

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

*Research Project For*

**New York State Foundation for Science, Technology & Innovation**



**Sponsored Research Master Agreement File**

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## **Introduction**

The Master Agreements contained in this file have been selected from the top 200 universities in research and development expenditures as determined by a survey conducted by the National Science Foundation's Division of Science Resources. This database is fully searchable by using the Searchable Terms Keys listed above which correspond to the names of the different clauses in the Master Agreements (e.g. searching for Assignment you would use the A4 Key). To perform a search, type the Key in the search box and press Enter. Each time you press Enter you will go to another instance of the Key or clause name.

### **1. Brandeis University**

The mission of Brandeis University is to educate students and conduct state-of-the-art research. It is to gain new knowledge and understand various phenomena and openly express those results in both the classroom and outside arenas. There are many partners in developing research relationships including the federal government, foundations, and for-profit organizations. Brandeis University encourages the development of appropriate research relationships with for-profit organizations. The purpose of this policy is to allow all parties in these relationships to understand the scope of the arrangements and the procedures and approvals required for implementation. This policy is specifically developed to address situations that arise in negotiations with for-profit organizations in collaboration with University faculty. A separate University policy addresses matters of intellectual property rights.

The objectives of the Brandeis licensing policy are to promote the progress of science and technology, to assure that discoveries and inventions are utilized in ways that are most likely to benefit the public, to provide adequate recognition to inventors through royalty sharing and a return to the institution on its investment in research facilities.

This policy is established in order to clarify the procedures for all parties involved in the development of research relationships with for-profit organizations and to ensure that the relationship proceeds in an orderly fashion and culminates in a positive interaction between the university and the for-profit organization. We appreciate the availability of the MIT and Cornell University policy on matters of for profit research relationships and conflict of interest, and have modeled our policy after these.

### **Definitions**

**For-Profit Organization:** A for-profit organization is an entity whose primary goal is to generate a profit for the organization at the present time or in the future. This policy does not pertain to those organizations which are clearly not-for-profit.

**Relationships:** For-profit relationships include, but are not limited to, the following:

Use of space;

Use of equipment;

Persons working at Brandeis who are employees of for-profits;

Equity or other interests of Brandeis faculty/staff in the for-profit corporation;

Funded research relationships; and  
Graduate or undergraduate student involvement in the relationship.

## **Policy Considerations (K1)**

### **A. Use of Brandeis Research Facilities**

Persons may be permitted to use Brandeis research facilities for sponsored research when arrangements have been made and approvals have been obtained through the Office of Grant, Contract, and Patent Administration. According to federal law, Brandeis research facilities cannot be used for private gain by individuals engaged in outside activities nor can they be used for unfair competition with for-profit, taxable commercial entities. Sometimes equipment which is unique and not commercially available may be made available to outside private companies if certain criteria are met and the usage is approved by the Office of Grant, Contract, and Patent Administration.

### **B. Appropriate Research**

In order to support the mission described in the preamble of this document, any research conducted on the Brandeis University campus should be limited to the intellectual interests of the Brandeis faculty and senior research staff and the responsibility for that research must reside with the principal investigator.

The research should be driven by the advancement of knowledge and should, where possible, provide both thesis or dissertation opportunities for students. Under federal law applicable to tax-exempt institutions, research must be related to educational objectives of the university. The conduct of unrelated activities may result in the imposition of a tax on the University and, if found to be significant, a loss of the University's tax-exempt status. A tax-exempt institution may not engage in commercial activities such as product development or routine testing unless an appropriate and separate administrative structure is established and the required procedures developed. This does not necessarily include the fabrication of conceptual models and lab prototypes. For example, start-up companies on the campus involving a Brandeis faculty member would be allowed to develop conceptual models and/or lab prototypes. If the research were to go beyond that stage into commercialization, then it would no longer be appropriate for university space to be utilized.

### **C. Contract Policies**

The following contract policies applicable to Brandeis research agreements with industrial sponsors are of particular significance.

**Best Efforts:** Since state-of-the-art research is, by nature, unpredictable and without guarantees of success, Brandeis research is conducted on the best effort basis. The University receives no fee or profit on its research with which to cover business risk. Therefore, Brandeis cannot accept contract provisions which impose penalties for failure to complete the statement of work within the estimated cost, or provide for the withholding of payment if the sponsor is not satisfied with the results. Brandeis cannot be held liable for any research which leads to product development and, therefore, disclaims any liability with regard to commercial products or service that arise from research conducted at Brandeis University.

**Conflicting Obligations:** Brandeis University does not enter into research agreements where there are conflicting obligations or conflict of interest between parties. Full disclosure of any potential conflicts is necessary. Brandeis employees must adhere to the policies stated in the current Conflict of Interest statement. Normally, Brandeis employees should not hold equity interest or an option for an equity interest in a for-profit organization which will (1) occupy research space on the campus; (2) locate its employees in a Brandeis research space; (3) utilize University equipment; or (4) have a funded research agreement with a Brandeis employee. Start-up companies where one or more of the principals is a Brandeis faculty member and where no commercialization of a product has begun will be considered separately.

**3. Publications (P3):** Brandeis research must be disseminated on a non-discriminatory basis and openly published. Companies may have the right to review proposed publications up to 60 days before submission for publication for the purpose of review for patentable material but may not prohibit nor delay publication. We cannot undertake studies when the results cannot be freely published.

**4. Students (K1):** It is expected that at times graduate and/or undergraduate students may participate in research and be supported by funds provided by for-profit corporations. There will be no restrictions with regard to publication, confidentiality, choice of research projects or thesis topic.

**5. Intellectual Property (I5):** Brandeis University retains all ownership of inventions, tangible research property, and copyrightable materials, including the software resulting from sponsored research and licenses them, in the public interest, under an active Technology transfer Program in which the licensing of industrial research sponsors is an important part. A separate policy concerning all intellectual property and the sharing of return is provided by the Office of Grant, Contract, and Patent Administration.

**6. Cost Reimbursement (C4):** Brandeis conducts research only on the basis of full-cost reimbursement. Such research must be funded in advance since the institution does not have adequate funds to finance work in progress or to pay the interest on funds borrowed for that purpose.

#### **Implementation Procedures (K1)**

The beginnings of any discussion should take place between the Director of the Office of Grant, Contract and Patent Administration and representatives of the faculty and the for-profit organization. The Director will communicate with the following individuals as required: the President, when necessary; the Provost and Senior Vice President for Academic Affairs, the Executive Vice President for Finance and Administration, the Associate Provost, the Dean of Arts and Sciences or the Dean of the Heller School, University Legal Counsel, the Controller, the Vice President for Administration, Department Chairs, and center Directors. Such communication will allow all parties to be aware of potential interactions with our employees and for-profit organizations.

**1. Space:** At times, for-profit organizations may propose to use research space on the Brandeis

University campus. It may be appropriate for Brandeis to rent space to for-profit organizations when research considered by the for-profit overlaps with research at the University and when application is made for an available part of a laboratory or an entire laboratory becomes available for a defined period of time. So that rental agreements are within the policy guidelines of the institution, the agreement should be initiated by the Director of the Office of Grant, Contract, and Patent Administration and reviewed both by the Executive Vice President for Finance and Administration (who will determine whether the space can be rented to an outside party) and secondly, by the Controller (who will determine the impact on the indirect cost base to the institution). The decision to grant use of the space will be determined by the above criteria and the relevance to University research interests. Any use of space should be delineated in a formal space rental agreement defining the rate per square foot, the period of time, insurance requirements, liability requirements, and clearly stating that Brandeis University does not indemnify any group for the use of space on the Brandeis University campus. Any funds accrued to the University for use of space will be allocated to the general fund pool.

**2. Equipment (E3):** Because of the specialty of instrumentation and equipment, for-profit organizations may apply to use equipment on campus. Such equipment usage, when used by for-profit organizations, should be detailed in a specific agreement and reviewed by the Controller in conjunction with the Office of Grant, Contract, and Patent Administration. Any funds that accrue to the University would accrue to the maintenance and support of the equipment and, above that, would revert back to general funds.

**3. Employees (K1) For-Profit:** On occasion for-profit employees may seek to be located on the Brandeis campus. This can occur in a number of ways. A guest appointment may be made where the courtesy is extended to a for-profit employee to participate with Brandeis University faculty for a period of time on a research project. For-profit employees will be given a guest appointment through the Office of the Provost and Senior Vice President for Academic Affairs and will adhere to all regulations and policies of the institution. These people are usually not paid through the University. For-profit employees may apply to use space on the campus on a pay-as-you-go basis and have a research relationship with a faculty member here. The major criteria for allowing use of space is that the for-profit employee carries on research of interest to the company with a mutual interest to the faculty members involved in similar research at the University. In this instance, the space is rented for a period of time and the employees must be covered by all aspects of a formal research agreement concerning use of space, equipment, and liability for the individuals involved.

**4. Research (A2):** Any kind of interaction with for-profit corporations should begin with a research funding agreement similar to the model shown in Attachment 1, defining agreed-upon terms and conditions. This agreement should be drafted by the Director of the Office of Grant, Contract, and Patent Administration and should be signed off by his office. Various constituencies would be consulted prior to execution of the agreement as required with regard to space, equipment, and for-profit employees. No research can begin prior to execution of a formal agreement.

**5. Financial Arrangements and Type of Funding (K1, P2):** The Office of Grant, Contract, and Patent Administration will determine, along with the Controller, the appropriate arrangements



for the funding of various interactions with for-profit corporations whether it be space, equipment usage, research support, student support, etc. All financial considerations will be set forth in an agreement indicating the responsibilities of all parties involved and the distribution of resources.

**6. Disclosures (D1):** Before any research agreement is signed or any other agreement is reached with regard to interactions with for-profit corporations a complete disclosure of all parties involved will be made with regard to financial or other interests in the for-profit, either current, past, or anticipated for the future.

**7. Procedures and Approvals (A2):** We expect that a formal research agreement will be signed as shown in Attachment 1 before any active interaction between Brandeis University and a for-profit organization commences. The agreement will be signed by the Director of the Office of Grant, Contract, and Patent Administration. Any appeals of the process or decisions will be made to the Provost and Senior Vice President for Academic Affairs

## 2. Cal Poly

### RECITAL (R1)

This Masters Services Agreement (MSA) sets forth the terms and conditions between Cal Poly Corporation, ("Corporation"), an auxiliary organization for the California Polytechnic State University, ("University") with principal office at Building 15, Cal Poly State University, San Luis Obispo, CA 93407 and NAME OF SPONSOR, ("Sponsor") wherein Corporation shall provide services to Sponsor, subject to the following terms and conditions:

#### 1. PURPOSE AND SCOPE (S1)

1.1. The purpose of this Master Agreement is to establish a framework within which Sponsor and Corporation may execute Work Project Proposals to procure specific services such as, but not limited to the following:

1.1.1. Technical assistance to Sponsor personnel and/or Sponsor authorized representatives.

1.1.2. Technical meetings as appropriate to provide Sponsor personnel and/or representatives special knowledge, ability, and/or expertise of faculty principal investigators;

1.1.3. Studies for Sponsor culminating in appropriate recommendations, oral briefings of study results, and/or written reports;

1.2. The research services will be in areas of University expertise and where those services are consistent with the University's academic program and educational mission. Such services for sponsor may be carried out on either a long or a short term basis, and shall be conducted by qualified individuals, including students as appropriate, working separately or in teams, for the Corporation or reimbursed by the Corporation to the University.

#### 2. PROJECT PROPOSALS

2.1. Work Project proposals may be conceived in discussions and/or written concept papers developed by Sponsor technical personnel and/or University principal investigators; however, each such Work Project will not be considered valid until approved in writing by Corporation's and Sponsor's authorized representative. Each such approved Project shall be referred to as "Work Project."

2.2. Each Work Project carried out under this Master Agreement will be formally initiated by a Work Project Proposal, submitted by the Grants Development Office to the Sponsor. Requirements and terms for each specific Work Project ("Work Project") to be performed under this agreement will be set forth in a written Statement of Work to be executed by CPC and Sponsor. Each Statement of Work shall include a timeline, deliverables, responsibilities of all parties, estimated costs (including labor and expenses, and a "not to exceed" amount), the authorized CPC contact for the Work Project, and whether there are to be payment milestones tied to dates or deliverables

2.3. Work Project Proposals shall be deemed fully executed when signed by the authorized representative of Sponsor and the final signature of the authorized representative of Corporation and will then be attached to this MSA as part of Schedule A.

2.4. Terms of the MSA are hereby incorporated into each Statement of Work agreement, unless otherwise agreed in the Statement of Work. All work shall be provided in accordance with the Statement of Work and this MSA.

3. CONTACTS (K1)

3.1. Cal Poly Work Project Services Administrative contacts:

3.1.1. The contact for the University on all pre-award matters including Work Project proposals and submissions, and amendments/revisions to this Master Agreement shall be:

Director, Grants Development Office  
California Polytechnic State University  
San Luis Obispo, CA 93407  
Telephone: (805) 756-2982  
Fax: 805/756-5466

3.1.2. The contact for the Corporation on all post-award matters including issues involving performance, invoicing, payment, fiscal reporting, contractual compliance, legal issues etc. shall be:

Sponsored Programs Manager  
Cal Poly Corporation  
San Luis Obispo, CA 93407  
Telephone: (805) 756-1123  
Fax: 805/756-5588

3.2. Sponsor Project Administrative contacts:

3.2.1. The contact for Sponsor on all legal notices shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3.2.2. The contact for Sponsor on all other non-technical matters shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3.3. Technical contacts:

\_\_\_\_\_  
\_\_\_\_\_

3.4. **Corporation:**

For the purpose of this Agreement and pursuant to Corporation policy, FACULTY MEMBER is designated the principal investigator (“Principal Investigator”) who shall be responsible for the administration, direction, and content of the Research Program, including budgeting and revisions to the Budget necessary to accomplish the Research Program. Should the Principal Investigator leave the University or otherwise become unavailable during the Period of this Agreement, the Corporation will report unavailability immediately in writing to the Sponsor. The University will nominate a replacement, if available substitute exists, within 30 days of Corporation’s notification to the Sponsor of the unavailability of the Principal Investigator. If within 10 days of receiving notice of nomination of a replacement, Sponsor replies to the Corporation that Sponsor does not accept the replacement, the Research Program and Budget may be modified to reflect a reduced scope of work or terminated pursuant to Article 13.

**3.5. Sponsor:**

3.5.1.1. Each Project Proposal shall provide the name, address and telephone number of a technical monitor or program manager for each work project.

**4. ALLOWABLE COSTS, PAYMENTS, AND FISCAL REPORTS (C4, P1)**

4.1. Allowable costs for each Project Proposal will be those associated with direct project activities and the indirect costs at amounts and rates set forth in the proposed budget which, when approved, are incorporated into and become part of each Project Proposal.

4.2. Corporation shall maintain a separate account for each Work project Proposal and shall invoice periodically for accrued costs to date. Invoices shall include substantiation of costs in the form of a detailed Work Project Activity Report along with a Payroll Cost Distribution Statement.

4.3. Payment of invoices by Sponsor shall be made within thirty (30) days of receipt.

4.4. Invoices shall be sent to the Sponsor at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**5. DELIVERY, PERFORMANCE AND REPORTS (P2, R3)**

5.1. Delivery and performance shall be in accordance with the products and schedule set forth in the approved Work Project Proposal. Progress and Final Reports shall be submitted to Sponsor by the Principal Investigator, copied to the Corporation, on a schedule to be determined in each approved Work Project Proposal.

5.2. If at any time it appears the Principal Investigator may not meet such schedule, the Principal Investigator, through the Corporation, shall immediately notify Sponsor verbally and in writing of the reasons for and estimated duration of delay. Sponsor may, at its sole option, provide a no-cost extension of the schedule for a mutually agreeable and reasonable time period.

5.3. Research by its nature is unpredictable and without guarantee of successful results. The Work Projects under this Agreement are conducted on a “reasonable efforts” basis. No fee or profit is received for such research. Work for extramural sponsors is performed on a “no-profit-no loss” basis. For these reasons, the Corporation will not accept Agreement provisions that guarantee results, impose penalties for failure to make progress by firm deadlines, or provide for withholding of payments if the sponsor is not satisfied with the results.

## 6. RECORDS (R2)

6.1. Corporation shall maintain complete and accurate accounting records in a form in accordance with standard accounting practices, to substantiate Corporation's charges. Such records shall be made available for examination by Sponsor for three years after final payment under each Work Project Proposal.

## 7. CONFIDENTIAL/PROPRIETARY INFORMATION (C2)

7.1. Corporation acknowledges that Sponsor may find it necessary or desirable to disclose to the Corporation Sponsor's own information, which information Sponsor considers confidential, in order to accomplish the work of this Agreement. Sponsor acknowledges, however, that neither the Corporation nor the University has mechanisms to maintain or guarantee the confidentiality of information and the University, as a public, non-profit educational institution, is subject to statutes requiring disclosure of information and records that a private corporation could keep confidential. In addition, the Corporation does not have financial resources to sustain liability for disclosure of confidential information; or institute mechanisms to maintain confidential information.

Any and all knowledge, know-how, practices, process, or other information disclosed in writing or in other tangible form which is designated as "Confidential Information" or which, if initially orally disclosed is reduced to writing which is designated as "Confidential Information" within twenty (20) days after its initial disclosure to either party to this Agreement by the other shall be maintained by the receiving party in strict confidence and shall not be disclosed to any third party not a party to the applicable Work Project Proposal under this Master Agreement unless otherwise mutually agreed to in writing. Neither party shall use said Confidential Information for any purpose other than those purposes specified in this Agreement.

7.2. The parties may disclose Confidential Information to those of their respective employees requiring access thereto for the purposes of this Agreement provided, however, that prior to making any such disclosures each such employee shall be apprised of the duty and obligation to maintain Confidential Information in confidence and not to use such information for any purpose other than in accordance with the terms and conditions of this Agreement.

7.3. If required by Sponsor for specific Confidential Information, Corporation shall maintain a written agreement with each of Corporation's affected staff, employees, or students sufficient to enable Corporation to comply with the terms of this Agreement.

7.4. Neither party will be held financially liable for any inadvertent disclosure, but each will agree to use its reasonable efforts not to disclose any information designated as "Confidential Information."

7.5. Nothing, contained herein will in any way restrict or impair either party's right to use, disclose, or otherwise deal with any information which at the time of its receipt:

7.5.1. Is generally available in the public domain, or thereafter becomes available to the public through no act of the receiving party; or

7.5.2. Was independently known prior to receipt thereof, or made available to such receiving party as a matter of lawful right by a third party.

7.5.3. Was developed by or for the receiving party by someone who had no access to the information received by the receiving party hereunder.

7.5.4. Is not disclosed in writing and so marked with an appropriate confidentiality legend within forty-five (45) days of disclosure.

7.6. This clause shall remain in effect for three years after termination or expiration of this agreement.

## 8. INTELLECTUAL PROPERTY AND INVENTIONS (15)

### 8.1. Definitions:

8.1.1. "Intellectual Property" shall mean any idea, design, concept, technique, software, invention, discovery or improvement, whether or not patentable, made solely or jointly by University and/or its employees, or agents, solely or jointly by Sponsor and/or its employees, or jointly by University and/or its employees or agents with one or more employees of Sponsor during the term of this Agreement and in the performance of services hereunder, provided that either the conception or reduction to practice occurs during the term of this Agreement and in the performance of a Work Project hereunder.

### 8.2. Ownership:

8.2.1. The Corporation may hold University intellectual property, and manage the rights to such intellectual property consistent with University regulation and policy. All rights and title to Intellectual Property whether patentable or copyrightable or not, relating to Work Project made solely by employees of University or Corporation shall belong to California Polytechnic State University and shall be subject to the terms and conditions of this Agreement.

8.2.2. All rights and title to Intellectual Property, whether patentable or copyrightable or not, relating to Work Project made and/or owned solely by employees of Sponsor shall belong to Sponsor. Such inventions, improvements, and/or discoveries shall not be subject to the terms and conditions of this Agreement.

8.2.3. All rights and title to Intellectual Property, whether or not patentable or copyrightable, relating to Work Project made jointly by the parties shall belong jointly to the parties.

### 8.3. Disclosure and Disposition:

8.3.1. Corporation will promptly notify Sponsor of any Intellectual Property conceived and/or made during the Contract Period under Work Project, specifically pointing out the features or concepts that it believes to be new or different.

8.3.2. Sponsor shall respond to disclosures made pursuant to Article 8.3.1 within thirty (30) days of disclosure to negotiate an exclusive or non-exclusive, world-wide, royalty-bearing license to make, use, or sell under any intellectual property made or conceived during the term of the agreement. Corporation reserves for itself a, royalty-free, paid-up, perpetual, irrevocable, non-exclusive license to make, use and practice such intellectual property for its internal non-commercial purposes.

8.3.3. If Sponsor directs that a patent application or application for other intellectual property protection be filed, Corporation shall promptly prepare, file, and prosecute such U.S. and foreign application in the inventor's name. Sponsor shall bear all costs incurred in connection with such preparation, filing, prosecution, and maintenance of U.S. and foreign applications(s) related to said Intellectual Property. Sponsor shall cooperate to assure that such application(s) will cover, to the best of Sponsor's knowledge, all items of commercial interest and importance. While Corporation shall be responsible for making, decisions regarding scope and content of application(s) to be filed and prosecution thereof, Sponsor shall be given an opportunity to review and provide input thereto. Corporation shall keep Sponsor advised as to all developments with respect to such application(s) and shall promptly supply to Sponsor copies of all papers received and filed in connection with the prosecution thereof in sufficient time for Sponsor to comment thereon.

8.3.4. If Sponsor elects not to exercise its option or decides to discontinue the financial support of the prosecution or maintenance of the protection, Corporation shall be free to file or continue prosecution or maintain any such application(s), and to maintain any protection issuing thereon in the U.S. and in any foreign country at Corporation's sole expense and all right, title and interest in and to any resulting patent shall reside with the University, with no accounting to Sponsor.

8.3.5. With regard to jointly made Intellectual Property relating to Work Projects under this Agreement, Corporation and Sponsor shall negotiate to determine (i) the share of ownership belonging to each party, (ii) whether to pursue patent or other protection, and (iii) the share of costs for such protection to be incurred by each party.

8.4. Nothing in this Agreement shall be deemed to grant either directly or indirectly or by implication any license under any patents or patent applications arising out of any other inventions or intellectual property conceived or made by either party in connection with activities not covered by this Agreement.

## 9. PUBLICATION (P3)

9.1. Sponsor recognizes that the results of research under Work Project Proposal must be publishable and agrees that researchers engaged in Work Project shall be permitted to present at symposia, national, or regional professional meetings and to publish in journals, theses or dissertations, or otherwise of their own choosing, methods and results of Work Project, provided, however, that (i) such publications are subject to the terms of Article 7 regarding confidentiality of Sponsor's Confidential Information and (ii) Sponsor shall have been furnished copies of any proposed publication or presentation at least six weeks in advance of the submission of such proposed publication or presentation to a journal, editor, or other third party.

9.2. Sponsor shall have three weeks, after receipt of said copies, to object to such proposed presentation or proposed publication either because there is patentable subject matter that needs protection and/or there is proprietary or confidential information of Sponsor contained in the proposed publication or presentation. In the event that Sponsor makes such objection because of confidential or proprietary information, the parties shall negotiate an acceptable version.

9.3. In the case of patentable subject matter, researcher(s) shall refrain from making such publication or presentation for a maximum of eighteen months from date of receipt of such objection in order for Corporation to file patent application(s) with the United States Patent and Trademark Office and/or foreign patent office(s) directed to the patentable subject matter contained in the proposed publication or presentation.

9.4. Notwithstanding any other provisions in this agreement relating to publication or disclosure, Corporation shall not be prevented from issuing reports of a general nature, containing no proprietary or confidential information, in University or Corporation reports and newsletters. Clause 9 shall remain in effect for two years from the date of termination or expiration of this agreement.

9.5. PUBLICITY: Sponsor shall not use the name of the University or Corporation, nor any of Corporation's Work Project staff, in any publicity, advertising, or news release without the prior written approval of an authorized representative of the Corporation. Except for on-campus newsletters and reports, the Corporation/University will not use the name of the Sponsor, or its employees or subcontractor of the Sponsor, in any publicity without approval of the Sponsor.

## 10. EQUIPMENT PURCHASED OR LOANED (E3)

10.1. 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.

10.2. 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.

10.2.1. 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.

10.2.2. The Corporation represents that adequate Sponsor equipment, programs, documentation, and other materials protection will be provided.

10.2.3. 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.



The Corporation represents that any alterations or attachments to or removal of equipment from the University's premises require prior written approval of Sponsor.

## 11. INDEPENDENT CONTRACTOR (I3)

11.1. In the performance of all services hereunder:

11.1.1. Corporation shall be deemed to be and shall be an independent contractor and, as such, Corporation shall not be entitled to any benefits applicable to employees of Sponsor;

11.1.2. 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.

## 12. INSURANCE (I4)

12.1. 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:

12.1.1. 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.

12.1.2. 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.

12.1.3. 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.

12.2. 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.

12.3. Corporation has no liability insurance policy that can extend protection to any other person.

## 13. INDEMNIFICATION (I2)

13.1. Sponsor shall indemnify, defend, and hold harmless Corporation against any and all claims, costs, or liabilities, including attorneys' fees and court costs at both trial and appellate levels, for any loss, damage, injury, or loss of life, other than that attributable in whole or part to Corporation's fault or negligence, caused by the actions of Sponsor or its officers, servants, agents or of third parties acting on behalf of or under the authorization from Sponsor involving products developed or made as a result of information or materials received from Corporation, provided that (a) Corporation promptly notifies Sponsor in writing, after Corporation receives

notice of any claim, (b) Sponsor is given the opportunity, at its option, to participate and claim and any related settlement negotiations, provided, however, that with respect to any claim, or portion thereof, from which Sponsor agrees at the initiation of such claim to save and hold Corporation harmless, Sponsor shall have the sole control of the defense, trial, and any related settlement negotiations, and (c) Corporation fully cooperates with Sponsor in the defense of any such claim.

#### 14. DISPUTES (D2)

14.1. If for any reason a dispute arises during the performance of this Agreement, and the Sponsor and Corporation cannot reach an agreement, the dispute shall be referred to qualified mediation services mutually agreed upon by the parties to this Agreement. For any remaining dispute after mediation that cannot be resolved, either party may seek resolution employing whatever remedies exist in law and equity.

#### 15. GOVERNING LAW (G1)

15.1. This Agreement is deemed to be made under and shall be construed according to the laws of the State of California and will be considered fully executed when signed by both parties.

15.2. Corporation agrees to comply, and reasonably assist Sponsor in complying with all applicable Federal, State, and local laws, regulations and ordinances, insofar as they relate to the services to be performed under this Agreement.

#### 16. ASSIGNMENT (A4)

16.1. This Agreement shall not be assigned by either party without the prior written consent of the parties hereto.

#### 17. SPONSOR TRADEMARK AND USE OF UNIVERSITY NAME (P4)

17.1. Notwithstanding any other provision of this Agreement, Corporation shall not have the right to use Sponsor's trademark or trade name or refer to Sponsor directly or indirectly in any commercial context in connection with any product, promotion or publication without the prior written approval of Sponsor.

17.2. The names or symbols of the University or Corporation shall not be used in any advertising associated with products it has developed, tested, or evaluated unless approved in advance by the Corporation, in accordance with section 3.1.2.

#### 18. TERM AND TERMINATION (P2, T2)

18.1. The term of this Agreement shall be START DATE through END DATE.

18.2. This Agreement shall continue in effect for the full duration of the Agreement term unless sooner terminated in accordance with the provisions of this Article. The parties hereto may extend the term of this Agreement for additional periods as desired under mutually agreeable terms and conditions that the parties reduce to writing and sign. Either party may terminate this agreement upon thirty (30) days prior written notice to the other.

18.3. In the event that either party shall commit any breach of or default in any of the terms or conditions of this Agreement, and also shall fail to remedy such default or breach within thirty (30) days after receipt of written notice from the other party, the party giving notice may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending notice of termination in writing to the other party to such effect, and such termination shall be effective as of the date of the receipt of such notice.

18.4. Termination of this Agreement by either party for any reason shall not affect the rights and obligations of the parties accrued prior to the effective date of termination of this Agreement. No termination of this agreement shall release the parties hereto from their rights and obligations under Articles 7, 8, 9, and 16.

ACCEPTED AND AGREED TO:  
FOR NAME OF SPONSOR:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

ACCEPTED AND AGREED TO:  
FOR THE CAL POLY CORPORATION

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Cal Poly Corporation  
San Luis Obispo, CA 93407

cc: N. FACULTY  
GDO XX-XXX  
Sponsored Programs

### 3. Carnegie Mellon

Recital (R1):

This Research Agreement (“Agreement”) effective as of [date] (“Effective Date”) is between Carnegie Mellon University, a nonprofit Pennsylvania corporation with offices located at 5000 Forbes Avenue, Pittsburgh, PA 15213 (“Carnegie Mellon”) and [company name] with offices located at [address of company] (“Sponsor”).

Sponsor would like Carnegie Mellon to conduct a research project as described in this Agreement. Carnegie Mellon is interested in conducting the project in support of its nonprofit research and educational objectives.

Intending to be legally bound, Carnegie Mellon and Sponsor agree as follows:

1. Research Project. Carnegie Mellon agrees to perform the research project described in the Statement of Work, attached as Appendix A (the “Project”). Unless otherwise noted on the Statement of Work, it is intended that Carnegie Mellon will perform the work at one of its campus locations in the United States.
2. Personnel.(K1) [principal investigator’s name] will serve as the “Project Director” while employed by Carnegie Mellon. However, should [principal investigator’s name] no longer be able to serve as Project Director, Carnegie Mellon will provide notice to the Sponsor of the replacement Project Director.
3. Term (P2). The term of this Agreement begins as of the Effective Date and ends on [ending date] (“End Date”), unless it is terminated earlier as allowed under this Agreement or unless the parties both agree in writing to extend it (the “Term”). If a party intends to request an extension to the Term, it agrees to use reasonable efforts to notify the other party at least thirty (30) days before the end of the then-current Term.
4. Payment (C4, P1). Sponsor agrees to pay Carnegie Mellon the amount listed in the Budget (attached as Appendix B) in accordance with the Payment Schedule (attached as Appendix C). The total cost charged to Sponsor for the Project work under this Agreement will not be more than \$[dollar amount] under this [fixed price/cost reimbursable] Agreement without Sponsor’s consent.
5. Equipment and Property (E3).
  - a. Purchased Equipment. Unless otherwise specified in the Statement of Work, title to and ownership of all equipment and property purchased by Carnegie Mellon under this Agreement will belong to Carnegie Mellon.
  - b. Loaned Equipment. Sponsor agrees to list in Appendix A any equipment or property that it would like to loan to Carnegie Mellon for the Project. Title to any and all “on loan” equipment will remain with Sponsor. If specified in Appendix A, Sponsor will maintain insurance on such loaned items. Sponsor will provide final disposition instructions for all loaned equipment or

property within ninety (90) days following the end of the Term. Carnegie Mellon will comply with such disposition instructions within thirty (30) days after receipt. To the extent Sponsor fails to provide Carnegie Mellon with disposition instructions within the 90-day period mentioned above, Sponsor agrees that Carnegie Mellon may dispose of such equipment or property as Carnegie Mellon desires without compensation or liability to Sponsor. If Sponsor requests the return of the equipment or property, Sponsor agrees that it will be returned by Carnegie Mellon at Sponsor's expense in an "AS-IS" condition.

6. Ownership of Project Work Product (I5).

a. Intellectual Property Definition. As used in this Agreement, "Intellectual Property" means any and all art, method, process, procedure, invention, idea, design, concept, technique, discovery, improvement or moral right, regardless of patentability, as well as any patents, patent applications, copyrights, trademarks, service marks, trade names, trade secrets, know-how or other intellectual property rights recognized in any country or jurisdiction in the world.

b. Carnegie Mellon Developments. Carnegie Mellon will own any and all work product and/or Intellectual Property developed solely by it under this Agreement ("Carnegie Mellon Intellectual Property").

c. Sponsor Developments. Sponsor will own any and all work product and/or Intellectual Property developed solely by it under this Agreement ("Sponsor Intellectual Property"). Any work performed by Sponsor under this Agreement shall be performed at a location provided by Sponsor. Sponsor agrees that it must obtain prior written permission from Carnegie Mellon's Office of Sponsored Programs if it would like to perform work under this Agreement on Carnegie Mellon's premises.

d. Joint Developments. Carnegie Mellon and Sponsor will jointly own any and all work product and/or Intellectual Property developed jointly (e.g., to the extent the parties would be considered joint inventors and/or joint copyright holders, as applicable, under relevant U.S. intellectual property laws) under this Agreement ("Joint Intellectual Property").

e. Prior/Outside Developments. Each party will retain its rights in any work product and/or Intellectual Property developed prior to and/or outside the scope of this Agreement.

7. Notification of Disclosures (D1). Carnegie Mellon agrees to provide written notice to Sponsor (a "Disclosure Notice") of any and all Intellectual Property disclosures that are received by Carnegie Mellon's Center for Technology Transfer and Enterprise Creation ("CTTEC") relating to Carnegie Mellon Intellectual Property and/or Joint Intellectual Property created under the Project. This Disclosure Notice is usually sent within four (4) weeks of receipt by CTTEC. Likewise, Sponsor agrees to notify Carnegie Mellon (at the contract issues address listed on the signature page) of any and all Intellectual Property disclosures relating to Sponsor Intellectual Property and/or Joint Intellectual Property created under the Project.

8. Protecting Project Intellectual Property.(I5)

a. *Definition.* “Intellectual Property Protections” means the registration, application, filing, prosecution or maintenance of a patent, copyright, trademark or other protective measure for Intellectual Property.

b. *Obtaining Protection.* Carnegie Mellon may, in its discretion, file for and maintain Intellectual Property Protections anywhere in the world for any or all Carnegie Mellon Intellectual Property. Sponsor is free to ask Carnegie Mellon to pursue Intellectual Property Protections for such Intellectual Property in a particular country(ies) at the Sponsor's expense. Either party may file for and maintain Intellectual Property Protections for Joint Intellectual Property developed under this Agreement. In the event that a party wants to obtain or maintain any Intellectual Property Protections concerning Joint Intellectual Property, the other party agrees to execute any documentation reasonably requested.

9. Use and Protection of Joint Intellectual Property (I5).

a. *Rights to Joint Intellectual Property; Sharing of Expenses.* Joint Intellectual Property shall be owned equally by the parties. Except as provided below, the parties agree: (i) to share equally all expenses incurred in obtaining and maintaining Intellectual Property Protections on Joint Intellectual Property, and (ii) that each party shall have the right to license such Joint Intellectual Property to third parties (with the right to sublicense) without accounting to the other and without the consent of the other. In the event that consent by each joint owner is necessary for either joint owner to license the Joint Intellectual Property, the parties hereby consent to the other party's grant of one or more licenses under the Joint Intellectual Property to third parties and shall execute any document or do any other act reasonably requested to evidence such consent.

b. *Exceptions to Expense Sharing.* Notwithstanding the foregoing, a party may decide that it does not want to financially support Intellectual Property Protections for certain Joint Intellectual Property (a “Non-Supporting Party”). In that case, the other party is free to seek and obtain such Intellectual Property Protections at its own expense (a “Supporting Party”), provided that title to any such Intellectual Property Protections shall still be held jointly by the parties. However, if the Non-Supporting Party then subsequently licenses and/or otherwise uses the Joint Intellectual Property for economic gain in a particular country that is covered by the Intellectual Property Protections obtained by the Supporting Party, then Non-Supporting Party agrees to pay: (a) fifty percent (50%) of the fees and expenses incurred by the Supporting Party for the Intellectual Property Protections, plus (b) interest accruing from the date upon which such costs were incurred at the rate per annum announced from time to time by the *Wall Street Journal* as the prime rate.

10. Review and Evaluation License Granted to Sponsor. (R5) Provided Sponsor has fulfilled (and continues to fulfill) any and all payment obligations to Carnegie Mellon as contemplated by this Agreement, Carnegie Mellon hereby grants to Sponsor a non-exclusive, non-transferable, royalty-free, perpetual license for any and all Carnegie Mellon Intellectual Property listed as deliverables in Appendix A (“Deliverables”) for the Sponsor's internal operations and internal, non-commercial research use (“Review and Evaluation License”). Pursuant to such Review and Evaluation License, Sponsor may copy and distribute the Deliverables to individuals internally

within its own organization. Sponsor may also modify the Deliverables, provided that Sponsor may only use such modifications within the scope of this Review and Evaluation License and hereby assigns to Carnegie Mellon any and all rights to such modifications. Unless source code is delivered to Sponsor, Sponsor agrees that it shall not (and will not allow others to) decompile or reverse engineer any Deliverables. Except for the rights granted above, all other rights in the Deliverables remain with Carnegie Mellon. If Sponsor would like additional rights to the Deliverables (including but not limited to the right to use the Deliverables for commercial marketing, production, redistribution, sale, rent, lease, sublicensing assignment, publication, or dissemination) it must request to negotiate a commercial license as described in Section 12 below.

11. Internal Use Rights Granted to Carnegie Mellon.(R4) Sponsor hereby grants to Carnegie Mellon a non-exclusive, non-transferable, royalty-free, perpetual license for all Sponsor Intellectual Property for Carnegie Mellon's internal academic and research purposes ("Research Use License"). Pursuant to such Research Use License, Carnegie Mellon may copy, distribute, modify and use the Sponsor Intellectual Property for research purposes and general academic use within Carnegie Mellon, but otherwise shall not, nor permit any third party to, modify, decompile, reverse engineer, redistribute, repackage, encumber, sell, rent, lease, sublicense, assign, time-share, publish, broadcast, circulate, market, donate, disseminate, retransmit, or commercially-exploit the Sponsor Intellectual Property or any part thereof.

12. Commercial Licensing Opportunities Available to Sponsor (I5). Sponsor will have one hundred eighty (180) days after receiving a Disclosure Notice to let Carnegie Mellon know if Sponsor is interested in negotiating a non-exclusive or exclusive commercial license to the Carnegie Mellon Intellectual Property and/or Joint Intellectual Property that is referenced in the Disclosure Notice (the "Negotiation Period"). Carnegie Mellon agrees that during the Negotiation Period it will not conduct license negotiations with any other party for the same Carnegie Mellon Intellectual Property and/or Joint Intellectual Property, unless Sponsor indicates during the Negotiation Period that it is interested in negotiating only a non-exclusive license. Sponsor understands and agrees that if it is in breach of this Agreement at the time it receives the Disclosure Notice (for example, if Sponsor is delinquent in making payments as required under this Agreement), it is not entitled to request any exclusive negotiations during the Negotiation Period and Carnegie Mellon is free to pursue licenses with other third parties during such time. If Sponsor would like to negotiate such a commercial license after the Negotiation Period ends and/or a license to Intellectual Property that was not created on the Project, Sponsor is always free to contact Carnegie Mellon at any time and request to do so (however, Carnegie Mellon cannot guarantee that the relevant Intellectual Property will be available for the desired license at that time).

The granting of any license is subject to the negotiation and execution of a mutually-agreeable, separate written license agreement. However, Carnegie Mellon's expectations are that any license will, at a minimum: (a) have a limited term and cover a defined field of use; (b) require mutually-agreeable licensing fees and/or royalties; (c) require Sponsor to pay for Intellectual Property Protections (where the Sponsor covers 50% of such costs for a non-exclusive license and 100% of such costs for an exclusive); (d) require Carnegie Mellon's prior written consent to

sublicense, except to Sponsor's direct customers; and (e) include disclaimers and indemnification for the benefit of Carnegie Mellon.

13. Confidential Information (C2).

a. *Definition.* All information, documents, materials and know-how which may be disclosed or furnished pursuant to this Agreement shall be considered "Confidential Information" if marked or designated as provided below.

b. *Marking Requirement.* In order to be considered "Confidential Information" under this Agreement: (i) information that is disclosed in written or tangible form must be marked "confidential" at the time of disclosure, and (ii) information that is disclosed orally or otherwise than in tangible form must be identified as "confidential" at the time of disclosure and a written summary must be provided to the recipient within twenty (20) days thereafter.

c. *Exceptions.* "Confidential Information" does not include any information that: (i) was known to the recipient prior to disclosure by the other party; (ii) is or becomes publicly available (with no obligation of confidentiality) through no fault of recipient; (iii) is independently developed by employees of recipient without use or reference to the Confidential Information; or (iv) is or was brought to recipient's attention by a third party who has a legal right to do so.

d. *Confidentiality Obligations.* For two (2) years following the End Date of this Agreement, the recipient of the other party's Confidential Information will not share it with any third party and will keep it confidential using the same degree of care as it uses in protecting and preserving its own confidential information (but no less than a reasonable standard of care). Provided the recipient is exercising this standard of care, it will not be liable for the inadvertent or accidental disclosure of Confidential Information.

e. *Permitted Disclosure (D1).* It will not be a violation of this section for a recipient to disclose the other party's Confidential Information in response to a subpoena, court order or other legal process provided that the recipient gives the disclosing party reasonable advance written notice of the required disclosure (unless prohibited by the terms of the court order, etc.) and provided the recipient discloses only as much Confidential Information as required.

14. Publications (P3).

a. *Right to Publish.* Subject to any applicable confidentiality obligations, Sponsor understands that Carnegie Mellon is free to publish its Project work (including reports and papers of research and other activities conducted under the Project) in accordance with academic standards. Any such reports or papers may refer to the fact that the Project was conducted pursuant to a grant from Sponsor.

b. *Review and Comment.* During the Term and for a period of two (2) years from the End Date, Carnegie Mellon agrees to provide Sponsor with a copy of any such Project reports or papers (excluding student thesis and/or dissertations) for review and comment at least thirty (30) days prior to submission for publication. Sponsor can then request deletion from the publication of any Sponsor Confidential Information that has been inadvertently included and/or can request an additional sixty (60) day delay in submission for publication to allow time for filing of



patent/copyright protection on Intellectual Property in which Sponsor has an ownership interest (such as Joint Intellectual Property).

15. Use of the name of Carnegie Mellon or Sponsor (P4). Except for any acknowledgment of Sponsor's funding referenced in Section 14 above, each party agrees not to use the name or trademarks of the other party or any member of its staff in sales promotion work, advertising or other publicity without the prior written permission of the other party.

16. Termination (T2).

a. Termination for Convenience. Either party shall have the right to terminate this Agreement by providing the other party with at least sixty (60) days prior written notice.

b. Effect of Termination. In the event of termination, Sponsor agrees to pay Carnegie Mellon for all work performed up through the effective date of termination. For purposes of clarification:

(i) if this Agreement is a cost reimbursable agreement, Carnegie Mellon will invoice for all costs incurred through the effective date of termination and, where Sponsor was the terminating party, for the cost of all commitments made prior to the date of termination notification which could not be immediately cancelled and which are a direct result of the work under this Agreement; or

(ii) if this Agreement is a fixed price agreement, Carnegie Mellon will invoice for all payments due and owing as of the date of termination (or, where there are no milestone payments, for a percentage of the fixed price based on the percentage of work completed as of the effective date of termination). Carnegie Mellon will provide documentation on any and all cancelled commitments upon the reasonable request of Sponsor.

c. Provision of Deliverables. In either event, provided Sponsor has fully paid Carnegie Mellon as provided in this Agreement, Carnegie Mellon will provide to Sponsor any completed or partially completed Deliverables required by the Statement of Work.

d. Survival (S3). Any provisions of this Agreement which would naturally survive termination or expiration will do so (including but not limited to Sections 4, 5(b), 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, and 20).

17. DISCLAIMERS; LIMITATION OF LIABILITY; INDEMNITY (D1, I2)

a. Disclaimers. ANY AND ALL INFORMATION, MATERIALS, SERVICES, INTELLECTUAL PROPERTY AND OTHER PROPERTY AND RIGHTS GRANTED AND/OR PROVIDED BY CARNEGIE MELLON PURSUANT TO THIS AGREEMENT (INCLUDING THE DELIVERABLES), ARE GRANTED AND/OR PROVIDED ON AN "AS IS" BASIS. CARNEGIE MELLON MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER, AND ALL SUCH WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CARNEGIE MELLON DOES NOT MAKE ANY WARRANTY OF ANY KIND RELATING TO EXCLUSIVITY, INFORMATIONAL

CONTENT, ERROR-FREE OPERATION, RESULTS TO BE OBTAINED FROM USE, FREEDOM FROM PATENT, TRADEMARK AND COPYRIGHT INFRINGEMENT AND/OR FREEDOM FROM THEFT OF TRADE SECRETS. sponsor IS PROHIBITED FROM MAKING ANY EXPRESS OR IMPLIED warranty TO ANY THIRD PARTY on behalf of Carnegie Mellon RELATING TO ANY MATTER, INCLUDING the application of or the results to be obtained FROM the information, materials, services, INTELLECTUAL PROPERTY OR OTHER PROPERTY OR RIGHTS (INCLUDING THE DELIVERABLES) GRANTED AND/OR PROVIDED BY CARNEGIE MELLON pursuant to this agreement.

b. *Limitation of Liability.* CARNEGIE MELLON SHALL NOT BE LIABLE TO SPONSOR OR ANY THIRD PARTY FOR ANY REASON WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING ANY BREACH OF THIS AGREEMENT) FOR LOSS OF PROFITS OR FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF CARNEGIE MELLON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR HAS OR GAINS KNOWLEDGE OF THE EXISTENCE OF SUCH DAMAGES.

c. *Indemnification (I2).* Sponsor shall defend, indemnify and hold harmless Carnegie Mellon and its trustees, officers, employees, attorneys and agents (“Carnegie Mellon Parties”) from and against any and all liability, damage, loss or expense (including reasonable attorneys fees and expenses) incurred by or imposed upon any or all Carnegie Mellon Parties in connection with any claim, suit, action or demand arising out of or relating to any exercise of any right or license granted or provided to Sponsor under this Agreement, including any use of the Deliverables, under any theory of liability (including without limitation, actions in the form of tort, warranty, or strict liability, or violation of any law, and regardless of whether such action has any factual basis).

18. *Notice (N1).* Any notice to the other party under this Agreement must be in writing, signed by the party giving it, and provided either personally, by registered mail, certified mail, and/or reputable overnight courier (such as UPS, FedEx, etc.) to the appropriate address listed on the signature page to this Agreement. Either party may update its contact information by providing written notice to the other party as required by this Section.

19. *Export Controls (E4).* Each party is subject to any and all applicable export control laws and regulations in its performance of this Agreement. As an institution of higher learning, Carnegie Mellon performs fundamental research that is exempt from export control licensing under applicable export control laws. As a result, Carnegie Mellon does not wish to take receipt of export-controlled information or materials except as may be specifically agreed to in advance by Carnegie Mellon and for which Carnegie Mellon has made specific arrangements. Sponsor agrees that it will not provide or make accessible to Carnegie Mellon any export-controlled information or materials without first informing Carnegie Mellon’s Office of Sponsored Programs of the export-controlled nature of the information or materials and obtaining from Carnegie Mellon’s Office of Sponsored Programs its written consent to accept such information or materials as well as any specific instructions regarding the mechanism pursuant to which such information or materials should be passed. To the extent there is a situation where the transfer of information, data or materials (including but not limited to the return of any materials being

loaned by Sponsor under this Agreement) from Carnegie Mellon to Sponsor requires an export control license from the pertinent agency of the United States Government and/or written assurances by Sponsor that Sponsor shall not export data or commodities to certain foreign countries without prior approval of such agency, Sponsor understands that Carnegie Mellon cannot guarantee that such a license will be issued. If for any reason the required license should not be issued, Sponsor shall pay to Carnegie Mellon only those costs of labor and expenses associated with the performance of the Agreement to the date when Carnegie Mellon was informed that the license would not be issued and Carnegie Mellon shall be released from any further performance of the Agreement.

20. Miscellaneous (M1).

a. *No Exclusivity.* Nothing contained in this Agreement shall prevent either Sponsor or Carnegie Mellon from entering into research projects with third parties which are similar to the Project, or from independently developing (either through third parties or through the use of its own personnel), or from acquiring from third parties, technologies or products which are similar to and competitive with Intellectual Property resulting from the Project.

b. *Severability (S2).* If any portion of this Agreement is determined by any court or governmental agency of competent jurisdiction to violate applicable law or otherwise not to conform to requirements of law, then the rest of the Agreement will remain in effect and the parties will substitute a suitable and equitable provision for the invalid/unenforceable provision in order to carry out the original intent and purpose of the original Agreement.

c. *Independent Contractors (I3).* In all matters relating to this Agreement, the parties are acting as independent contractors and neither party will represent that it has any authority to assume or create any obligation or warranty on behalf of the other party and/or to represent the other party as agent, employee or in any other capacity.

d. *Section Headings; No Third Party Beneficiaries.* The section headings herein are inserted for convenience only and shall not be construed to limit or modify the scope of any provision of this Agreement. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person or entity other than Carnegie Mellon or Sponsor any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

e. *Dispute Resolution (D2).* This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania without regard to the conflict of laws provisions. All claims and/or controversies of every kind and nature arising out of or relating to this Agreement, including any questions concerning its existence, negotiation, validity, meaning, performance, non-performance, breach, continuance or termination shall be settled (1) at Carnegie Mellon's election, by binding arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules and, in such case (A) the arbitration proceedings shall be conducted before a panel of three arbitrators, with each party selecting one disinterested arbitrator from a list submitted by the AAA and the two disinterested arbitrators selecting a third arbitrator from the list, (B) each party shall bear its own costs of arbitration, (C) all arbitration hearings shall be conducted in Allegheny County, Pennsylvania, and (D) the

provisions hereof shall be a complete defense to any suit, action or proceeding instituted in any Federal, state or local court or before any administrative tribunal with respect to any claim or controversy arising out of or relating to this Agreement and which is arbitrable as provided in this Agreement (provided that either party may seek injunctive relief in a court of law or equity to assert, protect or enforce its rights in any intellectual property and/or confidential or proprietary information as described in this Agreement), or (2) in the event that Carnegie Mellon does not elect binding arbitration as permitted in point (1) above, exclusively in the United States District Court for the Western District of Pennsylvania or, if such Court does not have jurisdiction, in any court of general jurisdiction in Allegheny County, Pennsylvania and each party consents to the exclusive jurisdiction of any such courts and waives any objection which such party may have to the laying of venue in any such courts.

f. *Government Rights (G1)*. The Sponsor understands and agrees that the Carnegie Mellon Intellectual Property and/or Joint Intellectual Property may have been developed in whole or in part under an agreement with the United States government (the “Government”) and, in such event, the Government may have certain rights. This Agreement, any and all obligations of Carnegie Mellon, and any and all rights granted to Sponsor are made subject to any applicable rights of the Government.

g. *No Assignment (A4)*. Sponsor may not assign any or all of its rights and/or obligations under this Agreement without the prior written consent of Carnegie Mellon, which consent may be granted or withheld in Carnegie Mellon’s sole discretion. Any attempted assignment in violation of this section shall be void and of no effect.

h. *Binding Effect; No Waiver (W1)*. This Agreement is binding upon and shall inure to the benefit of the parties hereto, their representatives, successors and permitted assigns. No failure or successive failures on the part of either party, its successors or assigns, to enforce any covenant or agreement, and no waiver or successive waivers on its or their part of any condition of this Agreement, shall operate as a discharge of such covenant, Agreement, or condition, or render the same invalid, or impair the right of either party, its successors and assigns, to enforce the same in the event of any subsequent breach or breaches by the other party, its successors or assigns.

i. *Force Majeure (F1)*. Except for Sponsor’s payment obligations, neither party shall be liable under this Agreement for delay in performance due to fire, flood, strike, or other labor difficulty, act of God, war (declared or undeclared), terrorist act, act of any governmental authority, acts or omissions of the other party, riot, fuel or energy shortage, or due to any other cause beyond the party’s reasonable control. In the event delays in performance due to any such cause, the dates for performance will be postponed by a period of time equal to the delay period.

j. *Entire Agreement (E1)*. This Agreement (including its appendices) constitutes the entire agreement between the parties and supersedes all previous agreements and understandings relating to the subject matter of this Agreement. The Agreement may not be altered, amended, or modified except by a written instrument signed by the duly authorized representatives of both parties. Unless explicitly accepted in this Agreement or in a document specifically entitled as an

amendment to this Agreement, terms appearing in purchase orders shall be of no effect other than evidencing Sponsor's intent to be bound to this Agreement.

