Sponsors.

16.1. University of Chicago:

INDEMNIFICATION: The Company undertakes to indemnify, defend and hold harmless the Principal Investigator and the University, its trustees, officers, agents and employees from any and all liability, loss, damage and expenses (including attorney fees) they may suffer as the result of claims, demands, costs or judgments which may be made or instituted against them or any of them by reason of personal injury (including death) to any person or damage to property arising out of or connected with the performance of the activities to be carried out pursuant to the work scope provided, however, that any such liability, loss or damage resulting from negligence or willful malfeasance by the Principal Investigator or the University, its trustees, officers, agents and employees is excluded from this agreement to indemnify, defend and hold harmless. The Principal Investigator and the University agree to notify the Company as soon as they become aware of a claim or action and to cooperate with and to authorize the Company to carry out the sole management and defense to such claim or action. The Company agrees, at its own expense, to provide attorneys to defend against any actions brought or filed against the Principal Investigator, the University, its trustees, officers, agents and employees with respect to the subject of indemnity contained herein, whether or not such claims or actions are rightfully brought or filed.

16.2. University of Vermont:

Indemnification. Sponsor agrees to indemnify and hold UVM harmless from liability of any nature or kind including defense costs or expenses, from, or on account of, any and all suits or damages, of any kind, resulting from injuries or damages sustained by any person or persons or property by virtue of Sponsor's negligence or performance of this contract unless such liability results solely from UVM's performance of this contract or its negligence.

16.3. Michigan Technological University:

Indemnity. Each party remains liable for all risks of personal or bodily injury and property damage caused by the negligent or willful acts or omissions of that party but subject to and reserving all applicable immunities granted by law or constitution to either party. Except as provided above, Sponsor shall fully indemnify and hold harmless Michigan Tech against all claims, costs or judgments (including expenses of defense) arising out of Sponsor's use, commercialization, or distribution of information, materials or products which result in whole or in part from the research performed pursuant to this

Agreement; and from and against any and all claims, costs or judgments (including expenses of defense) arising out of claimed copyright, patent, or other confidentiality or proprietary rights violations with respect to any product or information provided by Sponsor to Michigan Tech. This clause is solely for the benefit of the parties to this Agreement and is not intended to create any rights in any third party.

17. Merger

A merger or integration clause states that the written document and its attached appendices constitute the entire agreement between parties. The legal effect of such a clause is to preclude the use of evidence extrinsic to the written agreement in subsequent legal proceedings. Similar to the warranty clause below, inclusion of a merger clause seeks to clarify the reasonable expectations that each party should have in the sponsored research agreement.

17.1. University of Illinois:

MERGER. This Agreement and all attachments embody the entire understanding of the Parties and will supersede all previous or contemporaneous communications, either verbal or written, between the Parties relating to this Agreement. All terms and conditions of any instruments, including purchase orders, issued by SPONSOR to facilitate payment under this Agreement are void, even though they may be issued after the signing of this Agreement.

17.2. Rochester Institute of Technology:

Entire Agreement- This agreement and its appendices contain the entire agreement between parties regarding the Research. In case of inconsistency or conflict between the provisions of this Agreement and the preprinted terms and conditions of any purchase order with respect to the Research, the provisions of this Agreement shall control.

18. Warranties

A warranty claim can arise in contract law where one party fails to provide the other party a rightfully expected result or product. Warranty clauses in sponsored research agreements are generally limited to disclaimers of warranty. A warranty disclaimer serves to give notice to either party that specific results are not guaranteed. Both agreements below disclaim any warranty arising in the products of research, with the Rutgers agreement specifically disclaiming the patentability of any research product.

It should be noted that certain legal doctrines require that warranty disclaimers be conspicuous in order to be enforced. This explains the capitalized text in the sections below. Likewise, some statements or affirmations can be construed as express warranties, which may not legally be disclaimed in certain situations. This said, the sponsored research agreement should contain the entire agreement and should include a merger clause to limit future litigation on these issues.

18.1. Rutgers University:

Warranties:

RUTGERS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION, ORIGINALITY, OR ACCURACY OF THE RESEARCH OR ANY INVENTION(S) OR PRODUCT(S), WHETHER TANGIBLE OR INTANGIBLE, CONCEIVED, DISCOVERED, OR DEVELOPED UNDER THIS AGREEMENT; OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR ANY SUCH INVENTION OR PRODUCT. RUTGERS WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, OR OTHER DAMAGES SUFFERED BY SPONSOR, ANY LICENSEE, OR ANY OTHERS RESULTING FROM THE USE OF THE RESEARCH OR ANY SUCH INVENTION OR PRODUCT. RUTGERS MAKES NO REPRESENTATION OR WARRANTY REGARDING ACTUAL OR POTENTIAL INFRINGEMENT OF PATENTS, COPYRIGHTS OR OTHER INTELLECTUAL PROPERTY OF THIRD PARTIES, AND SPONSOR ACKNOWLEDGES THAT THE AVOIDANCE OF SUCH INFRINGEMENT IN THE DESIGN, USE AND SALE OF PRODUCTS AND PROCESSES RELATED TO THE RESEARCH WILL REMAIN THE RESPONSIBILITY OF SPONSOR.

18.2. Michigan Technological University:

Disclaimer of Warranty. In view of the experimental nature of this Project, Michigan Tech makes no warranty or guarantee of any kind in connection with anything delivered or provided by Michigan Tech under this Agreement, and Michigan Tech DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, with respect to any information, results, design, specification, prototype, or any other item furnished to Sponsor, or to others at Sponsor's request, in connection with the Project, this Agreement, or the subject thereof.

19. Export Controls

This clause covers the compliance of the Sponsor and the University with government regulations regarding the export of technology to foreign governments. Some agreements may not include a specific export control section but usually include a more general clause requiring compliance with all laws.

The RIT agreement lays out specific statutes as well as the general regulations that must be followed and places the responsibility on both parties to comply with the regulations. The SU agreement places the majority of the responsibility on the University while this USC clause places most of the responsibility on the Sponsor.

19.1. Rochester Institute of Technology:

- 1) Export Control – Both parties agree that no technology or technical data received under this Agreement shall be exported or disclosed to any foreign national, firm or country, including foreign nationals employed by or associated with either party, without first complying with the requirements of the International Traffic in Arms Regulation (ITAR), the Export Administration Regulation (EAR), and all other applicable export control regulations of the United States of America, including obtaining an export license or technical assistance agreement, if applicable.
- 2) Before the Research commences or before the Effective Date of this Agreement, whichever is sooner, Sponsor will inform RIT in writing of the US Department of Commerce Export Control Classification Number and/or the US Department of State Munitions List Categorization (if any) of any technology or technical data that Sponsor discloses to RIT or permits RIT to utilize under this Agreement. If Sponsor learns of an export classification by the US or another government during the course of the Research, Sponsor shall inform RIT of such promptly.

19.2. Syracuse University:

Export Controls. It is understood that University is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities, and that its obligations hereunder are contingent on compliance with applicable U.S. export laws and regulations (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979). The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances by the Sponsor that the Sponsor will not re-export data or commodities to certain foreign countries without prior approval of the cognizant government agency. While University agrees to cooperate in securing any license which the cognizant agency deems necessary in connection with this Agreement, University cannot guarantee that such licenses will be granted.

19.3. University of Southern California:

Sponsor agrees that no technical data, or any direct products thereof, will be made available or re-exported, directly or indirectly, by Sponsor (or by any employee of, Sponsor, to any person, entity or country unless such prior written authorization as may be required is obtained by Sponsor from the appropriate U.S. government agency(ies), including, as applicable, the U.S. Office of Export Licensing of the U.S. Department of Commerce, in accordance with the U.S. Export Administration Regulations (15 CFR, parts 779 et seq.) issued by the Department of Commerce of the United States in the administration of the Export Administration Act of 1979 as amended from time to time. Sponsor asserts that it is not now doing business with any country to which the United States Government prohibits export of products under consideration in this Agreement.

20. Excusable Delays

This section covers delays that both parties agree are unforeseeable and are therefore excusable. These reasons are usually related to Acts of God and other specific types of delays that will not result in penalties.

20.1. Syracuse University:

Force Majeure. Neither party shall be liable for any failure to perform as required by this Agreement to the extent such failure to perform is reasonably beyond the University's control, or by reason of any of the following: labor disturbances or labor disputes of any kind, accidents, failure of any governmental approval required for full performance, civil disorders or commotions, acts of aggression, floods, earthquakes, acts of God, energy or other conservation measures, explosion, failure of utilities, mechanical breakdowns, material shortages, disease or other such occurrences.

21. Governing Law

This section lays out the controlling law that will govern the parties should a dispute arise with regard to the contract. Most sponsored research agreements claim the law of the University's state of residence as governing.

21.1. Syracuse University:

Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of New York and the applicable U.S. Federal law.

22. Arbitration/Dispute Resolution

An arbitration clause requires conflicts arising from the contract to be resolved by arbitration either prior to or in lieu of actions in the courts. The clause will generally outline the venue and procedure that the parties must follow to resolve claims. Arbitration is favored in some situations as a means of streamlining conflict resolution. Courts are increasingly likely to enforce arbitration clauses. When arbitration clauses are properly executed, the binding determinations by an arbitrator is considered final and not open to appeal.