INTENDING TO BE LEGALLY BOUND, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Carnegie Mellon University

[Company Name]

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

*Sponsor understands and agrees that Carnegie Mellon will not be bound by this Agreement and/or any amendment hereto unless signed by a duly authorized signatory listed in Carnegie Mellon's policy entitled "Authorized Signatures for Agreements, Contracts, Licenses" (currently posted at <http://www.cmu.edu/policies/documents/AuthSig.html>) or who Sponsor knows possesses a valid, written signature delegation issued pursuant to such policy.*

Carnegie Mellon University

[Company Name]

For Billing Information:

Attn: Rhonda Kloss  
Sponsored Projects Accounting Office  
Carnegie Mellon University  
5000 Forbes Avenue  
Pittsburgh, Pennsylvania 15213  
(412) 268-2091 Telephone  
(412) 268-5841 Fax  
Email: rkloss@andrew.cmu.edu

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For Contract Issues:

Attn: Susan Burkett  
Associate Vice President  
Office of Sponsored Programs  
Carnegie Mellon University  
5000 Forbes Avenue  
Pittsburgh, PA 15213  
(412) 268-8746 Telephone

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(412) 268-6279 Fax  
Email: [sburkett@cmu.edu](mailto:sburkett@cmu.edu)

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For Technical Issues:

Attn: (Fill in name)  
Address  
Address  
Carnegie Mellon University  
5000 Forbes Avenue  
Pittsburgh, PA 15213  
(412) 268-XXXX Telephone  
(412) 268-XXXX Fax  
Email:

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### APPENDIX C Payment Schedule

As full and complete compensation hereunder, Sponsor agrees to pay Carnegie Mellon on this [fixed price, cost reimbursable] type agreement in accordance with the line item expenditures as set forth in the Appendix B for the work detailed under Appendix A. Sponsor agrees to make advance [annual, bi-annual, quarterly, monthly] payments to Carnegie Mellon, commencing with the first payment within thirty (30) days of the Effective Date. All future payments will be made within thirty (30) days of receipt of an invoice as specified below.

1 <sup>st</sup> payment	30 days from Effective Date	US\$XXX,XXX.00
2 <sup>nd</sup> payment	DATE	US\$XXX,XXX.00
3 <sup>rd</sup> payment	DATE	US\$XXX,XXX.00
4 <sup>th</sup> payment	DATE	US\$XXX,XXX.00

Payments may be made via check or wire transfer.

Checks should be made payable to Carnegie Mellon University and sent to:

Carnegie Mellon University  
P.O. Box 371032  
Pittsburgh, PA 15250-7032.

Wire transfers should be sent as follows:

Name: Bank of New York Mellon  
Address: 500 Ross St.  
Pittsburgh PA 15262

Beneficiary: Carnegie Mellon University

Account Name: Cash Management Account  
Account Number: 197-9003  
ABA Number: 043000261  
SWIFT Code: MELNUS2P

Bank Contact: Cash Management Customer Service  
(412) 234-2515 Jeanne Mazur

*Delinquent Payments; Taxes (T1).* Any payment that is not made when due shall be considered delinquent. Carnegie Mellon, in its sole discretion, may charge interest on any delinquent amounts at the lower of the rate of 1.5% per month or the maximum rate of interest allowable under applicable law. The amounts to be paid by Sponsor under this Agreement do not include any charges for applicable taxes, governmental charges, duties or similar additions or deductions of any kind (including without limitation any and all federal, state, local, governmental, republic or provincial sales, use, goods and services, excise and withholding taxes) other than any United States Federal or state income taxes assessed on the income of Carnegie Mellon (collectively, "Taxes"). Sponsor agrees to pay any and all amounts required under this Agreement without deduction of any such Taxes. In the event by operation of law or otherwise, such Taxes are required to be deducted from any amounts paid to Carnegie Mellon under this Agreement, the amounts due under this Agreement shall be increased to such amounts as may be necessary to yield Carnegie Mellon the amount it would otherwise have received had such payments been made without deduction for any such Taxes. In addition, the amounts to be paid by Sponsor under this Agreement do not include customs duties or any other importation or exportation fees and associated costs, if any. Sponsor agrees to pay any such costs within thirty (30) days after receipt of an invoice from Carnegie Mellon.

#### 4. Case Western Reserve University

##### SPONSORED RESEARCH AGREEMENT

Between

CASE WESTERN RESERVE UNIVERSITY

And

\_\_\_\_\_.

**Recital (R1)** This Agreement (the “Agreement”), effective as of the \_\_\_th day of \_\_\_\_\_, 20\_\_\_, is between \_\_\_\_\_, a corporation domiciled in the State of \_\_\_\_\_ having a principal place of business at \_\_\_\_\_ (the “Company”), and Case Western Reserve University, an Ohio nonprofit corporation having its principal office at 10900 Euclid Avenue, Cleveland, Ohio (the “University”).

The University makes its capabilities available to commercial entities for research which complements and does not conflict with the University’s educational activities. In this spirit, the University is prepared to undertake on behalf of the Company a program of research in \_\_\_\_\_ to be directed by \_\_\_\_\_ (the “Principal Investigator”). To accomplish this, the University and the Company have agreed as follows.

##### ARTICLE I: RESEARCH

1.1 **Staff and Facilities (S1)**. The University will provide staff and facilities to conduct the program of research described in Appendix I (“Research Program”). The University will arrange for the Principal Investigator to direct the performance of the Research Program. Should the Principal Investigator become unable to continue supervising the Research Program, the University will so inform the Company and the parties will attempt to identify a replacement reasonably acceptable to both. If they are unable to reach agreement, either party may terminate this Agreement upon written notice to the other.

1.2 **Expenditure of Payments (P1)**. The University will use reasonable efforts to ensure that the Company’s payments to the University are expended in accordance with Appendix II (“Budget”). Any amounts remaining after completion of the Research Program may be expended at the discretion of the Principal Investigator.

1.3 **Accounting (R2)**. At the written request of the Company and not more frequently than annually, the University will provide the Company with an itemized accounting of expenditures for the Research Program. The University will use reasonable efforts to ensure that the accounting is correct and complete.

1.4 **Reports (R3)**. The University will use reasonable efforts to cause the Principal Investigator to provide the Company with written reports of the progress of the Research Program, in such detail as the Company may reasonably request, with each accounting of expenditures (i.e., not more frequently than annually).



**1.5 Site Visitations.** Upon reasonable notice, representatives of the Company may visit the University for purposes of meeting and talking with personnel engaged in the Research Program and reviewing records of the Research Program.

**1.6 Remedies.** The sole remedy for breach of any of the sections of this Article will be termination of the Company's obligation to make further payments to the University.

**1.7 Period of Performance (P2).** The work to be performed under this agreement shall commence on approximately the \_\_\_th day of \_\_\_\_\_, 200\_\_ and shall continue until approximately the \_\_\_th day of \_\_\_\_\_, 200\_\_.

#### ARTICLE II: PAYMENT (P1)

The Company will pay the University the sum of dollars (\$) in accordance with the Schedule set forth in Appendix III ("Schedule of Payment").

#### ARTICLE III: INTELLECTUAL PROPERTY, PATENTS, AND LICENSING (I5)

Patent and invention rights will be in accordance with the following:

**3.1. Background Intellectual Property;** Should one or more parties possess rights in background intellectual property, that is, intellectual property not otherwise subject to this Agreement, which would be useful or essential to the practice or commercialization of the results of this Agreement, consideration should be given to negotiating license rights which will allow the use of this intellectual property in the practice and commercialization of the results of this Agreement, to the extent that the parties are legally able to do so.

**3.2. Project Intellectual Property;** "Project Intellectual Property" means the legal rights relating to inventions, patent applications, patents, copyrights, trademarks, mask works, trade secrets, and any other legally protectable information, including computer software, first made or generated during the performance of this Agreement. The rights of the parties to inventions made by their employees or agents in the performance of this Agreement shall be as follows. Unless otherwise agreed in writing, Project Intellectual Property shall be owned by the party whose employee(s) or agent(s) make or generate the Project Intellectual Property. Jointly made or generated Project Intellectual Property shall be jointly owned by the Parties unless otherwise agreed in writing.

The Company shall have the first option to perfect the rights in jointly made or generated Project Intellectual Property unless otherwise agreed in writing, and shall have an option to negotiate for an exclusive commercial license to the jointly owned Project intellectual property. This option must be exercised within ten (10) months from the date of first written disclosure of the jointly owned Project Intellectual Property to the parties; any commercial license will be issued upon CWRU's standard terms and conditions. The joint owners may also consult and agree whether or not to file a patent application, which party will file, and where a patent application is to be filed; such joint applications will be at the expense of the Company.

**3.3 Patents;** The Parties agree to disclose to each other, in writing, each and every Invention that may be patentable or otherwise protectable under the United States patent laws in Title 35, U.S.C. and that is made or generated during the performance of this agreement. The Parties acknowledge that they will disclose Inventions to each other within two months after their respective inventor(s) first disclose the invention in writing to the person(s) responsible for patent matters of the disclosing Party. All written disclosures of such inventions shall contain sufficient detail of the invention, identification of any statutory bars, and shall be marked confidential, in accordance with 35 U.S.C. Section 205.

Upon request by the Company, the University will cause patent applications on Project Intellectual Property of the University to be filed in the University's name. Such applications will be made at the Company's expense by attorneys reasonably acceptable to both parties. If the University does not file a patent application requested by the Company, the Company's sole redress will be to file the application in the University's name at the Company's expense, which it is hereby authorized to do. Should the University determine that it is appropriate to file patent applications on Project Intellectual Property of the University or jointly owned Project Intellectual Property that have not been requested by the Company, the University will notify the Company of its determination (the notice must include a summary of the information on which the University based its determination). If the Company does not request the University to file the patent applications within ninety (90) days following receipt of the notice, the University has discretion to file applications in its name and at its expense. In the event any patents issue in respect of such patent applications they will not be deemed to be included in any license.

Promptly upon receipt of an invoice, the Company will pay patent costs directly to patent counsel or to the University for those patent applications on Project Intellectual Property that have been filed at the Company's request by the University. In a timely manner, the University will keep the Company informed of the status of patent applications and patents.

**3.4 Licenses and Option to Project Intellectual Property of the University;** Each party hereto may use Project Intellectual Property of the other non-exclusively and without compensation in connection with research or development activities covered by this Agreement. In addition, the University shall grant to the Company a non-exclusive, royalty free license to use the Project Intellectual Property of the University for internal, non-commercial research purposes only.

The Company will have an option to negotiate for an exclusive license to the Project Intellectual Property of the University, subject to any rights of the Government therein, for commercial purposes. This option must be exercised within ten (10) months from the date of first written disclosure of the Project Intellectual Property to the Company.. Any commercial license to the Project Intellectual Property of the University will be issued upon CWRU's standard terms and conditions.

**3.5 Follow-on Work;** All follow-on work, including any licenses, contracts, subcontracts, sublicenses or arrangements of any type, shall contain appropriate provisions to implement the Project Intellectual Property rights provisions of this Agreement and insure that the Parties obtain and retain such rights granted herein in all future resulting research, development, or commercialization work.

#### ARTICLE IV: PUBLICATION AND CONFIDENTIALITY

**4.1 Confidentiality (C2).** 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.

**4.2 Publication (P3).** The University will advise the Principal Investigator that if the Principal Investigator proposes to publish any results or conclusions from the Research Program, he or she must allow the Company to review any proposed publication thirty (30) days prior to submitting it for publication. If within said period, the Company identifies proprietary information of Company which it desires to protect and notifies the University in writing that it wishes publication of identified portions to be delayed, the University will use its best efforts to cause publication to be delayed for up to an additional sixty (60) days in order that a patent application may be prepared and filed. If, within the thirty (30) day review period, Company identifies Knowledge disclosed by Company and marked Confidential, University will delete such Knowledge from any publication proposed during the confidentiality period.

#### ARTICLE V: COMPANY INFORMATION

Upon completion of the Research Program, any and all materials, devices, samples, software and documentation provided to the University by the Company will be returned to the Company, unless the parties otherwise agree.

#### ARTICLE VI: DISCLAIMER OF WARRANTIES (W2)

THE INFORMATION, MATERIALS AND SERVICES PROVIDED BY THE UNIVERSITY UNDER THIS AGREEMENT ARE FURNISHED WITHOUT WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

#### ARTICLE VII: INDEMNIFICATION (I2)

The Company will defend, indemnify and hold the University harmless from any claim, suit, loss, cost, damage, liability or expense arising out of the Company's use of any information or results from the Research Program. Such defense will be conducted by attorneys reasonably acceptable to both parties. This obligation shall survive termination of the Agreement.

#### ARTICLE VIII: BREACH AND TERMINATION (T2)

**8.1 Term.** This Agreement will terminate upon completion of the Research Program. However, either party may terminate the Agreement for any reason with 30 day written notice. In the event of such early termination, Company will reimburse the University for all expenses incurred up to the date of termination including all non-cancelable obligations.

**8.2 Disposal of Funds.** In the event of termination of this Agreement prior to completion of the Research Program, the University will return any funds received pursuant to Article II to the Company, except for funds that (i) have been expended or (ii) that will be required to fulfill commitments made by the University in connection with the Research Program.

**8.3 Force Majeure (F1).** Each of the parties will be excused from performance of this Agreement only to the extent that performance is prevented by conditions beyond the reasonable control of the party affected. The parties will, however, use their best efforts to avoid or cure such conditions. The party claiming such conditions as an excuse for delaying performance will give prompt written notice of the conditions, and its intent to delay performance, to the other party and will resume its performance as soon as performance is possible.

**8.4 Breach.** If either party at any time commits any material breach of the Agreement, and fails to remedy it within thirty (30) days after receiving written notice of the breach, the aggrieved party, at its option, may cancel this Agreement by notifying the other in writing. This remedy is in addition to any other remedies to which it may be entitled. Any failure to cancel this Agreement for any breach will not constitute a waiver by the aggrieved party of its rights to cancel this Agreement for any other breach whether of similar or dissimilar nature. Except in the case of an intentional breach, the University's

liability will be limited to the amount of actual direct damages or the amount the company paid to the University under Article II, whichever is less.

**ARTICLE IX: USE OF NAME (P4)**

The Company will not use the name of the University, related schools or departments in any publication or marketing materials without the prior written consent of the University.

**ARTICLE X: NOTICES (N1)**

All notices to the University under this Agreement will be in writing and sent by facsimile or by U.S. Mail to the addresses below:

If to the University: If to the Company:

Assoc. Vice President for Research \_\_\_\_\_

Case Western Reserve University \_\_\_\_\_

10900 Euclid Avenue \_\_\_\_\_

Cleveland, Ohio 44106-7015 \_\_\_\_\_

**ARTICLE XI: MISCELLANEOUS (M1)**

**11.1 Governing Law (G1).** This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

**11.2 Headings.** The captions or headings in this Agreement do not form part of the Agreement, but are included solely for convenience.

**11.3 Waiver, Amendment (W1).** No waiver, amendment or modification of this Agreement will be effective unless in writing and signed by both parties.

**11.4 Assignment (A4).** 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.

**11.5 Entire Agreement (E3).** This Agreement embodies the entire agreement of the parties. It supersedes all prior written and verbal agreements between the parties with respect to the subject matter.

**11.6 Severability (S2).** If any term or condition of this Agreement is contrary to applicable law, such term or condition will not apply and will not invalidate any other part of this Agreement. However, if its deletion materially and adversely changes the position of either of the parties, the affected party may terminate the Agreement by giving thirty (30) days written notice.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the first date indicated above.

CASE WESTERN RESERVE UNIVERSITY COMPANY

By: \_\_\_\_\_ By: \_\_\_\_\_

Associate Vice President for Research Title:

Date: \_\_\_\_\_ Date: \_\_\_\_\_

I, the undersigned Principal Investigator, have read and understood this Agreement and agree to comply with its terms.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

## 5. Central Washington

Recital (R1): This agreement serves as an umbrella agreement to establish the operating relationships between Central Washington University ("University"), and the Central Washington University Research Foundation, a nonprofit corporation ("CWURF").

In that the University desires to enhance and expand its sponsored research and economic development and outreach programs by enabling the University to compete favorably with other public and private research universities and taking advantage of the services of a university connected research foundation, and the Mission of the CWURF is as follows:

Central Washington University Research Foundation's mission is to encourage and assist Central Washington University's faculty, staff and students to serve as an intellectual resource to enable central Washington, the state, and the region in solving human and environmental problems through economic development. The Central Washington University Research CWURF will accomplish this by supporting 'and encouraging the transformation of intellectual inquiry and exploration into applications that facilitate economic development; and The University wants the CWURF, through its Innovation Park and its improvements, utilized to provide space for businesses and entities that may help develop, improve, or license University intellectual properties and University-created technology, and transfer that intellectual property and technology into use, or that work closely with the University to advance its research and educational mission; and

The University recognizes that the CWURF as a State approved not-for-profit corporation, chartered for the exclusive benefit and support of the University can offer a range of services that can facilitate the university's objectives, and to the extent it is contractually legal and allowable under State of Washington law and desirable for the University to utilize the CWURF to:

- a. Contract for University-requested sponsored research which may- include terms and conditions that may not be allowable for the University, but are appropriate for the CWURF, and that if awarded to the CWURF the research work would be assigned to the University for performance and to the extent allowable by the University.
- b. Serve. as a legal entity for sponsored research, external contracts, and economic development programs for the University whenever appropriate. Central Washington University CWURF A greement
- c. Provide selected services in support of sponsored research operations that could facilitate the timely completion of such programs/projects.
- d. Develop incentive or other facilitating programs to encourage and expand sponsored . research and contract work at the University and CWURF.
- e. Facilitate University economic development programs to encourage programs/activities to assist economic and social programs for the benefit of Kittitas Valley and surrounding regions.

The parties agree to the following obligations (S1):

In that CWURF has been chartered to support the University and desires, to the extent it is legal and allowable, to support the broad range of University needs as out lined in paragraphs above, and to the extent as requested by the University, CWURF shall provide the following services:

Provide sponsored research contracting and administration.

Obtain CWURF risk management services (i.e. general liability, excess liability, workers compensation, hired and non-owned auto coverage, director and officers, employee dishonesty, etc.) as well as any specific project unique insurance. The University will be named as an additional insured on the policy or policies, which will also provide that the coverage is primary coverage and is not contributory with any other insurance or self insurance programs.

Make clear to volunteers whether they are working for the University or the CWURF. The CWURF will follow its own guidelines as to volunteers. Provide legal services in defense of CWURF.

Publicity (P4): Observe University delegations of authority and policies concerning the use of the University's name, logos, trademarks, service marks and official seal.

Records (R2): Create and maintain financial records and accounts to provide all of the agreed services. Such records shall be audited annually by a reputable independent accounting firm and shared with the University .Establish intellectual property management office/program for all assigned University research - related intellectual property. Provide purchasing services to the extent that University services do not support specific contract requirements.

Establish other facilitating programs to manage any funds on deposit with CWURF, obtain equipment and facility financing or long term leases, or other related activities.

Assist the University and the local community to establish needed economic development programs such as skill training, economic analysis and impact studies, new business incubation, licensing technology for product/production improvement or start-ups, etc.

Accept, hold, administer, invest and disburse such funds as from time to time may be given to it, in accordance with the terms of such grant, contract or gift provided, however, that any restricted or conditional funds which in any way obligates the University shall not be accepted by the CWURF without the prior written consent of the University President or other University official specifically delegated with written authority to approve such funding on behalf of the University.

Use all assets and earnings of CWURF for the benefit of the University or for payment of necessary and reasonable administrative expenses of the CWURF. No part of such assets and earnings shall accrue to the benefit of any director, officer, member, or employee of the CWURF or of any other individual, except for appropriate payment of reasonable compensation for services actually rendered or reimbursement of reasonable expenses necessarily incurred



Not merge, consolidate, or change the CWURF's Articles of Incorporation without the written consent of the University. Not allow the directors or staff members of the CWURF or any of its entities to participate in any business activities nor accept gifts or offer gifts where a personal conflict of interest exists or may reasonably be perceived to exist, without the approval of the CWURF Board of Directors in accordance with established policy.

**Key Personnel (K1):** Appoint an Executive Director of the CWURF who shall be an employee of the University and subject to the policies and procedures of the University. Such an individual will be responsible for the day-to-day management of the Innovation Park and to the extent provided by separate agreement of the parties. The duties and responsibilities of such an employee shall be described in the Job Descriptions provided by CWURF, which may be amended from time to time to make it proper and consistent with terms of this AGREEMENT and the associated Innovation Park agreement.

Develop operating policies for sponsored research contracting and administration, technology licensing, and economic development outreach programs that are consistent with the intent of appropriate University formal and operating policies.

B. The University shall provide:

1. **Equipment (E3):** Appropriate office space (including utilities) and the use of office furniture and associated equipment, materials and services (technology support, campus mail, internet and phone services) reasonably required for its operation, and warehouse space for temporary storage of donated materials and equipment.

2. Selected employees on a reimbursable basis (including the cost of benefits) that may include managers, accountants, computer technicians, and other administrative and support personnel as required.

3. **Costs and Payments (C4, P1)** Agreement for CWURF to retain a portion of all collected indirect/facilities and administrative costs to cover all CWURF operating costs. Retained funds surplus to CWURF operating costs and any CWURF Board-approved reserve amounts will be available to support University-requested and CWURF-approved programs.

C. The University and CWURF shall:

1. **Reports (R3)** Agree that all direct and indirect revenues that CWURF receives are recognized as a direct benefit to the University because the entity exists for the sole purpose of supporting the University. If expenditures provided by the University on behalf of the CWURF exceeds these revenues, then CWURF will reimburse the University. Both the University and the CWURF will prepare annual reports detailing all benefits provided during the year to each other. The Chair of the CWURF Board and the Chief Financial Officer of the University and/or their designees will annually review a post-closing summary of the transactions between the two parties.

2. Costs and Payments (C4, P1) Agree that the CWURF will issue Task Orders to the University when services are needed based upon an existing grant and/or contract requirement. The University will perform the work requested in the Task Order and bill the CWURF. Indirect costs will be negotiated between both parties for each Task Order for the work performed by the University. Typical services could include but will not be limited to staff payroll costs, benefits, good and services, travel and equipment. Any equipment purchased will become the property of the University. The Task Order process will be described in further detail in the CWURF Operating Procedures.

## OTHER AGREEMENTS

**Independent Capacity:** At all times and for all purposes of this Agreement, each party shall act in an independent capacity and not as an agent or representative of the other party.

**Contracting Authority:** The CWURF has no contracting authority on behalf of the University.

**No Indemnification (I2):** Each party shall be responsible for the actions and inactions of itself and its own officers, employees, and agents acting within the scope of their authority.

**No Assignment (A4):** This agreement is not assignable by either party, in whole or in part.

**Governing Law and Disputes:** This Agreement shall be governed by the laws of the State of Washington. Before instituting any legal action hereunder, a party, through its executive officer, shall meet with the executive officer of the other party and attempt in good faith to resolve the disagreement. Venue of any action hereunder shall be in Kittitas County Superior Court.

**Entire Agreement (E3):** This constitutes the entire agreement of the parties, including all oral understandings, on the subject of their general and overall relationship. However, the parties may enter into other stand-alone agreements on specific subjects. All such other agreements shall also be in writing, signed by the parties, and approved as to form by the Attorney General or designee.

**Modification (A3):** Amendment of this agreement may be made by mutual agreement with either party giving sixty (60) days notice for any requested/proposed change. If required approval under RCW 42.52.220 by the Executive Ethics Board and the Governor's Office is not provided, both parties agree to modified MOU so approval can be provided.

**Termination (T2):** Subject to its other provisions, the period of performance of this Agreement shall commence on July 1, 2008 and be completed on June 30, 2010. Both parties agree to review these terms and conditions at least 90 days before the termination date and can mutually agree in writing to extend this Agreement for additional years as needed to meet the needs to the program.

## 6. Dartmouth College

This Agreement, effective this \_\_\_ day of \_\_\_\_\_ 2008, between

TRUSTEES OF DARTMOUTH COLLEGE, a non-profit educational institution existing under the laws of the State of New Hampshire, and being located at Hanover, New Hampshire 03755, hereinafter called Dartmouth, and ABC CORPORATION, a corporation of the State of \_\_\_\_\_, with a principal place of business at \_\_\_\_\_, hereinafter called ABC.

Recital (R1): WHEREAS, Dartmouth under the direction of Principal Investigator \_\_\_\_\_, Ph.D., wishes to further research and development for \_\_\_\_\_, as described in the Research Plan (Attachment B); and

WHEREAS, ABC wishes to sponsor such research under the terms and conditions hereinafter set forth;

NOW THEREFORE, in consideration of the premises and the faithful performance of the covenants herein contained, IT IS AGREED:

Section 1. Affiliate. "Affiliate" shall mean a legal entity at least 50% of the voting stock of which is owned directly or indirectly by ABC.

Section 2. Agreement. "Agreement" shall mean this Research Agreement.

Section 3. Effective Date. "Effective Date" shall mean the date first written above and shall be the Effective Date of this Agreement.

Section 4. Dartmouth Know-How. "Dartmouth Know-How" shall mean the ideas, methods, inventions, improvements, characterization and techniques hereinafter developed by Dartmouth relating to \_\_\_\_\_, pursuant to the terms of this agreement.

Section 5. Dartmouth Patent Rights (I5). "Dartmouth Patent Rights" shall mean any United States or foreign patent applications and any United States or foreign patent issuing from such applications, and any continuations, continuations-in-part, divisions, reissues, reexaminations or extensions thereof, owned or assignable to Dartmouth, containing one or more claims based upon Dartmouth Know-How.

Section 6. Joint Patent Rights. "Joint Patent Rights" shall mean any United States or foreign patent applications and any United States or foreign patent issuing from such applications, and any continuations, continuations-in-part, divisions, reissues, reexaminations or extensions thereof, owned or assignable to Dartmouth and ABC, containing one or more claims based upon joint inventions.

Section 7. Contract Period (P2). The "Contract Period" shall mean the period commencing on the Effective Date and ending \_\_\_\_\_.

Section 8. Research Support (P1). ABC shall provide research support to Dartmouth for laboratory research at a level of \$xx,xxx for the Contract Period in accordance with the attached budget, which makes up Attachment A, and the attached Research Plan which makes up Attachment B. Dartmouth shall have the flexibility to rebudget the funds as necessary during the Contract Period so as to provide the Principal Investigator the opportunity to use the funds as he deems most reasonable, provided that the funds are used within the scope of the Research Plan. Dartmouth shall use reasonable efforts to perform the research as described in the Research Plan.

Section 9. Inventions (A4). All inventions arising during the conduct of the Research Plan, conceived solely by Dartmouth inventors, shall be assigned to Dartmouth, and all inventions conceived solely by the ABC inventors shall be assigned to ABC. For inventions that are conceived jointly by Dartmouth and ABC inventors, Dartmouth and ABC will hold joint title.

Section 10. License Rights (I5). Dartmouth hereby grants ABC the option of a world-wide, royalty-bearing license under Dartmouth Patent Rights, and Dartmouth Know-How, and Joint Patent Rights, to make, have made, use and sell (in a designated field of use, where appropriate) the products embodying or produced through the use of Dartmouth's or joint inventions, at reasonable terms and conditions as the parties may agree; except to the extent of any rights required to be granted to the Government of the United States of America pursuant to 35 U.S.C. §§200-211. ABC shall have forty-five (45) days to exercise this option after report of such Dartmouth's invention(s) arising during the conduct of the Research Plan by Dartmouth. [ABC shall have forty five (45) days after the expiration of the Contract Period to exercise this option.] If within ninety (90) days from the option exercise after good faith negotiations parties fail to reach an agreement on the license terms, or if ABC decides to forgo the option, Dartmouth 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.

Section 11. Patents and Patent Expenses (I5). ABC will reimburse Dartmouth for all costs associated with obtaining and maintaining Dartmouth Patent Rights. Provided, however, if ABC decides that it is not appropriate to apply for Dartmouth Patent Rights, ABC shall have no obligation to reimburse Dartmouth for such costs and in such event the option granted under Section 10 to ABC by Dartmouth shall lapse in respect to the Dartmouth Patent Rights for which ABC declines to reimburse the cost to Dartmouth. Dartmouth shall also have the right to obtain patent protection on its own and at its own expense for Joint Patent Rights in the names of Dartmouth and ABC in case ABC decides not to support such filings, in which event the option granted under Section 10 to ABC by Dartmouth shall lapse in respect to Dartmouth's rights under Joint Patent Rights.

Section 12. Mutual Confidentiality (C2). ABC and Dartmouth realize that some information received by one party from the other pursuant to this Agreement shall be confidential. Any information disclosed by either party and requiring confidential treatment

shall be identified in writing as confidential or, if disclosed orally or visually, shall be summarized and confirmed in writing as confidential within 30 days of such disclosure and shall be maintained in secrecy by the receiving party. Any failure by disclosing party to identify orally disclosed information as confidential in writing shall not relieve the receiving party of its obligations under this Agreement. Each party shall use all reasonable measures to prevent disclosure of information, except to their own personnel who have a need to know and such information shall not be used by either party for purposes other than those contemplated by this Agreement for a period of three (3) years from the termination of the Agreement, unless or until -

- (a) said information shall become known to third parties or shall become publicly known through no fault of the receiving party, or
- (b) said information was already in the receiving party's possession prior to the disclosure of said information to the receiving party, or
- (c) said information shall be subsequently disclosed to the receiving party by a third party who is not under any obligation of confidentiality to the disclosing party, or
- (d) said information is approved for disclosure by prior written consent of the disclosing party, or
- (e) said information is required to be disclosed by court rule or governmental law or regulation, provided that the receiving party gives the disclosing party prompt notice of any such requirement and cooperates with the disclosing party in attempting to limit such disclosure, or
- (f) said information is proven independently developed by the receiving party without recourse or access to the information.

Section 13. Corporate Action (W2). Dartmouth and ABC each represent and warrant to the other party that they have full power and authority to enter into this Agreement and carry out the transactions contemplated hereby and that all necessary corporate action had been duly taken in this regard.

Section 14. Payments (P1). For the rights and privileges granted under this Agreement, ABC shall pay to Dartmouth research support as defined in Section 8, to be paid in quarterly payments, the first to be due upon execution of this Agreement and every three month's thereafter. Payments will be due within 30 days of ABC's receipt of Dartmouth's invoice.

Section 15. Reports (R3). Dartmouth shall furnish ABC with quarterly reports during the term of this Agreement summarizing the research conducted in accordance with the Research Plan. A final written report stating the accomplishments and significant research findings shall be submitted to ABC within 90 days of the expiration of this Agreement.

Section 16. Publications (P3). Dartmouth retains the rights to report on the results of research under this Agreement in professional journals, meetings, seminars, and the like. Appropriate recognition of ABC's support will be included in all such reports. However, in recognition of ABC's desire for patent protection, Dartmouth shall provide ABC with the final draft of any manuscript describing studies within the pertinent field and resulting from the sponsored research at least thirty (30) days prior to publication.

Section 17. Use of Name (P4). ABC shall not use and shall not permit to be used by any other person or entity the name of Dartmouth, nor any adaptation thereof, or the name of Dartmouth's employees, in any advertising, promotional or sales literature, or for any other purpose without prior written permission of Dartmouth.

Section 18. Indemnity (I2). ABC shall defend and indemnify and hold Dartmouth its trustees, employees, officers and agents harmless for any judgments and other liabilities based upon claims or causes of action against Dartmouth or its employees which arise out of (i) the design, production, manufacture, sale, use in commerce, lease or promotion by ABC, its Affiliates and Licensees, affiliates or agents of ABC of any product, process or service relating to, or developed pursuant to, this Agreement or (ii) any other activities to be carried out pursuant to this Agreement, except to the extent that such judgments or liabilities arise in whole or in part from the gross negligence or willful misconduct of Dartmouth or its employees, provided that Dartmouth promptly notifies ABC of any such claim coming to its attention and that it cooperates with ABC in the defense of such claim. If any such claims or causes of action are made, Dartmouth shall be defended by counsel to ABC, subject to Dartmouth's approval, which shall not be unreasonably withheld.

**DARTMOUTH MAKES NO WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE RESULTS OF RESEARCH PERFORMED UNDER THE RESEARCH PLAN OR OF THE MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF SUCH RESEARCH OR RESULTS.**

Section 19. Termination (T2). Performance under this Agreement may be terminated by ABC upon sixty (60) days written notice; performance may be terminated by Dartmouth if circumstances beyond its control preclude continuation of the research. Upon termination, Dartmouth will be reimbursed as specified in Section 14 for all costs and non-cancellable commitments incurred in the performance of the research, such reimbursement not to exceed the total estimated project cost specified in Section 8.

Section 20. Prior Obligations. Termination of this Agreement for any reason shall not release either party from any obligation theretofore accrued.

Section 21. Governing Law (G1). This Agreement shall be construed, governed, interpreted and enforced according to the laws of the State of New Hampshire.

Section 22. Notices (N1). Any notice or communication required or permitted to be given by either party hereunder, shall be deemed sufficiently given, if mailed by certified mail, return receipt requested, and addressed to the party to whom notice is given as follows:

If to ABC, to:

-----

If to Dartmouth, to:

Alla Kan, Director  
Technology Transfer Office  
Dartmouth College  
11 Rope Ferry Road, #6210  
Hanover, New Hampshire 03755-1404

Section 23. Assignment (A4). This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto. However, ABC may not assign this Agreement in whole or in part without the written consent of Dartmouth.

Section 24. Entire Agreement (E3). This Agreement represents the entire Agreement between the parties as of the Effective Date hereof and may only be subsequently altered or modified by an instrument in writing. This Agreement cancels and supersedes any and all prior agreements between the parties which relate to the subject matter of this Agreement.

Section 25. Waiver (W1). A failure by one of the parties to this Agreement to assert its rights for or upon any breach or default of this Agreement shall not be deemed a waiver of such rights nor shall any such waiver be implied from acceptance of any payment. No such failure or waiver in writing by any one of the parties hereto with respect to any rights, shall extend to or affect any subsequent breach or impair any right consequent thereon.

Section 26. Severability (S2). The parties agree that it is the intention of neither party to violate any public policy, statutory or common laws, and governmental or supranational regulations; that if any sentence, paragraph, clause or combination of the same is in violation of any applicable law or regulation, or is unenforceable or void for any reason whatsoever, such sentence, paragraph, clause or combinations of the same shall be inoperative and the remainder of the Agreement shall remain binding upon the parties.

Section 27. Mediation and Arbitration (D2). 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.

Section 28. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not constitute a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

THE TRUSTEES OF DARTMOUTH COLLEGE

By \_\_\_\_\_

Name:

Title:

Date \_\_\_\_\_

ABC CORPORATION

By \_\_\_\_\_

Name:

Title:

Date \_\_\_\_\_



## 7. Drexel University

Recital (R1): This Sponsored Research Agreement ("AGREEMENT") is made by and between Drexel University, a Pennsylvania nonprofit corporation ("DREXEL"), with its principal place of business at 3141 Chestnut Street, Philadelphia, PA 19104 and , a corporation organized and existing under the laws of ("SPONSOR"), having a place of business at . .

This AGREEMENT is effective as of the day of , 200 ("EFFECTIVE DATE").

### BACKGROUND (S1)

- A. SPONSOR desires to fund the research of Dr. of DREXEL's College of in certain specific areas;
- B. . SPONSOR desires to support such research conducted by DREXEL under the terms and conditions of this AGREEMENT;
- C. The research program described in this AGREEMENT is of mutual interest to SPONSOR and DREXEL and furthers the educational and research objectives of DREXEL as a nonprofit, tax-exempt educational institution, and may benefit both SPONSOR and DREXEL through the creation of new inventions;

NOW, THEREFORE, in consideration of the promises and covenants contained in this AGREEMENT, and intending to be legally bound, the parties agree as follows:

### 1. DEFINITIONS

1.1 DREXEL INTELLECTUAL PROPERTY means and includes all technical information, inventions, developments, discoveries, software, know-how, methods, techniques, formulae, data, processes and other proprietary ideas, whether or not patentable or copyrightable, that are first conceived, discovered, developed or reduced to practice in the conduct of the SPONSORED RESEARCH.

1.2 PRINCIPAL INVESTIGATOR (K1) is (name of faculty member), who is responsible for supervision and administration of the SPONSORED RESEARCH.

1.3 SPONSORED RESEARCH means the research program described in Attachment A to this AGREEMENT.

### 2. SPONSORED RESEARCH

2.1 DREXEL agrees to begin the SPONSORED RESEARCH after the EFFECTIVE DATE and upon payment by SPONSOR of any funds owed. DREXEL agrees to use reasonable efforts to conduct the SPONSORED RESEARCH substantially in accordance with the terms and conditions of this AGREEMENT. SPONSOR acknowledges that DREXEL and the PRINCIPAL INVESTIGATOR shall have the freedom to conduct and supervise the SPONSORED RESEARCH in a manner consistent with DREXEL's educational and research missions.

2.2 If the services of the PRINCIPAL INVESTIGATOR become unavailable to DREXEL for any reason, DREXEL is entitled to designate another member of its faculty who is acceptable to both parties to serve as the PRINCIPAL INVESTIGATOR of the SPONSORED RESEARCH. If a substitute PRINCIPAL INVESTIGATOR has not been designated within sixty (60) days after the original PRINCIPAL INVESTIGATOR ceases his or her services under this AGREEMENT, either party may terminate this AGREEMENT upon written notice to the other party, subject to the provisions of ARTICLE 9.

### 3. TERM OF AGREEMENT (P2)

3.1 The term of this AGREEMENT shall begin on the EFFECTIVE DATE of this AGREEMENT and shall end on unless terminated sooner pursuant to Sections 2.2, 9.1 or 9.2 hereof. This AGREEMENT may be extended or renewed only by mutual written agreement executed by duly authorized representatives of the parties.

### 4. REIMBURSEMENT OF COSTS, PAYMENT (C4, P1)

4.1 SPONSOR shall reimburse DREXEL for all direct and indirect costs incurred in the conduct of the SPONSORED RESEARCH in an amount not to exceed the total amount of \$ 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 DREXEL 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 responsible for any costs in excess of the amount of \$ as set forth in Attachment A unless it has agreed in writing to provide additional funds.

4.2 SPONSOR shall make payments in advance to DREXEL in accordance with the payment schedule set forth in Attachment A. All payments are to be made by check payable in United States dollars, to "Drexel University", and sent to the address in Section 11.4.

4.3 Title to any equipment, laboratory animals, or any other materials made or acquired with funds provided under this AGREEMENT shall vest in DREXEL, and such equipment, animals, or materials shall remain the property of DREXEL following termination of this AGREEMENT.

### 5. RECORDS AND REPORTS (R3, R2)

5.1 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. 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.

5.2 In order to preserve the patentability of DREXEL INTELLECTUAL PROPERTY, SPONSOR shall maintain DREXEL INTELLECTUAL PROPERTY and information provided pursuant to Section 6.1 (whether oral or written) as confidential and shall not disclose such information to any third party except with DREXEL's prior written approval.

## 6. INTELLECTUAL PROPERTY (15)

6.1 PRINCIPAL INVESTIGATOR shall provide to DREXEL and SPONSOR a complete written disclosure of any DREXEL INTELLECTUAL PROPERTY reasonably considered patentable. SPONSOR shall advise DREXEL in writing, no later than thirty (30) days after receipt of such disclosure, whether it requests DREXEL to file and prosecute patent applications related to such DREXEL INTELLECTUAL PROPERTY. If SPONSOR does not request DREXEL to file and prosecute such patent applications, DREXEL 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.

6.2 DREXEL shall control the preparation and prosecution of all patent applications and the maintenance of all patents related to DREXEL INTELLECTUAL PROPERTY. SPONSOR shall reimburse DREXEL 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 DREXEL to prosecute under Section 6.1.

6.3 The preparation, prosecution, and maintenance of copyright, trademark and other intellectual property applications for the DREXEL INTELLECTUAL PROPERTY shall be subject to the provisions of Section 6.1.

6.4 DREXEL shall retain all right, title and interest in and to the DREXEL INTELLECTUAL PROPERTY and any patents, copyrights and other intellectual property protections related thereto.

6.5 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.

6.6 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 DREXEL and by employees of SPONSOR shall belong jointly to DREXEL and to SPONSOR. Such inventions, improvements, and/or discoveries shall be subject to the terms and conditions of this AGREEMENT.

## 7. OPTION (15)

7.1 In consideration of SPONSOR's funding of the SPONSORED RESEARCH and payment for intellectual property expenses as provided for in Article 6, DREXEL grants SPONSOR a first option to negotiate to acquire a royalty-bearing license to practice DREXEL INTELLECTUAL PROPERTY. DREXEL and SPONSOR will negotiate in good faith to determine the terms of a license agreement as to each item of DREXEL INTELLECTUAL PROPERTY for which SPONSOR has agreed to make payment for intellectual property expenses as provided for in Article 6. If SPONSOR and DREXEL fail to execute a license agreement within six (6) months

after disclosure of the DREXEL INTELLECTUAL PROPERTY. PROPERTY to SPONSOR or if SPONSOR fails to make payment for intellectual property expenses as provided for in Article 6, DREXEL shall be free to license the DREXEL INTELLECTUAL PROPERTY to any party upon such terms as DREXEL deems appropriate, without any further obligation to SPONSOR.

7.2 Any license granted to SPONSOR pursuant to Section 7.1 hereof shall be subject, if applicable, to the rights of the United States government reserved under Public Laws 96-517, 97-256 and 98-620, codified at 35 U.S.C. 200-212, and any regulations issued thereunder.

## 8. PUBLICATION, USE OF NAME (P4, P3)

8.1 DREXEL shall be free to publish the results of the SPONSORED RESEARCH; a copy of each publication will be provided to SPONSOR.

8.2 DREXEL shall not use SPONSOR's name without SPONSOR's prior written consent except that DREXEL may acknowledge SPONSOR's funding of the 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.

## 9. TERMINATION (T2)

9.1 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 of the breach. In the event of an incurable breach, the non-breaching party may terminate this AGREEMENT effective immediately upon written notice to the breaching party.

9.2 In addition, either party may terminate this AGREEMENT for any reason upon ninety (90) days prior written notice to the other party.

9.3 In the event of termination of this AGREEMENT prior to its stated term, whether for breach or for any other reason whatsoever, DREXEL shall be entitled to retain from the payments made by SPONSOR prior to termination DREXEL'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 DREXEL 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, DREXEL shall submit a final report of all costs incurred and all funds received under this AGREEMENT within sixty (60) 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 DREXEL the amount needed to cover costs and allowable commitments incurred by DREXEL under this AGREEMENT.

9.4 Termination of this AGREEMENT shall not affect the rights and obligations of the parties accrued prior to termination. The provisions of ARTICLE 6, entitled INTELLECTUAL PROPERTY; ARTICLE 7, entitled OPTION, ARTICLE 10, entitled DISCLAIMER OF WARRANTIES, ORCA 3.9.2007 INDEMNIFICATION; and ARTICLE 11, entitled ADDITIONAL PROVISIONS, shall survive termination.

## 10. DISCLAIMER OF WARRANTIES, INDEMNIFICATION (W2, I2)

10.1 DREXEL MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES WITH RESPECT TO THE CONDUCT, COMPLETION, SUCCESS OR PARTICULAR RESULTS OF THE SPONSORED RESEARCH, OR THE CONDITION, OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE SPONSORED RESEARCH OR ANY DREXEL INTELLECTUAL PROPERTY. DREXEL SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES SUFFERED BY SPONSOR OR ANY OTHER PERSON RESULTING FROM THE SPONSORED RESEARCH OR THE USE OF ANY DREXEL INTELLECTUAL PROPERTY PRODUCT.

10.2 SPONSOR shall defend, indemnify and hold harmless DREXEL, the PRINCIPAL INVESTIGATOR and any of DREXEL's faculty, students, employees, trustees, officers, affiliates and agents (hereinafter referred to collectively as the "INDEMNIFIED PERSONS") from and against any and all liability, claims, lawsuits, losses, damages, costs or expenses (including attorneys' fees), which the INDEMNIFIED PERSONS may hereafter incur, or be required to pay as a result of SPONSOR's use of the results of SPONSORED RESEARCH or any DREXEL INTELLECTUAL PROPERTY or as a result of any breach of this AGREEMENT or any act or omission of SPONSOR, its employees, affiliates, contractors, licensees or agents. DREXEL shall notify SPONSOR upon learning of the institution or threatened institution of any such liability, claims, lawsuits, losses, damages, costs and expenses and DREXEL shall cooperate with SPONSOR in every proper way in the defense or settlement thereof at SPONSOR's request and expense.

## 11. ADDITIONAL PROVISIONS (M1)

11.1 Assignment (A4): No rights hereunder may be assigned by SPONSOR, directly or by merger or other operation of law, without the express written consent of DREXEL. Any prohibited assignment of this AGREEMENT or the rights hereunder shall be null and void. No assignment shall relieve SPONSOR of responsibility for the performance of any accrued obligations which it has prior to such assignment.

11.2 Waiver (W1): A waiver by either party of a breach or violation of any provision of this AGREEMENT will not constitute or be construed as a waiver of any subsequent breach or violation of that provision or as a waiver of any breach or violation of any other provision of this AGREEMENT.

11.3 Agency: Nothing herein shall be deemed to establish a relationship of principal and agent between DREXEL and SPONSOR, nor any of their agents or employees, nor shall this AGREEMENT be construed as creating any form of legal association or arrangement which would impose liability upon one party for the act or failure to act of the other party. Nothing in this AGREEMENT, express or implied, is intended to confer on any person other than the parties hereto or their permitted assigns, any benefits, rights or remedies.

11.4 Notices and Payment (N1, P1): Notices, payments, statements, reports and other communications under this AGREEMENT shall be in writing and shall be deemed to have been received as of the date dispatched if sent by public overnight courier (e.g., Federal Express) and addressed as follows:

If to DREXEL:

Vice President for Research  
Drexel University  
3201 Arch Street, Suite 100 3201  
Philadelphia, PA 19104

with a copy to:

Office of the General Counsel  
Drexel University  
Arch Street, Suite 310  
Philadelphia, PA 19104  
Attn: General Counsel

If to SPONSOR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11.5 Governing Law (G1): This AGREEMENT shall be construed and governed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to conflict of law provisions. The parties hereby submit to the exclusive jurisdiction of and venue in any state or federal courts located within the Eastern District of Pennsylvania with respect to any and all disputes concerning the subject of this AGREEMENT.

11.6 Discrimination: DREXEL and SPONSOR shall not discriminate against any employee or applicant for employment because of race, color, sex, sexual preference, age, religion, national origin, disability, or because he or she is a disabled veteran or veteran of the Vietnam Era.

11.7 Force Majeure (F1): Neither party shall be liable for any failure to perform as required by this AGREEMENT to the extent such failure to perform is due to circumstances reasonably beyond such party's control, including, without limitation, 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, acts of God, energy or other conservation measures imposed by law or regulation, explosions, failure of utilities, mechanical breakdowns, material shortages, disease, or other such occurrences.

11.8 Export Control (E4): SPONSOR shall comply with all laws, regulations and other legal requirements applicable to SPONSOR in connection with this AGREEMENT, including but not limited to any legal requirements applicable to SPONSOR's use of the results of the

SPONSORED RESEARCH or any DREXEL INTELLECTUAL PROPERTY and laws controlling the export of technical data, computer software, laboratory prototypes, and all other export controlled commodities.

11.9 Entire Agreement (E1): This AGREEMENT embodies the entire understanding between the parties relating to the subject matter hereof and supersedes all prior understandings and agreements, whether written or oral.

This AGREEMENT may not be varied except by a written document signed by duly authorized representatives of both parties.

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereby execute this AGREEMENT as of the date first written above.

DREXEL UNIVERSITY

[SPONSOR HERE]

By:  
Name:  
Title:  
Date:

By:  
Name:  
Title:  
Date:

I have read and agreed to the responsibilities of the PRINCIPAL INVESTIGATOR:

By:\_\_\_\_\_ Date:\_\_\_\_\_

Attachment A  
Summary of SPONSORED RESEARCH

Work Scope

- 1)
- 2) Details of Program - See Attachment B

PRINCIPAL INVESTIGATOR

Representative of SPONSOR

- 1) Name:
- 2) Phone Number:

Period of Performance

Report Schedule

Final report within thirty (30) days after termination

Budget

Invoice and Payment Schedule	Amount of Payment Due
---------------------------------	-----------------------

Date Payment Due

- |    |    |
|----|----|
| 1. | 1. |
| 2. | 2. |
| 3. | 3. |
| 4. | 4. |
| 5. | 5. |



## 8. John Hopkins University

### 8.1. Master Agreement

The following is the language that is generally acceptable to Johns Hopkins University:

#### 1. Publication (P3)

“Investigators will have the right to publish and disclose the results of the Research, In order to balance this right with Provider's proprietary interests, investigators will submit any and all proposed disclosures to Provider for its review at least thirty (30) days prior to the scheduled disclosure of the results to any third party (including, without limitation, to any journal for review). Provider will complete its review within thirty (30) days of receipt of the submitted documents. Provider may request that investigators delete from the documents any reference to Provider's Confidential Information. If, during its thirty (30) day review period, Provider notifies JHU and/or investigators that it desires to file patent applications on any inventions disclosed in the documents, investigators will defer publication/disclosure for up to sixty (60) additional days from the date of submission of the document to Provider.”

#### 2. Definition of “Materials”

"Materials" means the provided materials and any Progeny and Unmodified Derivatives thereof. Progeny is an unmodified descendant from the provided materials, such as virus from virus, cell from cell, or organism from organism. Unmodified Derivatives are substances created by the investigator which constitute an unmodified functional subunit or product expressed by the provided materials, such as subclones of unmodified cell/lines, purified or fractionated subsets of the provided materials, proteins expressed by DNA/RNA supplied by the Provider, or monoclonal antibodies secreted by a hybridoma celline. Materials shall not include: (a) Modifications, or (b) other substances created by the investigator through the use of the Materials which are not Modifications, Progeny, or Unmodified Derivatives. Modifications are materials made by the investigator which contain/incorporate the Materials.

#### 3. Licensing (I5)

“JHU and investigators agree to grant to Provider (a) a non-exclusive, royalty-free license to inventions for internal research purposes and (b) an exclusive option to obtain an exclusive, royalty-bearing license to any and all of JHU's and investigators' interests in the inventions with the right to grant sublicenses. The parties agree to negotiate in good faith the commercially reasonable terms and conditions of such an exclusive license, or any such royalty payments, that may arise out of this Agreement. Provider shall exercise its (a) right and (b) exclusive option by notifying JHU and investigators in writing of those inventions that Provider intends to license within ninety (90) days of Provider's receipt of a report or manuscript describing such inventions. Any such license will be subject to (i) rights retained by the United States government in accordance with 35 USC sections 200-212, 37 CFR section 401, and JHU's obligations regarding the NIH guidelines for Obtaining and Disseminating Biomedical Research Resources, when research is funded by the U. S. government,

including, but not limited to, the obligation to ensure that research tools will be available to the academic research community on reasonable terms, and (ii) the retained right of JHU to make, have made, provide and use for its and The Johns Hopkins Health Systems' internal purposes.”

#### 4. Patent Prosecution (I5)

“Any patent applications necessary to protect the proprietary positions of the parties in any of the inventions may be prepared and filed by JHU and/or investigators (jointly in Provider's and JHU'S/investigators' names, if jointly invented, with expenses shared equally by Provider and JHU and/or investigators; solely in JHU's and/or investigators' name, if solely invented, with expenses paid by JHU and/or investigators). If JHU and/or investigators elect not to file or maintain an application or patent arising from any invention, JHU and/or investigators shall promptly notify Provider, and Provider shall have the right to file or maintain the applications or patents, at Provider's expense. Any such patent applications will be subject to any third party rights, including, but not limited to, those rights retained by the U. S. government and/or other sponsors of the Research. Inventorship will be determined according to U. S. patent law, with ownership to follow inventorship”.

#### 5. Confidential Information (C2)

“Confidential Information shall mean proprietary and confidential information of the Provider which is related to the Materials and is provided to JHU and indicated as confidential or proprietary at the time of disclosure or in the case of oral disclosures, indicated in writing within thirty (30) days of disclosure.”

Confidential Information shall not include information which:

- a) was in JHU's possession prior to receipt from Provider;
- b) was in the public domain at the time of receipt from Provider;
- c) becomes part of the public domain through no fault of JHU;
- d) was lawfully received by JHU from a third party having a right to disclose it to JHU;
- e) is subsequently and independently developed by employees of JHU who had no knowledge of the Confidential Information disclosed; or
- f) is required by law to be disclosed.

“JHU agrees that Confidential Information shall be used solely for the research with the Materials and that the Confidential Information will not be disclosed to anyone except those employees of JHU working under the direct supervision of the Recipient Scientist who have a need to know for the purposes of the research utilizing the Materials and who are bound by the terms of this agreement as an employee of JHU.”

“JHU's obligations with respect to Confidential Information as set forth in this Paragraph shall remain in effect for a period of five (5) years following the Effective Date of this Agreement.”

6. Data (R3)

“JHU agrees to provide the Provider with a summary of any data resulting from the use of the Materials (the "Data"). JHU shall own all Data. The Provider agrees to use the Data solely for research and regulatory purposes, and not to use the Data in support of a patent application without JHU's prior knowledge and only after the JHU has reviewed the application and had the ability to assert any claims to inventorship. The Provider also agrees not to use the Data for any marketing or promotional purposes without the JHU's prior written approval.”

7. Use of Name (P4)

“Neither party shall use the name of the other or any contraction or derivative thereof or the names( s) of the other party's faculty members, employees, or students, as applicable, in any advertising, promotional, sales literature, or fundraising documents without prior written consent from the other party.”

8. Indemnification (I2)

“To the extent permitted under governing law, JHU will indemnify and hold Provider harmless from any claims or liability resulting from JHU's and investigators' use of the Materials, except insofar as such claims or liability result from Provider's gross negligence or willful misconduct.”

## 8.2. Uniform Biological Material Transfer Agreement

### I. Definitions:

1. **PROVIDER:** Organization providing the ORIGINAL MATERIAL. The name and address of this party will be specified in an implementing letter.
2. **PROVIDER SCIENTIST:** The name and address of this party will be specified in an implementing letter.
3. **RECIPIENT:** Organization receiving the ORIGINAL MATERIAL. The name and address of this party will be specified in an implementing letter.
4. **RECIPIENT SCIENTIST:** The name and address of this party will be specified in an implementing letter.
5. **ORIGINAL MATERIAL:** The description of the material being transferred will be specified in an implementing letter.
6. **MATERIAL:** ORIGINAL MATERIAL, PROGENY, and UNMODIFIED DERIVATIVES. The MATERIAL shall not include: (a) MODIFICATIONS, or (b) other substances created by the RECIPIENT through the use of the MATERIAL which are not MODIFICATIONS, PROGENY, or UNMODIFIED DERIVATIVES.
7. **PROGENY:** Unmodified descendant from the MATERIAL, such as virus from virus, cell from cell, or organism from organism.
8. **UNMODIFIED DERIVATIVES:** Substances created by the RECIPIENT which constitute an unmodified functional subunit or product expressed by the ORIGINAL MATERIAL. Some examples include: subclones of unmodified cell lines, purified or fractionated subsets of the ORIGINAL MATERIAL, proteins expressed by DNA/RNA supplied by the PROVIDER, or monoclonal antibodies secreted by a hybridoma cell line.
9. **MODIFICATIONS:** Substances created by the RECIPIENT which contain/incorporate the MATERIAL.
10. **COMMERCIAL PURPOSES:** The sale, lease, license, or other transfer of the MATERIAL or MODIFICATIONS to a for-profit organization. COMMERCIAL PURPOSES shall also include uses of the MATERIAL or MODIFICATIONS by any organization, including RECIPIENT, to perform contract research, to screen compound libraries, to produce or manufacture products for general sale, or to conduct research activities that result in any sale, lease, license, or transfer of the MATERIAL or MODIFICATIONS to a for-profit organization. However, industrially sponsored academic research shall not be considered a use of the MATERIAL or MODIFICATIONS for COMMERCIAL PURPOSES per se, unless any of the above conditions of this definition are met.

11. **NONPROFIT ORGANIZATION(S)**: A university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute. As used herein, the term also includes government agencies.

## II. Terms and Conditions of this Agreement (S1, I5)

1. The **PROVIDER** retains ownership of the **MATERIAL**, including any **MATERIAL** contained or incorporated in **MODIFICATIONS**.

2. **Assignment (A3)**: The **RECIPIENT** retains ownership of: (a) **MODIFICATIONS** (except that, the **PROVIDER** retains ownership rights to the **MATERIAL** included therein), and (b) those substances created through the use of the **MATERIAL** or **MODIFICATIONS**, but which are not **PROGENY**, **UNMODIFIED DERIVATIVES** or **MODIFICATIONS** (i.e., do not contain the **ORIGINAL MATERIAL**, **PROGENY**, **UNMODIFIED DERIVATIVES**). If either 2 (a) or 2 (b) results from the collaborative efforts of the **PROVIDER** and the **RECIPIENT**, joint ownership may be negotiated.

3. **Scope of Work (S1)**: The **RECIPIENT** and the **RECIPIENT SCIENTIST** agree that the **MATERIAL**:

(a) is to be used solely for teaching and academic research purposes;

(b) will not be used in human subjects, in clinical trials, or for diagnostic purposes involving human subjects without the written consent of the **PROVIDER**;

(c) is to be used only at the **RECIPIENT** organization and only in the **RECIPIENT SCIENTIST**'s laboratory under the direction of the **RECIPIENT SCIENTIST** or others working under his/her direct supervision; and

(d) will not be transferred to anyone else within the **RECIPIENT** organization without the prior written consent of the **PROVIDER**.

4. **Assignment (A4)**: The **RECIPIENT** and the **RECIPIENT SCIENTIST** agree to refer to the **PROVIDER** any request for the **MATERIAL** from anyone other than those persons working under the **RECIPIENT SCIENTIST**'s direct supervision. To the extent supplies are available, the **PROVIDER** or the **PROVIDER SCIENTIST** agrees to make the **MATERIAL** available, under a separate implementing letter to this Agreement or other agreement having terms consistent with the terms of this Agreement, to other scientists (at least those at **NONPROFIT ORGANIZATION(S)**) who wish to replicate the **RECIPIENT SCIENTIST**'s research; provided that such other scientists reimburse the **PROVIDER** for any costs relating to the preparation and distribution of the **MATERIAL**.

5.

(a) The RECIPIENT and/or the RECIPIENT SCIENTIST shall have the right, without restriction, to distribute substances created by the RECIPIENT through the use of the ORIGINAL MATERIAL only if those substances are not PROGENY, UNMODIFIED DERIVATIVES, or MODIFICATIONS.

(b) Assignment (A4) Under a separate implementing letter to this Agreement (or an agreement at least as protective of the PROVIDER's rights), the RECIPIENT may distribute MODIFICATIONS to NONPROFIT ORGANIZATION(S) for research and teaching purposes only.

(c) Assignment Modification (A3) Without written consent from the PROVIDER, the RECIPIENT and/or the RECIPIENT SCIENTIST may NOT provide MODIFICATIONS for COMMERCIAL PURPOSES. It is recognized by the RECIPIENT that such COMMERCIAL PURPOSES may require a commercial license from the PROVIDER and the PROVIDER has no obligation to grant a commercial license to its ownership interest in the MATERIAL incorporated in the MODIFICATIONS. Nothing in this paragraph, however, shall prevent the RECIPIENT from granting commercial licenses under the RECIPIENT's intellectual property rights claiming such MODIFICATIONS, or methods of their manufacture or their use.

6. Intellectual Property (I5) The RECIPIENT acknowledges that the MATERIAL is or may be the subject of a patent application. Except as provided in this Agreement, no express or implied licenses or other rights are provided to the RECIPIENT under any patents, patent applications, trade secrets or other proprietary rights of the PROVIDER, including any altered forms of the MATERIAL made by the PROVIDER. In particular, no express or implied licenses or other rights are provided to use the MATERIAL, MODIFICATIONS, or any related patents of the PROVIDER for COMMERCIAL PURPOSES.

7. License (I5): If the RECIPIENT desires to use or license the MATERIAL or MODIFICATIONS for COMMERCIAL PURPOSES, the RECIPIENT agrees, in advance of such use, to negotiate in good faith with the PROVIDER to establish the terms of a commercial license. It is understood by the RECIPIENT that the PROVIDER shall have no obligation to grant such a license to the RECIPIENT, and may grant exclusive or non-exclusive commercial licenses to others, or sell or assign all or part of the rights in the MATERIAL to any third party(ies), subject to any pre-existing rights held by others and obligations to the Federal Government.

8. Patent Application (I5): The RECIPIENT is free to file patent application(s) claiming inventions made by the RECIPIENT through the use of the MATERIAL but agrees to notify the PROVIDER upon filing a patent application claiming MODIFICATIONS or method(s) of manufacture or use(s) of the MATERIAL.

9. Warranty (W2): Any MATERIAL delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties. The PROVIDER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS.

10. Indemnity (I2): Except to the extent prohibited by law, the RECIPIENT assumes all liability for damages which may arise from its use, storage or disposal of the MATERIAL. The PROVIDER will not be liable to the RECIPIENT for any loss, claim or demand made by the RECIPIENT, or made against the RECIPIENT by any other party, due to or arising from the use of the MATERIAL by the RECIPIENT, except to the extent permitted by law when caused by the gross negligence or willful misconduct of the PROVIDER.

11. Publication (P3): This agreement shall not be interpreted to prevent or delay publication of research findings resulting from the use of the MATERIAL or the MODIFICATIONS. The RECIPIENT SCIENTIST agrees to provide appropriate acknowledgement of the source of the MATERIAL in all publications.

12. Governing Law (G1): The RECIPIENT agrees to use the MATERIAL in compliance with all applicable statutes and regulations, including Public Health Service and National Institutes of Health regulations and guidelines such as, for example, those relating to research involving the use of animals or recombinant DNA.

13. Termination (T2): This Agreement will terminate on the earliest of the following dates: (a) when the MATERIAL becomes generally available from third parties, for example, through reagent catalogs or public depositories or (b) on completion of the RECIPIENT's current research with the MATERIAL, or (c) on thirty (30) days written notice by either party to the other, or (d) on the date specified in an implementing letter, provided that:

(i) if termination should occur under 13(a), the RECIPIENT shall be bound to the PROVIDER by the least restrictive terms applicable to the MATERIAL obtained from the then-available resources; and

(ii) if termination should occur under 13(b) or (d) above, the RECIPIENT will discontinue its use of the MATERIAL and will, upon direction of the PROVIDER, return or destroy any remaining MATERIAL. The RECIPIENT, at its discretion, will also either destroy the MODIFICATIONS or remain bound by the terms of this agreement as they apply to MODIFICATIONS;

and

(iii) in the event the PROVIDER terminates this Agreement under 13(c) other than for breach of this Agreement or for cause such as an imminent health risk or patent infringement, the PROVIDER will defer the effective date of termination for a period of up to one year, upon request from the RECIPIENT, to permit completion of research in progress. Upon the effective date of termination, or if requested, the deferred effective date of termination, RECIPIENT will discontinue its use of the MATERIAL and will, upon direction of the PROVIDER, return or destroy any remaining MATERIAL. The RECIPIENT, at its discretion, will also either destroy

the MODIFICATIONS or remain bound by the terms of this agreement as they apply to MODIFICATIONS.

14. Paragraphs 6, 9, and 10 shall survive termination.

15. Costs and Payments (C4, P1): The MATERIAL is provided at no cost, or with an optional transmittal fee solely to reimburse the PROVIDER for its preparation and distribution costs. If a fee is requested by the PROVIDER, the amount will be indicated in an implementing letter.



**9. Leland Stanford Junior University**

Recital (R1): This Agreement is between \_\_\_\_\_ (“Sponsor”) and The Board of Trustees of The Leland Stanford Junior University (“Stanford”), an institution of higher education having powers under the laws of the State of California.

Agreement Number:

Research Program Title:

Principal Investigator:

Effective Date:

End Date:

Cost:

Payment Schedule:

The following authorized party representatives have executed this Agreement, including all its terms and conditions.

Sponsor	The Board of Trustees of The Leland Stanford Junior University
Signature _____	Signature _____
Name _____	Name _____
Title _____	Title _____
Date _____	Date _____

I, \_\_\_\_\_, named as Principal Investigator, acknowledge that I have read this Agreement in its entirety and will use reasonable efforts to uphold my obligations and responsibilities set forth herein:

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## 1. DEFINITIONS

- 1.1 **“Research Program” means the research to be performed as set forth in Exhibit A.**
- 1.2 **“Confidential Information” means Sponsor-owned, confidential, scientific, business or financial information that is provided in written form and clearly marked as Confidential provided that such information:**
- (a) is not publicly known or available from other sources who are not under a confidentiality obligation to the source of the information;
  - (b) has not been made available by its owners to others without a confidentiality obligation;
  - (c) is not already known by or available to the receiving party without a confidentiality obligation;
  - (d) is not independently developed by the receiving party; or
  - (e) does not relate to potential hazards or cautionary warnings associated with the performance of the Research Program, or is not required to be disclosed under operation of law.
- 1.3 **“Cost” means all direct and indirect costs incurred by Stanford in conducting the Research Program up to the amount indicated on Page 1.**
- 1.4 **“Technology” means all tangible materials, inventions, works of authorship, software, information, and data conceived or developed in the performance of the Research Program and funded under this Agreement.**

## 2. BACKGROUND (S1)

- 2.1 **Performance of the Research Program.** Stanford will use reasonable efforts to perform the research described in Exhibit A, Research Program, which is incorporated and made part of this Agreement.
- 2.2 **Objectives (S1).** The performance of the Research Program is of mutual interest to Sponsor and Stanford, and is consistent with the instructional, scholarship, and research objectives of Stanford as a nonprofit, tax-exempt, educational institution.

### 3. PRINCIPAL INVESTIGATOR (K1)

- 3.1 **Identity.** The Principal Investigator for the performance and supervision of the Research Program is the person identified on Page 1.
- 3.2 **Change.** If for any reason the Principal Investigator cannot conduct or complete the Research Program, Stanford will appoint a successor, subject to the approval of Sponsor. If the parties cannot agree on a successor, either party may terminate this Agreement in accord with the terms of Section 12. EARLY TERMINATION.

### 4. PERIOD OF PERFORMANCE (P2)

The Agreement is effective as of the Effective Date and terminates as of the End Date.

### 5. COSTS (C4)

- 5.1 **Designation.** This Agreement is designated as: \_\_\_\_\_
- 5.2 **Cost-Reimbursable Agreement.** If this Agreement is designated as “Cost-Reimbursable,” Sponsor will reimburse Stanford for the Cost of conducting the Research Program. The parties estimate that the Cost is sufficient to support the Research Program, but Stanford may submit to Sponsor a revised budget requesting additional funds if costs are reasonably projected to exceed the Cost. Sponsor is not liable for any payment in excess of the Cost except on Sponsor’s written agreement. Stanford has the authority to rebudget Costs from time to time, at the discretion of the Principal Investigator, as long as the rebudgeting is consistent with the goals of the Research Program. At the end of the Research Program, if there is a balance owed to Sponsor of \$100 or less, Stanford may keep the balance. Any amounts over \$100 will be returned to Sponsor unless the parties agree otherwise.
- 5.3 **Fixed-Price Agreement.** If this Agreement is designated as “Fixed Price,” Sponsor will pay Stanford the Cost indicated on Page 1. The parties estimate that the Cost is sufficient to support the Research Program. Stanford may submit to Sponsor a revised budget requesting additional funds if Sponsor requests a change in the Research Program scope of work. Sponsor will not be liable for any payment in excess of the Cost except on Sponsor’s written agreement. Stanford has the authority to rebudget costs at the discretion of the Principal Investigator, as long as the rebudgeting is consistent with the goals of the Research Program. Sponsor is not entitled to any refund of funds not spent if all project commitments have been met.

## 6. PAYMENT(P1)

6.1 **Schedule.** Sponsor will pay Stanford in accord with the Payment Schedule on Page 1.

6.2 **Payment Information.** Sponsor will pay by wire transfer to:

Wells Fargo Bank, Treasury Management - Client Services  
707 Wilshire Blvd., 13th Floor  
Los Angeles, CA 90017

(Account numbers to be provided by Stanford contract officer)

or by checks made payable to Stanford University and sent to:

Stanford University  
P.O. Box 44253  
San Francisco, CA 94144-4253

6.3 **Payment Identification.** For purposes of identification each wire or check payment must refer to the Research Program title, the Agreement number, and the name of the Principal Investigator.

6.4 **Stanford Payment Contact.**

Chris Nodohara, Accountant  
Office of Sponsored Research  
Stanford University  
Encina Hall  
616 Serra St., Room 3  
Stanford, CA 94305

6.5 **Sponsor Payment Contact.** Invoices to Sponsor will be sent to:

[Name]

[Address]

[Telephone Number]

[Fax Number]

## 7. TAXES (T1)

Stanford is a nonprofit 501(c) (3) corporation. Sponsor agrees that if this Agreement is subject to taxation by any governmental authority, Sponsor will pay these taxes in full. Stanford will have no liability for the payment of these taxes.

## 8. EXPENDABLES AND EQUIPMENT (E3)

Stanford owns all expendables and equipment purchased or fabricated to perform the Research Program.

## 9. INTELLECTUAL AND OTHER PROPERTY (15)

- 9.1 **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”).
- 9.2 **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.
- 9.3 **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.
- 9.4 **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

Note: If you grant an actual license in this SRA, please include the following export control language:

“Sponsor and its affiliates shall comply with all United States laws and regulations controlling the export of licensed commodities and technical data. (For the purpose of this paragraph, “licensed commodities” means any article, material or supply but does not include information; and “technical data” means tangible or intangible technical information that is subject to US export regulations, including blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions.) These laws and

regulations may include, but are not limited to, the Export Administration Regulations (15 CFR 730-774), the International Traffic in Arms Regulations (22 CFR 120-130) and the various economic sanctions regulations administered by the US Department of the Treasury (31 CFR 500-600).

Among other things, these laws and regulations prohibit or require a license for the export or retransfer of certain commodities and technical data to specified countries, entities and persons. Sponsor hereby gives written assurance that it will comply with, and will cause its affiliates to comply with all United States export control laws and regulations, that it bears sole responsibility for any violation of such laws and regulations by itself or its affiliates, and that it will indemnify, defend and hold Stanford harmless for the consequences of any such violation.”

(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 (subject to Paragraph 9.7 below) 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.

- 9.5 **License Terms and Conditions.** All licenses of this Section 9 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.
- 9.6 **License to Joint Technology.** Sponsor may, at its option under 9.4(b), exclusively license Stanford’s rights in Joint Technology.
- 9.7 **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.
- 9.8 **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 9.4.

- 9.9 **Non-Election.** If Sponsor does not provide written notice to Stanford within 3 months of a written disclosure under Paragraph 9.4, 9.6 or Section 9.8, Stanford has no further obligations to the Sponsor and may license the Stanford Technology to third parties.
- 9.10 **Assignment (A4).** 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.

## 10. REPORTS (R3)

The Principal Investigator will submit a final report to Sponsor within 90 days of the End Date. The report will summarize the Research Program accomplishments and significant research findings.

## 11. PUBLICATION (P3)

- 11.1 **Objective.** The basic objective of research activities at Stanford is the generation of new knowledge and its expeditious dissemination for the public's benefit. Sponsor will provide all reasonable cooperation with Stanford in meeting this objective.
- 11.2 **Review.** As a matter of basic academic policy, Stanford retains the right at its discretion to publish freely any results of the Research Program. Stanford will provide Sponsor with a copy of any manuscript or other publication at the time it is submitted for publication. Sponsor may review the manuscript or publication:
- (a) To ascertain whether Sponsor's Confidential Information would be disclosed by the publication;
  - (b) To identify potentially patentable Technology so that appropriate steps may be taken to protect the Technology; and
  - (c) To confirm that the privacy rights of individuals are adequately protected.
- 11.3 **Comments.** Sponsor will provide comments, if any, within 30 days of receiving the manuscript or publication. If patentable Technology is disclosed in the manuscript or publication, Sponsor will promptly advise Stanford whether it requests Stanford to file and prosecute a patent application.
- 11.4 **Acknowledgment.** Stanford will give Sponsor the option of receiving an acknowledgment in the publication for its sponsorship of the Research Program.

## 12. EARLY TERMINATION (T2)

Either party may terminate this Agreement upon 60 days' written notice. If this Agreement is terminated before the End Date, Sponsor will pay the reasonable cost incurred by Stanford in winding down and terminating the Research Program, including the Cost of the Research

Program during the wind-down period and all costs and non-cancelable commitments made before termination. If any Stanford student is supported under this Agreement, Sponsor will remain responsible for the full cost of the student support through the end of the academic quarter in which this Agreement is terminated. After termination, Stanford will submit a final report of all Costs incurred and all funds received under this Agreement. The report will be accompanied by a check for funds remaining after allowable Costs and non-cancelable commitments have been paid.

### **13. NOTICE (N1)**

Any notices given under this Agreement will be in writing and delivered by mail, by hand, or by facsimile, addressed to the parties as follows:

#### **Stanford**

Industrial Contracts Officer  
Stanford University  
1705 El Camino Real  
Palo Alto, CA 94306-1106  
Telephone: (650) 723-0651  
Facsimile: (650) 725-7295

#### **Sponsor**

[Sponsor Cognizant Official]  
[Sponsor Name]  
[Sponsor Address]  
  
[Sponsor Telephone Number]  
[Sponsor Fax Number]

### **14. PUBLICITY (P4)**

14.1 **Stanford Name.** Sponsor will not identify Stanford in any promotional statement, or otherwise use the name of any Stanford faculty member, employee, or student, or any trademark, service mark, trade name, or symbol of Stanford or Stanford Hospitals and Clinics, including the Stanford name, unless Sponsor has received Stanford's prior written consent. Permission may be withheld at Stanford's sole discretion.

14.2 **Sponsor Name.** Stanford will not identify Sponsor in any promotional statement, or otherwise use the name of any Sponsor employee, or any trademark, service mark, trade name, or symbol of Sponsor, including Sponsor's name, unless Stanford has received Sponsor's prior written consent. Permission may be withheld at Sponsor's sole discretion.

### **15., 16. MATERIAL PROVIDED BY SPONSOR (E3)**

If Sponsor provides any materials, equipment, or other property to Stanford in connection with the Research Program, Sections 15 and 16 of Appendix 1 are incorporated into this Agreement.



## **17. HUMAN SUBJECTS RESEARCH AND PROTECTION**

If the Research Program involves human subjects, Section 17 of Appendix 2 is incorporated into this Agreement.

## **18. NO WARRANTIES (W2)**

Stanford provides Sponsor the rights granted in this Agreement AS IS and WITH ALL FAULTS. Stanford makes no representations and extends no warranties of any kind, either express or implied. Among other things, Stanford disclaims any express or implied warranty:

- (a) of merchantability, of fitness for a particular purpose,
- (b) of non-infringement or
- (c) arising out of any course of dealing.

## **19. FORCE MAJEURE (F1)**

Stanford is not liable for any failure to perform as required by this Agreement if the failure to perform is caused by circumstances reasonably beyond Stanford's control, such as 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, acts of God, energy or other conservation measures, explosions, failure of utilities, mechanical breakdowns, material shortages, disease, theft, or other occurrences.

## **20. SCIENTIFIC RESEARCH**

- 20.1 **No Guarantee.** Sponsor acknowledges that the Research Program is a scientific undertaking and, consequently, Stanford will not guarantee any particular outcome or specific yield.
- 20.2 **Freedom of Research.** This Agreement does not limit the freedom of individuals participating in this Research Program to engage in any other research.

## **21. GENERAL PROVISIONS (M1)**

- 21.1 **Laws and Regulations.** This Agreement is subject to all applicable local, state and federal laws and regulations.
- 21.2 **Export Control (E4).** Both parties agree to adhere to applicable export laws and regulations, subject to all available exclusions and exceptions thereto.
- 21.3 **Animal Studies.** Stanford does not conduct animal studies that are intended to support applications for research or marketing permits for FDA-regulated products (as described

in Title 21, Code of Federal Regulations (CFR) Part 58-Good Laboratory Practice (GLP) for Nonclinical Laboratory Studies).

- 21.4 **Dispute Resolution (D2).** If any dispute arises between the parties in connection with payments due under this Agreement and it cannot be resolved by mutual agreement after meetings between the parties, it will be finally settled under the JAMS Comprehensive Arbitration Rules and Procedures, by one or more arbitrators appointed in accordance with the Rules. Arbitration will be held in Palo Alto, California, or at some other mutually agreeable location.
- 21.5 **Assignment (A4).** Neither party may assign this Agreement without the prior written consent of the other party.
- 21.6 **Severability (S2).** If any provision of this Agreement becomes or is declared illegal, invalid, or unenforceable, the provision will be divisible from this Agreement and deemed to be deleted from this Agreement. If the deletion substantially alters the basis of this Agreement, the parties will negotiate in good faith to amend the provisions of this Agreement to give effect to the original intent of the parties.
- 21.7 **Independent Contractors (I3).** Stanford and Sponsor are independent contractors and neither is an agent, joint venturer, or partner of the other.
- 21.8 **Governing Law (G1).** This Agreement is governed by the laws of the State of California, without regard to its conflict of laws doctrine. Any legal action involving this Agreement or the Research Program will be adjudicated in the State of California.
- 21.9 **Non Discrimination.** Stanford shall follow its normal employment policies, which prohibit discrimination against any employee or applicant for employment on the basis of race, color, creed, religion, national origin, sexual preference, marital status, age, sex, or handicap (except where bona fide occupational qualification so requires), with respect to this Agreement. Qualified individuals will not be denied the opportunity to contribute to the work to be conducted at Stanford under this Agreement on those bases or on the basis of their citizenship.
- 21.10 **Prevailing Terms.** In the event of any inconsistency between the terms of this Agreement and the documents referenced or incorporated into this Agreement, the terms of this Agreement prevail.

- 21.11 **Entire Agreement (E1).** This Agreement represents the entire agreement and understanding between the parties with respect to its subject matter. It supersedes all prior or contemporaneous discussions, representations, or agreements, whether written or oral, of the parties regarding this subject matter.
- 21.12 **Amendments or Changes.** Amendments or changes to this Agreement must be in writing and signed by the parties' authorized representatives.
- 21.13 **Electronic Signatures.** The parties to this Agreement agree that a copy of the original signature (including an electronic copy) may be used for any and all purposes for which the original signature may have been used. The parties further waive any right to challenge the admissibility or authenticity of this Agreement in a court of law based solely on the absence of an original signature.
- 21.14 **Counterparts.** This Agreement and any amendment to it may be executed in counterparts and all of these counterparts together shall be deemed to constitute one and the same agreement.

## **Appendix 1**

### **15. INDEMNIFICATION (I2)**

- 15.1 **Duties of the parties.** Sponsor will indemnify, defend, and hold harmless The Board of Trustees of the Leland Stanford Junior University, their respective trustees, directors, employees, agents, subcontractors, and students ("Indemnitees") from any liability, damage, loss, or expense (including reasonable attorneys' fees and expenses of litigation) incurred by or imposed upon the Indemnitees or any one of them in connection with any claims, suits, actions, demands, or judgments arising out of or connected with this Agreement or the research done under this Agreement, except to the extent that the liability is due to the gross negligence and willful misconduct of Stanford. Stanford will promptly notify Sponsor of any claim and will cooperate with Sponsor in the defense of the claim. Sponsor will, at its own expense, provide attorneys reasonably acceptable to Stanford to defend against any claim with respect to which Sponsor has agreed to indemnify Stanford. This indemnity will not be deemed excess coverage to any insurance or self-insurance Stanford may have covering a claim. Sponsor's indemnity will not be limited by the amount of Sponsor's insurance.
- 15.2 **Survival.** The provisions of this clause will survive termination of this Agreement.

### **16. INSURANCE (I4)**

- 16.1 **Stanford Coverage.** Stanford will maintain Worker's Compensation insurance or other coverage on its employees as required by California law, and will self-insure or maintain insurance covering its liability under this Agreement.
- 16.2 **Sponsor Coverage.** Sponsor will procure and maintain during the term of this Agreement comprehensive liability and product liability insurance to the full amount of Sponsor insurance limits, but in no event less than \$5,000,000 per occurrence, with a

reputable and financially secure insurance carrier. The insurance will include The Board of Trustees of the Leland Stanford Junior University, their respective trustees, directors, employees, agents, subcontractors, and students as additional insureds with respect to this Agreement. This insurance will be written to cover claims incurred, discovered, manifested, or made during or after the expiration of this Agreement.

- 16.3 **Certificate.** Before executing the Agreement, Sponsor will provide Stanford with a Certificate of Insurance evidencing primary coverage and requiring 30 days prior written notice of cancellation or material change to Stanford. Sponsor will advise Stanford in writing that it maintains excess liability coverage (following form) over primary insurance for at least the minimum limits set forth above. Conditions of the Certificate of Insurance will be subject to approval in advance by Stanford's Office of Risk Management.
- 16.4 **Primary Coverage.** Sponsor's insurance will be primary coverage. Stanford's insurance or self-insurance will be excess and noncontributory.
- 16.5 **Continued Coverage.** If Sponsor's insurance is written on a claims-made basis, as opposed to an occurrence basis, Sponsor will purchase the coverage necessary to ensure continued and uninterrupted coverage of all claims, including those made after the policy expires or is terminated.

## Appendix 2

### 17. HUMAN SUBJECTS RESEARCH AND PROTECTION (H1)

- 17.1 **Human Research Protection Program.** Sponsor acknowledges that Stanford has a human research protection program ("HRPP") established in accordance with the principles and standards of the Association for the Accreditation of Human Research Protection Programs that is applicable to all research involving human subjects, including the Research Program, that includes: (i) submittal for prospective and continuing review to Stanford's institutional review board ("IRB") under the federal regulations governing the protection of human research subjects, (ii) obtaining consent from human research subjects as specified in those regulations, (iii) conducting the research in accordance with ethical standards such as the Belmont Report.
- 17.2 **Communication Concerning Certain Events Affecting Research Participants.** In furtherance of Stanford's HRPP, Sponsor agrees:
- (a) to notify promptly the Principal Investigator and/ or the Stanford IRB directly, of (i) non-compliance with the Research Program in Exhibit A or applicable laws,

particularly those laws related to human research subjects, that could affect the safety or welfare of participating subjects; (ii) serious adverse events that have been reported to the FDA or other governmental agency in relation to the Research Program at Stanford or any other site; (iii) unanticipated problems in the Research Program at Stanford or any other site that could relate to risks to participating subjects; and (iv) circumstances that could affect subjects' willingness to continue to participate in the Research Program or the continued approval of Stanford's IRB for the Research Program, and

- (b) to develop a plan of communication to subjects with Stanford's Principal Investigator that is acceptable to Stanford's IRB when new findings or results of the Research Program might affect the willingness of subjects to continue to participate in the Research Program or directly affect their current or future safety or medical care.

## 10. Michigan Technology Institute

Recital (R1):

This Agreement for Sponsored Research (Agreement) is entered into by Michigan Technological University, Houghton, Michigan 49931, (Michigan Tech) and (Sponsor).

The research program to be conducted under this Agreement is of mutual interest and benefit to Michigan Tech and Sponsor, will further the multiple missions of Michigan Tech (instruction, research, and public service) in a manner consistent with its status as a non-profit, tax exempt, educational institution, and may derive benefits for the Sponsor, Michigan Tech, and society by the advancement of science and engineering through discovery;

Sponsor has expressed a desire to engage Michigan Tech to create or enhance technologies that may assist in Sponsor's development and commercialization of new products and/or processes;

Michigan Tech's research capabilities and infrastructure reflect a substantial public investment which Michigan Tech, as a part of its mission as a publicly funded Michigan University, wishes to utilize in a cooperative and collaborative research effort with Sponsor in order to meet the above stated needs;

NOW, THEREFORE, in consideration of the above premises and the mutual covenants set forth below, the parties hereto agree to the following:

**1. Scope of Work and Price (S1, C4)** Michigan Tech shall, for a fixed price of \$ \_\_\_\_\_, undertake a sponsored project titled “ ” as described in Attachment A (Project). It is agreed that Attachment A will govern the direction of the Project until amended by authorized representatives of the Sponsor and Michigan Tech as provided in this Agreement.

**2. Project Duration (P2)** The Project shall start on \_\_\_\_\_ and end on \_\_\_\_\_, unless earlier terminated pursuant to Section 3. Michigan Tech will exert good faith efforts to complete the Project by the end date but makes no warranty or representation that it will be completed by that time. The parties may agree to extend the Project duration by written, signed amendment to this Agreement.

### **3. Termination (T2)**

3.1 Sponsor may terminate the Project and this Agreement upon written notice to Michigan Tech and termination shall be effective as of thirty (30) days from the date of receipt of such notice. As of the effective date of termination by Sponsor all licenses and rights under the Intellectual Property shall terminate. Termination of this Agreement by Sponsor shall not relieve Sponsor of its obligation (a) to reimburse Michigan Tech for all fees and costs incurred by Michigan Tech under Section 11.4 for the pursuit and

maintenance of patents or (b) for payment to Michigan Tech for all non-cancelable commitments incurred under the Project prior to such termination.

3.2 Michigan Tech may terminate the Project and this Agreement if circumstances beyond its control preclude continuation of the Project or in the event Sponsor fails to promptly make payments according to the schedule set forth in Section 5. Such termination will not relieve Sponsor of its obligation to reimburse Michigan Tech for fees and costs incurred in carrying out, in good faith, Michigan Tech's obligations under the Project and this Agreement prior to such termination.

3.3 Except to the extent of Sponsor's failure to pay amounts due under Section 5, which is addressed in Section 3.2, in the event either party hereto shall commit any material breach of or default in any terms or conditions of this Agreement, and also shall fail to reasonably remedy such default or breach within sixty (60) days after receipt of written notice thereof, the non-breaching party may, at its option, and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending notice of termination in writing to the other party to such effect. Termination shall be effective as of the date of receipt of such notice.

**4. Equipment (E3)** Michigan Tech shall retain title to any equipment purchased from the fixed fee under this Agreement.

**5. Payment Schedule (P1)** Sponsor shall pay according to the following schedule. Payment is due within thirty (30) days of the date of the invoice.

\$ \_\_\_\_\_ due and payable upon execution of this Agreement  
\$ \_\_\_\_\_ due on or before  
\$ \_\_\_\_\_ due on or before  
\$ \_\_\_\_\_ due on or before

Payment Address:  
Cashier's Office  
Michigan Technological University  
1400 Townsend Drive  
Houghton, MI 49931  
Phone: (906) 487-2247  
Fax: (906) 487-2245

**6. Reporting Requirements (R3)** Michigan Tech will provide written technical progress reports as reasonably requested by Sponsor but no more frequently than quarterly.

**7. Disclaimer of Warranty (W2)** 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.

**8. Name Use (P4)** Except that either party may reference the existence of the Project and the relationship of the parties in the Project, neither party will use the name of the other party, nor of any member of the other party's employees in any publicity, advertising, news release, or other materials without the prior written approval of an authorized representative of that party.

**9. Confidentiality (C2)**

9.1 Confidential Information shall mean any information disclosed by a party (the Disclosing Party) to the other party (the Receiving Party), and identified prior to disclosure with an appropriate marking or identification such as CONFIDENTIAL or any other similar legend. If such Confidential Information is disclosed orally or visually, then the parties shall use reasonable effort to reduce such oral or visual Confidential Information to tangible form and furnish a copy (marked CONFIDENTIAL) to the Receiving Party within thirty (30) days of the original oral or visual disclosure. Confidential Information shall not include information that (a) is now available or becomes available to the public without breach of this Agreement; (b) is explicitly approved for release by written authorization of the Disclosing Party; (c) is lawfully obtained from a third party or parties without a duty of confidentiality; (d) is known to the Receiving Party prior to disclosure as evidenced by prior written records; or (e) is at any time developed by or for the Receiving Party independently of any such disclosure(s) from the Disclosing Party.

9.2 Neither party shall disclose, reproduce, use, distribute, reverse engineer or transfer, directly or indirectly, in any form, by any means or for any purpose, the Confidential Information of the other party, except in the performance of the Project or as expressly permitted in writing by the Disclosing Party. Disclosure of Confidential Information does not confer upon the Receiving Party any license, interest or rights in any Confidential Information except as provided under this Agreement. Subject to the terms set forth herein, each party shall protect the other party's Confidential Information with the same degree of protection and care it uses to protect its own Confidential Information, but in no event less than reasonable care. The obligations of the parties under this Section 9 shall survive the term of this Agreement by two (2) years.

9.3 Nothing in this Section 9 shall prohibit or limit the Receiving Party's disclosure of Confidential Information pursuant to a requirement of a governmental agency or by operation of law so long as the Receiving Party notifies the Disclosing Party prior to disclosure in order to give the Disclosing Party an opportunity to seek an appropriate protective order and/or waive compliance with the terms of this Agreement. In this case disclosure shall include only that part of the Confidential Information that the Receiving Party is required to disclose.



9.4 The Receiving Party acquires no intellectual property rights from the Disclosing Party under this Agreement, except for the restricted right to use Disclosing Party's Confidential Information for the express, limited purposes permitted by this Agreement.

### **10. Publication (P3)**

10.1 Sponsor recognizes that the scientific results of Michigan Tech research must be publishable and may be presented at symposia or professional meetings; published in journals, theses, or dissertations; and/or otherwise disclosed for scholarly or academic purposes.

10.2 Except as provided in Section 9.2, Michigan Tech agrees not to publish or otherwise disclose Confidential Information. Sponsor agrees that Michigan Tech, subject to review by Sponsor, shall have the right to publish results of the Project. Sponsor shall be furnished copies of any proposed publication or presentation at least thirty (30) days before submission. Sponsor shall have such thirty (30) days as a review period to identify Confidential Information provided by the Sponsor and to assess the patentability of any invention described in the proposed publication or presentation. During the thirty (30) day review period and upon receipt of written notice from Sponsor, Michigan Tech shall (a) remove Sponsor Confidential Information identified in such notice and/or; (b) delay the presentation or publication for an additional ninety (90) days or until a patent application is filed, whichever is sooner. Should Sponsor fail to provide written notice within thirty (30) days after receipt of any proposed publication or presentation, Sponsor shall be deemed to have approved publication of the entire content, and Michigan Tech shall be free to publish or present material included in the proposed publication or presentation.

### **11. Intellectual Property Protection (I5)**

11.1 Intellectual Property shall mean, individually and collectively, all know-how, inventions, discoveries, and works of authorship which are discovered or conceived directly pursuant to the Project, and any registration or protection (including but not limited to patents, trademarks, and copyrights) on any of the foregoing. Michigan Tech Intellectual Property means any Intellectual Property discovered or conceived solely by Michigan Tech. Joint Intellectual Property means any Intellectual Property discovered or conceived jointly by Michigan Tech and Sponsor.

11.2 Sponsor recognizes that Michigan Tech has an obligation to utilize the knowledge and technology generated by Michigan Tech research under the Project in a manner which maximizes societal benefit and economic development and which provides for the education of graduate and undergraduate students.

11.3 Each party shall notify the other party of any Intellectual Property disclosed to it within thirty (30) days of its receipt of disclosure and such disclosure shall be considered Confidential Information.

11.4 Michigan Tech will, through patent counsel of its choosing, prepare, file, and prosecute applications for patents on any potentially patentable aspects of the

Intellectual Property that the parties agree to pursue. Michigan Tech will pay maintenance and annuity fees on any patent applications and patents the parties agree to maintain in force. Sponsor will reimburse Michigan Tech for all fees and costs associated with the pursuit and maintenance of patents on such potentially patentable aspects of the Intellectual Property. Michigan Tech will have ultimate decision-making authority on any patent applications on the Intellectual Property, but will provide Sponsor with information on the status of all such patent applications.

## **12. Intellectual Property Licenses (I5)**

12.1 Michigan Tech Intellectual Property will be owned by Michigan Tech, and Joint Intellectual Property will be owned by the parties jointly.

12.2 Michigan Tech hereby grants to Sponsor a non-exclusive, royalty-free license under the Michigan Tech Intellectual Property to make, use, sell, and import the Michigan Tech Intellectual Property. Such non-exclusive license is subject to termination by Michigan Tech with respect to any patent in the event Sponsor fails to reimburse Michigan Tech for any fees and costs incurred in securing and maintaining such patent.

12.3 Exclusive Negotiation Period shall mean the six (6) month period following the end-date of the Project. If Sponsor desires an exclusive license under the Intellectual Property, Sponsor will notify Michigan Tech of same. In such event, Michigan Tech will not negotiate with any third party any license under the Intellectual Property during the Exclusive Negotiation Period. During the Exclusive Negotiation Period, the parties will negotiate an exclusive license for Sponsor under Michigan Tech's rights to the Intellectual Property. Such exclusive license will be subject to termination by Michigan Tech with respect to any patent in the event Sponsor fails to reimburse Michigan Tech for any fees and costs incurred in securing and maintaining such patent.

12.4 In the event Sponsor declines or ceases to reimburse Michigan Tech for its costs in the securing and maintaining of any patent on any aspect of the Intellectual Property, Michigan Tech may continue to secure and maintain the patent at its own cost and without any obligation or license to Sponsor for that patent.

12.5 Any other terms of this Agreement or any exclusive license negotiated under this agreement notwithstanding, Michigan Tech retains the right to perform research even if such research activities overlap the Project and whether or not such research is supported either by Michigan Tech or by any third party.

## **13. Independent Parties (I3)**

13.1 In the performance of all services hereunder, Michigan Tech shall be deemed to be and shall be an independent contractor.

13.2 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

**14. Indemnity (I2)** 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.

**15. Export Control (E4)** Sponsor shall comply with all applicable export control regulations of the United States of America. Sponsor shall be responsible for obtaining all information regarding such regulations that is necessary for Sponsor to comply with such regulations.

**16. Modifications to Agreement (A3)** Any agreement to modify the terms of this Agreement shall be valid only if the modification is made in writing and approved by authorized representatives of both parties.

**17. Notices (N1)** All notices, communications and reports given under this Agreement shall be in writing delivered by certified mail, common courier, facsimile or electronic mail, with receipt acknowledged, addressed to the parties as follows or such other address as may hereafter be designated by notice in writing. Notice given pursuant to this Section shall be effective as of the date of receipt of notice.

**18. Waiver (W1)** Except as specifically provided for herein, any waiver by either of the parties of any of their rights or their failure to exercise any remedy shall not operate or be construed as a continuing waiver of same or of any other of such party's rights or remedies provided in this Agreement.

**19. Governing Law (G1)** This Agreement shall be governed and construed in accordance with laws of the State of Michigan.

**20. Entire Agreement (E3)** This Agreement contains the entire and only agreement between the parties respecting the subject matter hereof and supersedes or cancels all previous negotiations, agreements, commitments and writings between the parties on the subject of this Agreement. Should processing of this Agreement require issuance of a purchase order or other contractual document, all terms and conditions of said document are hereby deleted in entirety. This Agreement may not be amended in any manner except by an instrument in writing signed by the duly authorized representatives of each of the parties hereto. In witness whereof, the parties hereto have caused this Agreement to be duly executed.

## 11. Montana State University

### Recital (R1):

THIS Agreement is entered into between [“SPONSOR”] and MONTANA STATE UNIVERSITY [“UNIVERSITY”], a state institution of higher education located in Bozeman, Montana.

1. SPONSOR desires research services in accordance with the scope of work outlined within this agreement hereinafter referred to as “the research” and

2. The performance of the research is consistent, compatible and beneficial to the role and mission of UNIVERSITY; and

3. UNIVERSITY has the capability to provide for the conduct of the research; NOW THEREFORE, the parties agree as follows:

**1. Scope of Work. (S1)** UNIVERSITY will undertake the research program described in the research proposal attached hereto as Exhibit 1, under the direction and supervision of (PI) principal investigator.

### 2. Contract Period (P2).

A. This contract shall become effective on (start date) and shall be completed by (end date), unless subsequent time extension, supplement, addition, continuation or renewal is mutually agreed upon in writing between the parties.

B. This agreement may be terminated at any time upon the written mutual consent of the parties.

C. SPONSOR may terminate this agreement for failure of the UNIVERSITY to perform any of the services, duties or conditions contained in this agreement after providing the UNIVERSITY written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period or some other period agreed upon by the parties, the termination is effective at the end of the specified period.

C. The above remedies are in addition to any other remedies provided by law or the terms of the agreement.

**3. Compensation (C4, P1).** SPONSOR agrees to pay UNIVERSITY for services performed under this agreement in the amount of (money in words) Dollars (\$) (money in #s)) in accordance with the budget itemized in Exhibit 2.

Payments shall be made as follows:

(payment schedule)

All payments shall be made to Montana State University and mailed to:  
Office of Sponsored Programs, 309 Montana Hall, Bozeman, MT 59717.

**4. Reporting Requirements.** (R3) UNIVERSITY will provide reports on the progress of the research described in Exhibit 1 as follows:

A final report will be furnished at the completion of the contract period.

THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION UNDER TITLE 27, Chapter 5, M C A.

**5. Publication and Confidentiality (P3, C2).**

A. UNIVERSITY, as a state institution of higher education, engages only in research that is compatible, consistent and beneficial to its academic role and mission. Therefore significant results of research activities must be reasonably available for publication. Before publishing, UNIVERSITY agrees to give SPONSOR a copy of any proposed publication and SPONSOR shall have 45 days to review the publication. UNIVERSITY shall consider SPONSOR.S suggested modifications; however, the decision of the UNIVERSITY as to what the publication shall contain is final.

B. UNIVERSITY agrees to take reasonable steps to keep confidential any SPONSOR proprietary information supplied to it by SPONSOR during the course of research performed by UNIVERSITY and designated in writing as .confidential,. and such information will not be included in any published material without prior written approval by SPONSOR.

**6. Equipment (E3).** Special equipment purchases under the terms of this agreement become the property of UNIVERSITY unless otherwise specified herein.

**7. Liability Exposure. (G1)** The parties hereto understand and agree that liability of the State of Montana, MSU, its officials and employees is controlled and limited by the provisions of Title 2, Ch. 9, Montana Codes Annotated. Any provisions of this subcontract, whether or not incorporated herein by reference, will be controlled, limited and otherwise modified to limit any liability of the State of Montana and MSU to that set forth in the above cited laws.

**8. Indemnification. (I2)** Each party hereto agrees to be responsible and assume liability for its own wrongful or negligent acts of omissions, or those of its officers, agents or employees to the full extent required by law, and agrees to indemnify and hold the other party harmless from any such liability. Each party agrees to maintain reasonable coverage for such liabilities either through commercial insurance or a reasonable self- insurance mechanism, and the nature of such insurance coverage or self-insurance mechanism will be reasonably provided to the other party upon request.

**9. No Warranties. (W2)** UNIVERSITY makes NO WARRANTY whatsoever regarding any research outcome obtained hereunder. Any decision regarding safety, applicability, marketability, effectiveness for any purpose, or other use or disposition of any research outcome shall be the sole responsibility of SPONSOR and/or its assigns and licensees.

**10. Force Majeure (F1).** UNIVERSITY shall not be liable for any failure to perform as required by the Agreement, to the extent such failure to perform is caused by any reason beyond the UNIVERSITY'S control, or by reason of any of the following: Labor disturbances or disputes of any kind, accidents, failure of any required governmental approval, civil disorders, acts of aggression, acts of God, energy or other conservation measures, failure of utilities, mechanical shutdowns, material shortages, disease or similar occurrences.

THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION UNDER TITLE 27, Chapter 5, M C A.

**11. Dispute Resolution (D2).**

A. If any dispute arises under this agreement, the parties agree to attempt to resolve the dispute in good faith as follows:

1. First, by informal negotiation.

2. If informal negotiations fail to resolve the dispute, the parties agree to seek mediation using a mediator acceptable to both parties.