22.1. Dartmouth

Mediation and Arbitration. Both parties agree that they shall attempt to resolve any dispute arising from this Agreement through mediation. Both parties agree that at least one company employee, capable of negotiating an agreement on behalf of his company, shall, within three weeks of receipt of written notification of a dispute, meet with at least one employee of the other party who is also capable of negotiating an agreement on behalf of his company. If no agreement can be reached, both parties agree to meet again within a four-week period after the initial meeting to negotiate in good faith to resolve the dispute. If no agreement can be reached after this second meeting, both parties

agree to submit the dispute to binding arbitration under the Rules of the American Arbitration Association before a single arbitrator.

22.2. Montana State University:

- 1) If any dispute arises under this agreement, the parties agree to attempt to resolve the dispute in good faith as follows:
 - (a) First, by informal negotiation
 - (b) If informal negotiations fail to resolve the dispute, the parties agree to seek mediation using a mediator acceptable to both parties
 - (c) If mediation fails to resolve the dispute within 60 days of initial mediation session, the parties agree to submit to binding arbitration under the provisions of the Montana Uniform Arbitration Act, Title 27, Chapter 5, MCA. The arbitration shall be conducted before a single arbitrator selected by the parties. If the parties have not selected an arbitrator within 10 days of written demand for arbitration, the arbitrator shall be selected by the American Arbitration Association.
- 2) Any dispute regarding or arising under this subcontract will be subject to and resolved in accordance with the laws of the State of Montana.
- 3) It is agreed by the parties that venue for any alternative dispute resolution proceeding, to enforce or interpret this agreement will be conducted in Gallatin County, Montana.

22.3. University of North Carolina:

The parties agree to make good-faith efforts to settle any dispute or claim that arises under this MASTER AGREEMENT through discussion and negotiation. If negotiation fails to achieve a resolution, the parties shall, with prior approval, consider the use of alternative disputes resolution (ADR). If ADR fails to achieve a resolution of the dispute then the applicable constitutional provisions or statutes that govern sovereign immunity shall dictate the appropriate forum and law governing substantive issues.

22.4. Syracuse University:

The parties agree to make good-faith efforts to settle any dispute or claim that arises under this MASTER AGREEMENT through discussion and negotiation. If negotiation fails to achieve a resolution, the parties shall, with prior approval, consider the use of alternative disputes resolution (ADR). If ADR fails to achieve a resolution of the dispute then the applicable constitutional provisions or statutes that govern sovereign immunity shall dictate the appropriate forum and law governing substantive issues.

23. Assignment

This section addresses the assignment of contractual rights or duties to a third party. The purpose of such a provision is to limit the ability of either party to unilaterally transfer their contractual interest to a third party. Here, both Case Western and U of R make it clear that prior written notice and consent is required if either party seeks to assign their contractual interest.

23.1. Case Western Reserve University:

Neither party may assign this Agreement or any of its obligations hereunder without the prior written consent of the other party; however, this Agreement will be binding on any successors or permitted assigns of either party.

23.2. University of Rochester:

Neither party shall assign its rights or duties under this Agreement to another without the prior express written consent of the other party; provided, however, that Sponsor may assign this Agreement to a successor in ownership of all or substantially all its business assets. Such successor shall expressly assume in writing the obligation to perform in accordance with the terms and conditions of this Agreement. Any other purported assignment shall be void.

24. Agreement Modification

This section addresses how a party must go about modifying and existing agreement. Agreements may generally only be modified with mutual consent in writing.

24.1. Syracuse University:

This Agreement shall not be amended or modified, nor shall any waiver or any right hereunder be effective unless set forth in writing and executed by duly authorized representatives of the Parties. The failure of either party hereto to enforce at any time any of the provisions hereof shall not be construed to be a waiver of such provisions or the right of such party thereafter to enforce any such provisions. For purposes of this clause, only the Associate Vice President for Research or the Vice President for Research at Syracuse University are authorized representatives of SU, and only the Director of Contracts & CCO or the President & CEO of [xxxx] are authorized representatives of [xxxx], who can legally and financially bind SU or [xxxx], respectively, and/or authorize any alterations, modifications or deviations from the requirements of this Agreement.

24.2. University of Iowa:

Any agreement to change the terms of this Agreement in any way shall be valid only if the change is made in writing and approved by mutual agreement of authorized representatives of the parties hereto.

25. Notices

This section sets out the proper means of correspondence with the University if there are any notices, requests, demands and other communications to be made between the parties.

25.1. Syracuse University:

Any notices, requests, demands and other communications hereunder shall be in writing and shall be sent by personal delivery or registered or certified mail, postage prepaid, to the respective Party's address first hereinabove written, and shall be marked to the attention of the individual shown below. Either Party may change its address for receiving notice by written notice given to the other Party in the manner referred to in this Section.

26. Survivability

A survivability clause allows the contracting parties to decide that certain provisions of the contract remain enforceable beyond the set period of performance regarding the research. The same essential terms may also be included in the termination clause.

26.1. Syracuse University:

Survivability. The obligations set forth in [the publicity, publication and termination sections] shall survive the expiration or termination of this Agreement.