3. 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.

B. Any dispute regarding or arising under this subcontract will be subject to and resolved in accordance with the laws of the State of Montana.

C. 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.

**12. Assignment (A4).** Neither party shall assign or transfer any interest in this contract without the prior written approval of the other party.

**13. Patents and Inventions (I5).**

A. UNIVERSITY agrees to take appropriate steps to cause all UNIVERSITY personnel assigned to the research project to file an appropriate invention disclosure for any and all inventions and improvements conceived or reduced to practice by any of such personnel in the performance of the research set forth in the scope of work.

B. UNIVERSITY shall retain all right, title and interest in and to such inventions and improvements and all patent applications therefore which it may file at its election. Any invention disclosure shall be deemed Confidential Information of the UNIVERSITY and shall not be disclosed by SPONSOR.

C. In consideration of SPONSOR's support of the project, UNIVERSITY agrees to grant SPONSOR, at its request and upon reimbursement for patent expenses, an option to negotiate a royalty-bearing license or licenses to practice such inventions and improvements. Such option and first right shall be exercisable by SPONSOR for a period of twelve (12) months after the completion of the research described in Scope of Work, above.

THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION UNDER TITLE 27, Chapter 5, M C A.

D. All rights granted are subject to Public Law 96-517, Patent Rights in Inventions made with Federal Assistance (35 USC §201 et seq.).

**14. Similar Research.** Nothing in this Agreement shall be construed to limit the freedom of University or of its researchers who are not participants under this Agreement, from engaging in similar research made under other grants, contracts or agreements with parties other than SPONSOR.

**15. Ownership of Work (A4, P3).** The UNIVERSITY will retain right, title and interest, including the right of copyright, in all work reduced to writing or fixed in any media (including reports, articles, photographs, recordings, data, computer programs and related documentation) produced by the UNIVERSITY under this Agreement.

**16. Royalty-Free Educational Uses (I5).** As to all licenses which may be granted by UNIVERSITY to SPONSOR under the terms of this agreement, UNIVERSITY retains a perpetual royalty-free non-exclusive right to practice the licensed patents and to use the licensed information for research, testing, and educational purposes of the UNIVERSITY.

**17. Use of University Name (P4).** SPONSOR will not include the name, logo or identifying marks of UNIVERSITY or any of its employees in any advertising, sales promotion or other publicity matter without the prior written approval of same.

**18. Relationship of Parties (I3).** 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.

The parties hereto have executed this agreement on the date set forth below by their duly authorized representatives.

UNIVERSITY:  
MONTANA STATE UNIVERSITY

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION UNDER TITLE 27, Chapter 5, M C A.

SPONSOR:  
(Sponsor in all caps)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## 12. North Carolina State

This Master Research Agreement is entered into this \_\_\_ day of \_\_\_\_\_, by and between North Carolina State University (hereinafter called "NC State"), and \_\_\_\_\_ with a principal place of business in \_\_\_\_\_ (hereinafter called "\_\_\_\_\_").

### RECITALS (R1)

A. XYZ and NC State University have numerous mutual research and development interests. Those interests are conducive both to the academic mission of NC State University and the corporate mission of XYZ; and

B. From time to time, these mutual interests XYZ may result in a desire for XYZ to provide funding in support of various research programs in exchange for receiving certain rights in the research results.

NOW, THEREFORE, the parties agree as follows:

#### 1. Field of Research (S1)

NC State University must use reasonable efforts, as a research university, to perform research projects as contemplated in task orders issued under this Master Research Agreement (hereinafter called "Research")

#### 2. Task Orders

A Task Order will be issued by XYZ upon their decision to fund a proposal submitted to them by NC State University. The Task Order form outlined in Appendix A of this Master Research Agreement shall be used and shall include as attachments: (1) The final statement of work outlined in NC State University's proposal; and, (2) A budget detailed by primary budget categories (Personnel, Equipment, Tuition, Subcontracts, Supplies, Other and Facilities and Administrative costs) and a budget justification that ties the budget needs to the statement of work. Facilities and Administrative costs shall be applied at the level negotiated by the federal government which represents a significant savings of the actual overhead burden associated with the conduct of research at NC State University.

#### 3. Period of Performance (P2)

The Master Research Agreement may be used between \_\_\_\_\_ and \_\_\_\_\_ and will be subject to renewal only by mutual written agreement of the parties. Task orders issued under this Master Research Agreement will identify the period of performance for individual projects.

4. Payment of Costs (C4, P1)

In consideration of NC State University's performance hereunder, XYZ will pay NC State University the amount agreed upon in each individual task order. These task order amounts may not be exceeded by NC State University without prior written authorization of XYZ. XYZ will make payment on a cost-reimbursement basis upon receipt of NC State University's standard invoice which will be submitted no more frequently than monthly and no less frequently than quarterly.

5. Confidentiality (C2)

(a) In the performance of the Research, it may be necessary for one party to receive information that is proprietary and confidential to the disclosing party. All such information must be disclosed by the disclosing party in writing and designated as confidential or, if disclosed orally, must be identified as confidential at the time of disclosure and confirmed in writing and designated as confidential within thirty (30) days of such disclosure. Except as otherwise provided herein, for a period of five (5) years following the date of such disclosure, the receiving party agrees to use the confidential information only for purposes of this Agreement and further agrees that it will not disclose or publish such information except that the restrictions of this §5(a) do not apply to:

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

(b) In addition to the obligations of paragraph (a) above, the disclosing party must notify the receiving party in writing if any confidential information being disclosed is on the U.S. Munitions List (USML), the Commerce Control List (CCL) or is subject to the Export Administration Regulation (EAR) prior to disclosure of any such confidential information.

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

6. Reporting (R3)

NC State University must deliver to XYZ periodic reports and a final report showing the results of the activity performed in accordance with the Research as outlined in the individual task orders delivered under this master agreement.

7. Inventions (I5)

(a) Any invention or discovery made or conceived in the performance of the Research (hereinafter called "Invention"), or any patent granted on such Invention is owned by NC State University and/or XYZ in accordance with the following criteria:

(i) Title to any Invention made or conceived solely by employees of NC State University in the performance of the Research vests in NC State University.

(ii) Title to any Invention made or conceived jointly by employees of both NC State University and XYZ in the performance of the Research (hereinafter called "Joint Invention") vests jointly in NC State University and XYZ.

(iii) Title to any Invention made or conceived solely by employees of XYZ in the performance of the Research vests in XYZ.

(b) NC State University has the right to file and prosecute patent applications on any Invention to which NC State University has sole title as set forth in §7(a).

(c) Both parties must discuss and determine the countries in which they file patent applications on each Joint Invention. Each party has the right to file at its cost such patent applications in the countries where the other party has indicated no interest in filing such patent applications. In such case the non-filing party must cooperate with the party filing patent applications, e.g., in the preparation of necessary documents for the filing, assignment and subsequent prosecution of such patent applications.

8. License

(a) In consideration for sponsoring the Project, the University shall grant to Sponsor a fully paid-up, non-exclusive, non-transferable, royalty-free license (without the right to sublicense) to use all results of the Research owned by University, either solely or jointly, exclusively for Sponsor's own internal, research and development purposes.

(b) Sponsor also has the first right to negotiate for a fee or royalty-bearing exclusive license or fee bearing option to any University and/or University's interest in Joint Intellectual Property, provided that Sponsor pays all costs for the preparation, filing, prosecution and maintenance of such Intellectual Property ("Negotiation Right"). Sponsor has 90 days following disclosure of an Intellectual Property by the University to exercise its Negotiation Right (the "Negotiation Period"). The Sponsor must submit a written notice to the University, within the Negotiation Period, in order to exercise their Negotiation Right. If the

Negotiation Period expires before University receives the Sponsor's written notice exercising the Negotiation Right or as provided below, the Sponsor shall have no further rights to the Intellectual Property.

(b) If Sponsor has not begun good faith, substantive negotiations with University for an option or license to such Intellectual Property within 90 days of the date of Sponsor's exercising its Negotiation Right in accordance paragraph 8(b), the University may, in its sole and unfettered discretion, terminate Sponsor's Negotiation Right.

(c) Further, if Sponsor and University have not negotiated a mutually agreeable license agreement on or before twelve months from the disclosure of the Intellectual Property by the University, then University may, in its sole and unfettered discretion, terminate Sponsor's Negotiation Right. Sponsor is only obligated to pay expenses incurred and noncancelable obligations that have accrued up to the date that University terminates Sponsor's Negotiation Right.

9. Publications (P3)

NC State University has the right to publish any of the results of the Research. NC State University must furnish XYZ with a copy of any proposed publication or public disclosure, at least 60 days in advance of the proposed publication date to allow for the protection of XYZ's proprietary, confidential, or patentable information.

10. Termination (T2)

(a) Performance under this Agreement or any task order may be terminated by XYZ at any time upon 60 days written notice to NC State University. Upon receipt of notification, NC State University must proceed in an orderly fashion to limit or terminate any outstanding commitments and/or to conclude the Research contemplated in affected task orders. NC State University must be reimbursed by XYZ for all costs and noncancelable commitments incurred in performance of the Research on affected task orders prior to receipt of termination notice.

(b) NC State University may terminate performance on any task order if circumstances beyond its control preclude the continuation of the Research contemplated in any such task order. If NC State University terminates, NC State University must reimburse XYZ all unexpended funds, except for those funds needed to pay for noncancelable commitments.

11. Use of Names (P4)

Neither party will use the name of the other in any form of advertising or publicity without the express written permission of the other party.

12. Notices (N1)

Any notices required to be given or which may be given under this Agreement and any resulting task orders must be in writing and delivered by first-class mail or facsimile addressed to the parties as follows:

For XYZ:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Facsimile: \_\_\_\_\_  
e-mail: \_\_\_\_\_

For NC State University:

Matthew Ronning, AVC for Research  
Office of Sponsored Programs  
and Regulatory Compliance Services  
North Carolina State University  
2701 Sullivan Drive, Suite 240  
Campus Box 7514  
Raleigh, North Carolina 27695-7514  
Facsimile: (919) 515-7721  
e-mail: matt\_ronning@ncsu.edu

13. Independent Parties

For purposes of this Agreement and all resulting task orders the parties are independent contractors and neither may be considered an agent or an employee of the other at any time or for any purpose. No joint venture, partnership or like relationship is created between the parties by this Agreement.

14. Assignment (A4)

This Agreement and all resulting task orders are binding upon and inure to the benefit of the parties and may be assigned only to the successors to substantially the entire business and assets of the respective parties. Any other assignment by either party without the prior written consent of the other party is void.

15. Governing Law (G1)

This Agreement and all resulting task orders are acknowledged to have been made and must be construed and interpreted in accordance with the laws of the State of North Carolina, without regard for its conflict of laws provisions, provided that all questions concerning the construction or effect of patent applications and patents shall be decided in accordance with the laws of the country in which the particular patent application or patent concerned has been filed or granted, as the case may be.

16. Liability (I2)

- (a) XYZ will indemnify and hold harmless NC State University, its trustees, officers, employees and agents from and against any liabilities, damages, or claims (including

attorneys' fees) arising out of injuries (including death) or property damage suffered by any person arising out of XYZ's use or possession of the results or Inventions produced hereunder or as a result of XYZ's negligence or willful misconduct in the performance of this Agreement and any resulting task orders.

(b) Notwithstanding any other provision of this Agreement, the liability of NC State University, as an agency of the State of North Carolina, for any injury or damage arising out of this Agreement and any resulting task orders or NC State University's performance of any resulting task orders is subject to the limitations of the North Carolina Tort Claims Act, GS §143-291 et seq. NC State University does not waive any rights or defenses under this Act.

17. Order of Precedence (A1)

If any provisions stated in this Agreement, resulting XYZ purchase orders (contemplated on occasion as a functional aspect of XYZ's accounting and procurement system), and/or any resulting task orders are in conflict, the order of precedence, beginning with the first to last, shall be (1) this Agreement, (2) any resulting task orders, and (3) the XYZ purchase order. The parties understand and agreed that any purchase order or similar document issued by XYZ will be for the sole purpose of establishing a mechanism for payment of any sums due and owing hereunder. Notwithstanding any of the terms and conditions contained in said purchase order, the purchase order will in no way modify or add to the terms and conditions of this Agreement.

18. Entire Agreement (E1)

Unless otherwise specified herein, this Agreement embodies the entire understanding of the parties for this project and any prior or contemporaneous representations, either oral or written, are hereby superseded. No amendments or changes to this Agreement or any resulting task orders including, without limitation, changes in the field of research, total estimated cost, and period of performance, are effective unless made in writing and signed by authorized representative of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date written in Article 3.

North Carolina State University  
By: \_\_\_\_\_

XYZ  
By: \_\_\_\_\_

Name:

Name: \_\_\_\_\_

Title:

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Master Research Agreement  
Agreement #: XXXX-XXXX  
Individual Task Order  
Task Order #: XXXX-XXXX

Upon execution by the parties below, the Research Project specified herein shall be awarded and performed in accordance with the Master Research Agreement ("Master Agreement") #XXXX-XXXX which is incorporated herein in its entirety and was executed by and between XYZ and NC State University. The project specifications shall include the following:

1. Project Title:
2. Principal Investigator at NC State:
3. Project Director at XYZ:
4. Task Order Period of Performance: Start Date End Date
5. Amount of Funding from XYZ:
  - i. Amount this action \$
  - ii. Amount from previous actions \$
  - iii. Total Amount of funding to date \$
6. Invoicing Frequency:
  - i.  Monthly
  - ii.  Quarterly
  - iii.  Other; specify:
7. Technical Reporting Requirements:
  - i.  Quarterly;
  - ii.  Semi-Annually;
  - iii.  Annually;
  - iv.  Final (90days post term)
8. Other terms:.

Attachment (1): Statement of Work  
Attachment (2): Budget

The authorized employees or agents of the parties hereto agree to the terms of this Task Order as indicated by their signatures below.

North Carolina State University

XYZ

### 13. North Dakota University

#### Parties to the Agreement (R1)

\_\_\_\_\_, hereafter referred to as ("SPONSOR"), and North Dakota State University of Agriculture and Applied Science, hereafter referred to as ("NDSU"), hereby agree to enter into a research funding agreement subject to the conditions of this Agreement on ("Effective Date").

#### Term

The term of this Agreement is from the Effective date to \_\_\_\_\_.

#### Cooperative research agreement

- This Agreement shall incorporate the research proposal approved by SPONSOR, including detailed research objectives, methodologies, budget, and benefits to the North Dakota citizens/producers except as otherwise modified herein.
- NDSU through the North Dakota Agricultural Experiment Station ("NDAES") and/or the NDSU Extension Service ("NDSUEXT") agrees to conduct research in support of the project entitled:
- The objectives of this project are : \_\_\_\_\_ (alternatively listed in Exhibit A.)
- The Principal Investigator(s) for this project will be:
- NDSU acknowledges that SPONSOR is hereby providing funds for supporting \_\_\_\_\_ research under the provisions set forth in the North Dakota Century Code (if applicable.)

#### Financial responsibility (P1)

- For this investigation, SPONSOR shall pay NDSU the fixed sum of \$ \_\_\_\_\_ according to the following schedule:
- Disbursement of research funds will be made in accordance with the fiscal policies in force at NDSU at the time of disbursement, which may be amended or changed from time to time at the sole discretion of NDSU.
- Funds shall be expended in accordance with the approved budget. SPONSOR must provide written approval prior to transfers between restricted categories. Restricted categories, if applicable, shall include:  
.



- NDSU shall maintain adequate records of the receipt and expenditure of all funds contributed under this Agreement by approved budget categories. All such records will be available upon request to representatives of SPONSOR for inspection and/or audit during each annual period covered by the term of this Agreement, and for a period of three (3) years after termination. NDSU and all subcontractors shall receive reasonable notice of audits, and such audits shall be conducted during normal business hours.

### **Terms and conditions for conduct of project (S1)**

- NDSU shall have complete direction of the approved project/research and other activities associated with the efficient conduct of the project/research. The proposed project/research shall be conducted under the direct supervision of the Principal Investigator(s) who will be accountable to NDSU.
- Title to all equipment purchased by NDSU with funds provided by SPONSOR pursuant to this Agreement shall become and remain the property of NDSU.
- The Principal Investigator(s) shall provide a written progress report and final report.
- The Principal Investigator(s) and/or NDSU shall have the right to publish results of this investigation in any publication. Copies of all such manuscripts shall be provided to SPONSOR at least sixty (60) days prior to submission for publication. NDSU shall have final authority over the content and journal(s) of publication.
- SPONSOR may issue reports to its directors and supporters on the progress of the research, but such report shall not include any information deemed confidential by NDSU unless each director or supporter has signed a nondisclosure agreement.
- The Principal Investigator(s), NDSU, and SPONSOR shall provide proper credit to each other for the cooperative nature of the research. The Principal Investigator(s) shall, whenever possible, give credit to SPONSOR during oral presentations, interviews, in press releases and published reports.
- No commercial brands or trade names shall appear in the publication of the project results, except if such brands or trade names are essential in the description of the research. SPONSOR, will not, under any circumstances, use the name, trademark, or likeness of NDSU, NDSUEXT, or NDAES as an endorsement in any advertisement or publicity whether with reference to this Agreement or any other matter. In the case of Discoveries that are licensed or publicly disclosed, SPONSOR may make use of statements that such Discoveries are licensed and/or were developed by NDSU, NDAES, or NDSUEXT.

## **Intellectual Property (I5)**

- NDSU and SPONSOR agree that the allocation of all rights and interests relating to copyrights or patents resulting from research conducted pursuant to this Agreement shall be determined as follows:
  - NDSU and SPONSOR agree that information, processes, or inventions (hereafter referred to as "Discoveries") that could be protected by patents or copyrights may be developed as a result of this Agreement. "Discoveries" does not include plant varieties, cultivars, or germplasm.
  - Any patents or copyrights resulting from Discoveries developed as a result of this Cooperative Agreement shall become the property of NDSU.
  - In the event that the Discovery or Discoveries is/are patented by NDSU, all revenues or benefits of any form derived from such license shall be retained by NDSU or its assignee and disbursed according to NDSU policy.
  - NDSU reserves the right to assign ownership of Discoveries to the NDSU Research Foundation which may protect and license such Discoveries on behalf of NDSU.
- Varieties, germplasm, and/or cultivars will be solely owned by NDSU and all revenues or benefits of any form derived from such varieties, germplasm, and/or cultivars shall be retained by NDSU or its assignee and disbursed according to NDSU policy. NDSU through NDAES reserves the right to make all decisions regarding the release of cultivars as named varieties. NDSU's policy is to publicly release varieties in the United States. NDSU will continue to publicly release varieties and will notify SPONSOR if it were to change this policy on the release of varieties in the United States. NDSU does not grant to SPONSOR any rights to varieties, germplasm, and/or cultivars. NDSU or its assignee shall notify SPONSOR of any plans to license varieties, germplasm, and/or cultivars in the United States and, if applicable, in foreign countries. The parties agree that varieties, germplasm, and/or cultivars may be developed as a result of funding from multiple sources.
- Notwithstanding anything contained herein, directly or by implication, no licenses or options are granted to SPONSOR by this Agreement.

## **Miscellaneous Provisions (M1)**

- The NDSU relationship to SPONSOR in the performance of this Agreement is that of an independent contractor.

- Indemnity (I2) NDSU's tort liability is governed by the North Dakota Tort Claims Act N.D.C.C. ch. 32-12.2. Nothing herein shall preclude NDSU from asserting against any party any defenses to liability it may have under North Dakota law nor is anything herein intended to extend NDSU's liability beyond that provided by N.D.C.C. ch. 32-12.2.
- Termination (T2)
- This Agreement may be terminated at any time upon the written mutual consent of the parties. Either party may terminate or suspend performance of this Agreement for failure of the other party to perform any of the services, duties or conditions contained in this Agreement after giving the other party written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period. This Agreement shall be construed and enforced in accordance with the laws of the State of North Dakota.

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supercedes all prior agreements and understandings between the parties (whether written or oral) relating thereto. No modification shall be effective unless made in writing and signed by a duly authorized representative of each party.

<b>North Dakota State University</b>	
Principal Investigator	Date
Dept. Chair/Research Extension Center Director	Date
North Dakota Agricultural Experiment Station	Date
Authorized Organizational Representative Research Administration	Date

<b>Sponsor</b>	
Authorized Representative	Date

**14. New York University (certain portions of this document have been redacted)**

This Agreement, effective as of June 2, 2003 (the "Effective Date"), is by and between:

**NEW YORK UNIVERSITY** (hereinafter "NYU"), a not-for-profit corporation organized and existing under the laws of the State of New York and having a place of business at 70 Washington Square South, New York, New York, 10012

AND

**Cell-Matrix, Inc.**, (hereinafter "Cell-Matrix"), a corporation organized and existing under the laws of the State of Nevada having its principal office at 2110 Rutherford Road, Carlsbad, California, 92008.

RECITALS (R1)

WHEREAS, Dr. Peter Brooks of NYU (hereinafter "the NYU Scientist") has made certain inventions relating to [\*\*\*]-Peptides and [\*\*\*]-Peptides and [\*\*\*]-Peptides, all as more particularly described in certain invention disclosures attached hereto as Exhibits A and B (hereinafter "the Pre-Existing Inventions"), in a pending U.S. patent application owned by NYU, filed on [\*\*\*], entitled "[\*\*\*]-Peptide and [\*\*\*]-Peptide" and/or in a pending U.S. patent application owned by NYU, filed on [\*\*\*] entitled "[\*\*\*]-Peptides" (hereinafter "the Pre-Existing Patent Applications");

WHEREAS, subject to the terms and conditions hereinafter set forth, NYU is willing to grant to Cell-Matrix and Cell-Matrix is willing to accept from NYU the License (as hereinafter defined);

\*\*\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties hereto hereby agree as follows:

1. DEFINITIONS.

a. "Affiliate" shall mean any company or other legal entity which controls, or is controlled by, or is under common control with, Cell-Matrix; control means the holding of twenty five and one tenth percent (25.1%) or more of (i) the capital and/or (ii) the voting rights and/or (iii) the right to elect or appoint directors.

b. "Calendar Year" shall mean any consecutive period of twelve months commencing on the first day of January of any year.

c. "License" shall mean the exclusive worldwide license, including the right to sublicense, to make, to have made, to import, to use, to offer for sale, and to sell the Licensed Products (as hereinafter defined), and to practice the NYU Technology (as hereinafter defined) for the development, manufacture, use and sale of the Licensed Products.

d. "Licensed Products" shall mean [\*\*\*]-Peptides and [\*\*\*]-Peptides and [\*\*\*]-Peptides, covered by a claim of any unexpired NYU Patent (as hereinafter defined) which has not been disclaimed or held invalid by a court of competent jurisdiction from which no appeal can be taken, or which incorporates or is developed using NYU Know-How.

e. "Net Sales" shall mean the total amount invoiced in connection with sales of the Licensed Products to any person or entity that is not a Affiliate or a sublicensee of Cell-Matrix or an Affiliate under the License, after deduction of all the following to the extent applicable to such sales;

- i) all trade, case and quantity credits, discounts, refunds or rebates;

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- ii) allowances or credits for returns;
- iii) sales commissions; and
- iv) prepaid freight, transportation insurance, sales taxes and other government charges (including value-added tax).

Sales of Licensed Products by Cell-Matrix, or an Affiliate or sublicensee of Cell-Matrix to any Affiliate or sublicensee which is a reseller thereof shall be excluded, and only the subsequent sale of such Licensed Products by Affiliates or sublicensees of Cell-Matrix to unrelated parties shall be deemed Net Sales hereunder.

f. "NYU Know-How" shall mean information and materials related to the Pre-Existing Inventions made by the NYU Scientist and owned or controlled by NYU, including, but not limited to, pharmaceutical, chemical, biological and biochemical products, technical and non-technical data, materials, methods and processes and any drawings, plans, diagrams, specifications and/or other

documents containing such information, and including any additional peptides, peptide analogs or peptide homologs that (i) bind to denatured collagen or denatured laminin preferentially, or (ii) are directed towards the same, any adjacent, or any subpart of the epitopes to which the Pre-Existing Inventions are directed, that are conceived, invented or developed by NYU during the period of the Research Agreement (as such term is defined below), including any extensions thereof, and for which Dr. Peter Brooks is an inventor.

g. "NYU Patents" shall mean all rights arising out of or resulting from (i) any and all U.S. and foreign patent applications covering the NYU Know-How including, without limitation, the Pre-Existing Patent Applications, (ii) the patents proceeding from such applications, (iii) all claims of and any divisions, continuations, in whole or in part, reissues, re-examinations, renewals and extensions of any such patents or patent applications.

h. "NYU Technology" shall mean all NYU Patents and NYU Know-How.

i. "Research Agreement" shall mean the Research Support Agreement between NYU and CancerVax Corporation, effective as of December 18, 2002, as amended.

j. "USC Claim" shall mean a valid claim of an issued patent owned by the University of Southern California (hereinafter "USC") and licensed by USC to Cell-Matrix for which Dr. Peter Brooks is an inventor.

## 2. EFFECTIVE DATE (P2).

This Agreement shall be effective as of the Effective Date and shall remain in full force and effect until it expires or is terminated in accordance with Section 13 hereof.

## 3. TITLE.

a. Subject to the License granted to Cell-Matrix hereunder, it is hereby agreed that all right, title and interest, in and to the NYU Technology, and in and to any drawings, plans, diagrams, specifications, and other documents containing any of the NYU Technology shall vest solely in NYU. At the request of NYU, Cell-Matrix shall take all steps as may be necessary to give full effect to said right, title and interest of NYU including, but not limited to, the execution of any documents that may be required to record such right, title and interest with the appropriate agency or government office.

## 4. PATENTS AND PATENT APPLICATIONS. (I5)

a. Cell-Matrix shall, within thirty (30) days following the signing of this Agreement, pay NYU the sum of U.S. [\*\*\*]

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[\*\*\*], being the amount of all costs and fees incurred by NYU up to the date hereof in connection with the Pre-Existing Patent Applications.

b. At the initiative of Cell-Matrix or NYU, the parties shall consult with each other regarding the prosecution of all patent applications with respect to the NYU Technology and each party shall use reasonable efforts to implement all reasonable requests made by the other party with regard to the preparation, filing, prosecution and/or maintenance of the patent applications and/or patents within NYU Technology. Such patent applications shall be filed, prosecuted and maintained by the law firm of Darby & Darby or by other patent counsel jointly selected by NYU and Cell-Matrix. Copies of all such patent applications, patent office actions and related correspondence shall be forwarded on a timely basis to each of NYU and Cell-Matrix.

NYU and Cell-Matrix shall each also have the right to have such patent applications and patent office actions independently reviewed by other patent counsel separately retained by NYU or Cell-Matrix, upon prior notice to and consent of the other party, which consent shall not unreasonably be withheld.

c. All applications and proceedings with respect to the NYU Patents shall be filed, prosecuted and maintained by NYU at the expense of Cell-Matrix. Against the submission of invoices, Cell-Matrix shall reimburse NYU for all costs and fees invoiced by outside patent counsel to NYU during the term of this Agreement, in connection with the filing, maintenance, prosecution, protection and the like of the NYU Patents.

d. If at any time during the term of this Agreement Cell-Matrix decides that it is undesirable, as to one or more countries, to prosecute or maintain any patents or patent applications within the NYU Patents, it shall give prompt written notice thereof to NYU, and

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upon receipt of such notice Cell-Matrix shall be released from its obligations to bear all of the expenses to be incurred thereafter as to such countries in conjunction with such patent(s) or patent application(s) and such patent(s) or application(s) shall be deleted from the NYU Technology and NYU shall be free to grant rights in and to the NYU Technology in such countries to third parties, without further notice or obligation to Cell-Matrix, and Cell-Matrix shall have no rights whatsoever to exploit the NYU Technology in such countries.



- e. Nothing herein contained shall be deemed to be a warranty by NYU that
  - i) NYU can or will be able to obtain any patent or patents on any patent application or applications in the NYU Patents or any portion thereof, or that any of the NYU Patents will afford adequate or commercially worthwhile protection, or
  - ii) that the manufacture, use, or sale of any element of the NYU Technology or any Licensed Product will not infringe any patent(s) of a third party.

## 5. GRANT OF LICENSE.

a. Subject to the terms and conditions hereinafter set forth, NYU hereby grants to Cell-Matrix and Cell-Matrix hereby accepts from NYU the License. The License is subject to (i) the right of NYU to use and to permit other non-commercial entities to use the NYU Technology for non-commercial educational and research purposes only, and (ii) the rights of the U.S. Government. Permission to use the NYU Technology shall only be granted to non-commercial entities by NYU under a written agreement, a copy of which shall be provided by NYU to Cell-Matrix as soon as practicable after the signing thereof, and which shall contain, at a minimum, the provisions listed in Exhibit C to this Agreement. Cell-Matrix agrees to consider, in good faith, reasonable changes to the provisions listed in Exhibit C requested by NYU.

b. The License granted to Cell-Matrix in Section 5.a. hereto shall commence upon the Effective Date and shall remain in force on a country-by-country basis, if not previously terminated under the terms of this Agreement, for fifteen (15) years from the date of first commercial sale in such country or until the expiration date of the last to expire of the NYU Patents, whichever shall be later. Cell-Matrix shall inform NYU in writing of the date of first commercial sale with respect to each Licensed Product in each country as soon as practicable after the making of each such first commercial sale.

c. Cell-Matrix shall be entitled to grant sublicenses under the License on terms and conditions in compliance and not inconsistent with the terms and conditions of this Agreement (except that the rate of royalty may be at higher rates than those set forth in this Agreement) (i) to an Affiliate or (ii) to other third parties for consideration and in arms-length transactions. All sublicenses to third parties shall only be granted by Cell-Matrix under a written agreement, a copy of which shall be provided by Cell-Matrix to NYU as soon as practicable after the signing thereof. Each sublicense granted by Cell-Matrix hereunder shall be subject and subordinate to the terms and conditions of this License Agreement and shall contain (inter-alia) the

following provisions:

- (1) the sublicense shall expire automatically on the termination of the License;
- (2) the sublicense shall not be assignable, in whole or in part;
- (3) the sublicensee shall not grant further sublicenses; and
- (4) both during the term of the sublicense and thereafter the sublicensee shall agree to a confidentiality obligation similar to that imposed on Cell-Matrix in Section 9 below, and the sublicensee shall impose on its employees, both during the terms of their employment and thereafter, a similar undertaking of confidentiality; and
- (5) the sublicense agreement shall include the text of Sections 11 and 12 of this Agreement and shall state that NYU is an intended third party beneficiary of such sublicense agreement for the purpose of enforcing such indemnification and insurance provisions.

## 6. PAYMENTS FOR LICENSE.

- a. In consideration for the grant and during the term of the License, Cell-Matrix shall pay to NYU:
  - (1) a non-refundable, non-creditable license issue fee of two hundred thousand dollars (\$200,000.00) payable as follows: (i) sixty-six thousand, six hundred and sixty-six dollars (\$66,666.00) within thirty (30) days after the Effective Date; (ii) sixty-six thousand, six hundred and sixty-seven dollars (\$66,667.00) on or before the first anniversary of the Effective Date; and (iii) sixty-six thousand, six hundred and sixty-seven dollars (\$66,667.00) on or before the second anniversary of the Effective Date; and
  - (2) on the first and each succeeding anniversary of the Effective Date until approval to market a Licensed Product is received by Cell-Matrix, non-refundable, non-creditable license maintenance fees of fifteen thousand dollars (\$15,000.00) each; and

- (3) upon the achievement of the following technical milestones, with respect to a Licensed Product, the payments as indicated below:

Milestone -----	Payment -----
<S>	<C>
i) Upon the first approval of an Investigational New Drug Application by the FDA	[***]
ii) Upon commencement of the first Phase III clinical trial of a Licensed Product for therapeutic purposes	[***]
iii) Upon receipt of the first approval to market a Licensed Product for therapeutic purposes	[***]

provided that if a milestone payment is owed to USC under Cell-Matrix's license agreement with USC with respect to the Licensed Product generating the milestone payment and a milestone payment is paid by Cell-Matrix to USC based on the same milestone for the same Licensed Product under an agreement in effect prior to the Effective Date, then Cell-Matrix may credit the milestone payment paid to USC for the respective milestone against the milestone payment due to NYU, provided that the milestone payment to NYU shall not be reduced by more than fifty percent (50%);

- (4) a royalty of [\*\*\*] of the Net Sales of Cell-Matrix or of an Affiliate or of a sublicensee of Cell-Matrix or an Affiliate, provided that if a royalty is owed to USC under Cell-Matrix's license agreement with USC with respect to the Licensed Product generating the royalty, and a royalty is paid by Cell-Matrix to USC for the same Licensed Product under an agreement in effect prior to the Effective Date, then Cell-Matrix may credit the royalty payments paid to USC against the royalty payments due to NYU, provided that the royalty payments to NYU shall not be reduced by more than fifty percent (50%); and

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- (5) [\*\*\*] of any revenue (including any monetary payments not based on Net Sales, but not including any non-monetary

consideration), received by Cell-Matrix from a sublicensee of Cell-Matrix (not being a Affiliate) under the terms of, or as a consideration for the grant of, a sublicense of any rights or for grant of an option to acquire such a sublicense.

b. For the purpose of computing the royalties due to NYU hereunder, the year shall be divided into four parts ending on March 31, June 30, September 30, and December 31. Not later than sixty (60) days after each December, March, June, and September in each Calendar Year during the term of the License, Cell-Matrix shall submit to NYU a full and detailed report of royalties or payments due NYU under the terms of this Agreement for the preceding quarter year (hereinafter "the Quarter-Year Report"), setting forth the Net Sales and/or lump sum payments and all other payments or consideration from sublicensees upon which such royalties are computed and including at least

- i) the quantity of Licensed Products used, sold, transferred or otherwise disposed of;
- ii) the selling price of each Licensed Product;
- iii) the deductions permitted under subsection 1.g. hereof to arrive at Net Sales; and
- iv) the royalty computations.

If no royalties or other payments are due, a statement shall be sent to NYU stating such fact. Payment of the full amount of any royalties or other payments due to NYU for the preceding quarter shall accompany each Quarter-Year Report on royalties and payments. Cell-Matrix shall keep for a period of at least six (6) years after the date of entry, full, accurate and

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complete books and records consistent with sound business and accounting practices and in such form and in such detail as to enable the determination of the amounts due to NYU from Cell-Matrix pursuant to the terms of this Agreement.

c. Within sixty (60) days after the end of each Calendar Year, commencing on the Date of First Commercial Sale, Cell-Matrix shall furnish NYU with a report (hereinafter "the Annual Report"), relating to the royalties and other payments due to NYU pursuant to this Agreement in respect of the Calendar Year covered by such Annual Report and containing the same details as those specified in Section 6.b. above in respect of the Quarter-Year Report.

d. On reasonable notice and during regular business hours, NYU or the authorized representative of NYU shall each have the right to inspect the books of accounts, records and other relevant documentation of Cell-Matrix or any of its Affiliates insofar as they relate to the production, marketing and sale of the Licensed Products, in order to ascertain or verify the amount of royalties and other payments due to NYU hereunder, and the accuracy of the information provided to NYU in the aforementioned reports.

7. METHOD OF PAYMENT. (P1)

a. Royalties and other payments due to NYU hereunder shall be paid to NYU in United States dollars. Any such royalties on or other payments relating to transactions in a foreign currency shall be converted into United States dollars based on the closing buying rate of Citibank, N.A., in New York applicable to transactions under exchange regulations for the particular currency on the last business day of the accounting period for which such royalty or other payment is due.

b. Cell-Matrix shall be responsible for payment to NYU of all royalties due on sale, transfer or disposition of Licensed Products by Affiliate or by the sublicensees of Cell-Matrix or of Affiliate.

c. Any amount payable hereunder by one of the parties to the other, which has not been paid by the date on which such payment is due, shall bear interest from such date until the date on which such payment is made, at the rate of one percent (1%) per annum in excess of the prime rate prevailing at the Citibank, N.A., in New York, during the period of arrears and such amount and the interest thereon may be set off against any amount due, whether in terms of this Agreement or otherwise, to the party in default by any non-defaulting party.

8. DEVELOPMENT AND COMMERCIALIZATION. (I5)

a. Cell-Matrix shall use reasonable efforts and due diligence to develop Licensed Products, as promptly as is reasonably and commercially feasible, and to perform all efficacy, pharmaceutical, safety, toxicological and clinical tests, trials and studies and all other activities necessary in order to obtain the approval of the FDA for the production, use and sale of the Licensed Products. Cell-Matrix further undertakes to exercise due diligence and to employ its reasonable diligence to obtain or to cause its sublicensees to obtain, the appropriate approvals of the health authorities for the production, use and sale of the Licensed Products, in each of the other countries of the world in which Cell-Matrix or its sublicensees intend to produce, use, and/or sell Licensed Products.

b. Provided that applicable laws, rules and regulations require that the performance of the tests, trials, studies and other activities specified in subsection a. above shall be carried out in accordance with FDA Good Laboratory Practices and in a manner acceptable to the relevant health authorities, Cell-Matrix shall carry out such tests, trials, studies and other activities in accordance with FDA Good Laboratory Practices and in a manner acceptable to the relevant health authorities. Furthermore, the Licensed Products for commercial sale shall be produced in accordance with FDA Good Manufacturing Practice ("GMP") procedures in a facility that has been certified by the FDA as complying with GMP, provided that applicable laws, rules and regulations so require.

c. Cell-Matrix shall provide NYU with written reports on significant activities and actions undertaken by Cell-Matrix to develop and commercialize the Licensed Products; such reports shall be made within sixty (60) days after each twelve (12) months of the duration of this Agreement, commencing twelve months after the Effective Date.

e. In the event that Cell-Matrix shall not meet its commercial development obligations, as set forth in paragraph (a) of this Section 8, unless such delay is necessitated by FDA or other regulatory agencies or unless NYU and Cell-Matrix have mutually agreed to extend the period of time in which Cell-Matrix is obligated, under paragraph (a) of this Section 8, to commercialize a Licensed Product because of unforeseen circumstances, NYU shall notify Cell-Matrix in writing of Cell-Matrix's failure to commercialize and shall allow Cell-Matrix one (1) year to materially cure its failure to commercialize. Cell-Matrix's failure to materially cure such delay to NYU's reasonable satisfaction within such one (1) year period shall be a material breach of this Agreement..

f. Cell-Matrix shall give NYU the option to participate as a clinical site in any clinical trials of Licensed Products sponsored by Cell-Matrix or its Affiliates, under the same compensation and other terms as those offered to other clinical sites participating in such trials, provided that NYU meets the reasonable qualification criteria established by Cell-Matrix for its other clinical sites for any such clinical trials.

g. Licensed Products sold by Cell-Matrix, its Affiliates, or its sublicensees in the United States shall be substantially manufactured in the United States.

## 9. CONFIDENTIAL INFORMATION (C2).

a. Except as otherwise provided in Section 9.b and 9.c below Cell-Matrix shall maintain any and all of the NYU Technology in confidence to the same extent Cell-Matrix maintains its own proprietary industrial information

and shall not release or disclose any tangible or intangible component thereof to any third party without first receiving the prior written consent of NYU to said release or disclosure.

b. The obligations of confidentiality set forth in Sections 9.a shall not apply to any component of the NYU Technology which: (i) was in Cell-Matrix's possession prior to the date of its actual receipt from NYU; (ii) was part of the public domain prior to the Effective Date of this Agreement or which becomes a part of the public domain not due to some unauthorized act by or omission of Cell-Matrix after the effective date of this Agreement; (iii) is disclosed to Cell-Matrix by a third party who has the right to make such disclosure; or (iv) is developed independently by Cell-Matrix without use of the NYU Technology.

c. The provisions of Section 9.a notwithstanding, Cell-Matrix may disclose the NYU Technology (i) to third parties who need to know the same in order to secure regulatory approval for the sale of Licensed Products; and (ii) to Cell-Matrix's Affiliates, sublicensees, prospective sublicensees and assignees of Cell-Matrix and its Affiliates, attorneys and other agents who are bound by confidentiality obligations equivalent to those provided herein.

d. Upon the expiration or termination of this Agreement, any and all NYU Technology possessed in tangible form by Cell-Matrix, its Affiliates or its or any of its officers, directors, employees, agents, consultants or clinical investigators and belonging to NYU, shall, upon written request, be returned to NYU (or destroyed if so requested); provided, however, that Cell-Matrix may retain one (1) copy of the NYU Technology, which by applicable laws, rules or regulations it is obligated to retain, for the later of: (a) the period in which any such applicable laws, rules or regulations require such retention; or (b) the expiration of the statute of limitations applicable to actions arising under this Agreement or Cell-Matrix's receipt of NYU's release from any actions by Cell-Matrix under this Agreement.

## 10. INFRINGEMENT OF NYU PATENT (15).

a. In the event a party to this Agreement acquires information that a third party is infringing one or more of the NYU Patents, the party acquiring such information shall promptly notify the other party to the Agreement in writing of such infringement.

b. In the event of an infringement of an NYU Patent, Cell-Matrix shall have the right but not required to bring suit against the infringer. Should Cell-Matrix elect to bring suit against an infringer and NYU is joined as a party plaintiff in any such suit, NYU shall have the right to approve the counsel selected by Cell-Matrix to represent Cell-Matrix and NYU, which approval shall not be unreasonably withheld. The expenses of such suit or suits that Cell-Matrix elects to bring, including any expenses of NYU incurred in

conjunction with the prosecution of such suit or the settlement thereof, shall be paid for entirely by Cell-Matrix and Cell-Matrix shall hold NYU free, clear and harmless from and against any and all costs of such litigation, including attorneys' fees. Cell-Matrix shall not compromise or settle such litigation without the prior written consent of NYU, which shall not be unreasonably withheld.

c. In the event Cell-Matrix exercises the right to sue herein conferred, it shall have the right to first reimburse itself out of any sums recovered in such suit or in settlement thereof for all costs and expenses of every kind and character, including reasonable attorneys' fees

necessarily involved in the prosecution of any such suit, and if after such reimbursement, any funds shall remain from said recovery, Cell-Matrix shall promptly pay to NYU an amount equal to thirty percent (30%) of such remainder and Cell-Matrix shall be entitled to receive and retain the balance of the remainder of such recovery.

d. If Cell-Matrix does not bring suit against said infringer pursuant to Section 10.b. herein, or has not commenced negotiations with said infringer for discontinuance of said infringement, within ninety (90) days after receipt of such notice, NYU shall have the right, but shall not be obligated, to bring suit for such infringement. Should NYU elect to bring suit against an infringer and Cell-Matrix is joined as a party plaintiff in any such suit, Cell-Matrix shall have the right to approve the counsel selected by NYU to represent NYU and Cell-Matrix, which approval shall not be unreasonably withheld, and NYU shall hold Cell-Matrix free, clear and harmless from and against any and all costs and expenses of such litigation, including attorneys' fees. If Cell-Matrix has commenced negotiations with an alleged infringer of the NYU Patent for discontinuance of such infringement within such 90-day period, Cell-Matrix shall have an additional ninety (90) days from the termination of such initial 90-day period to conclude its negotiations before NYU may bring suit for such infringement. In the event NYU brings suit for infringement of any NYU Patent, NYU shall have the right, following consultation with Cell-Matrix, to settle any such suit by licensing the alleged infringer on terms substantially equivalent to those included in this Agreement. In the event NYU brings suit for infringement of any NYU Patent, NYU shall have the right to first reimburse itself out of any sums recovered in such suit or settlement thereof for all costs and expenses of every kind and character, including reasonable attorneys' fees necessarily involved in the prosecution of such suit, and if after such reimbursement, any funds shall remain from said recovery, NYU shall promptly pay to Cell-Matrix an amount equal to thirty percent (30%) of such remainder and NYU shall be entitled to receive and retain the balance of the remainder of such recovery.



e. Each party shall always have the right, at its own expense, to be represented by counsel of its own selection in any suit for infringement of the NYU Patents instituted by the other party to this Agreement under the terms hereof.

f. Cell-Matrix agrees to cooperate fully with NYU at the request of NYU, including by giving testimony and producing documents lawfully requested in the prosecution of any suit by NYU for infringement of the NYU patents; provided, NYU shall pay all reasonable expenses (including attorneys' fees) incurred by Cell-Matrix in connection with such cooperation. NYU shall cooperate fully with Cell-Matrix and shall endeavor to cause the NYU Scientists to cooperate with Cell-Matrix at the request of Cell-Matrix, including by giving testimony and producing documents lawfully requested in the prosecution of any suit by Cell-Matrix for infringement of the NYU Patents; provided, that Cell-Matrix shall pay all reasonable expenses (including attorneys' fees) incurred by NYU in connection with such cooperation.

#### 11. LIABILITY AND INDEMNIFICATION (12).

a. Cell-Matrix shall indemnify, defend and hold harmless NYU and its trustees, officers, medical and professional staff, employees, students and agents and their respective successors, heirs and assigns (the "Indemnities"), against any liability, damage, loss or expense (including reasonable attorneys' fees and expenses of litigation) incurred by or imposed upon the Indemnities or any one of them in connection with any claims, suits, actions, demands or judgments (i) arising out of the design, production, manufacture, sale, use in commerce or in human clinical trials, lease, or promotion by Cell-Matrix or by a sublicensee,

Affiliate or agent of Cell-Matrix of any Licensed Product, process or service relating to, or developed pursuant to, this Agreement or (ii) arising out of any other activities to be carried out pursuant to this Agreement.

b. With respect to an Indemnities, Cell-Matrix's indemnification under subsection a(i) of this Section 11 shall apply to any liability, damage, loss or expense, whether or not it is attributable to the negligent activities of such Indemnities; however, Cell-Matrix's indemnification obligation under subsection a(ii) of this Section 11 shall not apply to any liability, damage, loss or expense to the extent that it is attributable to the negligent activities or willful misconduct of any such Indemnatee.

c. Cell-Matrix agrees, at its own expense, to provide attorneys reasonably acceptable to NYU to defend against any actions brought or filed against any Indemnatee with respect to the subject of indemnity to which such Indemnatee is entitled hereunder, whether or not such actions are rightfully brought.

## 12. SECURITY FOR INDEMNIFICATION (I2).

a. At such time as any Licensed Product, process or service relating to, or developed pursuant to, this Agreement is being commercially distributed or sold (other than for the purpose of obtaining regulatory approvals) by Cell-Matrix or by a licensee, Affiliate or agent of Cell-Matrix, Cell-Matrix shall at its sole costs and expense, procure and maintain policies of comprehensive general liability insurance in amounts not less than \$10,000,000 per incident and \$20,000,000 annual aggregate and naming the Indemnitees as additional insureds. Such comprehensive general liability insurance shall provide (i) product liability coverage and (ii) broad form contractual liability coverage for Cell-Matrix's indemnification under Section 11 of this Agreement. If Cell-Matrix elects to self-insure all or part of the limits described above

(including deductibles or retentions which are in excess of \$250,000 annual aggregate) such self-insurance program must be reasonably acceptable to NYU.

The minimum amounts of insurance coverage required under this Section 12 shall not be construed to create a limit of Cell-Matrix's liability with respect to its indemnification under Section 11 of this Agreement.

b. Cell-Matrix shall provide NYU with written evidence of such insurance upon request of NYU. Cell-Matrix shall provide NYU with written notice at least sixty (60) days prior to the cancellation, non-renewal or material change in such insurance; if Cell-Matrix does not obtain replacement insurance providing comparable coverage within such sixty (60) day period, NYU shall have the right to terminate this Agreement effective at the end of such sixty (60) day period without notice or any additional waiting periods.

c. Cell-Matrix shall maintain such comprehensive general liability insurance beyond the expiration or termination of this Agreement during (i) the period that any product, process or service, relating to, or developed pursuant to, this Agreement is being commercially distributed or sold (other than for the purpose of obtaining regulatory approvals) by Cell-Matrix or by a sublicensee, Affiliate or agent of Cell-Matrix and (ii) a reasonable period after the period referred to in (c)(i) above, which in no event shall be less than fifteen (15) years.

## 13. EXPIRY AND TERMINATION (T2).

a. Unless earlier terminated pursuant to this Section 13 hereof, this Agreement shall expire upon the expiration of the period of the License in all countries as set forth in Section 5.b. above.

b. At any time prior to expiration of this Agreement, either party may terminate this Agreement forthwith for cause, as "cause" is described below, by giving written notice to the other party. Cause for termination by one party of this Agreement shall be deemed to exist if the other party materially breaches or defaults in the performance or observance of any of the provisions of this Agreement and such breach or default is not materially cured within sixty (60) days or, in the case of failure to pay any amounts due hereunder, thirty (30) days (unless otherwise specified herein) after the giving of notice by the other party specifying such breach or default, or if either NYU or Cell-Matrix discontinues its business or becomes insolvent or bankrupt.

c. Cell-Matrix may terminate this Agreement at any time in Cell-Matrix's sole discretion, upon not less than one hundred eighty (180) days' prior written notice to NYU.

d. Upon termination of this Agreement for any reason and prior to expiration as set forth in Section 13.a and 13.b hereof, all rights in and to the NYU Technology shall revert to NYU, and, except as provided in Section 9.d, Cell-Matrix shall not be entitled to make any further use whatsoever of the NYU Technology.

e. Cell-Matrix shall promptly, without further consideration, provide to NYU copies of all data and regulatory documents, including INDs, NDAs, Orphan Drug applications, or their equivalents in all countries, directly related to the development of Licensed Products (the "Regulatory Information"), provided that NYU and any of its sublicensees who utilize such Regulatory Information shall agree to indemnify, defend and hold harmless Cell-Matrix and its Affiliates and sublicensees against any liability, damage, loss or expense (including reasonable attorney's fees and expenses of litigation) incurred by or imposed upon Cell-Matrix, its Affiliates or sublicensees, or any one of them in connection with any claims, suits, actions, demands or judgments arising out of any use by NYU or its sublicensees of such Regulatory Information.

f. Termination of this Agreement shall not relieve either party of any obligation to the other party incurred prior to such termination.

g. Sections 3, 9, 11, 12, 16, 17, and 18 hereof shall survive and remain in full force and effect after any termination, cancellation or expiration of this Agreement.

#### 14. REPRESENTATIONS AND WARRANTIES BY CELL-MATRIX (W2).

Cell-Matrix hereby represents and warrants to NYU as follow:

(1) Cell-Matrix is a corporation duly organized, validly existing and in good standing under the laws of the State of Nevada. Cell-Matrix has been

granted all requisite power and authority to carry on its business and to own and operate its properties and assets. The execution, delivery and performance of this Agreement have been duly authorized by the Board of Directors of Cell-Matrix.

(2) There is no pending or, to Cell-Matrix's knowledge, threatened litigation involving Cell-Matrix which would have any effect on this Agreement or on Cell-Matrix's ability to perform its obligations hereunder; and

(3) There is no indenture, contract, or agreement to which Cell-Matrix is a party or by which Cell-Matrix is bound which prohibits or would prohibit the execution and delivery by Cell-Matrix of this Agreement or the performance or observance by Cell-Matrix of any term or condition of this Agreement.

#### 15. REPRESENTATIONS AND WARRANTIES BY NYU (W2).

NYU hereby represents and warrants to Cell-Matrix as follows:

(1) NYU is a corporation duly organized, validly existing and in good standing under the laws of the State of New York. NYU has been granted all requisite power and authority to carry on its business and to own and operate its properties and assets. The execution, delivery and performance of this Agreement have been duly authorized by the Board of Trustees of NYU.

(2) There is no pending or, to NYU's knowledge, threatened litigation involving NYU which would have any effect on this Agreement or on NYU's ability to perform its obligations hereunder;

(3) There is no indenture, contract, or agreement to which NYU is a party or by which NYU is bound which prohibits or would prohibit the execution and delivery by NYU of this Agreement or the performance or observance by NYU of any term or condition of this Agreement; and

(4) NYU shall provide to Cell-Matrix the materials and information listed in Exhibit D hereto (the "Supporting Data") within thirty (30) days following the Effective Date. In the event that Supporting Data are not provided within this time period, Cell-Matrix may delay payment of [\*\*\*] from the portion of the License Issue Fee that would otherwise be payable within thirty (30) days following the Effective Date under Section 6(a)(1) of this Agreement until such time as all of Supporting Data are received by Cell-Matrix.

16. NO ASSIGNMENT (A4).

Neither Cell-Matrix nor NYU shall have the right to assign, delegate or transfer at any time to any party, in whole or in part, any or all of the rights, duties and interest herein granted without first obtaining the written consent of the other to such assignment, which consent shall not be unreasonably withheld, provided, however, that no prior written consent shall be required in the event that a third party acquires substantially all of the assigning party's assets or outstanding shares, or merges with the assigning party. No assignment of this Agreement shall

\*\*\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

relieve the assigning party of any of its obligations or liability hereunder. Any attempted assignment not in compliance with this Section 16 shall be of no force or effect.

17. USE OF NAME (P4).

Without the prior written consent of the other party, neither Cell-Matrix nor NYU shall use the name of the other party or any adaptation thereof:

- i) in any product labeling, advertising, promotional or sales literature;
- ii) in connection with any public or private offering, in conjunction with any application for regulatory approval, in reports or documents or other disclosures sent to stockholders or filed with or submitted to any government authority or stock exchange, unless disclosure is otherwise required by law, in which case either party may make factual statements concerning the Agreement or file copies of the Agreement.

Except as provided herein, neither NYU nor Cell-Matrix will issue public announcements about this Agreement without prior written approval of the other party, which approval shall not be unreasonably withheld. The parties each agree that once approval for disclosure of information subject to this Section 17 has been obtained, the party that requested such approval shall be entitled to use such information substantially in the form initially presented without an obligation to seek further approval.

18. MISCELLANEOUS (M1).

a. In carrying out this Agreement the parties shall comply with all local, state and federal laws and regulations including but not limited to, the provisions of Title 35 United States Code Section 200 et seq. and 15 CFR Section 368 et seq.

b. If any provision of this Agreement is determined to be invalid or void, the remaining provisions shall remain in effect.

c. (Governing Law) This Agreement shall be deemed to have been made in the State of New York and shall be governed and interpreted in all respects under the laws of the State of New York.

d. (Payment) All payments or notices required or permitted to be given under this Agreement shall be given in writing and shall be effective when either personally delivered or deposited, postage prepaid, in the United States registered or certified mail, addressed as follows:

To: NYU:  
New York University School of Medicine  
650 First Avenue, 6th Floor  
New York, NY 10016  
Attention: Abram M. Goldfinger  
Executive Director, Industrial Liaison/Technology Transfer

With a copy to:

Office of Legal Counsel  
New York University  
Bobst Library  
70 Washington Square South  
New York, NY 10012  
Attention: Annette B. Johnson, Esq.  
Vice Dean & Senior Counsel for Medical School Affairs

To: Cell-Matrix:  
Cell-Matrix, Inc.  
2110 Rutherford Road  
Carlsbad, CA 92008  
Attention: General Counsel

or such other address or addresses as either party may hereafter specify by written notice to the other. Such notices and communications shall be deemed effective on the date of delivery or fourteen (14) days after having been sent by registered or certified mail, whichever is earlier.

f. This Agreement (and the annexed Appendices) constitute the entire Agreement between the parties and no variation, modification or waiver of any of the terms or conditions hereof shall be deemed valid unless made in writing and signed by both parties hereto. This

Agreement supersedes any and all prior agreements or understandings, whether oral or written, with respect to the NYU Technology between Cell-Matrix and NYU.

g. No waiver by either party of any non-performance or violation by the other party of any of the covenants, obligations or agreements of such other party hereunder shall be deemed to be a waiver of any subsequent violation or non-performance of the same or any other covenant, agreement or obligation, nor shall forbearance by any party be deemed to be a waiver by

such party of its rights or remedies with respect to such violation or non-performance.

h. The descriptive headings contained in this Agreement are included for convenience and reference only and shall not be held to expand, modify or aid in the interpretation, construction or meaning of this Agreement.

i. It is not the intent of the parties to create a partnership or joint venture or to assume partnership responsibility or liability. The obligations of the parties shall be limited to those set out herein and such obligations shall be several and not joint.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date and year first above written.

NEW YORK UNIVERSITY

CELL-MATRIX, INC.

By: /s/ Abram M. Goldfinger

By: /s/ William R. LaRue

-----  
Abram M. Goldfinger  
Executive Director,  
Industrial Liaison/Technology Transfer

-----  
William R. LaRue  
President

Date: 6/2/03

Date: 5/30/03

EXHIBIT A

[\*\*\*]-Peptide and [\*\*\*]-Peptide

Invention Disclosure

(NYU # 2002-41)

[15 Pages of Proprietary Information Deleted Pursuant to Confidential Treatment Request]

\*\*\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

EXHIBIT B

[\*\*\*]-Peptide

Invention Disclosure

(NYU # 2002-40)

[15 Pages of Proprietary Information Deleted Pursuant to Confidential Treatment Request]

\*\*\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

EXHIBIT C

- "Material(s)" shall mean the NYU Technology.
- "Derivatives" shall mean and shall only include progeny of the Material(s) or their Derivatives.
- "New Substance" shall mean any material produced or isolated by Transferee in connection with Transferee's use of Materials which is not a Derivative.
- Transferor shall transfer to Transferee the Materials following the execution of the Agreement or as otherwise agreed upon by the parties, and grants Transferee a nonexclusive license to use and modify the Materials for non-commercial, non-clinical educational and research purposes only, as fully described in Attachment X hereto.



- Transferee represents and warrants that the Materials will not be given or made available to any other person, firm or corporation, but are to remain under Transferee's immediate and direct control. Transferee further represents and warrants that the Materials will not be used in humans or, directly or indirectly, in any "sponsored" research or other research programs if the terms of such sponsorship or program would entitle the sponsor or any third party to any rights or interests in such research or its results, including the right to review and/or publish such results. Any other uses of the Materials by Transferee are prohibited.
  
- TRANSFEE AGREE TO USE THE MATERIALS IN COMPLIANCE WITH ALL APPLICABLE FEDERAL, STATE, NATIONAL, OR LOCAL LAWS AND REGULATIONS. TRANSFEE UNDERSTANDS AND ACKNOWLEDGES THAT THE USE OF THE MATERIALS IN HUMANS WITHOUT THE EXPRESS WRITTEN PERMISSION OF TRANSFEROR IS EXPRESSLY PROHIBITED.
  
- Transferee agrees to return all unused Materials to Transferor upon the termination or expiration of the Agreement or upon written request of Transferor within ten (10) business days of such request.
  
- All right, title and interest to all Materials shall remain in or are hereby assigned to Transferor. All right, title and interest to all Derivatives and New Substances (and any patent and other intellectual property rights to the Derivatives and New Substances) shall vest in or are hereby assigned to Transferor.
  
- Transferee shall keep Transferor and Cell-Matrix, Inc., informed of all uses made of the Materials, and shall provide Transferor and Cell-Matrix, Inc., with a report summarizing the results of experiments and data generated utilizing the Materials quarterly during the course of the research and within thirty days following the conclusion of such research.
  
- CONFIDENTIALITY (C2). THE MATERIALS SHALL BE RECEIVED AND HELD IN CONFIDENCE BY TRANSFEE, WHICH ACKNOWLEDGES THAT THEY ARE CONSIDERED PROPRIETARY TO TRANSFEROR. TRANSFEE SHALL EXECUTE A CONFIDENTIAL DISCLOSURE AGREEMENT WITH TRANSFEROR PRIOR TO THE TRANSFER BY TRANSFEROR OF THE MATERIALS. THE CONFIDENTIAL DISCLOSURE AGREEMENT SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THE AGREEMENT.
  
- Publications (P3). Transferee shall have the right to publish or present information which results from Transferee's research using the Materials, provided that such publication or presentation (and any revisions thereto):
  - (a) does not disclose Confidential Information (as such term is defined in

the Confidential Disclosure Agreement referenced in Section 3, above) of Transferor; and (b) is submitted to Transferor and Cell-Matrix, Inc., at least ninety (90) days prior to the date of submission of such proposed publication or presentation. Upon notice by Transferor or Cell-Matrix, Inc., that Transferor's or Cell-Matrix, Inc.'s legal counsel recommends delaying or modifying the proposed publication or presentation in order to protect intellectual property rights and/or as otherwise required by applicable law or regulation, Transferee agrees that the submission of the publication or presentation shall be delayed by the period of time reasonably recommended by such legal counsel and/or the publication or presentation shall be modified in accordance with comments or changes as directed by Transferor or Cell-Matrix, Inc.

- TERM. THIS AGREEMENT WILL TERMINATE ON THE EARLIEST OF THE FOLLOWING DATES:

(I) UPON COMPLETION OF TRANSFEE'S CURRENT INVESTIGATION WITH THE MATERIAL,

OR (II) ON TEN (10) BUSINESS DAYS PRIOR WRITTEN NOTICE BY EITHER PARTY TO THE OTHER.

- (A4) This Agreement may not be assigned by either party without the written consent of the other party, except to a person or entity acquiring all or substantially all of the assigning party's business or voting power through merger, consolidation or otherwise. This Agreement may be modified only in writing, signed by both parties.

#### EXHIBIT D

##### "Supporting Data"

The following list refers only to data already in existence as of the Effective Date:

1. Raw data from which the graphs that we received were generated and data from the repeat studies that were done with the peptides in the CAM, proliferation and adherence assays.

2. Raw data that was generated on the effect of the peptides in the mouse tumor model along with the protocol that was used.

3. Comparative data with the other peptides that were generated and tested and did not show activity

4. Any comparative data on soluble is less soluble forms of the peptides

5. List of peptides tested

## 15. Oklahoma State University

This Agreement entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Oklahoma State University, an institute of higher education of the State of Oklahoma, hereinafter referred to as "University", and \_\_\_\_\_, a corporation duly organized under the laws of the State of \_\_\_\_\_ and having a principal place of business at \_\_\_\_\_, hereinafter referred to as "Sponsor."

### RECITALS (R1)

WHEREAS, Sponsor desires to retain University to perform certain research concerning \_\_\_\_\_ (title of proposal) \_\_\_\_\_; and

WHEREAS, University, in furtherance of its educational objectives, desires to undertake the performance of the said research under the terms and conditions hereinafter set forth;

### TERMS

In consideration of the mutual promises and conditions herein contained, the parties agree as follows:

#### 1.0 DEFINITIONS

As used herein, the following terms shall have the following meanings:

1.01 "Project" shall mean the Project as described in the Statement of Work, marked as "Exhibit A", which is incorporated into this Agreement.

1.02 "Agreement Period" is \_\_\_\_\_, through \_\_\_\_\_, unless sooner terminated as provided herein.

1.03 "University Intellectual Property" shall mean individually and collectively all inventions, improvements, discoveries, patents, patent applications, copyrights, trademarks, trade secrets and any other legally protectable information which is first made, conceived and/or generated (a) by one or more employees of University, or (b) jointly by one or more employees of University and by one or more employees of Sponsor in the performance of Project.

1.04 "Background Intellectual Property" shall mean patented or unpatented and/or copyrighted or uncopyrighted information, discoveries, inventions, improvements, data, processes, computer programs, source or object codes, documentation, texts, or other know-how in tangible form as described on "Exhibit B" not arising directly from the Project or not otherwise subject to this Agreement which would be useful or necessary for work on the Project or to the practice or commercialization of the results of the Project.

2.0 SCOPE OF RESEARCH WORK (S1)

2.01 University shall commence the performance of the Project promptly after the effective date of this Agreement, and shall use reasonable efforts to perform the Project substantially in accordance with the terms and conditions of this Agreement. Anything in this Agreement to the contrary notwithstanding, Sponsor and University may at any time amend the Project by mutual written Agreement.

2.02 The Project will be under the direction of \_\_\_\_\_ as Principal Investigator for the Project and others (e.g. technicians, graduate students, post-doctoral fellows or faculty members) as assigned by the Principal Investigator.

2.03 In the event that the Principal Investigator becomes unable or unwilling to continue the Project or leaves the employment of the University, a mutually acceptable substitute will be selected. In the event a mutually acceptable substitute is not available, University and/or Sponsor shall have the option to terminate the Project.

3.0 REPORTS AND CONFERENCES (R3)

3.01 University, through the Principal Investigator, will submit to Sponsor \_\_\_\_\_  
\_\_\_\_\_ due \_\_\_\_\_.

4.0 COSTS, BILLINGS, OTHER SUPPORT AND OBLIGATIONS (C4)

4.01 Sponsor agrees to pay to the University \_\_\_\_\_ for the services, reports, and other items to be delivered hereunder to Sponsor.

4.02 University shall invoice Sponsor monthly and payment in full is due thirty (30) days from date of invoice (due date). Payment shall be made by Sponsor to University at the following address:

Grants & Contracts Financial Administration  
Oklahoma State University  
P.O. Box 645  
Stillwater, OK 74076

4.03 Sponsor agrees that any amounts remaining unpaid after the due date will accrue interest on a daily basis at the rate charged on unpaid account balances by the Oklahoma State University Bursar's Office. The current rate is 1.5% per month on any unpaid balance until paid in full or an Annual Percentage Rate (APR) of 19.56% when computed from the due date.

4.04 University shall retain title to any equipment purchased by Sponsor for the Project or purchased with funds provided by Sponsor under this Agreement.

4.05 Notwithstanding anything to the contrary, in the event of early termination of this Agreement pursuant to Section 11.01 hereof, Sponsor shall pay all costs accrued by the University to date of termination, including any non-cancelable obligations.

#### 5.0 PUBLICITY (P4)

5.01 Neither party will use the name of the other party, nor of any member of the other party's Project staff, in any publicity, advertising, or news release without prior written approval of the other party. The parties agree that the required approvals set forth herein will not be unreasonably withheld.

#### 6.0 PUBLICATIONS (P3)

6.01 Sponsor recognizes that under University policy, the results of University Projects must be publishable and agrees that researchers engaged in the Project will be permitted to present at symposia, national, or regional professional meetings, and to publish in journals, theses or dissertations, or otherwise of their own choosing, methods and results of the Project, provided, however, that Sponsor shall have been furnished copies of any proposed publication or presentation at least thirty (30) calendar days in advance of the submission of such proposed publication or presentation to a journal, editor, or other third party.

6.02 Sponsor shall have thirty (30) calendar days, after receipt of said copies, to object, in writing, to such proposed presentation or proposed publication because there is patentable subject matter which needs protection. In the event that Sponsor makes such objection, said Researcher shall refrain from making such publication or presentation for a maximum of six (6) months from date of receipt of such objection in order for University to file patent application(s) with the United States Patent and Trademark Office and/or foreign patent office(s) directed to the patentable subject matter contained in the proposed publication or presentation.

#### 7.0 INTELLECTUAL PROPERTY (I5)

7.01 All rights and title to University Intellectual Property under the Project shall belong to University and shall be subject to the terms and conditions of this Agreement.

7.02 Rights to inventions, improvements, and/or discoveries, whether patentable or copyrightable or not, relating to the Project made solely by employees or agents of Sponsor shall belong to Sponsor. Such inventions, improvements, and/or discoveries shall not be subject to the terms and conditions of this Agreement, except to the provisions of Section 8 as applicable.

7.03 Neither party shall acquire any ownership interest in the other party's Background Intellectual Property by performance of this Agreement. If Background Intellectual Property is useful or essential to the practice or commercialization of the results of the Project, the parties agree to negotiate license rights to allow the practice and commercialization of the results of the Project.

7.04 University will promptly, within thirty (30) days, notify Sponsor of any University Intellectual Property conceived and/or made during the Agreement Period under the Project. If Sponsor directs within thirty (30) days of receipt of conceived Intellectual Property that a patent application or application for other intellectual property protection be filed, University shall promptly prepare, file, and prosecute such U.S. and foreign application in University's name. Sponsor shall bear all costs incurred in connection with such preparation, filing, prosecution, and maintenance of U.S. and foreign application(s) directed to said University Intellectual Property. Sponsor shall cooperate with University to assure that such application(s) will cover, to the best of Sponsor's knowledge, all items of commercial interest and importance. While University shall be responsible for making decisions regarding scope and content of application(s) to be filed and prosecution thereof, Sponsor shall be given an opportunity to review and provide input thereto. University shall keep Sponsor advised as to all developments with respect to such application(s) and shall promptly supply to Sponsor copies of all papers received and filed in connection with the prosecution thereof in sufficient time for Sponsor to comment thereon.

7.05 If Sponsor elects not to exercise its option or decides to discontinue the financial support of the prosecution or maintenance of the protection, University shall be free to file or continue prosecution or maintain any such application(s), and to maintain any protection issuing thereon in the U.S. and in any foreign country at University's sole expense.

## 8.0 GRANT OF RIGHTS (15)

8.01 If Sponsor elects to exercise its option pursuant to Section 7.04 or if Sponsor elects to incorporate University Intellectual Property in its commercial device(s), University agrees to grant to Sponsor an exclusive license with a right to sublicense on terms and conditions to be mutually agreed upon. Negotiations of the terms and conditions of such license including the execution of the license Agreement shall be completed within six (6) months of written notice to University of Sponsor's exercise of said option. Unless the parties mutually agree in writing to extend said time limitation, if said Agreement between University and Sponsor is not signed in final form before expiration of the six (6) months above, University shall be free to negotiate with other parties not a party to this Agreement provided, however, the University shall not enter into any license Agreement providing more favorable terms to said other party than those last offered by Sponsor during the period of negotiations unless Sponsor, upon being given thirty (30) days written notice, fails or refuses to execute a license Agreement containing said terms and conditions last offered by Sponsor.

8.02 Notwithstanding anything to the contrary, University shall retain, at a minimum, in any license Agreement a royalty-free, non-exclusive, non-commercial license to use the discovery and/or invention for its educational and research purposes.

8.03 University shall have the right to terminate the exclusive license upon the bankruptcy or insolvency or the appointment of a receiver of the property of Sponsor or any assignee thereof by giving written notice of such termination.

## 9.0 GOVERNMENT RIGHTS (G2)

9.01 The parties acknowledge that pursuant to 37 CFR §401, the United States government may have some rights in the inventions and discoveries under this Agreement, which rights, if applicable, would include a non-exclusive, nontransferable paid up license to practice or have practiced for or on behalf of the United States the subject invention(s) throughout the world.

## 10.0 CONFIDENTIAL INFORMATION (C2)

10.01 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.

## 11.0 TERM AND TERMINATION (T2)

11.01 This Agreement shall become effective upon the date first above written and shall continue in effect for the full duration of the Agreement Period unless sooner terminated in accordance with the provisions of this Section. 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 ninety (90) days written notice to the other.

11.02 In the event that either party shall commit any breach of or default in any of the terms or conditions of this Agreement, and also shall fail to remedy such default or breach within ninety (90) days after receipt of written notice thereof from the other party hereto, the party giving notice may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending notice of termination in writing to the other party to such effect, and such termination shall be effective as of the date of the receipt of such notice.

11.03 Termination of this Agreement by either party for any reason shall not affect the rights and obligations of the parties accrued prior to the effective date of termination of this Agreement. No termination of this Agreement, however effectuated, shall affect the parties' rights and duties or release the parties hereto from their obligations under Sections 4, 5, 6, 7, 8, 9, 10, 13, and 14.

## 12.0 INDEPENDENT CONTRACTOR (I3)

12.01 In the performance of all services hereunder:

(a) 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.

(b) 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.

### 13.0 LIABILITY AND RISK (I2)

13.01 University represents that it has statutorily prescribed liability insurance coverage for the negligent acts of its officers, employees, and agents while acting within the scope of their employment by University, and University has no liability insurance policy as such that can extend protection to any other person, including Sponsor.

13.02 Subject to the provisions of the Oklahoma Governmental Tort Claims Act, including its limits of liability and exclusions therefrom, University assumes any and all risks of personal injury and property damage attributable to the negligent acts or omission of the University, its officers, employees and agents thereof.

13.03 Sponsor hereby assumes any and all risks of personal injury and property damage attributable to the negligent acts or omissions of Sponsor, its officers, employees, and agents thereof.

13.04 Sponsor agrees to indemnify and hold harmless University and its governing Board, officers, agents, and employees from any liability, loss, or damage they may suffer as the result of claims, demands, costs, or judgments against them arising out of the activities to be carried out pursuant to this Agreement.

### 14.0 DISCLAIMER OF WARRANTIES (W2)

**14.01 UNIVERSITY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED OR EXPRESS WARRANTIES AND MAKES NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSES OF THE TECHNOLOGY OR THE PROCESS, PRODUCTS, OR SYSTEMS CONTEMPLATED BY THIS AGREEMENT.**

14.02 Sponsor agrees to indemnify and hold University, its governing Board, officers, agents, and employees harmless against any and all claims for loss, damage, or injuries in connection with or arising out of (1) use by Sponsor, its directors, employees, contractors, subcontractors, or agents or by third parties of the system, processes, or products contemplated by the Project or (2) the design, manufacture, distribution, or use of any of the systems, processes, or other products developed in connection with or arising out of the Project. Such indemnity shall include all costs and expenses, including attorneys' fees and any costs of settlement.

### 15.0 EXPORT CONTROLS (E4)

15.01 Sponsor agrees that it shall comply with any and all applicable export control laws and regulations of the United States of America.



16.0 GOVERNING LAW (G1)

16.01 This Agreement shall be governed and construed in accordance with the laws of the State of Oklahoma, notwithstanding any conflict of law provision to the contrary. The forum for any proceeding or suit in law or equity arising from or incident to this Agreement shall be located in the State of Oklahoma.

17.0 ASSIGNMENT (A4)

17.01 This Agreement shall not be assigned by either party without the prior written consent of the parties hereto.

18.0 AGREEMENT MODIFICATION (A1)

18.01 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.

19.0 ATTORNEYS' FEES (A5)

19.01 In the event that either party commences an action in law or equity to enforce any provision of this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees, reasonable costs of experts, and other costs incurred in that action or proceeding, as allowed by law, in addition to any other relief to which said party may be entitled.

20.0 SCOPE OF AGREEMENT (A2)

20.01 This Agreement embodies the entire Agreement and understanding of the parties with respect to the subject matter of this Agreement and all transactions contemplated therein and supersedes all other prior commitments, arrangements, understandings, or Agreements, both oral and written, between the parties with respect thereto. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

21.0 NOTICES (N1)

21.01 Legal notices and communications hereunder shall be deemed made if given by registered or certified mail, postage prepaid, and addressed to the party to receive such notice at the address given below, or such other address as may hereafter be designated by notice in writing.

If to Sponsor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to University: Stephen W.S. McKeever,  
Vice President For Research & Technology Transfer  
Oklahoma State University  
203 Whitehurst Hall  
Stillwater, OK 74078

21.02 Other communications, reports, inquiries regarding contractual or other general administrative matters or technical matters, should be made to the attention of:

If to Sponsor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

If to University: \_\_\_\_\_ (College Research Office)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

IN WITNESSETH WHEREOF, the authorized representative of the parties hereto have executed in duplicate this Agreement as of the day and year first above written.

**SPONSOR:** \_\_\_\_\_  
**By:** \_\_\_\_\_  
**Printed Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**OKLAHOMA STATE UNIVERSITY**

**By:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title:** Vice President for Research \_\_\_\_\_

**Date:** \_\_\_\_\_

**PRINCIPAL INVESTIGATOR'S ACKNOWLEDGEMENT (K1):**

I have read this Agreement and agree to perform my obligations as Principal Investigator(s) under this Agreement. I also understand and agree to the disposition of rights in inventions, discoveries, and other results as provided by this Agreement. I will inform students and other participants working on this research of the terms and conditions of this Agreement, especially with regard to inventions, discoveries, and publications.

**By:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**EXHIBIT B**

**Background Intellectual Property**

**University:** (if none, state none)

**Sponsor:** (if none, state none)

## 16. Penn State University

### Recital (R1):

**THIS AGREEMENT**, effective this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between The Pennsylvania State University (hereinafter referred to as "University") and \_\_\_\_\_ (hereinafter referred to as "Sponsor")

### WITNESSETH:

**WHEREAS**, University has developed a research and analysis expertise and related technologies, equipment, or facilities (hereinafter referred to as Research Services), in the areas of high energy processing, manufacturing systems analysis, drive train design and related services, which Research Services it intends to utilize in fulfillment of its role as a Land Grant University by providing special Research Services to its various constituencies, including private companies, for the benefit of the Commonwealth; and **WHEREAS**, Sponsor desires specialized assistance requiring these Research Services; and **WHEREAS**, such Research Services are currently available on a limited basis from the University at the \_\_\_\_\_, (hereinafter referred to as "Unit"); and

**WHEREAS**, Research Services contemplated by this Agreement are of mutual interest and benefit to University and Sponsor, will further the instructional, research, and public service missions of the University, and may derive benefits for both Sponsor and University through the advancement of knowledge;

**NOW, THEREFORE**, in consideration of the premises and mutual covenants herein contained, and with intent to be legally bound, the parties hereto agree to the following:

### Article 1 - Definitions

As used herein, the following terms shall have the following meanings:

1.1 "Research Service" shall mean the description of the project as described in Individual Task Orders (hereinafter referred to as "ITO") that shall be issued from time to time as necessary under this Master Agreement, and which shall become a part hereof, under the overall supervision of \_\_\_\_\_, as

Project Director (PD). ITO's shall be under the direction of a Principal Investigator (PI) as identified in the specific

ITO. ITO's shall be in the form as described in Exhibit I, attached hereto and incorporated herein.

1.2 "Program Period" is \_\_\_\_\_, through \_\_\_\_\_, or the end date of the last expiring ITO, if such date is later than \_\_\_\_\_.

### Article 2 - Research Work (S1)

2.1 University shall commence the performance of Research Service promptly after the effective date of the first ITO and shall use diligent efforts to perform such service substantially in accordance with the terms and conditions of this Agreement. Anything in this Agreement to the contrary notwithstanding, Sponsor and University may at any time amend Research Service by mutual written agreement.

2.2 In the event that the PD or a PI of an ITO becomes unable to continue the Research Service, a mutually acceptable substitute shall be selected. In the event that a suitable replacement of a PI cannot be identified, the Sponsor may terminate the ITO in accordance with Article 8.

### **Article 3 - Fiscal Considerations (P1)**

3.1 Payment shall be made upon receipt of invoices in accordance with the payment schedule of the ITO. Payment shall be made by Sponsor within 30 days of receipt of invoice.

3.2 University shall retain title to any equipment purchased with funds provided by Sponsor under this Agreement.

3.3 In the event of early termination of this Agreement or any ITO pursuant to Article 8 hereof, Sponsor shall pay all costs and non-cancelable obligations incurred by University as of the date of termination.

### **Article 4 - Reports and Publications (R3, P3)**

The University shall provide Sponsor with a written report regarding the data obtained in the course of Research Services to the extent required in the specific ITO. Said report shall be maintained as confidential pursuant to Article 5 of this Agreement. Sponsor recognizes that the results of Research Services which do not disclose Confidential Information provided hereunder may be published by University, and that the researchers engaged in project shall be free to publish these results, consistent with the obligations imposed in Article 5 of this Agreement.

### **Article 5 – Confidentiality (C2)**

University hereby agrees 1) to maintain as confidential all information obtained from Sponsor for a period of five (5) years, which is clearly marked "Confidential" and sent to the PI referred to above; and 2) maintain as confidential any data derived from and interpretation of said confidential information arising out of Research Services until Sponsor has had an opportunity to review same. Publications will be limited to new scientific information regarding the Research Services performed, and University will use reasonable efforts not to disclose proprietary processes or methods of Sponsor or the nature or composition of materials provided by Sponsor. University will provide Sponsor with thirty (30) days to review any manuscripts or proposed publications arising out of Research Services. University's obligations hereunder do not apply to information in the public domain, or independently known, or obtained by University, or required to be disclosed by law.

### **Article 6 - Intellectual Property (I5)**

6.1 Copyright to copyrightable materials, including computer software, developed under this Agreement shall vest in University with a royalty-free license to Contractor for its internal, non-commercial use. University shall grant Contractor an option to license any such materials(s) it wishes to develop for commercial purposes on reasonable terms and conditions, including a reasonable royalty, as the parties agree in a subsequent writing.

6.2 All inventions arising out of Research Services will be promptly disclosed to Sponsor. University shall not obtain or attempt to obtain patent coverage on Sponsor-provided materials or information, without the express written consent of Sponsor. All inventions, patent applications, or patents made during Research Services which name as an inventor at least one employee of The Pennsylvania State University shall be owned as follows:

- a) Inventions which involve the use of, composition of, or improvement to Sponsor-provided materials or information, or a derivative or analogue thereof shall belong to Sponsor; and
- b) Inventions which cover a scientific process, technique, procedure, medium, device or other process which is not unique to processing Sponsor's proprietary materials or does not derive from Sponsor-provided materials or information shall be owned by University. Sponsor shall be given an option to negotiate a license thereto.

**Article 7 – Publicity (P4)**

Neither party will use the name of the other in any publicity, advertising, or news release without the prior written approval of an authorized representative of the other party.

**Article 8 – Termination (T2)**

Either party may terminate this Agreement or any ITO issued hereunder upon thirty (30) days prior written notice to the other. All costs and non-cancelable obligations reasonably incurred by University at the time of said termination shall be reimbursed by Sponsor. At the request of Sponsor, all unused Sponsor-provided materials at the time of termination shall either be destroyed by University or returned to Sponsor.

**Article 9 - University Status (I3)**

9.1 In the performance of all Research Services, hereunder, University shall be deemed to be and shall be an independent contractor.

9.2 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, representation as to any matter. Neither shall be bound by the acts or conduct of the other.

**Article 10 – Warranties and Indemnity (W2, I2)**

University in no way guarantees the Research Services performed pursuant to this Agreement and makes no warranties, express or implied, regarding the quality of product produced under this Agreement. Sponsor agrees to indemnify and hold harmless University against any claims arising out of Sponsor's commercial sale or distribution of products or processes developed under this Agreement, or its reliance upon the reports set forth in Article 4.

**Article 11 – Notices (N1)**

Notices, invoices, communications, and payments hereunder shall be deemed made if given by overnight courier or by registered or certified envelope, postage prepaid, and addressed to the party to receive such notice, invoice or communication at the address given below, or such other address as may hereafter be designated by notice in writing:

If to Contractor:

Name/Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Fax: \_\_\_\_\_

Address \_\_\_\_\_ Email: \_\_\_\_\_

City/State/Zip \_\_\_\_\_

If to University:  
David Richardson, Assoc. VP for Research  
Phone: (814) 865-1372  
Office of Sponsored Programs Fax: (814) 865-3377  
The Pennsylvania State University Email: osp@psu.edu  
110 Technology Center  
University Park , PA 16802

If Payment Matters: Research Accounting Phone: (814) 865-7525  
The Pennsylvania State University Fax: (814) 865-3910401  
227 W. Beaver Avenue, Suite 401 E-mail: res-acct@psu.edu  
University Park, PA 16801-4819

If Technical Issue:

PI \_\_\_\_\_ Phone: \_\_\_\_\_  
Title \_\_\_\_\_ Fax: \_\_\_\_\_  
Campus Address \_\_\_\_\_ Email: \_\_\_\_\_  
The Pennsylvania State University  
City/State/Zip \_\_\_\_\_

Notice given pursuant to this Article shall be effective as of the day of receipt of notice.

**Article 13 - Governing Law (G1)**

This Agreement shall be governed and construed in accordance with laws of the Commonwealth of Pennsylvania.

**Article 14 – Assignment (A4)**

This Agreement shall not be assigned by University without the prior written consent of Sponsor.

**Article 15 - Agreement Modification (A3)**

Any agreement to change the terms of this Agreement in any way shall be valid only if the change is made by mutual agreement and approved in writing by an *authorized official* of each party hereto.

**Article 16 - Entire Agreement (E1)**

This Agreement represents the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes any prior and/or contemporaneous discussions, representations, or agreements, whether written or oral, of the parties regarding this matter.

**IN WITNESS WHEREOF**, the parties have caused these presents to be executed in duplicate as of the day and year first above written.

By An Authorized Official of University By An Authorized Official of Donor

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: Date: \_\_\_\_\_

*Last Updated 12/20/1999*

**EXHIBIT 1**

**INDIVIDUAL TASK ORDER (ITO)**

ITO NUMBER \_\_\_\_\_

Project: Scope of Work as Defined in Attachment A

Principal Investigator:

Period:

Funding: Shall be the fixed sum of \_\_\_\_\_ (Dollars). Payable in full upon receipt of invoice



## 17. Rochester Institute of Technology

This **SPONSORED RESEARCH AGREEMENT** is entered into by and between Rochester Institute of Technology, having a principal place of business at One Lomb Memorial Drive, Rochester, NY 14623, on behalf of its \_\_\_\_\_ (RIT) and \_\_\_\_\_, having a place of business at \_\_\_\_\_ (Sponsor).

### RECITALS (R1):

- a) RIT, through its \_\_\_\_\_, has experience, skill, and ability in the field of \_\_\_\_\_.
- b) Sponsor desires to engage RIT in a research project in accordance with the scope of work described in Appendix A (Research).
- c) Both parties agree the Research is of mutual interest and benefit and shall further the teaching, research, and/or public service missions of RIT in a manner consistent with its status as a non-profit, tax-exempt, educational institution. Both parties anticipate the Research may derive benefits for the participants and society as a whole by advancing science and engineering through discovery and development of applications.

**NOW, THEREFORE** in consideration of the premises and mutual covenants set forth in this Agreement, the parties agree as follows:

1. **Scope of Work (S1)** – RIT shall use its reasonable efforts to perform the research entitled \_\_\_\_\_ as described in Appendix A (Research). Substantive changes to the Research require prior written approval of the Sponsor.
2. **Principal Investigator (K1)** – \_\_\_\_\_ shall serve as the Principal Investigator (PI) on the Research. If for any reason s(he) is unable to continue to serve as PI, both parties shall endeavor to agree upon a successor. If the parties are unable to agree upon a successor, this Agreement shall be terminated as provided for in Paragraph 11.
3. **Period of Performance (P2)** – This Agreement is effective from \_\_\_\_\_ (Effective Date) to \_\_\_\_\_ (Expiration Date) and may be extended only by mutual written agreement of both parties.
4. **CREATE Act** - This Agreement is a “joint research agreement” as defined under the CREATE Act, 35 U.S.C. Section 103(c). Intellectual Property made in the performance of work funded under this Agreement and in the field of \_\_\_\_\_ shall be deemed made as a result of activities undertaken within the scope of the joint research agreement and subject to the CREATE Act.
5. **Fiscal Considerations –(C4, P1)**
  - a) RIT shall be paid the budget as set forth in Appendix A. Sponsor understands that the budget is a representation of the Research and that adjustments may be necessary. Adjustments that do not change the total cost of the Research shall not require Sponsor approval.
  - b) Acceptable forms of transmitting invoices shall be facsimile, email, U.S. Postal Service, or courier.  
Sponsor shall make payments to RIT according to schedule below:

c) **Invoice Date Payment Due Date Amount**

- d) Checks shall be made payable to Rochester Institute of Technology and shall be sent to the RIT contact individual indicated below. Invoices and any additional copies necessary shall be directed to the designated individual(s) below.

For Sponsor:	For RIT:
Name/Dept:	Rochester Institute of Technology
Address:	Student Financial Services 25 Lomb Memorial Drive
Telephone:	Rochester, New York 14623-5603
Facsimile:	Telephone: 585-475-6186
Email:	Facsimile: 585-475-5307

- e) For purposes of identification, each payment shall include the title of the Research project and the name of the Principal Investigator.
- f) If not otherwise specified, payment terms are net thirty (30) days. Sponsor shall pay a late charge equal to one and one-half percent (1.5%) per month on any overdue amount.
- g) RIT shall retain title to any equipment purchased with funds provided by Sponsor under this Agreement.

**6. Intellectual Property (I5)** – The purpose of this clause is to balance the needs of Sponsor to develop and commercialize products and processes with due competitive advantage with RIT’s responsibility to promote the progress of science and technology and to assure that discoveries and inventions are utilized in ways most likely to benefit the public. In addition, RIT has an obligation to utilize knowledge and technology generated from sponsored research to further the education of undergraduate and graduate students. Intellectual Property shall mean data arising from the research, copyrightable materials, inventions and/or discoveries conceived and/or reduced to practice in performance of the Research and resulting patents, divisions, continuations, or substitutions of such applications and all reissues thereof, upon which a university employee or agent is a named inventor.

- a) (*Optional; Initial to include: RIT \_\_\_\_\_ | Sponsor \_\_\_\_\_*)

If either party has Background Intellectual Property (BIP) that is necessary to perform work under this Agreement, that BIP shall be noted in Appendix A by the owner of the BIP (Discloser) to the other party (Receiver). Discloser hereby grants to Receiver the non-exclusive right to use such BIP during the term of this Agreement solely for the purpose of conducting work under this Agreement. If Receiver notifies Discloser that Receiver wishes to obtain other license rights to Discloser’s BIP and to the extent that Discloser has the legal right to grant such license request, then the parties will negotiate such a license. Such license negotiated in good faith shall cover terms and conditions including reasonable royalties.

- b) RIT and Sponsor shall promptly provide a complete written disclosure to each other of Intellectual Property made in the performance of the work funded under this Agreement. Such disclosure shall be of sufficient detail for Sponsor to assess the commercial viability of the technology or discovery. For RIT Intellectual Property, Sponsor shall, within sixty

(60) days upon receipt of such disclosure, determine whether to request RIT to file and prosecute any patent application, domestic or foreign, on the invention described in such disclosure with Sponsor paying all reasonable costs in connection therewith. Upon such request, Sponsor and RIT will use reasonable efforts to enter into an agreement defining such patenting activities and responsibilities.

- c) Ownership of any Intellectual Property made solely by RIT employee(s) or students funded under this Agreement shall vest in RIT (RIT Intellectual Property), except as provided in subparagraphs e and f below. To the extent that RIT has the legal right to do so, RIT grants Sponsor a royalty-free, non-exclusive license to use RIT Intellectual Property for internal research purposes only, and for six (6) months from disclosure of RIT Intellectual Property to Sponsor, RIT hereby grants Sponsor the first option to negotiate an exclusive or non-exclusive commercial license for the RIT Intellectual Property with the RIT Intellectual Property Management Office. Such license negotiated in good faith shall cover terms and conditions including reasonable royalties.
- d) Ownership of any intellectual property made solely by Sponsor's employee(s) shall vest in Sponsor (Sponsor Intellectual Property).
- e) Ownership of any intellectual property made jointly by Sponsor's and RIT employee(s) and/or students funded under this Agreement shall vest in both parties with no obligation to account to the other party (Joint Intellectual Property). To the extent that RIT has the legal right to do so, for six (6) months from disclosure of Joint Intellectual Property RIT hereby grants Sponsor the first option to negotiate an exclusive license for the Joint Intellectual Property with the RIT Intellectual Property Management Office. Such license negotiated in good faith shall cover terms and conditions including reasonable royalties.
- f) An agency of the U.S. Government, another research sponsor, or an individual may have certain rights in Intellectual Property funded under this Agreement. Each party shall use reasonable efforts to inform the other party of any such third party rights that impact the ownership of arising Intellectual Property.

g)

**7. Confidentiality (C2)** – Either party (Discloser) may disclose information to the other party (Receiver) under this Agreement that it identifies as confidential at the time of disclosure (Confidential Information) and that is required for the conduct of the Research, according to the following provisions:

- a) 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.
- b) 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.

- c) 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.
  - d) 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.
  - e) The parties designate the individuals below to coordinate the disclosure and/or receipt of Confidential Information:  
RIT:  
Sponsor:
  - f) The obligation to protect Confidential Information pursuant to Paragraphs 7a – 7e shall continue in effect for one (1) 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.
  - g)
- 8. Publicity (P4)** – Neither party shall use the name of the other in connection with any products, promotions, or advertising without the prior written permission of the other party.
- 9. Publication (P3)**– RIT shall have the right to release information or to publish any material resulting from the Research, except Sponsor’s Confidential Information while under the obligation of confidentiality. RIT shall furnish Sponsor with a copy of any proposed publication thirty (30) days in advance of the proposed publication date. For review and protection of the potential patentability of any intellectual property described therein, and for the deletion of any inadvertently included Sponsor Confidential Information, Sponsor may request an additional thirty (30) days’ delay. Such delay shall not, however, be imposed on the filing of any student thesis or dissertation.
- 10. Technical Reports (R3)**– RIT shall furnish Sponsor reports as listed in Appendix A.
- 11. Termination (T2)**– This Agreement may be terminated by either party at any time upon the receipt of sixty (60) days’ written notice to the other party. All costs associated with termination shall be allowable including non-cancelable commitments incurred prior to receipt of termination notice and all expenses, which have not been reimbursed to RIT by Sponsor. Any costs and commitments incurred in excess of funds provided shall be invoiced to Sponsor and shall be payable within thirty (30) days.
- 12. Notices (N1)**– Any notices given under this Agreement shall be in writing and delivered by certified, or registered return receipt mail, postage prepaid, or by facsimile addressed to the parties as follows:

For Sponsor:  
Name/Dept:  
Address:

Telephone:  
Facsimile:  
Email:

For RIT:  
Rochester Institute of Technology

141 Lomb Memorial Drive  
Rochester, New York 14623  
Telephone:  
Facsimile: 585-475-7990  
Email:

**13. No Warranty; Sponsor Indemnity; and RIT Limitation of Liability (W2, I2)**

- a) RIT MAKES NO WARRANTY, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, INFRINGEMENT AND THE DESIGN, USE, ORIGINALITY, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR ACCURACY OF THE RESEARCH OR ANY IDEA, INVENTION(S) OR PRODUCT(S), WHETHER TANGIBLE OR INTANGIBLE, CONCEIVED, DISCOVERED, OR DEVELOPED UNDER OR IN CONNECTION WITH THIS AGREEMENT.
- b) Sponsor shall indemnify and hold RIT and its trustees, officers and employees (Indemnitees) harmless from and against any claim, demand, liability, damage, loss, or expense (including reasonable attorneys' fees and expenses, whether incurred as the result of a third party claim or a claim to enforce this provision) incurred by or imposed upon any Indemnitee(s) in connection with any third party claims, suits, or judgments arising out of any theory of liability (including tort, warranty, strict liability, or other theory) and regardless whether or not such suit or claim has a factual basis, directly or indirectly arising or resulting from this Agreement, including without limitation, Sponsor's breach of any obligation hereunder, its acts or omissions, and the use of the Research or its findings.
- c) RIT shall not be liable for any indirect, special, incidental, consequential, punitive, or other damage, loss or expense incurred or suffered by Sponsor or any third party regardless of the nature of the claim therefore and even if advised of the possibility of such loss or damage. RIT's maximum liability to Sponsor related to this Agreement shall not exceed the amounts paid by Sponsor for the Research.

**14. Export Control (E4)**– 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.

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.

**15. RIT Policy on Sponsored Programs (G1)**– In addition to the terms and conditions set forth in this Agreement, all externally sponsored activities of RIT are conducted in accordance with its Oversight Policy, a campus-wide set of principles governing all publicly and privately sponsored projects at RIT. The RIT policy states that while confidentiality shall be maintained as specified in this Agreement, in all cases this Agreement’s existence, the project name, sponsoring organization’s name, funding amount, project duration, and identities of RIT project personnel shall be made available to the RIT Community. RIT faculty, staff, and students who are working on a sponsored program are informed of such sponsorship and any unique contractual requirements. The full Oversight Policy for Externally Sponsored Projects is available at [www.research.rit.edu/compliance/roc/](http://www.research.rit.edu/compliance/roc/).

**16. Miscellaneous (M1)**–

- a) **Force Majeure (F1)** – RIT shall not be liable for any failure to perform as required by this Agreement, to the extent such failure to perform is caused by any reason beyond RIT’s control, or by reason of any of the following occurrences: labor disturbances or disputes of any kind, accident, failure of any governmental approval required for full performance, civil disorder or commotion, act of aggression, terrorism or threat thereof, flood, fire, earthquake, act of God, explosion, shortage or failure of utilities, mechanical breakdown, material shortage, disease, or other similar occurrence.
- b) **Assignment (A4)**– Neither party shall assign its rights or duties under this Agreement 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 who expressly in writing assumes Sponsor’s obligations hereunder.
- c) **Independent Contractor (I3)**– RIT is an independent contractor and not an agent, joint venture, or partner of Sponsor.
- d) **Entire Agreement (E1)**– This Agreement and its appendices contain the entire agreement between the parties regarding the Research. In the 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.
- e) **Limitations Period** – Except for claims arising out of paragraph 7, neither party may bring an action arising out of this Agreement, regardless of form, more than three (3) years after the cause of action has accrued.
- f) **Survival (S3)**– Paragraphs 6-9, 13, 14 and 16 shall survive the expiration or termination of this Agreement for any reason.
- g) **Governing Law (G1)**– This Agreement shall be governed and construed pursuant to the laws of the State of New York without regard to its conflicts of law principles.

The parties have signed this Agreement as of the dates written below.

ROCHESTER INSTITUTE OF  
TECHNOLOGY

By: \_\_\_\_\_  
(Signature)

Name: .  
Title: .  
Date: .

By: \_\_\_\_\_  
(Signature)  
Name: Donald L Boyd  
Title: Vice President for Research  
Date: \_\_\_\_\_

## 18. Rutgers, The State University of New Jersey

This Research Agreement ("Agreement") is entered into as of \_\_\_\_\_ (the "Effective Date") by and between \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_, having a business office at \_\_\_\_\_ (hereafter "SPONSOR") and RUTGERS, The State University of New Jersey, a specially chartered New Jersey Educational Institution, having its principal offices in New Brunswick, New Jersey 08901-1281 (hereafter "RUTGERS").

### **Recital (R1)**

**WHEREAS**, Sponsor wishes to fund certain research at RUTGERS which is of interest and benefit to RUTGERS, will further the instructional and research objectives of RUTGERS and the public interest in a manner consistent with its status as a non-profit, tax-exempt, public, educational institution, and may derive benefits for both SPONSOR and RUTGERS by advancing knowledge through discovery and by creating new technologies through invention; **NOW, THEREFORE**, the parties mutually agree as follows:

#### **1. Scope of Work (S1)**

RUTGERS' Principal Investigator for the research program described in Attachment A conducted during the Period of Performance shown in Article 3 of this Agreement (hereinafter the "Research") is \_\_\_\_\_. The Principal Investigator shall be responsible for the direction of the Research and shall conduct the Research in accordance with the terms of this Agreement.

#### **2. Compensation (P1)**

The amount payable by SPONSOR to RUTGERS for the cost of Research is \$\_\_\_\_\_. One-half of the total amount is payable on the Effective Date. The balance is payable in equal installments at three (3) month intervals thereafter during the period described in Article 3 of this Agreement. Checks should be made payable to Rutgers, The State University of New Jersey and should identify the SPONSOR and the Principal Investigator and be sent to:

Rutgers, The State University of New Jersey  
Division of Grant and Contract Accounting  
ASB III, 3 Rutgers Plaza, 2nd Floor  
New Brunswick, New Jersey 08901-8559

RUTGERS will not be obligated to expend funds in excess of those provided under this Agreement to conduct the Research.

#### **3. Period of Performance (P2)**

Research under this Agreement will be performed during the period \_\_\_\_\_ through \_\_\_\_\_.



#### **4. Company Technical Representative (K1)**

SPONSOR shall appoint a technical or scientific representative (hereafter "SPONSOR's Technical Representative") who initially will be <company rep.>, or such other representative as SPONSOR may subsequently designate in writing.

#### **5. Communication with SPONSOR's Representatives (K1)**

During the period of this Agreement, SPONSOR's Technical Representative may have reasonable access personally or by telephone to discuss the Research informally with Principal Investigator. Access to work performed in RUTGERS laboratories and at other RUTGERS' premises in the course of the Research will be entirely under the control of RUTGERS personnel; SPONSOR's representatives are permitted to visit such laboratories and premises only during usual hours of operation as is mutually agreeable.

#### **6. Technical Reports (R3)**

The Principal Investigator may make up to two (2) oral reports each year if requested by SPONSOR. Within sixty (60) days after the expiration of this Agreement, the Principal Investigator shall submit a comprehensive final written report to SPONSOR.

#### **7. Publicity (P4)**

Neither party will use the name or trademarks of the other in any form of advertising or promotion or for any other use without the prior written approval of the other. The parties may, however, acknowledge SPONSOR's support for, and the nature of, the investigations being pursued under this Agreement. In any such statement, the relationship of the parties will be accurately and appropriately described.

#### **8. Publication (P3)**

RUTGERS has the right to copyright and publish and otherwise publicly disclose, through technical presentations or otherwise, the information and results gained in the course of the Research. In order to permit SPONSOR an opportunity to determine if patentable inventions will thereby be disclosed, the Principal Investigator will provide SPONSOR with copies of articles written by project personnel reporting on the Research prior to submission for publication. If SPONSOR wishes to request that the article be delayed so that a patent application may be filed on an invention disclosed in such article, SPONSOR shall so notify Principal Investigator and RUTGERS in writing within thirty (30) days of receipt of the proposed publication from RUTGERS.

#### **9. Intellectual Property (I5)**

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.

a) 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.

b) 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) 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).

d) **Confidential Information (C2)**

All information belonging to one party and given to the other under this Agreement shall be used only for the purposes given and shall be held in confidence by the receiving party for three (3) years after expiration of this Agreement so long as such information (i) remains unpublished by the giving party or does not otherwise become generally available in the public domain, (ii) is not lawfully received by the receiving party from a third party with the legal authority to publicly disclose it, (iii) is not independently developed by the receiving party without the benefit of such information, or (iv) is not required by law to be disclosed.

**10. Independent Contractor (I3)**

For the purposes of this Agreement and all services to be provided hereunder, each party is, and will be deemed to be, an independent contractor and not an agent or employee of the other party. Neither party shall have authority to make any statements, representations or commitments of any kind, or to take any action, which is binding on the other party, except as may be explicitly provided for herein or authorized by the other party in writing.

**11. Warranties (W2)**

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.

**12. Indemnification (I2)**

To the maximum extent permitted by law, SPONSOR hereby agrees to indemnify, defend, and hold harmless RUTGERS and its present and former officers, directors, governing board members, employees, agents, and students from any claim, loss, cost, expense, damage or liability of any kind, including reasonable attorney's fees and expenses, arising out of or connected with its participation in the Research or its use of the Intellectual Property.

Notwithstanding anything herein to the contrary, SPONSOR agrees to hold harmless, indemnify and defend RUTGERS from all claims, liabilities, demands, damages, expenses and losses (including reasonable attorney fees and expenses of litigation) arising out of the use by SPONSOR, or by any third party acting on behalf of or under authorization from SPONSOR, of any Intellectual Property subject to possible license hereunder or out of any use, sale or other disposition by SPONSOR, or by any third party acting on behalf of or under authorization from SPONSOR, including products made or developed as a result of information or materials received from RUTGERS. The provisions of this paragraph shall survive termination or expiration of this Agreement.

### **13. Governing Law (G1)**

The validity and interpretation of this Agreement and the legal relations of the parties to it will be governed by the laws of the State of New Jersey applicable to the agreements entered into, and to be fully performed, in the State of New Jersey, without regard to its conflict of laws provisions.

### **14. Assignment (A4)**

This Agreement is not assignable by either party without the prior written consent of the other party. Any and all assignments not made in accordance with this Article are void.

### **15. Term and Termination (P2, T2)**

This Agreement will expire at the end of the period specified in Article 3, unless extended or sooner terminated in accordance with the provisions of this Article. RUTGERS may terminate this Agreement immediately if circumstances beyond its control preclude continuation of the Research. In the event RUTGERS' Principal Investigator is unavailable or unable to continue direction of the Research for a period in excess of ninety (90) days, RUTGERS shall notify SPONSOR and may nominate a replacement; if RUTGERS does not nominate a replacement or if that replacement is unsatisfactory to SPONSOR, SPONSOR may terminate this Agreement upon thirty (30) days written notice and such right to terminate shall be SPONSOR's sole remedy at law or in equity.

If SPONSOR fails to meet any of its obligations under this Agreement and fails to remedy any such failure within thirty (30) days after receipt of written notice thereof, RUTGERS shall have the option of terminating this Agreement upon written notice thereof, and may terminate any licenses or negotiation rights granted to SPONSOR. In the event RUTGERS fails to meet its obligations under this Agreement and fails to remedy any such failure within thirty (30) days after receipt of written notice thereof, SPONSOR will have the option of terminating this Agreement upon written notice thereof, and such right to terminate shall be SPONSOR's sole remedy at law or in equity. Upon termination of this Agreement, SPONSOR shall reimburse RUTGERS for all reasonable expenses and uncancellable commitments incurred or committed as of the date of termination and not paid for by SPONSOR previously, provided that, other than with respect to patent costs reimbursable to RUTGERS pursuant to the terms of Article 9 herein, the cumulative reimbursement responsibility of the SPONSOR may not exceed the total amount committed for Research funding under this Agreement.

Termination or expiration of this Agreement, for reasons other than an unremedied failure to meet the material obligations under this Agreement, will not affect the rights and obligations of the parties accrued prior to termination.

**16. Agreement Modifications (A3)**

No change, modification, extension, termination, or waiver of this Agreement, or any of the provisions herein contained, shall be valid unless made in writing and signed by duly authorized representatives of the parties hereto.

**17. Title to Equipment (E3)**

RUTGERS shall retain title to all equipment and supplies purchased and/or fabricated by it with funds provided by SPONSOR under this Agreement.

**18. Notices (N1)**

Any notice or report required or permitted to be given under this Agreement shall be deemed to have been sufficiently given for all purposes if sent by first class certified or registered mail or if delivered by express delivery service to the following addresses of either party:

Office of Technology Commercialization  
Rutgers, The State University of New Jersey  
ASB III, 3 Rutgers Plaza, 3rd Floor  
New Brunswick, New Jersey 08901-8559  
ATTN: □□□□□□□□□□ Director  
and

Company Rep. Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City, State: \_\_\_\_\_

or to such other address as is hereafter furnished by written notice to the other party.

**19. Paragraph Headings**

The Article headings are provided for convenience and are not to be used in construing this Agreement.

**20. Survivorship (S3)**

The provisions of Articles 6, 7,8, 9,11, 12, 13, and 17 survive any expiration or termination of this Agreement.

**21. Insurance (I4)**

SPONSOR shall obtain and carry in full force and effect liability insurance with a reputable and established insurance company which shall protect SPONSOR and RUTGERS in regards to the events covered in Article 12 above. SPONSOR shall supply a current certificate of insurance to RUTGERS if requested.

**22. Excusable Delays (F1)**

RUTGERS will be excused from performance of the Research if a delay is caused by inclement weather, fire, flood, strike or other labor dispute, acts of God, acts of governmental officials or agencies, or any other cause beyond the control of RUTGERS. The excusable delay is allowed for the period of time affected by the delay. If a delay occurs, the parties will revise the performance period or other provisions, as appropriate.

**23. Entire Agreement (E1)**

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the Research and the Intellectual Property and supersedes and replaces any prior or contemporaneous understandings or agreements of the parties with respect to the subject matter of this Agreement.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized representatives.

\_\_\_\_\_  
By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
Date: \_\_\_\_\_

**RUTGERS, The State University of New Jersey**

By: \_\_\_\_\_  
Dipanjan Nag, Ph.D., MBA, CLP  
Executive Director, OTC  
Date: \_\_\_\_\_

Principal Investigator has reviewed this Agreement and agrees to be bound by the provisions of Articles 1, 2, 3, 6, 7, 8, 9 and 10 herein.

\_\_\_\_\_  
Principal Investigator

## **19. Syracuse University**

### **19.1. Master Agreement**

This Master Collaboration Agreement (hereinafter the “Agreement”), is entered into this \_\_\_ day of \_\_\_\_\_, 200\_\_, between \_\_\_\_\_, a New York corporation with its principal place of business being at \_\_\_\_\_, \_\_\_\_\_, NY, \_\_\_\_\_ (hereinafter “XXX”), and Syracuse University, with an office located at 113 Bowne Hall, Syracuse, NY 13244-1200 (hereinafter “SU”), individually and jointly hereinafter the “Party” or the “Parties”, respectively.

#### **WITNESSETH:**

##### **Recital (R1)**

Whereas, the Parties desire to develop a strategic alliance under which they can collaborate on multiple initiatives intended to result in the exchange of scientific and technical knowledge and expertise, and the development of new initiatives, which could potentially create new business opportunities for each Party; and

Whereas, the Parties desire to define and establish the respective rights, responsibilities, duties, obligations, of one to the other hereunder regarding the intended longer-term collaborative relationship,

NOW, THEREFORE, in consideration of these premises, for good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties hereto hereby agree as follows:

##### **1. Purpose (S1)**

The purpose of this Agreement is to establish the terms and conditions upon which the two Parties will conduct mutually agreed collaborative project initiatives and other services. No commitment is made by either Party to contract for, or to conduct, research or other services by the execution of this Agreement alone. Rather, specific mutually agreed collaborative project initiatives and other services will be set forth in a Research Project Initiative (in the form of Addendum) issued by one Party to the other.

##### **2. Term (P2)**

This Agreement shall begin on the effective date first hereinabove written, and shall continue for a period of ten (10) years, unless earlier terminated in accordance with Termination article hereunder. Specific periods of performance will be associated with each Research Project Initiative issued hereunder.

##### **3. Independent Contractor (I3)**

This Agreement shall not constitute, create nor give effect to, or otherwise imply, a joint venture, partnership or any form of formal business relationship/association of any kind. Each Party to this Agreement shall act as an independent contractor. Neither Party to this Agreement shall

have any authority nor control over the other nor shall either party have the power to bind the other Party, except to the extent specifically provided and set forth herein or as specifically set forth in any resulting Research Project Initiative(s). Nothing contained in this Agreement shall be construed as providing for the sharing of profits or losses arising from the efforts of either or both of the Parties hereto. As an independent contractor, each Party covenants with the other Party and agrees that it will not by reason hereof, make any claim, demand or application for any right or privilege applicable to an officer or employee of other Party, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

#### **4. Guarantee (S1)**

Both Parties, one to the other, agree to provide services, to conduct research and/or to provide specific deliverables as expressly set forth in any Research Project Initiative(s) which may be issued hereunder.

#### **5. Intellectual Property Rights (I5)**

**5.1 General.** Except as expressly provided for herein, including any Addenda hereto, no license, express nor implied, shall inure to the benefit of either Party under any patents, copyrights, trademarks or service marks now owned by one of the Parties or as a result of a patent being granted to one of the Parties for inventions made exclusively by its employees/agents, or copyrights vested in one of the Parties due to works of original authorship by its employees/agents.

**5.2 Inventions.** Rights to inventions, improvements, and discoveries, whether or not patentable, conceived or fixed in a tangible medium under any Research Project Initiative solely by the employees/agents of XXX shall belong to XXX (hereafter "XXX Invention"). XXX Invention(s) shall not be subject to the terms and conditions of this Agreement.

**5.3 SU Inventions.** Rights to inventions, improvements, and discoveries, whether or not patentable, conceived or fixed in a tangible medium under any Research Project Initiative solely by the employees/agents of SU shall belong to SU (hereafter "SU Invention"). XXX shall be notified of any such invention promptly after an invention disclosure is received by SU. In consideration of XXX's sponsorship, SU hereby grants to XXX a non-exclusive, transferable, irrevocable, world-wide, royalty-free license to such SU Inventions for XXX's Purposes. XXX Purposes include: (i) XXX's internal use; (ii) XXX's use in the conduct of sponsor/customer demonstrations, and; (iii) XXX's use in performance of U.S. Government sponsor/customer contracts. XXX will be provided a first right to negotiate an exclusive license under any SU Invention with royalty arrangements and contractual terms to be negotiated as early as possible.

**5.4 Joint Inventions.** Rights to inventions, improvements, and discoveries, whether or not patentable, conceived or fixed in a tangible medium under any Research Project Initiative jointly by one or more XXX employees/agents and one or more employees and/or agents of the SU, shall belong to XXX and SU jointly (hereafter "Joint Invention"). Both XXX and the University have the right to make, have made, reproduce, use, sell, and offer to sell Joint Inventions in consultation with the other party. In the event, XXX requests an exclusive ownership of the



Joint Invention, SU will negotiate an exclusive license agreement with royalty arrangements and contractual terms to be negotiated as early as possible.

**5.5 Exclusive License.** SU grants XXX the first option to negotiate, in good faith, for an exclusive royalty-bearing license to make, have made, reproduce, use, sell, and offer to sell all SU Inventions and all Joint Inventions made in the course of work under this Agreement. In the event that XXX and SU are unable to negotiate an exclusive license to XXX, within one hundred twenty (120) days from the date SU provides XXX with notification of the invention, then in that event SU will be free to enter into a non-exclusive license with anyone else under terms which are no more favorable than those offered XXX under the exclusive license.

**5.6 Federally-Funded Sponsored Research.** Notwithstanding the contents of Articles 5.1 through 5.5, each Party recognizes and acknowledges that federally-funded sponsored research is predisposed to, and conditioned upon, compliance with certain intellectual property rights as will be addressed in the federally-funded sponsored program instrument (e.g. grant, cooperative agreement, contract). And, each Party, therefore, agrees to comply with the legal and regulatory requirements dictated by any such federally-funded sponsored research which forms a basis for any Research Project Initiative conceived and/or issued hereunder.

## **6. Termination (T2)**

This Agreement shall terminate upon the expiration of the Term specified herein, unless said Term is otherwise extended by mutual agreement of the Parties, or unless earlier terminated as provided herein. This Agreement may also be terminated, by either Party, prior to the end of the Term (“Early Termination”) by the terminating Party providing written notice to the other Party of not less than thirty (30) calendar days prior to the intended date of Early Termination. Any Research Project Initiative under this Agreement shall continue in full force and effect through its individual period of performance notwithstanding the termination of this Agreement, unless terminated in accordance with the specific termination language, if any, contained in such Research Project Initiative. Termination of this Agreement, or any Research Project Initiative hereunder, shall not relieve either Party of its obligations incurred prior thereto, which by their terms or nature survives termination, including without limitation, obligations relating to use, disclosure or return of proprietary information.

## **7. Non-Disclosure Agreement (D1)**

It is recognized that in the course of performance of their respective obligations under this Agreement, the Parties may disclose information and/or data which are considered proprietary to the supplying Party and which are to be treated as proprietary by the receiving Party. Therefore, relative to the exchange and/or disclosure of proprietary information hereunder, the Parties hereto agree as follows:

**7.1** For purposes of this Agreement, the Party disclosing Proprietary Information is the “Discloser,” and the Party receiving Proprietary Information is the “Recipient.” Proprietary Information means all confidential, nonpublic information concerning the parties’ business including, but not limited to, all tangible, intangible, visual, electronic, present, or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical

information, including research, development, procedures, algorithms, data, designs, and know-how; and (d) business information, including operations, planning, marketing interests, and products. Proprietary Information disclosed to the other party must be clearly identified. Written Proprietary Information must be clearly marked in a conspicuous place with an appropriate legend identifying the information as "Proprietary Information". Proprietary Information stored in electronic form on disk, tape or other storage media must be labeled in such a fashion that the information, when accessed via computer or when printed from the computer file, will conspicuously display an appropriate legend identifying the information as Proprietary Information. Proprietary Information that is disclosed in intangible form must be identified as Proprietary Information at the time of disclosure and confirmed in writing delivered to the Recipient within 15 days following its disclosure. The protections of this Agreement will apply during those 15 days.

**7.2** The Recipient agrees to apply to all Proprietary Information disclosed in accordance with the provisions of this Agreement, the same degree of care with which it treats and protects its own proprietary information against public disclosure, but in no case less than commercially reasonable care. All such Proprietary Information shall not be disclosed without the prior written consent of the party whose data are to be disclosed. Both Parties agree that all Proprietary Information disclosed hereunder shall remain the property of the Discloser and that said Proprietary Information shall not be copied nor reproduced without the express written approval of the Discloser, except for such copies as may be reasonably required for internal evaluation purposes by those persons with the requisite "need to know". Upon written notice, all Proprietary Information shall be returned to the Discloser within thirty (30) calendar days after termination of this Agreement or such earlier date as may be prescribed by the Discloser.

**7.3** Each Party retains the right to refuse to accept any such Proprietary Information which it does not consider to be essential to performance of collaboration, or which it believes to be improperly designated.

**7.4** Neither Party shall be liable for the inadvertent or accidental disclosure of such information marked as proprietary or confidential information, if such disclosure occurs despite the exercise of diligence and reasonable care to preserve and safeguard such proprietary information. Such diligence and reasonable care shall have been afforded when the receiving party has protected the information against unauthorized disclosure to the same degree it protects its own proprietary information against unauthorized disclosure, but in no case less than commercially reasonable care.

**7.5** For the purposes of this Agreement, information shall not be considered to be Proprietary Information if such information:

- (1) Was in or passes into the public domain other than by breach of this Agreement; or
- (2) Was, and can be shown to have been, known to the Recipient without restriction prior to its receipt from the Discloser; or
- (3) Is disclosed to the Recipient without restriction by a third Party having the full right and authority to disclose; or

(4) Is independently developed by the Recipient without the use of any Proprietary Information of the Discloser; or

(5) Was or is released without restriction by the Discloser other than by breach of this Agreement; or

(6) Is information disclosed in a non-tangible form and which is not subsequently reduced to a tangible form and appropriately identified in accordance with the provisions hereunder within fifteen (15) calendar days of such oral disclosure and a copy furnished to the Recipient.

Where confidential information constitutes an aggregation of several elements, the mere availability of all of the elements separately in public domain does not, without public disclosure of their correct aggregation, place such confidential information in the public domain.

7.6 With respect to any exchange of information under the terms herein, the Parties agree that the employees listed below shall, on behalf of the respective Parties, be authorized to receive and/or transmit information hereunder. Either Party may re-designate such persons by written notice to the other party.

**XXX:**

**SU:           Gina Lee-Glauser**

7.7 Notwithstanding the termination of this Agreement, the terms and conditions under this section relative to protection of proprietary/confidential information shall survive for a period of thirty-six (36) months from the date of termination of the Agreement.

## **8. Publications (P3)**

XXX recognizes that under SU policy, the results of a project must be publishable and agrees that researchers engaged in a Research Project Initiative shall be permitted to present symposia, national, or regional professional meetings and to publish in journals, theses or dissertations, or otherwise to their own choosing, methods and results of a project, provided, however, that XXX shall have been furnished copies of any proposed publication at least thirty (30) days in advance of such proposed publication. Where practical proposed presentations shall be submitted to XXX allowing it a reasonable period of time to review the material for patentable subject matter or the inadvertent disclosure of XXX Proprietary Information (as defined above). During such review period, XXX may object to such proposed presentation or proposed publication either because there is patentable subject matter which needs protection or there is the inadvertent disclosure of XXX Information contained in the proposed publication or presentation. If XXX makes an objection because of the potential for patentable subject matter, SU agrees to delay the publication for an additional period of not more than sixty (60) days, and further agrees to aggressively prosecute a patent application for the subject invention(s). If XXX makes an objection, because of an inadvertent disclosure of XXX Proprietary Information, SU agrees to remove the XXX Proprietary Information. If XXX makes an objection on the grounds that public release of the XXX Proprietary Information could threaten XXX's competitive position, SU and XXX agree to work diligently to rewrite the publication to remove or mitigate any

portions that negatively impact the XXX's competitive position. In no event, will SU withhold publication of the non-proprietary fundamental scientific aspects of the work beyond ninety (90) days after a copy has been provided to XXX. SU hereby grants to XXX the right, **without fee**, to duplicate, publish, or reprint any report produced by the SU, but only for the internal use of XXX.

## **9. Methods of Collaboration (C1)**

This Agreement anticipates multiple marketing activities which will be jointly pursued by the Parties. If successful, such marketing activities will result in a collaborative work effort by the Parties. The method by which the Parties will conduct such collaborative work will involve this Agreement and/or other contractual vehicles. For example, some of the collaborative activities will be conducted under a U.S. federal contract/subcontract or assistance agreement/sub-assistance agreement arrangement. In such event, the rights, obligations and remedies available to each Party will be as specifically agreed to in a separate contract/subcontract arrangement and not be subject to this Agreement. In other situations it is envisioned that the Parties will pursue their collaborative efforts under this Agreement and no separate contract/subcontract will be necessary. Each such collaborative arrangement will be characterized as a "Research Project Initiative" under this Agreement and will be incorporated herein as an Addendum hereto by a modification executed between the Parties. Each Research Project Initiative will be separately and consecutively numbered and will include, as applicable, a price/cost, Statement of Work, period of performance, and the necessary additional terms and conditions applicable to said Research Project Initiative. In addition, each Research Project Initiative shall also be subject to all terms and conditions contained in this Agreement.

## **10. Collaborative Marketing Activities. (C1)**

Each Party shall bear its own costs associated with marketing and other efforts (e.g. presentations, exhibitions, potential-customer meetings, and other general marketing efforts) associated with this Agreement. Such costs will include, but are not necessarily limited to air travel or other transportation, lodging, meals, etc. Travel, lodging and other direct costs directly associated with any Initiative conducted hereunder shall be subject to the specific Research Project Initiative. The Parties agree to meet no less frequently than twice per calendar year during the Term of this Agreement to review issues relating to this Agreement, including, but not limited to, potential Research Project Initiatives, marketing strategies, Agreement administration, and Customer satisfaction.

## **11. Invoicing & Payments (P1)**

Requirements for invoicing and payments shall be specifically identified in each Research Project Initiative conducted hereunder.

## **12. Permissible Competition (A4)**

Nothing in this Agreement shall impair each Party's rights at all times to use, license, market, distribute, etc. without obligation to the other Party, its own products or services.

### **13. General Provisions (M1)**

**13.1 Arbitration (D2).** Any dispute or disagreement arising between the Parties hereto and in connection with this Agreement or any Initiative instituted hereunder which is not settled to the mutual satisfaction of the Parties within thirty (30) days (or such longer period as may be mutually agreed upon) from the date that either Party informs the other in writing that such dispute or disagreement exists, shall be settled by arbitration in Syracuse, NY in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect on the date that such notice is given. The decision of the arbitrator(s) shall be final and binding upon the Parties. Each Party shall bear the cost of preparing and presenting its case. The cost of the arbitration, including the fees and expenses of the arbitrator(s), will be shared equally by the Parties unless provided otherwise by any associated arbitration award. At the request of either Party, both Parties will instruct the Arbitrator to render a decision within forty-five (45) days of submission of the dispute for consideration.

**14.2 Enforceability.** If any part, term or provision of this Agreement shall be held void, illegal, unenforceable, or in conflict with any law of a federal, state or local government having jurisdiction over this Agreement, the validity of the remaining portions or provisions shall not be affected thereby.

**13.3 Amendments, Modifications, Waivers (W1).** 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 XXX are authorized representatives of XXX, who can legally and financially bind SU or XXX, respectively, and/or authorize any alterations, modifications or deviations from the requirements of this Agreement.

**13.4 Governing Law (G1).** This Agreement shall be governed and construed in accordance with the laws of the State of New York, excluding its rules on choice of law.

**13.5 Headings.** The article headings of this Agreement are inserted for reference only and shall not in any way effect the interpretation of this Agreement.

**13.6 Non-Assignment (A4).** Neither Party shall assign or sub-license its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

**13.7 Notice (N1).** 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.

**XXX:**

**SU:**

**Gina Lee-Glauser**

**Associate V.P. for Research**

**13.8 Order of Precedence.** In the event of any conflicts or inconsistencies between the terms and conditions of this Agreement and those included in any Addenda incorporated herein, the conflict or inconsistency shall be resolved by giving preference to the terms and conditions contained in the applicable Addenda.

**13.9 Force Majeure (F1).** Neither Party will be liable for losses, defaults, or damages under this Agreement which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this Agreement due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, strikes, civil strife, fire or any other cause beyond the reasonable control of the Party that was so delayed in performing or so unable to perform, provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such Party shall resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

**13.10 Publicity (P4).** Notwithstanding any other provisions of this Agreement, each Party will not use the name or trademark of the other Party nor of any member of the other Party's technical staff, in any publicity without the prior written approval of the other Party.

#### **14. Release of Claims**

Each Party, for good and valuable consideration received hereunder, the sufficiency of which is hereby acknowledged, does, for itself, and on behalf of its assigns and successors in interest, hereby agree to completely and forever release, remise and discharge, without monetary limitation, the other Party, and its affiliated companies, and their officers, directors, employees, assigns, and successors in interest, from any claims, actions, proceedings, liability, loss, damages, costs, or expenses, including attorneys fees, on account of death, personal injury or property damage, in any way resulting from the negligent acts or omissions of the releasing Party's employees, directors, officers or agents, arising from the performance of this Agreement.

#### **15. Entire Agreement (E1)**

This Agreement, including any Addenda attached hereto, which are hereby incorporated and made a part hereof, constitute the entire agreement between the Parties with respect to the transactions contemplated hereby and supersedes all past or contemporaneous agreements, either oral or written, relating to the subject matter hereof.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their fully authorized representatives below.

**XXX**

**Syracuse University**

**By:**

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**By:**

---

**Ben Ware, Ph.D.**

**Vice President for Research**

**Date:**

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**Date:**

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## 19.2. Sponsored Research Agreement

**THIS AGREEMENT** is entered into by and between Sponsor name (hereinafter referred to as the "Sponsor") and Syracuse University, a non-profit, educational institution having corporate powers under the laws of the State of New York (hereinafter referred to as the "University").

**(R1) 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;

**WHEREAS**, University, through the \_\_\_\_\_ Department, in the College of \_\_\_\_\_ has valuable experience, skill and ability in performing research in the area of <description>; and

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

**NOW THEREFORE**, in consideration of the premises and mutual covenants herein contained, the parties hereto agree to the following:

1. **Work**. 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. **Key Personnel (K1)**. The following individuals are identified as key personnel for the performance of the Project:

P.I. name, 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.

3. **Period of Performance (P2)**. The period of performance of this Agreement will be start date through end date.
4. **Reports (R3)**. The University shall render such reports as required by the Sponsor Principal Investigator as defined in the Scope of Work and delivered according to this schedule:

**Report type:**

**Due Date:**

**A. Interim Technical Report(s)**

**B. Final Technical Report**

**C.**



5. **Costs and Payments (C4, P1)**. (adjust to be either cost reimbursable by removing the payment schedule under 5.3 or fixed price by adding different language to 5.1)

5.1. It is agreed to and understood by the parties that the University shall be reimbursed for all costs incurred in connection with the Project up to the amount of \$amount (the "Project Cost") as established by the Approved Budget in Exhibit B which is incorporated herein. It is estimated that the amount designated as the Project Cost is sufficient to support Project expenses.

Reimbursement shall be made by Sponsor upon receipt of itemized invoices. Each invoice must reference the Sponsor account number. Invoices shall be submitted not more frequently than monthly, but must be submitted at least quarterly in accordance with the Approved Budget.

5.2. The Sponsor shall not be liable for any payment in excess of the Project Cost unless this Agreement is modified in writing. Within ninety (90) days after the termination of this Agreement the University shall submit a final financial report setting forth costs incurred. The report shall be accompanied by a check in the amount, if any, of the excess of funds advanced over costs incurred.

OR?? The final invoice must be submitted promptly following completion of the work under this agreement but in no event later than thirty (30) days (or such longer period as Sponsor may in its discretion approve in writing) from the date of such completion.

5.3. All checks shall be made payable to Syracuse University and sent to the address specified in Article 18, Notices. Payment shall be made by the Sponsor according to the following schedule.

#### **Upon execution of this Agreement**

Specified Date

#### **Check shall be made payable to Syracuse University and shall be sent to:**

Bursar's Office

Attn: Manager, Office of Sponsored Accounting

102 Archbold North

Syracuse University

Syracuse, NY 13244

**For the purposes of identification, each payment shall include the title of the Research and the name of the Principal Investigator.**

6. **Equipment (E3)**. University may be required to purchase equipment or the components thereof for its own use in connection with the Research. Title to any equipment purchased or manufactured in the performance of the Project shall vest in the University.

7. **Use of Name (P4).** Neither party shall make use of this Agreement, or use the name of the other party, nor that of any member of the other's staff, in any publicity, advertising, or news release without the prior written approval of the other party. This shall not include internal documents available to the public that identify the existence of this agreement.

**8. Publications (P3).**

8.1. The Sponsor recognizes that under University policy, the University shall have the right, at its discretion, to release information or to publish any material resulting from the Project. The University shall furnish the Sponsor with a copy of any proposed publication thirty (30) days in advance of the proposed publication date. The Sponsor may request the University to delay release of such proposed publication for a maximum of an additional thirty (30) days in order to protect Intellectual Property, or Confidential or Proprietary Data described therein. Such delay shall not be imposed on the filing of any student thesis or dissertation.

8.2. The Sponsor will be given full credit and acknowledgment for the support provided to the University in any publication resulting from the Project.

**9. Confidential Information (C2).**

9.1. "Confidential Information" shall mean that information: (1) disclosed to University by the Sponsor in connection with, and during the term of, this Agreement; and, (2) which relates to the Sponsor's past, present and future research, development and business activities; and, (3) which has been identified in writing to University at the time of disclosure as the confidential information of the Sponsor. The term Confidential Information shall not mean any information which is previously known to University without obligation of confidence, or, without breach of this Agreement, is publicly disclosed either prior or subsequent to University from a third party without an obligation of confidence.

9.2. For a period of three (3) years, University agrees to hold all Sponsor Confidential Information in trust and confidence for the Sponsor and not to use such Confidential Information other than for the purpose of this Agreement. Except as may be authorized by Sponsor in writing, for such period of time, University agrees not to disclose any Sponsor Confidential Information, by publication or otherwise, to any person other than those persons whose services University requires and who have a need to know the Sponsor's Confidential Information for purposes of carrying out the terms of this Agreement, and who agree in writing to be bound by, and comply with the provisions of this Article 7.

9.3. University shall not be responsible for disclosure of Confidential Information by employees of University after termination of their employment if University takes reasonable steps to prevent Confidential Information disclosure violations.

9.4. University retains the right to refuse to accept any such Confidential Information which it does not consider to be essential to performance of research pursuant to this agreement, or which it believes to be improperly designated.

## **10. Intellectual Property (I5).**

- 10.1. Except as expressly provided for herein, including any Addenda hereto, no license, express nor implied, shall inure to the benefit of either Party under any patents, copyrights, trademarks or service marks now owned by one of the Parties or as a result of a patent being granted to one of the Parties for inventions made exclusively by its employees/agents, or copyrights vested in one of the Parties due to works of original authorship by its employees/agents
- 10.2. "Intellectual Property" shall mean individually and collectively all inventions, improvements and/or discoveries, including deliverable software, if any, which are conceived and first reduced to practice in the performance of the Project.
- 10.3. "Sponsor Intellectual Property" shall mean Intellectual Property conceived and first reduced to practice solely by one or more employees of the Sponsor. Rights to inventions, improvements, and discoveries, whether or not patentable, conceived or fixed in a tangible medium under this Research Project Initiative solely by the employees/agents of Sponsor shall belong to Sponsor (hereafter "Sponsor Invention"). Sponsor Invention(s) shall not be subject to the terms and conditions of this Agreement.
- 10.3.1. All rights and title to Sponsor Intellectual Property shall vest in the Sponsor.
- 10.4. "University Intellectual Property" shall mean Intellectual Property conceived and first reduced to practice solely by one or more employees of the University. Rights to inventions, improvements, and discoveries, whether or not patentable, conceived or fixed in a tangible medium under this Research Project Initiative solely by the employees/agents of University shall belong to University (hereafter "University Invention"). Sponsor shall be notified of any such invention promptly after an invention disclosure is received by University. In consideration of Sponsor's sponsorship, University hereby grants to Sponsor a non-exclusive, transferable, irrevocable, world-wide, royalty-free license to such University Inventions for Sponsor's Purposes. Sponsor Purposes include: (i) Sponsor's internal use; (ii) Sponsor's use in the conduct of sponsor/customer demonstrations, and; (iii) Sponsor's use in performance of U.S. Government sponsor/customer contracts. Sponsor will be provided a first right to negotiate an exclusive license under any University Invention with royalty arrangements and contractual terms to be negotiated as early as possible.
- 10.4.1. All rights and title to University Intellectual Property shall vest in the University.
- 10.5. "Jointly Owned Intellectual Property" shall mean Intellectual Property conceived and first reduced to practice jointly by one or more employees of the University and by one or more employees of the Sponsor. Rights to inventions, improvements, and discoveries, whether or not patentable, conceived or fixed in a tangible medium under any Research Project Initiative jointly by one or more Sponsor employees/agents and one or more employees and/or agents of the University, shall belong to Sponsor and University jointly (hereafter "Joint Invention"). Both Sponsor and the University **have** the right to make, have made, reproduce, use, sell, and offer to sell Joint Inventions in

consultation with the other party. In the event, Sponsor requests an exclusive ownership of the Joint Invention, University will negotiate an exclusive license agreement with royalty arrangements and contractual terms to be negotiated as early as possible.

10.5. All rights and title to Jointly Owned Intellectual Property shall vest jointly in the University and in the Sponsor.

10.7 Federally-Funded Sponsored Research. Notwithstanding the contents of Articles 10.1 through 10.6, each Party recognizes and acknowledges that federally-funded sponsored research is predisposed to, and conditioned upon, compliance with certain intellectual property rights as will be addressed in the federally-funded sponsored program instrument (e.g. grant, cooperative agreement, contract). And, each Party, therefore, agrees to comply with the legal and regulatory requirements dictated by any such federally-funded sponsored research which forms a basis for any Research Project Initiative conceived and/or is used hereunder.

**11. Termination for Convenience (T2)**. This Agreement may be terminated at any time by either party giving the other party at least thirty (30) days written notice of termination. In the event of termination, the University will be reimbursed for all expenses incurred and non-cancelable commitments entered in accordance with the terms of this Agreement prior to the date of termination. In no event shall the liability of the Sponsor exceed the Project Cost.

**12. Independent Contractor (I3)**.

12.1 In the performance of the Project the University shall be deemed to be and shall be an independent contractor and, as such, the University shall not be entitled to any benefits applicable to employees of the Sponsor.

12.2 Neither party is authorized or empowered to act as an 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.

**13. Insurance (I4)**.

13.1 The University warrants and represents that the University has adequate liability insurance, such protection being applicable to officers, employees, and agents while acting within the scope of their employment by the University, and that the University has no liability protection for any other person.

13.2 Each party hereby assumes any and all risks of personal injury and property damage attributable to the negligent acts of that party and the officers, employees, and agents thereof.

**14. Export Controls (E4)**. 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.

**15. Force Majeure (F1).** 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.

**16. Governing Law (G1).** 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.

**17. Assignment (A4).** This Agreement shall not be assigned by either party without the prior written consent of the other party.

**18. Agreement Modification (A3).** 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.

**19. Notices (N1).** Notices, invoices, communications, and payments hereunder shall be deemed made if given by registered or certified envelope, postage prepaid and addressed to the party to receive such notice, invoice, or communication at the address given below or such other address as may hereafter be designated by notice in writing.

**If to the Sponsor:**

**Contractual:**

**Technical:**

**If to the University:**

**Contractual: Office of Sponsored Programs**

**113 Bowne Hall  
Syracuse University  
Syracuse, NY 13244**

**Payments:** Syracuse University  
Bursar's Office  
Attn: Manager, Sponsored Accounting  
102 Archbold North  
Syracuse, NY 13244-5300

**20. Special Provisions.** Intentionally left blank.

**21. Survivability (S3).** The obligations set forth in Articles 7, 8, and 11 shall survive the expiration or termination of this Agreement.

This Agreement is the complete agreement of the Sponsor and University and supersedes all prior understandings regarding the Project.

IN WITNESS WHEREOF, the parties have caused these presents to be executed in duplicate on the dates indicated below.

***DO WE WANT TO LEAVE THIS LANGUAGE FOR USAGE IF NECESSARY?***

*For research activities involving human subjects (H1):* The University represents that research involving human participants is and will be conducted in accordance with institutional policies under its federal-wide assurance; these policies are in compliance with federal regulations (45CFR56).

If participants in the human subject research conducted by the UNIVERSITY might be injured as part of the research, the UNIVERSITY agrees to inform the participant that the participant will be responsible to pay for the medical care for research-related injury. Should the UNIVERSITY, through its ongoing monitoring of human subject research or through the results of the research, discover findings that could affect the safety of participants or their willingness to continue participation, influence the conduct of the study, or alter the IRB's approval to continue the study (e.g., serious non-compliance), the UNIVERSITY agrees to promptly report these findings to SPONSOR and the SPONSOR's technical contact. Should SPONSOR, through its ongoing monitoring of human subject research or through the results of the research, discover findings that could affect the safety of participants or their willingness to continue participation, influence the conduct of the study, or alter the IRB's approval to continue the study (e.g., serious non-compliance), the SPONSOR agrees to promptly report these findings to UNIVERSITY and the UNIVERSITY's principal investigator, and Office of Sponsored Programs.

## 20. Thomas Jefferson University

This Agreement is entered into by and between Thomas Jefferson University, a Pennsylvania non-profit corporation through its Department of \_\_\_\_\_, with an address at Office of Research Administration, 201 S. 11th Street, Suite 303 Martin Building, Philadelphia, PA 19107, hereinafter called "Institution," and \_\_\_\_\_ a corporation with its principal office and place of business at \_\_\_\_\_, hereinafter called "Sponsor."

### **Background**

This Agreement is effective as of the day of , 20 ("Effective Date").

### **Recitals (R1)**

Institution and Sponsor are entering into this Agreement since Sponsor desires to fund the research of Dr. of Institution's Department of in certain specific areas. Sponsor desires to support such research conducted by Institution in accordance with the terms and conditions of this Agreement. The research program contemplated by this Agreement is of mutual interest to Sponsor and Institution and furthers the educational, scholarship and research objectives of Institution as a nonprofit, tax-exempt, educational institution, and may benefit both Sponsor and Institution through the creation or discovery of new inventions.

In consideration of the promises and mutual covenants contained herein, and intending to be legally bound hereby, the parties hereto agree as follows:

### **ARTICLE 1. DEFINITIONS**

#### 1.1

Institution Intellectual Property means all inventions whether patentable or not conceived and reduced to practice by employees or agents of Institution in the conduct of the Sponsored Research during the term of this Agreement, including all United States and foreign patent applications claiming said patentable inventions, including any divisional, continuation, continuation-in-part (to the extent that the claims are directed to said patentable inventions), and foreign equivalents thereof, as well as any patents issued thereon or reissues or reexaminations thereof. Institution Intellectual Property also includes all significant copyrightable software created by employees or agents of Institution in the conduct of the Sponsored Research during the term of this Agreement.

#### 1.2

Sponsor Intellectual Property means all inventions whether patentable or not conceived and reduced to practice by employees or agents of Sponsor in the conduct of the Sponsored Research during the term of this Agreement, including all United States and foreign patent applications claiming said patentable inventions, including any divisional, continuation, continuation-in-part (to the extent that the claims are directed to said patentable inventions), and foreign equivalents thereof, as well as any patents issued thereon or reissues or reexaminations thereof. Sponsor Intellectual Property also includes

all significant copyrightable software created by employees or agents of Sponsor in the conduct of the Sponsored Research during the term of this Agreement.

### 1.3

Joint Intellectual Property means all inventions whether patentable or not conceived and reduced to practice jointly by employees or agents of Institution and employees or agents of Sponsor in the conduct of the Sponsored Research during the term of this Agreement, including all United States and foreign patent applications claiming said patentable inventions, including any divisional, continuation, continuation-in-part (to the extent that the claims are directed to said patentable inventions), and foreign equivalents thereof, as well as any patents issued thereon or reissues or reexaminations thereof. Joint Intellectual Property also includes all significant copyrightable software created by employees or agents of Institution and employees or agents of Sponsor in the conduct of the Sponsored Research during the term of this Agreement.

Inventorship on all inventions and discoveries made in the performance of the Sponsored Research shall be determined in accordance with United States patent law, and ownership shall follow inventorship.

Principal Investigator means (name of faculty member), an employee of Institution who has agreed to serve as faculty investigator for the Sponsored Research and shall be responsible for the conduct, supervision and administration of the Sponsored Research.

Research Results means all data and information that are generated in the performance of the Sponsored Research during the term of this Agreement. . In the event that Research Results are generated using Sponsor's instruments at Institution, Institution shall at the same time receive a digital copy of the recorded data. Research Results does not include any patentable inventions, copyrighted or copyrightable works, or trademarks or service marks, or other intellectual property based on the Research Results. Institution retains all right, title, and ownership to research notebooks. Research Results expressly excludes Institution Intellectual Property.

1.4 Sponsored Research means the research program described in Attachment A to this Agreement.

## **ARTICLE 2. SPONSORED RESEARCH (S1)**

### 2.1

Institution shall commence the Sponsored Research after the Effective Date of this Agreement and upon payment by Sponsor of any initial payments due to Institution if any such payments are described in Attachment A. Institution shall use good faith efforts to conduct such Sponsored Research substantially in accordance with the terms and conditions of this Agreement. Sponsor acknowledges that Institution and the Principal Investigator shall have the freedom to conduct and supervise the Sponsored Research in a manner consistent with Institution's educational and research missions.



2.2

This Agreement is contingent on the Principal Investigator successfully obtaining IACUC approval if applicable to the Protocol and/or scope of project work, and complying with all Institutional IACUC, Public Health Service Humane Animal Care and Animal Welfare Act policies. If IACUC approval is required, work shall not begin until such time as all IACUC requirements are fully met.

2.3

If the services of the Principal Investigator become unavailable to Institution for any reason, Institution shall be entitled to designate another member of its faculty who is acceptable to Sponsor to serve as the Principal Investigator of the Sponsored Research. Either party will not unreasonably withhold approval of the replacement investigator. If a substitute Principal Investigator has not been designated within sixty (60) days after the original Principal Investigator ceases his or her services under this Agreement, either party may terminate this Agreement upon written notice thereof to the other party, subject to the provisions of ARTICLE 15.

**ARTICLE 3. TERM OF AGREEMENT (S1)**

3.1

The initial term of this Agreement shall begin on the Effective Date of this Agreement and shall end on unless terminated sooner pursuant to ARTICLES 2 or 15 hereof. This Agreement may be extended or renewed only by mutual written Agreement executed by duly authorized representatives of the parties.

**ARTICLE 4. REIMBURSEMENT OF COSTS, PAYMENT (C4, P1)**

4.1

Sponsor shall reimburse Institution for all direct and indirect costs incurred in the conduct of the Sponsored Research in an amount not to exceed the total amount of \$ 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 \$ unless it has agreed in writing to provide additional funds.

4.2 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 "Thomas Jefferson University", and sent to: Thomas Jefferson University Department administrator - [Fill in name and address]

\_\_\_\_\_  
\_\_\_\_\_

4.3

Title to any equipment, laboratory animals, or any other materials made or acquired with funds provided under this Agreement shall vest in Institution, and such equipment,

animals, or materials shall remain the property of Institution following termination of this Agreement. Institution retains ownership of all research notebooks.

## **ARTICLE 5. RECORDS AND REPORTS (R3, R2)**

### **5.1**

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.

### **5.2**

Institution shall maintain records of the use of the funds provided by Sponsor and shall make such records available to Sponsor upon reasonable advance notice during Institution's normal business hours, but not more frequently than once after each anniversary of the Effective Date.

## **ARTICLE 6. SPONSOR'S RIGHTS IN RESEARCH RESULTS AND REPORTS (R3)**

### **6.1**

Sponsor shall have the right to use Research Results disclosed to Sponsor in records and reports for any reasonable purpose. Sponsor shall need to obtain a license from Institution to use Research Results if such use would infringe any copyright or any claim of a patent application or issued patent owned by Institution.

Institution and the Principal Investigator hereby grant Sponsor a non-transferable, non-exclusive, royalty-free right to copy, reproduce and distribute any research reports furnished to Sponsor under this Agreement. Sponsor may not charge fees for said research reports, use said research reports for advertising or promotional activities, or alter or modify said research reports without the prior written permission of Institution.

## **ARTICLE 7. INTELLECTUAL PROPERTY (I5)**

### **7.1 Research Results**

Institution retains ownership of all data, data analysis, test results, laboratory notes and notebooks, techniques, progress reports, and any other results (collectively "Research Results") that are obtained in Institution's performance of the Sponsored Research. Institution shall grant Sponsor a non-exclusive, royalty-free, worldwide, non-transferable, non-sublicensable license to use Research Results. Sponsor shall consult with Institution's OTT for a license to use Research Results that support patentable Institution Inventions or Joint Inventions or copyrighted or copyrightable works of the Institution, as defined under Inventions.

### **7.2 Inventions and Invention Disclosure**

Inventions as referenced herein shall include any improvement, new use or indication, modification, discovery, method or process, tangible research material, development, know-how, design or product, and other intellectual property related thereto, whether patentable or not, that is discovered, made or conceived in the performance of the Sponsored Research.

Inventions shall include, but not be limited to, all United States and foreign patent applications claiming said patentable Inventions, including any divisional, continuation, continuation-in-part (to the extent that the claims are directed to said patentable Inventions), and foreign equivalents thereof, as well as any patents issued thereon or reissues or reexaminations thereof. Inventions shall also include all significant copyrightable software created in the conduct of the Sponsored Research during the term of this Agreement. Inventorship on Inventions, whether patentable or not, that are conceived and/or reduced to practice in the performance of the Sponsored Research shall be determined in accordance with the principles of United States patent law and ownership shall follow inventorship. Employees of Institution have an obligation to assign their intellectual property rights to Institution.

Inventions conceived and/or reduced to practice solely by Institution employees in the performance of the Sponsored Research shall belong to Institution (“Institution Inventions”). Institution shall retain all right, title and interest in and to the Institution Inventions. Inventions conceived and/or reduced to practice solely by Sponsor employees in the performance of the Sponsored Research shall belong to Sponsor (“Sponsor Inventions”). Sponsor shall retain all right, title and interest in and to the Sponsor Inventions.

Inventions conceived and/or reduced to practice jointly by Institution employees and by Sponsor employees in the performance of the Sponsored Research shall belong jointly to Institution and Sponsor (“Joint Inventions”). Institution and Sponsor shall have an undivided, half interest in and to the Joint Inventions.

Institution’s Office of Technology Transfer and Business Development (OTT) shall promptly notify Sponsor upon receipt of an invention disclosure on an Institution Invention or a Joint Invention.

### 7.3 Patent Prosecution

Sponsor shall advise Institution in writing, no later than sixty (60) days following notification of an invention disclosure by Institution’s OTT, whether it requests Institution to file and prosecute patent applications on such Institution Invention or Joint Invention at Sponsor’s expense. If Sponsor does not request Institution to file and prosecute such patent applications within 60 days following notification of the invention disclosure, Institution may at its discretion proceed with such preparation and prosecution at its own cost and expense; but such patent applications shall be excluded from Sponsor's option described below.

Institution shall control the preparation and prosecution of all patent applications and the maintenance of all patents related to such Institution Invention or Joint Invention. With regard to any patent applications filed at the written request and expense of Sponsor, Institution will consult with Sponsor on patent prosecution, and Sponsor shall have the opportunity to provide comment, in a timely manner, on such patent prosecution and maintenance. Sponsor shall reimburse Institution within thirty (30) days 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 Institution to prosecute.

#### 7.4 Licenses and Options

Upon Institution's OTT notifying Sponsor of an invention disclosure on an Institution Invention or a Joint Invention, and to the extent owned and controlled by Institution and available for licensing, Institution shall grant Sponsor (i) a non-exclusive, worldwide, royalty-free, non-commercial, internal research license and (ii) a sixty (60) day option (the "Option Period") to negotiate an exclusive, worldwide, royalty-bearing, fully sublicensable license to the Institution Invention or Institution's rights in the Joint Invention. Sponsor shall exercise the option by written notification to Institution's OTT prior to the expiration of the 60 day Option Period and the parties shall then commence good faith negotiation, not to exceed six (6) months (the "Negotiation Period") from the date Institution receives Sponsor's written notification exercising the option, to determine the terms of an exclusive commercial license agreement. If Sponsor does not exercise the option, or if Sponsor and Institution fail to execute an exclusive license agreement within three (3) months following the expiration of the Negotiation Period, Institution shall be free to license the Institution Invention or Institution's rights in Joint Inventions to any party upon such terms as Institution deems appropriate.

Upon exercising the option, Sponsor shall be responsible for patent expenses that it has requested Institution to file on the Institution Invention or Joint Invention during the Option Period, Negotiation Period, and the 3 months following the expiration of the Negotiation Period when both parties are in the process of executing the exclusive license agreement.

Any license granted to Sponsor shall be subject to Institution's right to use and permit other non-profit organizations to use Institution Inventions and Joint Inventions for educational and research purposes and, if applicable, to the rights of the United States government reserved under Public Laws 96-517, 97-256 and 98-620, codified at 35 U.S.C. 200-212, and any regulations issued thereunder.

### **ARTICLE 8. CONFIDENTIALITY (C2)**

#### **8.1**

All information supplied by Institution to Sponsor, including, but not limited to, the Protocol/Research Plan/Scope of Work, Investigator projects and Institution operations are considered confidential and shall remain the sole property of the Institution ("Institution Confidential Information"). Sponsor shall not disclose confidential information ("Sponsor Confidential Information") to the Institution unless it is necessary to the Study. Institution shall protect Sponsor Confidential Information with the same degree of care as Institution protects its own confidential information. Sponsor Confidential Information and Institution Confidential Information shall hereinafter be collectively referred to as "Confidential Information"

## 8.2

All such information in order to be considered Confidential Information must be appropriately marked, treated, and/or disclosed as confidential by the disclosing parties. “Both parties retain the right to refuse to accept any Confidential Information that they do not consider to be essential to the performance of the Study/Research.

## 8.3

Both during and after the term of this Agreement, both Sponsor and Institution shall use diligent efforts to maintain in confidence and use the Confidential Information only for the purposes contemplated in this Agreement. For the purposes of this Section, “receiving party” shall be defined as either party that is in receipt of Confidential Information.

8.4 Notwithstanding anything to the contrary contained in this Agreement or the markings on any document disclosed by the parties, Confidential Information does not include information that:

(a) is reasonably required by scientific standards for publication of the Study results, or any information that is necessary for other scholars to verify the results of the Study;

(b) is in the public domain at the time either party discloses it to the receiving party or that thereafter enters the public domain through no fault of receiving party;

(c) was known to receiving party before the date of receipt, or that becomes known to receiving party through a third party having an apparent bona fide right to disclose the information, as evidenced by contemporaneous written records;

(d) is independently developed by the receiving party, as evidenced by competent evidence

(e) is disclosed by receiving party in accordance with the terms of the other party’s written approval;

(f) is required to be disclosed for compliance with any Federal, state or local law or regulation, or required to be disclosed by a court of law or government authority.

Notwithstanding the foregoing, Sponsor shall cooperate and authorize release of data, which is the subject of this Study, to Institution’s internal committees as required by accrediting agencies or other governmental agencies. If required to report such data to any governmental authority or agency, Institution shall use its best efforts to maintain the confidentiality of such data.

8.6 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 Information 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.

8.7 Institution may maintain copies of Sponsor's Confidential Information for non-commercial, archival purposes.

8.8. The provisions of this Article 8 shall survive the termination or expiration of this Agreement for a period of five (5) years.

#### **ARTICLE 9: PUBLICATIONS (P3)**

The Principal Investigator and Institution shall be free to publish and present the Research Results with certain provisions.

i.

At least thirty (30) days prior to submitting a manuscript or abstract for publication or presentation Principal Investigator will submit to Sponsor a copy of the abstract, manuscript or presentation for review and comment. Sponsor shall have thirty (30) days to review and respond to Institution with comments. Sponsor's comments will be given due consideration by Principal Investigator, but Sponsor shall have no editorial control over the content. In addition, Principal Investigator shall delay any proposed publication/presentation an additional sixty (60) days in the event Sponsor so requests in writing to enable Sponsor to secure patent or other proprietary protection of any of Sponsor's inventions or discoveries disclosed in such publication/presentation.

ii.

Any such publication or presentation shall acknowledge, as appropriate, the contribution of Sponsor, its employees, agents and representatives.

#### **ARTICLE 10. DISCLAIMER OF WARRANTIES (W2)**

10.1 INSTITUTION MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES WITH RESPECT TO THE CONDUCT, COMPLETION, SUCCESS OR PARTICULAR RESULTS OF THE SPONSORED RESEARCH, OR THE CONDITION, OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE SPONSORED RESEARCH OR ANY INSTITUTION INTELLECTUAL PROPERTY OR RESEARCH RESULTS OR THAT USE OF THE INSTITUTION INTELLECTUAL PROPERTY OR RESEARCH RESULTS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT OF A THIRD PARTY. INSTITUTION SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES SUFFERED BY SPONSOR OR ANY OTHER PERSON RESULTING FROM THE SPONSORED RESEARCH OR THE USE OF ANY INSTITUTION INTELLECTUAL PROPERTY, ANY RESEARCH RESULTS OR ANY PRODUCTS RESULTING THEREFROM.

#### **ARTICLE 11. USE OF THE INSTITUTION'S OR SPONSOR'S NAME (P4)**

The Institution and the Sponsor will obtain prior written permission from each other before using the name, symbols and/or marks or logotypes of the other in any form of publicity in connection with the Sponsored Research. This shall not include legally

required disclosure by the Institution or Sponsor that identifies the existence of the Agreement. Further, Sponsor's use of the name, symbols and/or marks or logotypes of Institution, or names of Institution's employees, shall be limited to identification of Institution as the Sponsored Research site and the Sponsored Research staff as participants in the Sponsored Research. Notwithstanding the forgoing, Institution may disclose the title of the Sponsored Research, the funding amount and the identity of Sponsor in federal grant applications or to fulfill internal reporting requirements.

**ARTICLE 12. NOTICE (N1)**

Any notice shall be sent to the following addresses, with a copy also sent to the designated facsimile number. Notice shall be effective on the date of receipt.

Institution: Thomas Jefferson University

Office of Research Administration

201 S. 11th Street

Suite 303 Martin Building

Philadelphia, PA 19107

Attention: Director

FAX: 215-503-2365

With a copy to

Principal Investigator:

Sponsor:

**ARTICLE 13. INDEMNIFICATION (I2)**

Sponsor agrees to indemnify, defend and hold harmless the Institution, its trustees, officers, staff, agents, and employees and/or Principal Investigator from any and all liabilities for personal injury (including death) or property damage arising out of or in connection with performance of the Sponsored Research.

A. The obligation of indemnification under this section shall not apply to the extent that liabilities are caused by the negligence or willful misconduct of the Principal Investigator or any other employee of Institution.

B. Institution must promptly notify Sponsor of any claim or suit against any party to be indemnified hereunder, must allow Sponsor to have full control of any disposition or settlement of such claim or suit, and must fully cooperate with Sponsor regarding such disposition or settlement, provided, however, that Institution's consent shall be required for any settlement, such consent not to be unreasonably withheld.

C. Sponsor shall not dispose or settle any claim admitting liability on the part of the Institution without Institution's prior consent.

**ARTICLE 14. INSURANCE (I4)**

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.

**ARTICLE 15. TERMINATION (T2)**

A. This Agreement may be terminated by either party for any reason upon thirty (30) days prior written notice.

B. Upon the effective date of expiration or termination, there shall be an accounting conducted by the Institution. Within thirty (30) days after receipt of the final accounting for the Sponsored Research, Sponsor will make payment to the Institution for:

i.

All services rendered and monies expended by the Institution until the date of termination not yet paid for; and

ii.

Non-cancelable obligations, including any costs associated with termination, incurred for the Sponsored Research by the Institution prior to the effective date of termination.

C. Termination of this Agreement by either party shall not affect the rights and obligations of the parties accrued prior to the effective date of the termination. The rights and duties under ARTICLES 4, 7, 8, 9, 10, 11, 12, 13, 14, 16 and 27 shall survive the termination or expiration of this Agreement.

**ARTICLE 16. APPLICABLE LAW (G1)**

This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, without regard to its principles of conflict of law. Parties agree that disputes will be resolved by arbitration in the Commonwealth of Pennsylvania as provided by Article 27.

**ARTICLE 17. NO AGENCY (I3)**

The parties, in rendering performance under this Agreement, are each acting and shall act solely as independent contractors. Neither party shall undertake by this Agreement or otherwise to perform any obligation of the other party, whether by regulation or contract. In no way shall either party be construed as the agent or to be acting as the agent of the other party in any respect, any other provisions of this Agreement notwithstanding. Neither party shall enter into any Agreement or incur any obligations on behalf of the other party, nor commit the other party in any manner without such party's prior written consent. Neither party shall be deemed an employee of the other for the purposes of any employee benefit programs, income tax withholding, FICA taxes, unemployment benefits, or otherwise.

**ARTICLE 18. NO ASSIGNMENT (A4)**

Neither party to this Agreement may, without the prior written consent of the non-assigning party, assign, transfer, subcontract, or sublicense this Agreement or any obligation hereunder. Any attempt to do so in contravention of the Paragraph shall be void and of no force and effect.



**ARTICLE 19. FORCE MAJEURE (F1)**

Neither party shall be liable for any failure to perform as required by this Agreement to the extent such failure to perform is due to circumstances reasonably beyond such party's control, including, without limitation, labor disturbances or labor disputes of any kind, accident, failure of any governmental approval required for full performance, civil disorders or commotions, acts of aggression, acts of God, energy or other conservation measures imposed by law or regulation, explosions, failure of utilities, mechanical breakdowns, material shortages, disease, or other such occurrence.

**ARTICLE 20. DEBARMENT (K1)**

Institution will not use in any capacity the services of any individual, corporation, partnership or association which:

(1)

has been debarred under 21 U.S.C. 335a

(2)

disqualified as a clinical investigator under the provision of 21 C.F.R. 312.70.

In the event that Institution becomes aware of the debarment or disqualification of any such individual, corporation, partnership or association providing services under this Agreement, Institution shall notify Sponsor.

**ARTICLE 21. MULTIPLE COUNTERPARTS (A2)**

This Agreement may be executed in one or more counterparts, all of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument.

**ARTICLE 22. SECTION HEADINGS: EXHIBITS**

The section and subsection headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. The exhibits referred to herein and attached hereto, or to be attached hereto, are incorporated herein to the same extent as if set forth in full herein.

**ARTICLE 23. NEUTRAL CONSTRUCTION (A2)**

The parties to this Agreement agree that this Agreement was negotiated fairly between them at arm's length and that the final terms of this Agreement are the product of the parties' negotiations. Each party warrants and represents that it has sought and received legal counsel of its own choosing with regard to the contents of this Agreement and the rights and obligations affected hereby. The parties agree that this Agreement shall be deemed to have been jointly and equally drafted by them, and that the provisions of this Agreement therefore should not be construed against a party or parties on the grounds that the party or parties drafted or was more responsible for drafting the provision(s).

**ARTICLE 24. NO WAIVER (W1)**

No delay or omission by either party hereto to exercise any right or power occurring upon any noncompliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof.

The terms and conditions of this Agreement may be waived or amended only in writing and only by the party that is entitled to the benefits of the term(s) or condition(s) being waived or amended. A waiver by either of the parties hereto of any of the covenants, conditions, or Agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition, or Agreement herein contained (whether or not the provision is similar). Unless stated otherwise, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity, or otherwise.

**ARTICLE 25. UNENFORCEABILITY (A1)**

If any provision of this Agreement or any word, phrase, clause, sentence, or other portion thereof should be held to be unenforceable or invalid for any reason, then provided that the essential consideration for entering into this Agreement on the part of any party is not unreasonably impaired, such provision or portion thereof shall be modified or deleted in such manner as to render this Agreement as modified legal and enforceable to the maximum extent permitted under applicable laws.

**ARTICLE 26. ENTIRE AGREEMENT (E1)**

Each party to this Agreement acknowledges that this Agreement constitutes the entire Agreement of the parties with regard to the subject matters addressed in this Agreement, that this Agreement supersedes all prior or contemporaneous Agreements, discussions, or representations, whether oral or written, with respect to the subject matter of this Agreement, and that this Agreement cannot be varied, amended, changed, waived, or discharged except by a writing signed by all parties hereto. Each party to this Agreement further acknowledges that no promises, representations, inducements, Agreements, or warranties, other than those set forth herein, have been made to induce the execution of this Agreement by said party, and each party acknowledges that it has not executed this Agreement in reliance on any promise, representation, inducement, or warranty not contained herein.

**ARTICLE 27. AUTHORITY TO ENTER INTO AGREEMENT (A2)**

The parties and their representatives signing this Agreement hereby acknowledge and represent that the representatives signing this Agreement are duly authorized agents of the parties hereto and are authorized and have full authority to enter into this Agreement on behalf of the parties for whom they are signing.

In Witness whereof, the parties hereto have executed this Agreement in duplicate by proper persons thereunto duly authorized.

Institution Sponsor

By: \_\_\_\_\_ By: \_\_\_\_\_  
(signature) (signature)

\_\_\_\_\_  
(print or type name) (print or type name)

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

Principal Investigator

(Read and Acknowledged)

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(print or type name)

## 21. University of California, San Francisco

The Regents of the University of California, acting on behalf of the University of California, San Francisco ("UCSF"), agrees to provide \_\_\_\_\_ having a business address at \_\_\_\_\_ ("RECIPIENT") with certain research material requested by RECIPIENT for use by its scientist, \_\_\_\_\_ ("Scientist"), subject to the terms and conditions set forth in this Material Transfer Agreement (the "Agreement").

### Recital (R1)

1. The Agreement applies to the transfer of \_\_\_\_\_ and to any progeny, unmodified derivatives, or portions thereof (collectively, the "Material") for use only in scientific research/evaluation relating to \_\_\_\_\_ (the "Research"). The Material is being made available by \_\_\_\_\_ ("Investigator") and resulted from research conducted by Investigator as an employee of UCSF.

### Intellectual Property (I5)

2. Legal title to the Material shall be unaffected by this Agreement or the transfer made hereunder, and nothing in the Agreement grants RECIPIENT any rights under any patents nor any rights to use the Material or any product(s) or process(es) derived from or with the Material for profit-making or commercial purposes. Nothing in this Agreement shall alter any rights the U.S. Government may have with respect to the Material. Except as otherwise provided in paragraph 10 of this Agreement, RECIPIENT and Scientist shall maintain the confidentiality of UCSF's proprietary information relating to the Material. RECIPIENT will hold the Material in trust solely for the purposes set forth in this Agreement.

3. UCSF has/has not filed a patent application covering inventions relating to the Material. IF PATENTED: The Material is the subject of U.S. Patent Number XXXXXXXX assigned to The Regents of the University of California. (Can also reference an existence of an exclusive licensee if applicable.)

4. The transfer of the Material constitutes a non-exclusive license to use the Material solely for the internal scientific research of RECIPIENT. This Agreement does not restrict UCSF's rights to distribute the Material to other commercial or non-commercial entities. RECIPIENT agrees to negotiate in good faith a license with UCSF prior to making any profit-making or commercial use of the Material or any product(s) or process(es) derived from or incorporating the Material, including the screening of drug candidates. UCSF shall have no obligation to grant such a license to RECIPIENT and may grant exclusive or nonexclusive licenses to others who may be investigating uses of the Material.

5. The Material is provided to RECIPIENT for use in animals or in vitro. The Material will not be used in humans, including for purposes of diagnostic testing.

6. RECIPIENT shall have a period of three (3) months from the date of receipt of the Material to evaluate such Material. At the end of the three (3) month period, RECIPIENT will either enter into good faith negotiations with UCSF for a license, should such a license still be available at that time, or destroy the Material within thirty (30) days of the end of such period and will provide written notification to this effect.

### Termination (T2)

7. Notwithstanding the provisions of paragraph 6, any party may terminate this Agreement at any time in which case RECIPIENT will discontinue within thirty days its use of the Material until such time as a new agreement between and among the parties is established. If no new agreement is established within sixty days, RECIPIENT agrees, upon direction of UCSF, to return or destroy the Material. The provisions

of paragraphs 2 and 4, above, (except for the non-exclusive license) shall survive any termination of this Agreement. For the avoidance of doubt, surviving any termination or expiration of this Agreement (unless provided otherwise by UCSF and RECIPIENT), is the agreement by RECIPIENT that RECIPIENT shall not use the Material or any product(s) or process(es) derived from or with the Material if for profit-making or commercial purposes.

#### Confidentiality (C2)

8. Neither Scientist nor RECIPIENT nor any other person authorized to use the Material under the Agreement shall make available the Material or any portion of the Material to any person or entity other than laboratory personnel under the Scientist's immediate and direct control. No person authorized to use the Material shall be allowed to take or send the Material to any location other than the Scientist's laboratory without UCSF's prior written consent.

#### Warranty (W2)

9. The Material is experimental in nature and shall be used with prudence and appropriate caution, since not all of its characteristics are known. **THE MATERIAL IS PROVIDED WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. UCSF MAKES NO REPRESENTATION OR WARRANTY THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHT.**

#### Publication (P3)

10. If the Scientist and RECIPIENT wish to publish results of the Research, Scientist or RECIPIENT will furnish UCSF with a copy of the manuscript or abstract disclosing such results prior to submission thereof to any publisher not less than thirty (30) days prior to publication to allow UCSF opportunity to protect proprietary or intellectual property relating to the Material that might be contained in such disclosure.

11. Scientist and RECIPIENT shall acknowledge UCSF as the source of the Material in any publication of Research results.

12. The RECIPIENT shall, at the request of the UCSF, return or destroy all unused Material.

#### Indemnity (I2)

13. In no event shall UCSF be liable for any use by Scientist or RECIPIENT of the Material or for any loss, claim, damage, or liability, of any kind or nature, that may arise from or in connection with this Agreement or the use, handling, or storage of the Material. The RECIPIENT hereby agrees to defend, indemnify and hold harmless UCSF and UCSF's trustees, regents, officers, agents, and employees from any liability, claim, loss, or damage of whatsoever kind or nature that they may suffer as a result of claims, demands, costs, or judgments against them arising out of the use or disposition of the Material by the Scientist or the RECIPIENT.

14. Scientist and RECIPIENT will use the Material in compliance with all laws, governmental regulations and guidelines, including without limitation current NIH guidelines and any regulations or guidelines pertaining to research with recombinant DNA, that may be applicable to the Material.

15. Assignment (A4) This Agreement is not assignable.

#### Governing Law (G1)

16. This Agreement shall be governed by California State law. The parties hereby submit to the exclusive jurisdiction of the courts of the State of California in all matters concerning this Agreement.

AGREED AND ACCEPTED:

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Signature:

Name:

Title:

Date:

RECIPIENT: COMPANY NAME

[Note: must be signed by authorized officer]

By:

Name:

Title:

Date:

RECIPIENT SCIENTIST

By:

Name:

Date:

## 22. University of Central Florida

**RECITAL (R1)** This Agreement made and entered into by and between the University of Central Florida (UCF), acting for and on behalf of the UCF Board of Trustees or, as applicable, its assigns and/or successors, and [SUBCONTRACTOR] (SUBCONTRACTOR).

The terms of this Agreement are intended to provide the administrative framework for UCF and SUBCONTRACTOR (the Parties) to cooperate in the performance of this project. SUBCONTRACTOR shall make all reasonable efforts to perform the scope of work as outlined in Appendix A.

It is understood this is a subcontract under UCF's prime award, which is incorporated by reference into this Agreement:

- A) CFDA Number:
- B) CFDA Title:
- C) Award Name:
- D) Award Number:
- E) Award Year:
- F) R & D
- G) Federal Agency:

### **ARTICLE I - STATEMENT OF WORK (S1)**

SUBCONTRACTOR shall provide all the necessary personnel and facilities to conduct the work of this agreement.

### **ARTICLE II - PERIOD OF PERFORMANCE (P2)**

This Agreement shall begin on [START DATE] and shall not extend beyond [END DATE] unless the period is extended by modification of this Agreement.

### **ARTICLE III – FINANCIAL SUPPORT (C4, P1)**

This is a fixed price Agreement in the amount of [\$]. Serially numbered invoices from SUBCONTRACTOR shall be sent to UCF in accordance with Appendix A. The invoices shall contain the above assigned encumbrance number (#####), along with sufficient detail for pre- and post audits. Any invoice for a particular work item not submitted to UCF within 60 days of the end of the project period, will not be honored by UCF.

Sponsor's Billing Address: University of Central Florida  
Finance & Accounting  
Research Pavilion, Suite 300  
12424 Research Parkway  
Orlando, FL 32826

**ARTICLE IV – ADMINISTRATIVE CONSIDERATION (G1)**

The policies of SUBCONTRACTOR concerning all financial expenditures shall meet all applicable state and federal regulations.

**ARTICLE V - ADMINISTRATIVE PERSONNEL (K1)**

**University of Central Florida**

Technical:  
[PI]  
[Department]

University of Central Florida  
4000 Central Florida Boulevard  
Orlando, FL 32816  
Phone: (407) 823-XXXX  
Fax (407) 823-XXXX  
E-Mail:

Contractual:  
[CONTRACT MGR], Contract Manager  
University of Central Florida  
Office of Sponsored Research  
12443 Research Parkway, Ste. 207  
Orlando, FL 32826-0150  
Phone: (407) 823-XXXX  
Fax: (407) 823-3299  
E-mail:

**SUBCONTRACTOR**

Technical:  
\_\_\_\_\_  
[SUBCONTRACTOR]\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone:  
Fax:  
E-Mail:

Contractual:  
\_\_\_\_\_  
[SUBCONTRACTOR]\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone:  
Fax:  
E-mail:

**ARTICLE VI – REBUDGETING (C4)**

SUBCONTRACTOR may re-budget only as marked/checked:

- \_\_\_ Direct costs as dictated by SUBCONTRACTOR’S needs.
- \_\_\_ Is not permitted to re-budget indirect costs into direct costs or use indirect costs for any other purpose.
- \_\_\_ Prior approval for all budget transfers is required.
- \_\_\_ 10% of the total award or \$100,000, whichever is less.
- \_\_\_ Other: \_\_\_\_\_

**ARTICLE VII – AUDIT (R3)**

All costs incurred in the performance of this Agreement will be subject to audit by the cognizant audit agency. SUBCONTRACTOR shall be responsible for payment of any and all audit exceptions, which are identified by audit agency.



SUBCONTRACTOR will permit UCF’s auditors, other knowledgeable staff, or auditors engaged by UCF, whichever is appropriate, to have access to the records and financial statements as necessary to comply with OMB Circular A-133, [Subpart D, paragraph.400 (d) (3)].

SUBCONTRACTOR will abide by any requirements imposed on the subrecipient by Federal laws, regulations, and the provisions of the award agreement as well as any supplemental requirements imposed by UCF as required by OMB Circular A-133, [Subpart D, paragraph.400 (d) (2)].

SUBCONTRACTOR must provide all supporting documentation (copies of actual invoices, etc.) for the requests for reimbursement if the subrecipient does not have an OMB Circular A-133 audit performed for the period covering the awards from UCF.

SUBCONTRACTOR must provide to the address in Article III a copy of their latest annual audit report and management response to findings.

**ARTICLE VIII – PUBLICATION (P3)**

The parties agree that SUBCONTRACTOR may publish the results of the work in its own form.

UCF requires a copy of any proposed publication 60 days in advance of submission to review for confidential information, material which would affect pending patents, and to forward to prime funding source, if applicable. UCF’s review will be completed and any objections made within this 60 days.

SUBCONTRACTOR’S publication shall acknowledge support as marked/checked:

“This project was supported by the University of Central Florida”

\_\_\_ “This project was supported by the [Prime Funding Source] through the University of Central Florida.”

\_\_\_ Other: \_\_\_\_\_

**ARTICLE IX – EQUIPMENT (E3)**

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.

## **ARTICLE X – PATENTS (I5)**

Inventions or any copyrightable material or other intellectual property made solely by SUBCONTRACTOR faculty and staff under this Agreement will be solely owned by the SUBCONTRACTOR. Inventions or any copyrightable material or other intellectual property made jointly by faculty and staff of both UCF and SUBCONTRACTOR will be owned jointly by UCF and SUBCONTRACTOR, who agree to jointly determine patent filing and licensing responsibilities. Inventions or any copyrightable material or other intellectual property made solely by UCF faculty and staff will be solely owned by UCF. All persons who perform any part of the work under this Agreement and who may be reasonably expected to make inventions, including screening compounds or materials synthesized, must be covered by this Agreement.

“Background Intellectual Property” means individually and collectively all inventions, improvements and/or discoveries, patentable or unpatentable, copyrightable or uncopyrightable, including but not limited to mask works, computer software, both object and source code, data bases and works of Authorship, which were in existence, prior to the effective date of this Agreement. For the purposes of this Section, the “Making” of inventions shall be governed in accordance with 35 USC Section 101 et seq.

“Existing Background Intellectual Property”. The parties agree that any existing background intellectual property and/or inventions and technologies of a Company, University, and Investigator existing prior to the effective of this Agreement are their separate property, respectively, and are not affected by this Agreement. Neither party shall acquire any claims to or rights in any background intellectual property and/or technologies in existence prior to the effective date of this Agreement.

## **ARTICLE XI –CONFIDENTIAL INFORMATION (C2)**

Should it be necessary for either party to receive confidential information, the disclosing party agrees to state in writing at the time of delivery that such information is confidential, or if given orally, reduce to writing, clearly marked as confidential, within 30 days of the oral disclosure. The receiving party and its personnel agree to safeguard the confidential material to the same extent it safeguards its own. The parties’ technical representatives are responsible for initiating a Confidential Disclosure Agreement if applicable, and forwarding it to the contractual representatives for execution (available at [http://www.research.ucf.edu/SponsoredPrograms/Contracts\\_Grants/documents.html](http://www.research.ucf.edu/SponsoredPrograms/Contracts_Grants/documents.html)).

## **ARTICLE XII – HUMAN SUBJECTS (H1)**

No research involving humans is planned or authorized under this Agreement.

## **ARTICLE XIII – LABORATORY ANIMALS (L1)**

No research involving animals is planned or authorized under this Agreement.

**ARTICLE XIV – CIVIL RIGHTS AND EQUAL EMPLOYMENT OPPORTUNITY**

SUBCONTRACTOR certifies that it complies with Title VI of the Civil Rights Act of 1964 and has a valid Assurance of Compliance on file with the federal government.

**ARTICLE XV - REPORTING REQUIREMENTS (R3)**

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

**ARTICLE XVI – TERMINATION (T2)**

Either party may terminate this Agreement upon thirty (30) days written notification to the other. In the event of termination, SUBCONTRACTOR will be reimbursed for all costs incurred and any non-cancelable obligations properly incurred through the date of termination.

**ARTICLE XVII – SUBCONTRACTORS (K1)**

SUBCONTRACTOR shall not subcontract for any of the services to be performed under this Agreement without the prior written consent of UCF.

**ARTICLE XIII – MODIFICATIONS (A1)**

Modifications to this Agreement may be made only in writing signed by authorized signatories of both parties.

**ARTICLE XIX – COUNTERPARTS (A1)**

This Agreement may be executed in counterparts, each of which shall be considered an original, but which together shall constitute but one and the same Agreement.

**ARTICLE XX – DEBARMENT & SUSPENSION (K1)**

SUBCONTRACTOR hereby represents and certifies that neither it or its principals is presently:

- a. debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal Department or Agency;
- b. have within a 3-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under public transaction; violation or Federal or State

antitrust statutes or commission of embezzlement, theft forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- c. are presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in (b) above; and
- d. have within a 3-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause of default.

**ARTICLE XXI – NON-DELINQUENCY ON FEDERAL DEBT (K1)**

SUBCONTRACTOR certifies that it is not delinquent on the repayment of any federal debt. For the purposes of this certification, the following definitions of delinquency apply:

- a. For direct loans and fellowships (whether awarded directly to the applicant by the Federal Government or by an institution using Federal funds), a debt more than 31 days past due on a scheduled financial payment. (This definition excludes “service” payback under the National Research Service Award.)
- b. For guaranteed and insured loans, recipients of a loan guaranteed by the Federal Government that the Federal Government has repurchased from lender because the borrower breached the loan agreement and is in default.
- c. For Contracts, organizations in receipt of a “Notice of Contracts Cost Disallowance” which have not repaid the disallowed amount or which have not resolved the disallowance. (This definition excludes disallowance(s) in an “appeal” status.)

**ARTICLE XXII – SCIENTIFIC MISCONDUCT AND CONFLICT OF INTEREST (C3)**

SUBCONTRACTOR hereby certifies that it has established administrative procedures to review allegations of scientific misconduct and to evaluate and process real or potential Conflict of Interest situations and that such procedures conform to federal regulations.

**ARTICLE XXIII – LOBBYING CERTIFICATION (K1)**

SUBCONTRACTOR is required to complete the attached “Certification Regarding Lobbying” as part of their acceptance of this agreement.

**ARTICLE XXIV – DRUG-FREE WORKPLACE CERTIFICATION (D3)**

By signing this Agreement, SUBCONTRACTOR certifies that it is in compliance with the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F.

**ARTICLE XXV – GENERAL (M1)**

The terms of this Agreement shall supercede the terms of the purchase order to be issued by UCF’s purchasing department. No modification to the terms of this Agreement shall be valid unless made in writing and signed by authorized representatives of the parties.

**ARTICLE XXVI - ENTIRE AGREEMENT (E1)**

This Agreement consists of the following parts:

1. Articles I – XXVII
2. Appendix A: Scope of Work & Compensation
3. Appendix B: Certification Regarding Lobbying
4. Appendix C: Florida Statutes
5. Appendix D: Flow-Down Provisions
6. Appendix E: A-133 Audit Certification

and constitutes the entire Agreement of the parties with respect to the subject matter hereof. Any other agreement, written or oral, is hereby superseded.

**ARTICLE XXVII - ENDORSEMENTS**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below:

UNIVERSITY OF CENTRAL FLORIDA

[SUBCONTRACTOR]

\_\_\_\_\_  
\_\_\_\_\_

Name:  
Title:

Title:

Name:

**APPENDIX A: SCOPE OF WORK & COMPENSATION (S1, P1)**

SUBCONTRACTOR shall perform the work described in their proposal dated [Proposal Date] entitled “[Proposal Title]”, which document is hereby incorporated into this Contract by reference with the same force and effect as if set forth herein in full.

The following deliverable items are required, with the corresponding payment per deliverable:

<u>Report</u>	<u>Date Due</u>	<u>Amount</u>
---------------	-----------------	---------------

## 23. University of Chicago

RECITAL (R1) Whereas, *(type name of company)* (the "Company") and The University of Chicago (the "University") enter into this Agreement for the conduct of the research identified in the proposal named herein, the parties agree as follows:

### ARTICLE I.

SCOPE OF WORK (S1): The University, in a study under the direction of *(type name of the p.i.)*, (the "Principal Investigator"), shall exercise its best efforts to carry out the program described in the proposal entitled "*(type the name of the proposal)*", dated *(type a date)*, incorporated into this Agreement by reference.

### ARTICLE II.

PERIOD OF PERFORMANCE (P2): The proposed study shall commence on or about *(type a starting date)*, and is estimated to be completed on or about *(type an ending date)*.

### ARTICLE III.

CONSIDERATION (P1): In return for all activities and services performed hereunder, the Company will pay the University *(type a dollar amount)* as full compensation under this Agreement. This amount will be paid in four periodic payments; one-fourth upon execution of this Agreement, one-fourth on or about *(type periodic dates)*. Checks should be made payable to The University of Chicago and directed to:

Restricted Funds  
Office of the Comptroller  
The University of Chicago  
1225 East 60th Street  
Chicago, Illinois 60637

### ARTICLE IV.

PATENTS (I5): Under University policy, inventions resulting from work performed by members of its faculty and staff are the property of the University. If such inventions arise in the course of the work performed under this Agreement, the University will confidentially advise the Company. The Company should contact The Office of Technology and Intellectual Property (UChicagoTech) at 5555 South Woodlawn Avenue, Suite 300, Chicago, Illinois 60637, (773) 702-1692, if it is interested in pursuing commercial rights to the invention.

### ARTICLE V.

PUBLICATION (P3): 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.

#### ARTICLE VI.

REPORTS (R3): 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.

#### ARTICLE VII.

TERMINATION (T2): 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.

#### ARTICLE VIII.

ADVERTISING (P4): The Company agrees that the name of The University of Chicago, its trustees, officers, agents and employees will not be used for purposes of advertising. The Company and the University will obtain written approval from each other prior to issuing any press releases or other publicity in connection with this Agreement.

#### ARTICLE IX.

INDEMNIFICATION (I2): 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.



ARTICLE X.

CHANGES (A1): This Agreement may be amended only by the further written agreement between the parties. The persons signing this Agreement represent the parties in authorizing any such amendment or in any other business or contractual matter arising under this Agreement.

ARTICLE XI.

ORDER OF PRECEDENCE (E1): In any conflict between the terms of this Agreement and the incorporated scope of work, the terms of this Agreement shall take precedence.

**THE UNIVERSITY OF CHICAGO**

By \_\_\_\_\_

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

**(COMPANY NAME)**

By \_\_\_\_\_

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Title)

Revised 1/00

## 24. University of Cincinnati

This Master Terms and Conditions Agreement, dated the 3rd day of December, 2004 is by and between the University of Cincinnati, Office of Sponsored Programs with a principal place of business located at One Edwards Center, Suite 7148, Cincinnati, Ohio 45221 (hereinafter "Seller") and the General Electric Company, a New York corporation, acting through its Transportation - Aircraft Engines Operating Component ("GE"), with a principal place of business located at 1 Neumann Way, Cincinnati, Ohio 45215 and

Recital (R1) WHEREAS, GE desires to purchase certain goods and/or services from Seller for use in GE's commercial operations, and/or for use under GE's contracts with agencies of the United States Government or other governments; and as part of such purchases has submitted to Seller certain terms and condition applicable to these purchases; and

WHEREAS, Seller has taken exception to various provisions of GE's terms and conditions; and WHEREAS, GE and Seller desire to reconcile differences to arrive at mutually acceptable terms and conditions; and

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the parties agree as follows:

### 1. Term and Termination (P2, T2):

The term of this Agreement shall commence upon the date first stated above and continue through December 2008. The terms and conditions contained in this Agreement shall continue to apply to all contracts, including purchase orders, incorporating this Agreement prior to the effective date of termination or expiration of this Agreement. The parties hereto may renew this Agreement upon successive one-year terms upon mutual agreement of the parties.

### 2. Application:

a) The provisions of this Agreement shall only apply to purchases by GE of research and development services sold by Seller which do not involve the delivery of manufactured goods or the performance of services on the premises of GE or its customer and which do not involve the disclosure of classified information (hereinafter referred to individually and collectively as "Seller Services".)

b) Purchase orders issued by GE to Seller and Seller's acknowledgments of such purchase orders shall contain the following notation:

c) SOURCING REQUIREMENT 586

d) MASTER TERMS AND CONDITIONS AGREEMENT DATED DECEMBER 3,2004, TO GEAE TERMS AND CONDITIONS OF PURCHASE FOR EDUCATIONAL INSTITUTIONS, STANDARD REMARK G94 IS APPLICABLE TO THIS PURCHASE ORDER OR PURCHASE AGREEMENT. IN THE EVENT THERE IS A CONFLICT BETWEEN THE CONTENTS OF THIS PURCHASE ORDER OR PURCHASE AGREEMENT AND THE MASTER TERMS & CONDITIONS AGREEMENT, THEN THE MASTER TERMS & CONDITIONS AGREEMENT SHALL GOVERN.

3. Conditions of Sale:

Purchases by GE of Seller Services shall be in accordance with GE's Sourcing Requirement G94 titled "Terms and Conditions of Purchase for Educational Institutions" dated 1/16/2004 as modified herein in Exhibit "A". Subsequent revisions to Sourcing Requirement G94 will be indicated by a change in issue date, but will not become effective until accepted in writing by an authorized representative of Seller.

4. Other Provisions (A2):

- a) Nothing in this Agreement shall be construed as an obligation by either party to enter into subsequent contracts or other business relationships with the other party.
- b) Each party has full power and authority to enter into and perform this Agreement. The parties represent that those persons signing this Agreement on behalf of each party are duly authorized representatives of each party and properly empowered to execute this Agreement.

5. Entireties, Waiver & Modification (E1, W1):

This Agreement together with the Exhibits attached hereto and made a part hereof is the complete and exclusive statement of the agreement between the parties relating to the subject matter. No modification, termination, or waiver of any provision hereof shall be binding upon a party unless made in writing and executed by an authorized representative of such party.

UNIVERSITY OF CINCINNATI

Frederick I\1, Hamilton, Esq.

Associate General Counsel

GENERAL ELECTRIC COMPANY, acting through its Transportation Component

EXHIBIT "A"

Sourcing Requirement G94, dated 1116/04 is hereby amended as follows:

Article 1: Add the following as new definitions:

A) "Affiliates" shall mean with respect to any corporation, partnership, association or other entity or organization, including an agency or instrumentality thereof (referred to as "entity"), any other entity or hereinafter constituted that directly or indirectly owns or is owned by (whether majority or minority), directly or indirectly controlling, controlled by or under common control with, such entity.

B) "GE" shall mean the General Electric Company, its subsidiaries and Affiliates.

C) "GE Products" shall mean those Products in the Turbine Engine Field which are designed, analyzed, tested, manufactured, sold, marketed, maintained and/or serviced by GE.

D) "GE Software or Design/Analysis Process" shall mean any computer software or design/analysis process developed, owned or used by GE.

E) "Modified GE Software or Design/Analysis Process" shall mean any modification, enhancement, upgrade or change to GE Software or Design/Analysis Process.

F) "Modified UC Software or Design/Analysis Process" shall mean any modification, enhancement, upgrade or change to UC Software or Design/Analysis Process.

G) "New Intellectual Property" shall mean any inventions, patents, trademarks, copyrights, computer software, analysis techniques, experimental findings or other technologies resulting from this Agreement.

H) "Prior Intellectual Property" shall mean all intellectual property, including but not limited to, inventions, patents, trademarks, copyrights, computer software, analysis techniques, experimental findings and technologies other than New Intellectual Property as defined herein.

I) "Statement of Work" shall mean any document mutually agreed by the parties in writing that defines and/or describes the program requirements, including without limitation, the scope of the program effort, deliverables and schedule.

J) "Turbine Engine Field" shall mean the broad scope of gas turbine and turbomachinery applications to include, without limitation, gas turbine aircraft engines, gas turbine power generation equipment including automotive, marine and industrial power generation, steam turbine power generation equipment, compressors, turbines, turbomachinery pumps, and turbochargers, including those for diesel locomotives, automobiles and trucks.

K) "UC Software or Design/Analysis Process" shall mean any computer software or design/analysis process substantially developed by UC prior to this Agreement or which was developed while this Agreement was in effect but which was not funded by GE.

Article 2: Revise Article 2 to read as follows:

2. Terms and conditions: Either University's written acknowledgement or University's full or partial performance under this order, whichever occurs first, will constitute acceptance of all terms and conditions contained herein. All Requests for Proposal and Purchase Orders must be sent to University's

Office of Sponsored Programs, 773 Edwards I, ML 0627, Cincinnati OH 45221-0627, or such other address as University shall provide to GE's purchasing agent in writing .. Any acceptance of this purchase order is limited to acceptance of the express terms of the offer set forth in this order. Any proposal for additional or different terms or any attempt by University to vary in any degree any of the terms of this offer in University's acceptance or acknowledgement is hereby objected to and rejected, but such proposal shall not operate as a rejection of this offer unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods and/or services but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by the University without said additional or different terms. If this purchase order shall be deemed an acceptance of a prior offer by University, such acceptance is limited to the express terms set forth in this order. Additional or different terms or any attempt by University to vary in any degree any of the terms of this purchase order shall be deemed material

and shall be rejected. However, this purchase order shall not operate as a rejection of the University's offer unless it contains variances in the terms of the description, quantity, price, or delivery schedule of the goods and/or services.

Article 3: Revise Article 3 to read as follows:

"A. Except as specifically provided for in paragraph E below, the parties intend to resolve any and all disputes arising under or related to this contract exclusively by the process identified in this article. This article shall remain effective in the event that a petition in bankruptcy is filed by or against a party to this contract, or if a party makes an assignment for the benefit of creditors, or if any other insolvency proceeding is commenced against a party. Invocation of this paragraph shall not relieve either party of any obligation, right or duty of performance arising under or related to any purchase order.

B. Any and all disputes, controversies or claims arising under or relating to this contract or the breach, termination or invalidation thereof shall upon written notice, be referred to a senior management representative from each of the parties who will confer in good faith to attempt to resolve the matter. The party sending the first written notice (the "initial notice") shall

(1) set forth in detail all of its claims or issues in dispute and

(2) designate its representative. The other party shall have 5 business days to designate its representative and add any other issues or claims for resolution not identified in the initial notice. The representatives shall have 30 days from the date of the initial notice to resolve the issues identified in the notices. If the representatives are unable to resolve the matter, either party may refer the matter to administered mediation. Such mediation shall be started within 30 days from the date of referral, and the mediation process must be concluded within 30 days from the start date.

C. If the dispute or claim is not fully resolved pursuant to paragraph B, University may after 90 days, but not later than 120 days from the date of the initial notice, make a written demand for binding arbitration of its claims against GE to be administered by the American Arbitration Association (AAA) by one arbitrator in accordance with its commercial arbitration rules and judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Any claims by GE against University, including counterclaims on an arbitration demand made by University, shall be adjudicated in the Ohio Court of Claims. A party's failure to make a timely demand for arbitration or to commence litigation, as the case may be, shall result in the forfeiture of all the claims and issues that party identified in its written notice.

D. The arbitration proceedings shall be conducted in Cincinnati, Ohio, and the contract shall be interpreted and applied in accordance with the laws of the state under which the educational institution is chartered without regard to that state's choice of law provisional. In such proceeding each party will be permitted to take the deposition of one individual, limited to no longer than four hours. No other discovery shall be conducted except by the written agreement of both parties. All fees and expenses of the arbitration shall be shared equally by the parties. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of proofs. The arbitrator shall have no authority to award punitive or other damages

beyond the prevailing party's actual damages and shall not, in any event, make any ruling, finding, or award that does not conform to the terms and conditions of the contract. The arbitration award shall be in writing and shall specify the factual and legal basis for the award. Any appeal of the award shall be brought in a court of general jurisdiction located in Cincinnati, OH. Adjudication of claims brought in the Ohio Court of Claims shall be conducted in accordance with the rules of civil procedure and other applicable laws and rules of that court. E. Either party may at any time, without inconsistency with this contract, seek from a court of general jurisdiction located in Cincinnati, OH, any equitable, interim or provisional relief only to avoid irreparable injury.

F. The parties intend all statements made and documents provided or exchanged in connection with this dispute resolution process to be confidential and neither party shall disclose the existence or content of the dispute or claim, or the results of any dispute resolution process, to third parties other than outside counsel, except with the prior written consent of the other party or pursuant to legal process.

G. The parties may by written mutual consent agree to dates and times other than those set forth in this article

H. The provisions of this article shall not modify or displace the procedures specified in article 24, Termination. In addition, this article shall not apply to and will not bar litigation regarding any claims related to a party's proprietary or intellectual property rights."

Article 7: Revise (A) to read as follows:

"A. All tools, tool drawings, materials, drawings, computer software, documents or data of every description furnished to University by GE or to the extent specifically paid for by GE, shall be and remain the personal property of GE, and, unless otherwise agreed to in writing by GE shall be used by University solely to render services or provide products to GE. Such property, and whenever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by University as being the property of General Electric, and shall be safely stored separate and apart from University's property.

University shall not substitute any property for GE's property and shall not use such property except in filling GE's orders. Such property while in University's custody or control shall be held at University's risk and shall be insured by University for replacement cost. Such property shall be subject to removal at GE's written request, in which event University shall prepare such property for shipment and shall deliver it as directed by GE in the same condition as originally received by University, reasonable wear and tear excepted, all at GE's expense. At the end of the applicable program, GE, in its absolute discretion, may transfer ownership of certain property to University, taking due account of all available tax credits or other tax benefits. The foregoing shall not be deemed to affect the rights, if any, of the US government in any such property or to grant any rights to GE in conflict with DF ARS 252.227-7013, Rights in Technical Data Noncommercial Items, DFARS 252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, or DFARS 252.227-7015 Technical Data Commercial Items."

Modify the second sentence of subclause (B) to read as follows:

"All data is the property of GE and shall not be used, disclosed to others (except as provided in Article 8C herein), or reproduced for any purpose; provided; however, University may provide data furnished or paid for by GE hereunder to University's contractors and non-employee personnel for the sole purpose of enabling University's contractors and non-employee personnel to assist University in performing this order for GE and on condition that University's contractors and non-employee personnel agree in writing for GE's benefit to the terms of Articles 7 ("GE's Property") and 8 ("Intellectual Property") hereof. University shall be entitled to keep a copy of all data generated under this purchase order for archival purposes, provided that such data is subject to all of the restrictions and obligations set forth herein."

Article 8: Delete subclause (A) and (B) and replace with the following:

(A)

1. Prior Intellectual Property. It is recognized and understood that all Prior Intellectual Property, as defined in Article 1, is the separate intellectual property of GE or UC respectively and is not affected by this Agreement. Neither Party shall have any claims to or rights in such Prior Intellectual Property except as necessary to conduct the research contemplated by this Agreement.

2. New Intellectual Property Developed Solely by GE or UC. All right, title and interest, including patent and copyright rights, in New Intellectual Property shall reside with GE if conceived and/or developed solely by GE employees, and with UC if conceived and/or developed solely by UC employees.

3. New Intellectual Property Developed Jointly. Any New Intellectual Property conceived and/or developed during the life of this Agreement jointly by GE and UC shall be the joint property of the Parties, and any patent or copyright registration granted thereon shall be jointly owned by the Parties.

4. Notwithstanding Articles 8.A.2 and 3, the Parties agree to the following:

(i) If in the course of the research governed by this Agreement, UC makes "specific modifications" to GE Software or Design! Analysis Process and/or UC performs other specific work defined by mutual agreement between the Parties in the Statement of Work, then UC shall not gain any right, title or other interest in the Modified GE Software or Design! Analysis Process or product of such specific work and shall protect them in accordance with the confidentiality provisions of Article 8. GE shall be free to use and license others to use for GE's benefit the Modified GE Software or Design! Analysis Process or product of such specific work as it wishes to design, develop, produce, market and service its products and services without compensation to UC.

(ii) If in the course of the research governed by this Agreement, UC uses UC Software or Design! Analysis Process to develop or evaluate software modules (for example, turbulence or roughness models), GE shall be free to use the modules in GE's own software at no additional cost to GE but GE shall not gain any right, title or other interest in the UC Software or Design! Analysis

Process or software modules, and shall protect the UC Software or Design! Analysis Process or software modules in accordance with the confidentiality provisions of Article 8.

(iii) If UC develops New Intellectual Property based on data provided by GE, UC shall not gain any right, title or other interest in that data, and shall protect that data in accordance with the confidentiality provisions of Article 8.

1. GE's Royalty-free, Exclusive, World-wide License in the Turbine Engine Field. UC grants GE a royalty-free, exclusive, world-wide license for a period often (10) years after initial disclosure to use and put into practice in the Turbine Engine Field any New Intellectual Property as defined in Article

8A. The consideration for such license shall include payment of all patent costs and the consideration to be agreed upon with respect to each purchase order issued by GE under this Agreement. GE may use the New Intellectual Property in whatever manner it chooses to design, develop, produce, market, sell, offer to sell and service its products and services and may include such New Intellectual Property as modifications or improvements to GE's products and services without obligation to UC. GE may grant licenses of similar scope to others to use and put into practice New Intellectual Property in the Turbine Engine Field for GE. Neither Party shall transfer or disclose New Intellectual Property or the results of using the New Intellectual Property to third parties in the Turbine Engine Field without the other Party's expressed written permission. UC further agrees to provide reasonable assistance to GE, at GE's expense, for securing both jointly-owned patents on jointly-developed New Intellectual Property and patents in UC's name on New Intellectual Property solely-developed by UC. In consideration for the royalty-free, exclusive license, GE shall make a one-time payment of money to each UC inventor for each new patent application. This additional sum of money shall be consistent with the amount paid to GE's own inventors, unless at GE's sole discretion a larger amount is warranted. After such ten (10) year period, GE shall have an option to renew said license on terms mutually agreed by the parties.

2. GE has first-right over other parties for a period of one (1) year after initial disclosure to an exclusive or non-exclusive license outside of the Turbine Engine Field on terms and conditions to be negotiated covering all inventions and patents developed solely or jointly by UC employees and covered under this Agreement. Notwithstanding the provision of Article 17 herein, during such one-year period, UC shall notify GE in writing at least ninety (90) days in advance of any proposed publication of such inventions to enable GE to complete its evaluation of its interest in such license. If GE elects to exercise its right to negotiate a license under this section, then the timing of any such publication shall be mutually agreed by the parties but in no event later than an additional ninety (90) days.

3. UC's use of New Intellectual Property. Subject to 8(B)(2) above and notwithstanding 8(B)(1) above, UC shall be free to use its solely-developed or jointly-developed New Intellectual Property for its own purposes in any in-house research, development and teaching it conducts, subject to the provisions of Articles 8 and 17. UC may negotiate licenses with third parties for exploitation of its solely-developed New Intellectual Property outside the Turbine Engine Field. In addition, either Party may negotiate licenses with third parties for exploitation of the jointly-developed New Intellectual Property outside the Turbine Engine Field. However, UC will assure



that no third party licensee shall transfer or disclose New Intellectual Property or the results of using the New Intellectual Property to any party in the Turbine Engine Field.

4. License Agreement. GE recognizes that a license from UC may be required for GE to use UC Software or Design/Analysis Processes that were substantially developed by UC outside of this Agreement; however, UC will not require any royalty or other fee for GE to use the results of calculations made by UC using that software in conducting the research contemplated by this Agreement. In any event, any license required by UC will be on no less favorable terms than those offered by UC to third parties who did not fund the development of the software. The terms of the license will be negotiated in good faith between the Parties and shall be commercially reasonable and consistent with general industry practice and shall be limited to the Turbine Engine field of use unless the Parties agree otherwise.

5. The foregoing clause 8(A) and 8(B) shall not be deemed to affect the rights, if any, of the US government in any such property or to grant any rights to either party in conflict with the applicable FARIDFAR clauses of the prime contract.

Article 8: Add the following as subclause (d) to subclause (C)(vi):

d) "is required by law to be disclosed; however, the Receiving Party will notify the Disclosing Party prior to disclosure to allow the Disclosing Party a reasonable opportunity to file an appropriate legal defense."

Article 8: Revise subclause (C)(vii) to read as follows:

"(vii) The Receiving Party shall have a duty to protect any Confidential or Proprietary Information of the Disclosing Party that it does not destroy or return to the Disclosing Party for a period of ten (10) years after termination of this Agreement, or until receipt of a written release of Confidential or Proprietary Information by the Disclosing Party, whichever first occurs. Termination of this Agreement shall not affect the rights or obligations under this paragraph (vii)."

Article 11: Delete in its entirety - no work will be performed on GE or its customer's premises. Projects requiring work by UC or its personnel on GE or its customer's premises shall be separately negotiated by the parties. Visits by UC personnel to GE or its customer's premises shall be under escort required badges.

Article 17: Revise to read as follows:

17.1 Release of Information:

No public release of information regarding this order shall be made without the prior written approval of GE. University may include GE's trade name and research project title in published listings of research sponsors. Any use of the GE monogram is strictly prohibited. GE's written approval, if granted, will be subject to any "acknowledgement of sponsorship" clause in GE's prime contract.

17.2 Interests of the Parties:

GE recognizes that by its policies UC seeks to publish the results of its research and UC recognizes the interest of GE in protecting its rights both in GE's Confidential and/or Proprietary Information and in potentially patentable information or material. In respecting UC's mission as

an educational institution, GE encourages publications. To these ends, the Parties agree that before publication UC shall submit for review by GE all proposed material to be published or presented, including a student's thesis, arising out of the research sponsored by GE.

#### 17.3 Review Procedures:

- a. GE shall have forty-five (45) days from the date of receipt of the material in the English language to object to the publication and ninety (90) days from the date of receipt to complete the review process. GE will make a good faith effort to minimize the entire review process, with the objective of keeping it to forty-five (45) days. If GE objects to publication, GE shall specify the nature of its objection, that is whether the material includes Confidential and/or Proprietary Information, whether it includes patentable material, and/or whether it has other objectionable aspects.
- b. If GE objects on the basis that the material contains and/or is derived from Confidential and/or Proprietary Information supplied by GE and/or the material contains the results from the research conducted under this Agreement deemed Confidential and/or Proprietary by GE, UC agrees to revise the wording, use normalized data or other techniques to prevent reconstruction of the underlying Confidential and/or Proprietary Information where possible. If not possible, UC shall either delay publication to a mutually agreed upon time or not use the Confidential and/or Proprietary Information.
- c. If GE objects on the basis that the material is patentable or copyrighted, UC shall either remove the objectionable material or defer publication as necessary to allow expeditious filing of a patent application. GE will make a good faith effort to minimize the time required to review the material, conduct a patent search and file a patent application. If the patentable material is solely developed by UC, UC may, at its option and at its expense, file a patent application. If the patentable material is not solely developed by UC or UC opts not to file a patent application on its solely-developed patentable material, UC agrees to defer publication up to one (1) year, or longer if the Parties agree in good faith to such an extension, to allow GE to file a patent at its own expense unless GE agrees to an earlier release.
- d. If GE objects on the basis that inclusion of the material violates U.S. law, UC agrees to revise the manuscript to comply with the law.

17.4 Authorship and Acknowledgment: Employees of GE may be co-authors of any publication, as appropriate, and unless GE indicates otherwise, the relationship with GE will be acknowledged in all publications.

Article 19: Revise to read as follows:

"University represents that to the best of its knowledge: 1) the methods and measurements employed by University hereunder will be original; 2) University has no knowledge of any third party claims that the work to be performed and/or the software to be provided hereunder infringes any third party intellectual property rights; and 3) the work to be performed and the software to be provided hereunder will not violate a third party's trade secret rights; provided however, that GE acknowledges that University has not conducted any prior art search, and has not obtained any non-infringement opinions or analyses."

Article 20: Revise subclause (A) to read as follows & delete sub clauses B & C in their entirety:  
"(A) Standard. GE's standard terms of settlement shall be issuance of payment of the full invoiced amount (not discounted) to University within ninety (90) days (meaning within 90 days of the Payment Start Date (as defined in (d) below)». Settlement and invoicing must be paperless, and in a format acceptable to GE. University must provide banking information to establish electronic funds transfer for U.S. suppliers and wire transfer for non-U.S. suppliers."

Article 22(F): Revise subclause (F) to read as follows:

"F. Environmental Claims. University agrees to indemnify, to the extent permitted by applicable law, release, defend and hold harmless GE against any and all suits, actions, or proceedings, at law or in equity, and from any and all claims, demands, losses, judgments, damages, costs, expenses, or liabilities resulting from: (1) Death or injury to any person, including officers and employees of University and those of GE, arising out of University's failure to comply with this article 23, (2) Damage to any property, real or personal, including property of University and that of GE, arising out of University's failure to comply with this article 22, (3) Any and all pre-existing conditions of real or personal property of University, or (4) Any failure to comply with any applicable federal (including F ARJDF AR clauses), state or local environmental, health, or safety requirements. University agrees to include this clause in any subcontracts issued hereunder. University and any Indemnified Party shall confer and cooperate in the defense of claims, selection of counsel, and settlement of claims. An Indemnified Party shall have the right to participate in the selection of counsel and University shall not enter into any settlement agreement that contains any admission of liability on the part of GE without GE's consent, which shall not be unreasonably withheld."

Article 28: Revise Article 28 to read as follows:

28. Citizenship Status: Only US Citizens, permanent resident aliens or those aliens authorized to be employed by University in the U.S. shall be permitted to work on GE orders. University must notify GE prior to disclosure by University of GE export controlled information to non-US citizens. GE will clearly mark such information as "Export Controlled" prior to transferring said information to US. The University reserves the right to refuse export controlled information.

Article 34: Revise the 3rd paragraph as follows:

"If GE determines any of University's representations, warranties, certifications or covenants hereunder to be untrue or otherwise breached, GE shall have the right to terminate this purchase order without further compensation to University. University shall, to the extent permitted under applicable law, defend, indemnify and hold harmless GE ("Indemnified Party") from and against all claims, losses, loss of use, damages, attorney's fees, actions, liability, demands, judgment costs and expenses arising out of or resulting from University's untrue or breached representations, warranties, certifications and covenants and University's failure otherwise to comply with the terms of this purchase order. University and any Indemnified Party shall confer and cooperate, at University's expense, in the defense of claims, selection of counsel, and settlement of claims. An Indemnified Party shall have the right to participate in the selection of counsel and University shall not enter into any settlement agreement that contains any admission of liability on the part of GE without GE's consent, which shall not be unreasonably withheld."

Appendix I shall be modified as follows:

Clauses 2 (Anti-Kickback) revise as follows: Strike " ... University agrees to indemnify GE, to the extent permitted by applicable law, for any costs, liabilities or administrative offsets incurred by GE ... " and replace with " ... University shall be liable for and GE shall be entitled to offset against amounts owed to University any costs, liabilities or administrative offsets incurred by GE ... "

Clause 4 (Technical Data) revise as follows: Strike " . . . University shall indemnify GE, to the extent permitted by applicable law, for any withholdings ... " and replace with "University shall be liable for and GE shall be entitled to offset against amounts owed to University for any withholdings ... "

Clause 5 (price Reduction For Defective Cost Or Pricing Data) revise as follows: Strike " ... University agrees to indemnify GE for any costs, liabilities, and expenses resulting from failure ... " and replace with " ... University shall be liable for and GE shall be entitled to offset against amounts owed to University any costs, liabilities and expenses resulting from failure ... "

Clause 9 (Procurement Integrity) revise as follows: Strike " ... agrees to indemnify GE, to the extent permitted by applicable law, for any costs ... " and replace with " ... University shall be liable for and GE shall be entitled to offset against amounts owed to University any costs .. ," DF ARS 252.227-7020, 252.227-7021 and 252.227-7025 shall apply; however, UC shall not be required to provide the indemnification of the Government required by said clauses.

Appendix III shall be modified as follows:

Clause 3 shall be modified to change the reference FAR 52.249-6 to FAR 52.249-5 Termination for Convenience of the Government (Educational and Other Non-profit Institutions)"

I. Definitions: As used throughout this order, the following terms shall have the meanings set forth below.

A) "GE" means the General Electric Company or any of its affiliates or subsidiaries

B) "Government" means the United States of America or any department or agency thereof.

C) "Prime Contract" means a contract that is defined by a government contract number in the schedule of this order and under which this order is made.

"University" means the educational institution contracting to perform the work hereunder.

D) "Subcontract," unless provided otherwise in this order, means all contracts placed by the University or lower tier subcontractors for the specific purpose of performing any portion of the work under this order, and includes but is not limited to purchase orders and changes, or modifications thereto.

E) "FAR" means the Federal Acquisition Regulations.

F) "FAR Supplement" means authorized supplements to the FAR, including the DOD FAR Supplement (DFARS).

2. Terms and conditions (S1): Either University's written acknowledgement or University's full or partial performance under this order, whichever occurs first, will constitute acceptance of all

terms and conditions contained herein. Any acceptance of this purchase order is limited to acceptance of the express terms of the offer set forth in this order. Any proposal for additional or different terms or any attempt by University to vary in any degree any of the terms of this offer in University's acceptance or acknowledgement is hereby objected to and rejected, but such proposal shall not operate as a rejection of this offer unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods and/or services but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by the University without said additional or different terms. If this purchase order shall be deemed an acceptance of a prior offer by University, such acceptance is limited to the express terms set forth in this order. Additional or different terms or any attempt by University to vary in any degree any of the terms of this purchase order shall be deemed material and shall be rejected. However, this purchase order shall not operate as a rejection of the University's offer unless it contains variances in the terms of the description, quantity, price, or delivery schedule of the goods and or services.

### 3. Dispute Resolution (D2):

A. Except as specifically provided for in paragraph E below, the parties intend to forsake litigation and resolve with finality any and all disputes arising under or related to this contract exclusively by the process identified in this article. This article shall remain effective in the event that a petition in bankruptcy is filed by or against a party to this contract, or if a party makes an assignment for the benefit of creditors, or if any other insolvency proceeding is commenced against a party. Invocation of this paragraph shall not relieve either party of any obligation, right or duty of performance arising under or related to any purchase order.

B. Any and all disputes, controversies or claims arising under or relating to this contract or the breach, termination or invalidation thereof shall upon written notice, be referred to a senior management representative from each of the parties who will confer in good faith to attempt to resolve the matter. The party sending the first written notice (the "initial notice") shall (1) set forth in detail all of its claims or issues in dispute and (2) designate its representative. The other party shall have 5 business days to designate its representative and add any other issues or claims for resolution not identified in the initial notice. The representatives shall have 30 days from the date of the initial notice to resolve the issues identified in the notices. If the representatives are unable to resolve the matter, either party may refer the matter to administered mediation. Such mediation shall be started within 30 days from the date of referral, and the mediation process must be concluded within 30 days from the start date.

C. If the dispute or claim is not fully resolved pursuant to paragraph B, either party may after 90 days, but not later than 120 days from the date of the initial notice, make a written demand for binding arbitration to be administered by the American Arbitration Association (AAA) by one arbitrator in accordance with its commercial arbitration rules and judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. A party's failure to make a timely demand for arbitration shall result in the forfeiture of all the claims and issues that party identified in its written notice.

D. The arbitration proceedings shall be conducted in Cincinnati, Ohio, and the contract shall be interpreted and applied in accordance with the laws of the state under which the educational institution is chartered without regard to that state's choice of law provision. Each party will be

permitted to take the deposition of one individual, limited to no longer than four hours. No other discovery shall be conducted except by the written agreement of both parties. All fees and expenses of the arbitration shall be shared equally by the parties. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of proof. The arbitrator shall have no authority to award punitive or other damages beyond the prevailing party's actual damages and shall not, in any event, make any ruling, finding, or award that does not conform to the terms and conditions of the contract. The arbitration award shall be in writing and shall specify the factual and legal basis for the award. Any appeal of the award shall be brought in a court of general jurisdiction located in Cincinnati, OR.

E. Either party may at any time, without inconsistency with this contract, seek from a court of general jurisdiction located in Cincinnati, OR, any equitable, interim or provisional relief only to avoid irreparable injury.

F. The parties intend all statements made and documents provided or exchanged in connection with this dispute resolution process to be confidential and neither party shall disclose the existence or content of the dispute or claim, or the results of any dispute resolution process, to third parties other than outside counsel, except with the prior written consent of the other party or pursuant to legal process

G. The parties may by written mutual consent agree to dates and times other than those set forth in this article

H. The provisions of this article shall not modify or displace the procedures specified in article 24, Termination. In addition, this article shall not apply to and will not bar litigation regarding any claims related to a party's proprietary or intellectual property rights.

4. Packing Requirements: Packaging requirements are contained in GEAE Standard Remark EI3 listed on this purchase order.

5. Transportation:

(a) Unless otherwise stipulated on the face of this order, goods covered by this order shall be shipped "F.O.B. University's facility," as defined by the New York Uniform Commercial Code ("NYUCC"). If goods are to be delivered "F.O.B. Destination," as defined by the NYUCC, transportation charges must be prepaid. GE carries insurance on all material for which it accepts risk of loss while such material is in transit; therefore, University shall not declare any value on such material shipped via any carrier,

(b) University shall release rail or truck shipments at the lowest released valuation permitted in the governing tariff or classification. No charges for unauthorized transportation will be allowed. Any unauthorized shipment which will result in excess transportation charges must be fully prepaid by University. If University does not comply with the stated delivery schedule, GE may, in addition to any other right which GE may have, require delivery by fastest way and charges resulting from this mode of transportation must be fully prepaid and absorbed by the University.

6. Delay and Non-Performance: In the event University for any reason anticipates any difficulty in complying with the required delivery date, or in meeting any of the other requirements of this order, including without limitation, failure or inability to perform the Statement of Work, University shall promptly notify GE in writing or by electronic mail system. If University is unable to remedy its nonperformance to GE satisfaction within thirty (30) days, University shall be considered in default. In the event of default, GE reserves the right, without liability to GE, and in addition to its other rights and remedies provided at law or in equity, upon giving University 'written notice, to terminate this order. In lieu of termination, GE may require University to provide adequate assurance of performance, including, but not limited to, the institution of special controls regarding the protection of GE's proprietary information.

7. GE's Property (E3):

A. All tools, tool drawings, materials, drawings, computer software, documents or data of every description furnished to University by GE or to the extent specifically paid for by GE, shall be and remain the personal property of GE, and, unless otherwise agreed to in writing by GE shall be used by University solely to render services or provide products to GE. Such property, and whenever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by University as being the property of General Electric, and shall be safely stored separate and apart from University's property. University shall not substitute any property for GE's property and shall not use such property except in filling GE's orders. Such property while in University's custody or control shall be held at University's risk and shall be insured by University for replacement cost. Such property shall be subject to removal at GE's written request, in which event University shall prepare such property for shipment and shall deliver it as directed by GE in the same condition as originally received by University, reasonable wear and tear excepted, all at University's expense. At the end of the applicable program, GE, in its absolute discretion, may transfer ownership of certain property to University, taking due account of all available tax credits or other tax benefits. The foregoing shall not be deemed to affect the rights, if any, of the US government in any such property or to grant any rights to GE in conflict with DFARS 252.227-7013, Rights in Technical Data Noncommercial Items, DFARS 252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, or DFARS 252.227-7015 Technical Data Commercial Items.

B. GE hereby grants University a license to use the drawings, specifications, computer software, and other data (hereinafter collectively referred to as "data") furnished or paid for by GE hereunder for the sole purpose of performing this order for GE. All data is the property of GE and shall not be used, disclosed to others or reproduced for any purpose; provided; however, University may provide data furnished or paid for by GE hereunder to University's contractors for the sole purpose of enabling University's contractors to assist University in performing this order for GE and on condition that University's contractors agree in writing for GE's benefit to the terms of Articles 7 (Property") and 8 ("Intellectual Property") hereof, and University informs GE promptly of the identity of such contractors.

C. GE shall have the right to audit all pertinent books and records of University, and to make reasonable inspections of University's facilities to verify compliance with section 7B above.

## 8. Intellectual Property (I5):

### A. Patent Rights:

(i) If this order is a contract involving or the performance of this order results in experimental, development or research work, or engineering work, University hereby assigns and agrees to assign to GE any inventions conceived and/or reduced to practice in the course of this order and University also agrees to assign to GE any patents issuing thereon. University further agrees to provide reasonable assistance to GE, at GE's expense, for securing patents on such inventions. University shall be responsible for assuring that its employees, staff and students have signed appropriate agreements capable of securing such rights to GE. Any compensation due to University's employees or students in connection with any invention shall be paid solely by the University.

(ii) If the work being done hereunder is pursuant to a contract with the U.S. Government which contains provisions regarding retention of intellectual property rights of the University, University shall retain ownership of inventions and University hereby grants and agrees to grant to GE an irrevocable, fully paid license under any patents covering inventions conceived and/or reduced to practice in the course of this order, to make, have made, use and sell such inventions with the right to extend such license to GE's customers, including the U.S. Government, and to any of GE's licensees or co-producers of GE products.

B. Copyright: If this order is a contract which calls for the delivery of, or results in the creation of, original works of authorship, University agrees to assign and does hereby assign to GE ownership, including copyright, in all such works, irrespective of the media of expression, and all such works shall belong exclusively to GE. GE may obtain and hold in its own name copyrights, registrations, and other protection that may be available in such works and University shall provide any assistance (at GE's expense) required to perfect such protection.

### C. Confidential & Proprietary Information (C2):

(i) "Confidential or Proprietary Information" means documented information, including, but not limited to: drawings; plans; product, process and equipment specifications; operation and control instructions; quality control processes and process control data; test methods and reports and purchase specifications, marked as specified herein below, and which relates to work to be done by University under this Agreement.

(ij) All Confidential or Proprietary Information disclosed under this Agreement:

a) in tangible form shall be clearly identified at the time of disclosure as being Confidential or Proprietary Information by an appropriate and conspicuous marking;

b) in intangible form (e.g., oral or visual) shall be identified as being Confidential or Proprietary Information at the time of disclosure, and shall be confirmed as such in writing to the Receiving Party within thirty (30) days after such disclosure;

c) by electronic transmission (including, but not limited to, facsimile, electronic mail and the like) in

either human readable or machine readable form shall be clearly identified at the time of disclosure as being Confidential or Proprietary Information by an appropriate and conspicuous



electronic marking within the electronic transmission, such marking to be displayed in human readable form along with any display of the Confidential or Proprietary Information;

d) by delivery of an electronic storage medium or memory device shall be clearly identified at the time of disclosure as being Confidential or Proprietary Information by an appropriate and conspicuous marking on the storage medium or memory device itself and by an appropriate and conspicuous electronic marking of the stored Confidential or Proprietary Information, such marking to be displayed in human readable form along with any display of the Confidential or Proprietary Information.

(iii) The rights and obligations of the Parties with respect to Confidential or Proprietary Information shall be defined exclusively by the terms of the present Agreement irrespective of the language of a particular legend.

(iv) With respect to the Disclosing Party's Confidential or Proprietary Information, the Receiving Party shall protect such Confidential or Proprietary Information from unauthorized use or unauthorized or accidental disclosure by the exercise of the same degree of care as it employs to protect its own information of a like nature; but not less than reasonable care. Confidential or Proprietary Information may not be disclosed to any third party without the express written consent of the Disclosing Party. Copies or reproductions, in whole or in part, of Confidential or Proprietary Information or documents which incorporate Confidential or Proprietary Information must be marked by the Receiving Party according to Paragraph (ii).

(v) Confidential or Proprietary Information disclosed under this Agreement shall be used by the Receiving Party solely for work as specified in this Agreement or Statements of Work issued pursuant to this Agreement.

(vi) Information shall not be considered to be Confidential or Proprietary Information, and the Receiving Party shall not be liable for the use and disclosure thereof, if such information:

- a) was in the public domain at the time of disclosure, or thereafter comes into the public domain through no fault of the Receiving Party; or
- b) is otherwise available to the Receiving Party without restrictions on use and disclosure similar to those in this Agreement; or
- c) is independently developed by the Receiving Party as evidenced by written records.

(vii) The Receiving Party shall have a duty to protect the Confidential or Proprietary Information of the Disclosing Party for a period of ten (10) years after termination of this Agreement, or until receipt of a written release of Confidential or Proprietary Information by the Disclosing Party, whichever first occurs. Termination of this Agreement shall not affect the rights or obligations under this paragraph (vii).

(viii) Neither Party has an obligation to disclose Confidential or Proprietary Information hereunder. The Disclosing Party represents and warrants that it has the right to disclose the Confidential or Proprietary Information which it discloses under this Agreement.

(ix) Notwithstanding anything to the contrary in this Agreement, any Confidential or Proprietary Information or data disclosed to or received by GE under this Agreement may be disclosed by GE, for purposes of paragraph (v), to any: GE parent, affiliate, subsidiary, or joint venture participant, (as presently or hereafter constituted) and their directors, officers, agents and employees; engineering service provider; or consultant to GE or any of the foregoing entities; provided such entities, persons, service providers or consultants are subject to obligations of confidentiality.

(x) Except as provided under Paragraph (v), neither the execution of this Agreement, nor the disclosure of any Confidential or Proprietary Information by one Party hereunder, shall be construed as granting to the other Party either a license (expressly, by implication, estoppel, or otherwise) under, or any right of ownership in, such Confidential or Proprietary Information or in any invention, patent or patent application, or copyright now or hereafter owned or controlled by the Disclosing Party.

9. Changes (A1): GE at any time shall have the right to make changes in the order. Any such change which has a significant impact shall entitle either University or GE to an equitable adjustment. However, no additional charge will be allowed unless authorized by GE's written amendment to this order. Information, such as technical direction or guidance provided to University by representatives of GE in connection with the University's performance of this order, shall not be construed either as a change within the meaning of this provision or as direction to proceed outside the scope of this order. Nothing in this clause 9, including any disagreement with GE as to the equitable adjustment to be made, shall excuse University from proceeding with the order as changed.

10. Assignment (A2): Any attempted assignment of this order or any license or other right or interest therein, including without limitation, rights in any proprietary information identified in Article 7 hereto, without advance written consent of GE, shall be void.

11. Work on GE's or Its Customer's Premises: If University's work under this order involves operations by University on the premises of GE or one of its customers, then:

(a) University shall comply with all of GE's safety and security procedures and shall take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of such work. University shall maintain such public liability, property damage and employee's liability and compensation insurance as will protect GE from said risks and from any claims under any applicable workers' compensation and occupational disease acts, and upon GE request provide GE proof of such insurance.

(b) University agrees that all of its employees whom may require access to GE's or its customer's premises to perform work pursuant to this order shall be tested and certified (in writing) to be free from the following illegal or unauthorized drugs prior to being assigned to perform such work: cannabinoid metabolites (marijuana) opiate derivatives (heroin, morphine, codeine) cocaine metabolites (benzoylecgonine, ecgonine) amphetamines (methamphetamines) phencyclidine. In addition, such drug tests shall include screening for prescription drug use. In the event University's employee acknowledges use of prescription drugs, or if the drug screening results are positive for prescription drug use, University shall not assign such employee to

perform work pursuant to any order unless, (1) University confirms that there are corresponding documented medical authorizations for use of such prescription drugs and (2) University determines, using

(c) University's employees shall be retested and recertified to be free of these unauthorized drugs after a six (6) month absence from performing work on GE's or its customer's premises.

(d) University shall comply with any and all federal, state, or local anti-drug, alcohol abuse and or drug testing statutes or regulations for any of its employees who may be covered by such statutes or regulations. University shall have, retain, and be able to provide to GE, upon request, an approved drug and alcohol misuse prevention plan.

(e) University shall conduct a criminal convictions records investigation of its employees before they are assigned to work on any order that requires the employee to enter GE's premises or the premises of a customer of GE (hereinafter collectively "GE Premises") A Criminal Convictions Records Investigation shall consist of a records search (documented by a written report retained by the University of the results of such search) by the appropriate law enforcement or other local or state agency in each location in which the employee has resided and worked in at least the seven years preceding the date of the criminal conviction records investigation. GE reserves the right, at its discretion, to request from University documentation of the completion of a criminal convictions records investigation for any employee assigned to work on GE's or its customer's premises. University's failure to have completed a criminal convictions investigation of any of its employees in accordance with this clause shall be grounds for immediate expulsion of the University and its employees from GE's or its customer's premises and GE shall have the right to terminate all orders for default.

(f) University shall not assign any person to perform work on GE's or its customer's premises that has been: (i) convicted of murder; manslaughter; kidnapping; rape; sexual battery or gross sexual imposition; domestic violence; assault; arson; robbery; burglary; theft; embezzlement; fraud; drug possession, manufacturing or trafficking. (ii) convicted as an adult of any felony, convicted of more than one misdemeanor in the previous two years, or convicted of more than five misdemeanors in the previous five years.

(g) GE may require University's employees, before entering GE's or its customer's premises, to complete a criminal convictions questionnaire. In the event that GE has grounds to believe that an employee of University has falsified the criminal convictions questionnaire in any way, such person shall not perform work on GE's or its customer's premises.

(h) University shall include this Article 11 in any Subcontract placed pursuant to an order with a subcontractor who will perform work on GE's or its customer's premises.

(i) GE reserves the right to deny access to GE's or its customer's premises to any person who appears on government issued lists of terrorists, suspects, etc., such as the Department of State, Arms Export Control Debarment List; Department of State, Proliferation List; Department of Commerce, Denied Parties List; and Department of Treasury, Specially Designated National List.

12. Inspection (R3, R2):

(a) All services, including, but not limited to, engineering and design/development work, shall comply with all applicable specifications and shall be subject to inspection and acceptance by GE and its customer at all times and places and shall be in strict accordance with the requirements of the statement of work or contract documents. If any inspection or acceptance is made on the premises of University, University, without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of GE's representatives in the performance of their duties. All inspections and tests on the premises of University shall be performed in such a manner as not to unduly delay the work.

(b) GE' s failure to inspect services shall neither relieve University from responsibility for such services as are not in accordance with the order requirements nor impose liabilities on GE therefore. The inspection or test of any services by GE shall not relieve University from any responsibility regarding defects or other failures to meet order requirement, which may be discovered subsequently.

13. Principal Investigator (K1): The research will be supervised by University's Principal Investigator specified on the purchase order or such other document specified in the purchase order authorizing work under this Agreement. If for any reason the Principal Investigator is unable to continue to serve as Principal Investigator or the Principal Investigator does not conduct the investigations based on commonly accepted rules of scientific research and a successor acceptable to both University and GE is not available, and the situation cannot be remedied to GE's satisfaction, this Agreement may be terminated by GE for default as provided herein.

14. Qualified Personnel (K1): University agrees to use only qualified personnel in the performances of the service required by this agreement and all services must be of first class quality.

15. Record Retention Requirements (R2): University shall maintain during the course of the applicable program ,and for four (4) years following termination of the program, purchase order files for supplies, equipment, material, or services including supporting documentation and back-up files including, but not limited to, invoices and memoranda, e.g., memoranda of negotiations showing the principal elements of price negotiations.

16. State Sales Tax (T1): The following state sales and use Tax ID numbers are applicable for goods delivered into the States of Ohio, North Carolina and Massachusetts:

Ohio DPP# 98-000-604

North Carolina DPP#457

Massachusetts DPP# 00008

The states of Ohio, North Carolina and Massachusetts have issued to GE the direct payment permits indicated above, and GE is exempt from state sales tax in Ohio, North Carolina and Massachusetts. Therefore, GE shall not be invoiced or charged by University for sales tax on the sale of goods in Ohio, North Carolina and Massachusetts, and GE agrees to maintain adequate records of all purchases and pay tax on any taxable items directly to the treasurer of the respective states. In the event of a conflict between this Article 16 and any other provision of this purchase order, this

Article 16 shall prevail.

17. Release of Information (P3): No public release of information regarding this order shall be made without the prior written approval of GE. University agrees not to publicly present, publish, authorize or commission the publication of any information or materials concerning this order or containing any references to GE for five (5) years following completion of the services without the prior written approval of GE, which shall not be unreasonably withheld, provided that University may include GE's trade name and research project title in published listings of research sponsors. Any use of the GE monogram is strictly prohibited. GE's written approval, if granted, will be subject to any "acknowledgement of sponsorship" clause in GE's prime contract. During the term of this Agreement and for five (5) years thereafter, University shall submit any proposed publication regarding the order to GE at least ninety (90) days in advance of publication or planned presentation date, in order to allow GE to review and remove if necessary, any information which is proprietary to GE. Review of such material shall be completed within ninety (90) days from the receipt of the proposed publication unless GE and University mutually agree to longer period. University agrees to delete identified GE proprietary information from any proposed publication or presentation material unless GE agrees in writing to allow its release. Upon GE's request, University shall delay publication of materials submitted for an additional one (1) year (or longer if mutually agreed upon) to allow for preparation and filing of a patent application.

18. Nondiscrimination in Employment (K1): University will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, physical handicap or national origin. University shall comply with Executive Order 11246, which is incorporated by reference.

19. Patent and Copyright Indemnity (I5, I2): To the extent permitted by applicable law, University shall handle all claims and defend any suit or proceeding brought against GE or its customers so far as based on any claim that the manufacture or furnishing of goods and/or services under this order, or the use (without modification or further combination) or sales of such goods constitutes infringement of any patent or copyright, if notified promptly in writing and given information, assistance and such authority as is afforded by applicable laws; and University shall indemnify and save GE and its customers harmless from and against any expense or liability, including costs, fees and damages, arising out of such claim, suit or proceeding.

20. Standard Terms of Settlement (STS) (P1):

A. Standard. Unless GE chooses the accelerated payment program described in (b) below, GE's standard terms of settlement shall be issuance of payment of the full invoiced amount (not discounted) to University within ninety (90) days (meaning within 90 days of the Payment Start Date (as defined in (d) below)) Settlement and invoicing must be paperless, and in a format acceptable to GK University must provide banking information to establish electronic funds transfer for U.S. suppliers and wire transfer for non-U.S. suppliers.

B. Accelerated Payment Program. GE reserves the right to choose the settlement of invoices with University by using GE's accelerated payment program as follows: University agrees to accept the invoice amount discounted by two and one-half percent (2.5%), in exchange for GE initiation of payment on the 15th day following the Payment Start Date (as defined in Cd) below ("net 15 less 2.5 %"). If payment is initiated earlier than such 15th day, the invoice amount may be further discounted to reflect substantially similar economics as "net 15 less 2,5%".

C. Use of GECEF. Funding for accelerated payment of invoices under the GE accelerated payment program will be provided by General Electric Commercial Finance (HGECEF") If GE chooses to settle an invoice pursuant to the accelerated payment program, the following shall occur: (1) title to the Goods that are being delivered shall pass directly to GECEF consistent with clause 5 above; (2) once title to the Goods has passed to GECEF , GECEF will immediately and directly transfer title to GE; and (3) any and all of the University's obligations under this purchase order, including University's representations and warranties, shall extend to and benefit GE as if title passed directly to GE.

D. Payment Start Date: As used in this clause, the "Payment Start Date" shall be:

(i) For receivable material: From the latest of (a) the manufacturing required date as identified on the part schedules report, (b) the material received date as identified in GE's computer system, or (c) the invoice date; and,

(ii) For non-receivable material and/or services: From the invoice date; invoices for services must be dated no earlier than the last day of the period of time during which services that are the subject of the invoice were provided.

21. Export Regulations (E4): Each party shall be responsible for obtaining any necessary import licenses, export licenses, or other governmental authorizations required in connection with any disclosure by it under this Agreement, including disclosure to foreign nationals located within a facility of a party hereto, as the case may be. Furnishing of information shall be subject to prior receipt of all necessary government approvals.

University agrees to comply with all applicable export regulations, including but not limited to the Export Administration Regulations (EAR) and the International Traffic-in-Arms Regulations (ITAR). In the event University is supplying defense articles hereunder, University agrees to maintain a valid and current Office of Defense Trade Controls ("ODTC") registration. University shall provide its ODTC registration status (whether registered or not, with expiration date to GE and promptly advise GE of any updates or changes to such information, in the format requested by GE. With respect to defense articles and defense services furnished hereunder, University

certifies that it has not paid, offered or agreed to pay, and agrees that it shall not pay, offer or agree to pay, for the purpose of soliciting, promoting or otherwise to secure the sale of defense articles and services to or for the use of the armed forces of an international organization or non-US. country, any (i) fees or commissions in excess of \$1 ,000 or (ii) political contribution (including any gift, rebate or payment of expenses) to a non-US. person or entity.

If University intends to conduct work for GE in a foreign country, including but not limited to the use of GE own facility outside of the U.S. or the use of an unrelated subcontractor, University must provide advance written notification to GE. University is responsible for compliance with applicable export control laws and regulations and for obtaining all export control licenses required by law or requested by GE.

## 22. Environmental Matters (E2):

A. Hazardous Substances. University warrants that except as specified on the face of the order, none of the chemical substances constituting or contained in the product(s) sold or otherwise transferred to GE under this order are "hazardous substances" as defined in the Comprehensive, Environmental Response, Compensation and Liability Act (CERCLA), and University agrees to supply GE with any and all required material data safety sheets.

B. Asbestos. University agrees to provide products which are free of asbestos unless University has notified GE in advance and has obtained GE's prior written consent to the use of asbestos. University agrees to include this clause in any subcontracts issued hereunder. If University intends to rely upon any drawing which requires or permits the use of asbestos, written notice to, and approval by, the cognizant buyer must be obtained prior to such use.

C. Use of Cadmium. Unless specifically defined as a requirement by GE engineering drawings or specifications, the use of cadmium plating or nickel cadmium plating is strictly prohibited in the performance of services under this order. The use of cadmium plating or nickel cadmium plating is strictly prohibited on all tooling, fixturing, and test equipment that is used for manufacturing, assembly, test, or material handling of the product unless University has notified GE in advance and has obtained its prior written consent to such use. Approval shall not be granted where there is a potential for University's product to come into contact with titanium containing items.

D. Ozone Depleting Substances("ODS's"). University agrees to comply with the U.S. Clean Air Act amendments of 1990 regarding warning statements on products manufactured with ODS's, products containing ODS's, and containers containing ODS's. The need for warning statements, the specific wording of statements, and the placement of statements shall be in accord with requirements of the US Environmental Protection Agency implementing regulations. Any usage of class I ODS's is subject to evaluation and approval of GE or the U.S. Government. For purchases of materials to be supplied to the US. Government, University shall also comply with any labeling requirements arising under the Federal Acquisition Regulation (FAR). University will eliminate the use of class I ODS '5 to the maximum extent possible. Any usage of class I ODS's which cannot be eliminated is subject to evaluation and approval by GE or the U.S. Government. University will notify GE of any such use of Class I ODS's which cannot be eliminated and will provide GE with any requested information which may be required in order to complete the evaluation and approval of the continued usage.

E. Representations and Warranties. (W2): University represents and warrants that it shall perform all activities related to this order in compliance with all applicable federal, state and local environmental, health and safety laws and regulations. University represents and warrants that it will use best efforts to prevent and minimize accidental releases of hazardous substances or constituents to the environment, as well as prevent and minimize risk of endangerment to human health or the environment from any process. University represents and warrants that in the event of a release or spill, it will use best efforts to mitigate actual or potential impacts to the environment or human health.

F. Environmental Claims (E2): University agrees to indemnify to the extent permitted by applicable law, release, defend and hold harmless GE, its directors, officers, employees, agents, representatives, successors and assigns, whether acting in the course of their employment or otherwise, against any and all suits, actions, or proceedings, at law or in equity, and from any and all claims, demands, losses, judgments, damages, costs, expenses, or liabilities resulting from: (1) Death or injury to any person, including officers and employees of University and those of GE, arising out of or in any way connected with University's failure to comply with this article 22, (2) Damage to any property, real or personal, including property of University and that of GE, arising out of or in any way connected with University's failure to comply with this article 22, (3) Any and all pre-existing conditions of real or personal property of University, or (4) Any failure to comply with any federal (including F ARJDF AR clauses), state or local environmental, health, or safety requirements. University agrees to include this clause in any subcontracts issued hereunder.

G. Material Ownership (S1): University and GE agree that at all times prior to delivery and acceptance by GE of the items under this order, all raw materials, wastes and work-in-progress shall remain the property of University, except as otherwise provided herein.

H. Waste Management (E2): University shall be directly and solely responsible for managing all wastes associated with its processes. University shall manage any and all such wastes in compliance with applicable federal, state and local laws and regulations.

I. Waste Disposal Certifications (E2): University agrees to generate and maintain detailed records certifying the proper disposal of all wastes associated with its processes, including wastes generated from the remediation or cleanup of any releases, leaks or spills. Such records will include the names and addresses of any treatment, storage or disposal facility receiving such wastes, the amount of waste received, and the dates of shipment and receipt. University shall maintain all records relating to environmental compliance and waste disposal.

J. Notification of Significant Events (N1): University agrees to notify GE in writing within five days after learning of any significant event involving any of its processes that may affect University's ability to comply with its obligations under this purchase order, including but not limited to, any spill, leak or release to the environment which also requires notification to a state or federal agency, including, but not limited to: (1) the date of release; (2) the quantity and type of material released; (3) efforts to clean up the material released; and (4) efforts to mitigate



impacts from the release. Notices shall be provided to General Electric, Group Environmental Affairs & Safety, One Neumann Way, MID T265, Cincinnati OH 45215, phone: (513) 672-3982.

K. Hazardous Material Identification (E2): University shall identify hazardous materials contained in items delivered to GE, provide material safety data sheets (MSDS) for such items, and, where applicable, comply with the OSHA Hazard Communication Standard, 29 CFR 1910.1200 ("HAZCOM"). For each such material, identification shall reference the stock or part number of the delivered item. Hazardous materials include, but are not limited to, materials embedded in a delivered product in such a manner as to present a potential for personal injury or harm or property damage in the course of normal use, repair, accidents or disposal. All MSDS forms and hazard warning labels required under this section and HAZCOM shall be provided to General Electric, Group Environmental Affairs & Safety, One Neumann Way, MD T265, Cincinnati, OH 45215.

L. University Competence (W2): University represents and warrants that it possesses the skills, knowledge and expertise to handle and provide the products and or services specified herein in a safe and responsible manner, and that all persons, including any subcontractors, involved in handling any materials processed or provided for under this agreement will be shown any MSDS associated with such materials and be advised of its safe and proper use and handling.

23. Classified Information (R2): Upon completion of work by University under this order, University shall return to GE all classified information furnished by GE in connection herewith, including all reproductions thereof; then in University's possession or control, and University shall surrender classified information or materials developed by University in connection with this order, unless the information has been destroyed or the retention of the information is authorized in writing by GE or the government.

24. Termination (T2):

A. Termination for Convenience:

(i) GE, by written notice, may terminate this order, in whole or in part, when it is in GE's interest to do so. GE shall terminate by delivery to the University of a notice of termination specifying the extent of termination and the effective date. After receipt of a notice of termination, and except as directed by GE, the University shall immediately: (a) stop work as directed in the notice; (b) place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the order; and (c) terminate all subcontracts to the extent they relate to work terminated. After termination, the University shall submit a final termination settlement to GE in the form and in the manner prescribed by GE, and in accordance with applicable portions of subparts 49.1, 49.2 and 49.3 of the Federal Acquisition Regulations (FAR), and the parties shall negotiate a reasonable settlement, including consideration, without limitation, of the University's non-cancelable contracts and commitments, including funding of graduate students and the University's obligation to mitigate damages.

(ii) Termination for the convenience of the Government is in accordance with the applicable portion of 52.249-5, with the following changes, in paragraph (C) change a "120 days" to "60 days", in paragraph (D) change "1 year" to "60 days", and delete paragraph (H).

**B. Termination for Default:**

(i) if GE declares the University in default pursuant to Article 6 herein, GE may immediately terminate this order without liability.

(ii) In the event of any such termination for University's default, University agrees to render full cooperation to GE in order to minimize disruption to GE's program.

(iii) If progress payments have been made under this order, and the order is terminated for default, GE shall have the rights of the U.S. Government set forth in FAR 52.232-16 Progress Payments, including paragraph (h), "Special Terms Regarding Default."

C. Articles 3, 7, 8, 17 and 19 and all of University's indemnity obligations will survive any termination of this order.

25. Engineering Data (R3): Each Statement of Work related to the applicable program shall specify the content of a complete final report to be provided to GE, at no additional cost to GE, containing all pertinent engineering data, drawings, operating instructions for computer software, and other relevant information resulting from performance by University under this agreement.

26. Gratuities (K1): Any officers, employees or agents of GE, the U.S. Government, or GE customers, are prohibited from soliciting or accepting entertainment, gifts, gratuities, compensation or favors from University. University shall at all times comply with the requirements of this policy. When University has reasonable grounds to believe that a violation of the gratuity policy by University or GE's representatives may have occurred, University shall promptly report the potential violation to GE by using the University Hot line (1-800-443-3632) or (513-243-6922) or by reporting it in writing. For violation of this clause by University, this order may be terminated in whole or in part GE may also require University to provide proof that it has implemented internal management controls sufficient to prevent future violations. These rights and remedies of GE are not exclusive and are in addition to any other rights and remedies provided to GE under this order or by law.

27. Access to GE ConmlUter Systems: Access to GE's computer systems by University's personnel shall include only those individual persons who have been specifically granted an authorized user id by GE. GE reserves the right to, at any time, verify the citizenship status of all University personnel who have access to GE's computer systems. Such access shall be limited by GE to those systems, which in GE's sole discretion, are required for the University's personnel to perform assigned work and shall be valid until such access is revoked or surrendered. Such access shall be surrendered by University's personnel upon GE's request or upon removal or reassignment by University.

28. Citizenship Status (K1): Only US Citizens, permanent resident aliens or those aliens authorized to be employed in the U.S. shall be permitted to work on GE orders. University must notify GE prior to disclosure by University of GE technical data to non-US citizens, or the assignment by University of non-U.S. citizens to the involved work to enable GE to review the technical scope and assure any necessary export authorizations are in place. University certifies to GE that it has (i) confirmed the identity of each individual assigned to work on GE's purchase orders; (ii) verified that such individuals are legally entitled to work in the U.S. and are employees of University; and (3) preserved such records as required by the Department of Homeland Security. There maybe jobs which require U.S. citizenship because of national security or exposure to classified or export restricted information. In such cases, each such job will be separately identified by GE as requiring U.S. Citizenship.

29. Independent Contractor (I3): University's relationship to GE under this Agreement will be that of an independent contractor and not an agent, joint venture or partner of GE.

30. Notice (N1): Any notice or other communication required or permitted under this Agreement will be in writing and will be deemed given as of the date it is (a) delivered by hand, or (b) mailed, postage prepaid, first class, certified mail, return receipt requested, to the Party at the address listed below or as subsequently specified in writing, or (c) sent, shipping prepaid, return receipt requested, by national courier service, to the Party at the address specified on the face of the purchase order.

31. Prohibited Goods and Services (I1): The United States of America prohibits the importation of goods or services from the following countries: Burma, Cuba, Iran, Iraq, Liberia, Libya, North Korea, Sudan. No goods or services from the aforementioned prohibited countries may be used directly or indirectly in the design, manufacture, test, or other methods of providing any of the items (whether goods, services, or otherwise) covered by this order. Such list can change from time to time and it is University's responsibility to ensure compliance with such list at all times. Current information can be obtained by accessing the Internet at URL <http://v,wv/.treas.gov/ofac/>

32. Former GE Employees (K1): If access is requested to GE's facilities or computer systems, the University must confirm satisfactory performance of the individual for whom access is requested if the individual was previously employed by the GE or its affiliates. The University shall use a form provided by GE to obtain its employee's consent and waiver for GE to release employment information to University regarding the individual's performance when employed by the GE or its affiliates. All forms and more detailed instructions can be found at: [http://www.geae.com/aboutgeae/doingbusinesswith/supplier security \\_requirements.html](http://www.geae.com/aboutgeae/doingbusinesswith/suppliersecurity_requirements.html)

33. EDI (Electronic Data Interchange) and Paperless Invoicing (R3, R2):

(a) Upon GE's request, University shall sign an EDI (Electronic Data Interchange) Trading Partner Agreement with GE within 15 days from the request date. Following such agreement, the parties shall establish an implementation schedule which shall call for active EDI communication capability within 45 days from the EDI Trading Partner Agreement.

(b) Paperless invoicing is required. Options acceptable to GE include GSN Web Invoicing, Evaluated Receipt Settlement ("ERS") and EDI.

34. University's Representations and Indemnification (I2): University represents, warrants, certifies and covenants that it shall perform all activities required under this purchase order in compliance with all applicable international, national, state and local laws, including, but not limited to environmental, health and safety laws and regulations.

Goods supplied under this purchase order may be exported worldwide, including countries that prohibit the importation of goods manufactured with child labor or forced, indentured or convict labor. University represents, warrants, certifies and covenants that no goods or services supplied under this purchase order have been or will be produced using forced, indentured or convict labor, or the labor of persons in violation of the minimum working age laws of the country of manufacture, or in violation of minimum wage, hour of service or overtime laws of the country of manufacture.

If GE determines any of University's representations, warranties, certifications or covenants hereunder to be untrue or otherwise breached, GE shall have the right to terminate this purchase order without further compensation to University. University shall, to the extent permitted under applicable law, defend, indemnify and hold harmless GE and all of its affiliates, directors, officers, employees, agents, customers and representatives ("Indemnified Party") from and against all claims, losses, loss of use, damages, attorney's fees, actions, liability, demands, judgment costs and expenses arising out of or resulting from University's untrue or breached representations, warranties, certifications and covenants and University's (and its subcontractor's) failure otherwise to comply with the terms of this purchase order. An Indemnified Party shall have the right to participate in the selection of counsel and University shall not enter into any settlement agreement that contains any admission of liability on the part of GE.

From time to time, at GE's request, University shall provide certificates to GE in form and substance acceptable to GE relating to the requirements of this paragraph 34. University shall permit GE or its representatives to have reasonable access to the Site where work under this order is performed to assess 1) University's work quality and compliance with GE's specifications and 2) University's compliance with its representations, warranties, certifications and covenants hereunder.

35. Waiver (W1): GE's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or GE's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

36. Severability. If any provisions of this Remark G94 or any part hereof are invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all conditions and provisions of this agreement which can be given effect without such invalid, unlawful or unenforceable provision shall, nevertheless, remain in full force and effect.

## **25. University of Colorado**

## 25.1. Federal Sponsored Research Agreement

**Recital** (R1) This agreement (“Agreement”) is between \_\_\_\_\_ having a principal place of business at \_\_\_\_\_ (“Sponsor”) and the Regents of the University of Colorado, a body corporate, contracting on behalf of the University of Colorado at Boulder, a public educational institution of the State of Colorado (“University”).

WHEREAS, the Sponsor has received a prime contract from the \_\_\_\_\_ (“U.S. Government”) under contract no. \_\_\_\_\_ entitled \_\_\_\_\_, and

WHEREAS, the research program contemplated by this Agreement is of mutual interest and benefit to Sponsor and University, and will further University’s instructional and research objectives.

NOW, THEREFORE, the parties agree as follows:

### Article 1 – Proposed Work (S1)

1.1 University shall conduct the research project in accordance with the research plan, attached as Appendix A (“Project”), and standard scientific principles, in compliance with all applicable laws and regulations.

1.2 The Project will be under the direction and supervision of the University’s principal investigator, \_\_\_\_\_ (“PI”). If \_\_\_\_\_ ceases to serve as PI for any reason, University will promptly notify Sponsor and University and Sponsor shall use good faith efforts to identify a mutually acceptable replacement within thirty (30) days. If a suitable replacement cannot be identified within the thirty- (30)-day period, Sponsor shall have the right to terminate this Agreement upon written notice to University.

1.3 University may not subcontract the Project or any portion thereof to a third party without written authorization from Sponsor.

### Article 2 – Agreement Duration (P2)

2.1 This Agreement becomes effective on \_\_\_\_\_ (“Effective Date”) and will terminate on \_\_\_\_\_ (“Termination Date”).

### Article 3 – Consideration (P1)

3.1 In consideration of the foregoing, Sponsor will reimburse University an amount not to exceed of \_\_\_\_\_ dollars (\$\_\_\_\_\_), including direct and indirect costs, in accordance with the following schedule: \_\_\_\_\_ and all applicable U.S. Government terms and conditions in the attached Appendix C.

3.2 If this Agreement is terminated for any reason prior to the Termination Date, Sponsor must reimburse University for all reasonable costs incurred by University for the Project through the date of termination, including costs, if any, necessary to effect the early termination of this

Agreement. Such costs shall include commitments existing at the time the notice of termination is received that cannot be cancelled. However, in no event will Sponsor's financial obligation for Project exceed the amount specified in Article 3.

#### **Article 4 – Reporting Requirements (R3)**

4.1 University will provide reports on the progress of Project in accordance with the following schedule: informal oral reports upon the reasonable request of Sponsor, brief written reports semi-annually, and a formal written report within three (3) months of conclusion of the Project.

#### **Article 5 – Equipment and Other Property (E3)**

5.1 All equipment, materials, or other property purchased by University under the terms of this Agreement will become the property of the University upon acquisition.

#### **Article 6 – Intellectual Property (I5)**

6.1 Intellectual Property includes the following if they arise under this Agreement:

- a) any art or process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the patent laws of the United States (“Inventions”); and
- b) original works of authorship fixed in a tangible medium of expression, excepting:
  - (i) works specified in detail and called for in Appendix A, which works are made available to Sponsor as a Project deliverable; and
  - (ii) works of a scholarly nature (“Works”).
- c) data, test results, and laboratory notebook entries developed or made as a result of the Project (“Data”).

6.2 Title to all Inventions and Works made by University resulting from the Project shall reside in University

6.3 University shall have sole responsibility for the preparation, filing, prosecution, maintenance, and enforcement of patents directed to Inventions, unless otherwise agreed by the parties in writing.

6.4 Subject to University obligations, if any, to the Federal Government arising from use of Federally supplied funds in the Project, University hereby grants to Sponsor, without fee other than the consideration of the research sponsored herein and the reimbursement of University for all patent expenses incurred for the subject Invention prior to and during the option period and appertaining license negotiation period, an option to acquire an exclusive, worldwide, royalty-bearing license of University's rights to **any Invention, which option shall extend for six (6) months** after Sponsor's receipt of the subject Invention disclosure. If Sponsor notifies University in writing of its exercise of the option within the option period, then the parties shall proceed in good faith to negotiate a license agreement within sixty (60) days after notification of

exercise. If Sponsor does not exercise this option, or notifies University that it will not exercise this option, or the parties fail to sign a license agreement within said sixty (60) day negotiation period, then Sponsor's option to University's rights in the subject Invention shall terminate.

#### **Article 7 – Publications and Confidentiality (P3, C2)**

7.1 The Principal Investigator has the right to publish or otherwise publicly disclose information gained in the course of the Project. University agrees to submit to Sponsor for its review, a copy of any proposed publication resulting from the subject research at least thirty (30) days prior to submission for publication. If Sponsor determines that the proposed publication contains patentable subject matter requiring patent protection, University shall delay publication for a period of time not to exceed thirty (30) days for the purpose of allowing the filing of patent applications.

Confidential Information ("Information") shall mean all information provided by one party to the other and clearly identified as confidential by the transmitting party at the time of disclosure. In order to be considered Confidential Information, information disclosed orally or in any other transitory medium must be identified to the Recipient as confidential orally at the time of disclosure and in writing within thirty (30) days after such disclosure. Specifically excepted from this definition is all information: (a) known by the receiving party at the time of disclosure; (b) publicly disclosed except by breach of this Agreement; (c) rightfully received by the receiving party from a third party without an express obligation of confidence; (d) independently developed by the employees or agents of either party without any use of Information provided by the other party; or (e) is required by law or regulation to be disclosed..

7.2 Each Party shall vigilantly protect the Information of the other from disclosure to third parties for a period of three (3) years from the date of receipt of such information, and no such disclosure shall be made without the disclosing Party's written permission. All written documents containing Information and other material in tangible form received by either Party under this Agreement shall remain the property of the disclosing Party, and such documents and materials, together with copies of excerpts thereof, shall promptly be returned to disclosing Party upon request, except one copy may be retained for archival purposes. Sponsor acknowledges that University is subject to the Colorado Public Records Act (C.R.S. §§ 24-72-201 et seq.). All plans and reports marked "Confidential" shall be treated by University as confidential to the extent permitted under §§ 24-72-204.

#### **Article 8 – Liability and Insurance (I2, I4)**

8.1 Sponsor agrees to indemnify and hold harmless, University, their Regents, officers, agents and employees from any liability, loss or damage they may suffer as a result of claims, demands, costs or judgments against them arising out of the activities to be carried out pursuant to the obligations of this Agreement, including but not limited to the use by Sponsor of the results obtained from the activities performed by University under this Agreement; provided, however, that the following is excluded from Sponsor's obligation to indemnify and hold harmless:



- a. the negligent failure of University to substantially comply with any applicable governmental requirements; or
- b. the negligence or willful malfeasance of any Regent, officer, agent or employee of University.

8.2 Both parties agree that upon receipt of a notice of claim or action arising out of the Research Program, the party receiving such notice will notify the other party promptly. Sponsor agrees, at its own expense, to provide attorneys to defend against any actions brought or filed against University, their Regents, officers, agents and/or employees with respect to the subject of the indemnity contained herein, whether such claims or actions are rightfully brought or filed; and subject to the statutory duty of The Colorado Attorney General, University agrees to cooperate with Sponsor in the defense of such claim or action.

8.3 Each party warrants and represents that it has adequate liability insurance for the protection of itself and its officers, employees, and agents, while acting within the scope of their employment by the party. University shall have the right to request the appropriate certificates of insurance from Sponsor for the purpose of ascertaining the sufficiency of such coverage.

#### **Article 9 – Independent Contractor (I3)**

9.1 In the performance of Project, neither party is authorized or empowered to act as agent for the other party. Neither party shall be bound by the acts or conduct of the other.

#### **Article 10 – Compliance with Laws and Disputes (D2)**

10.1 Each party agrees to comply with all applicable laws and regulations in the performance of Project.

10.2 This Agreement is governed and construed in accordance with the laws of the State of Colorado.

10.3 In cases where a dispute arising in relation to this Agreement, the parties hereto shall make every effort to settle it upon mutual consultation.

#### **Article 11 – Assignment (A4)**

11.1 Neither party may assign or transfer any interest in this Agreement, without the prior written approval of the other party.

#### **Article 12 – Use of Name (P4)**

12.1 Each party agrees not to include the name of the other party in any advertising, sales promotion or other publicity matter without the prior written approval of the other party. However, nothing in this Agreement restricts either party from disclosing the existence of and nature of this Agreement (including the name of Sponsor) or from including the existence of and nature of this Agreement in the routine reporting of activities.

### **Article 13 – Audit and Retention of Records (R2)**

13.1 In accordance with the Confidentiality provisions herein, Sponsor shall have access to pertinent documents and records of University to audit or examine. Documents relating to this Agreement shall be retained by the parties for a period of at least three years from the date of termination of Project.

### **Article 14 – Termination (T2)**

14.1 This agreement may be renewed for additional periods upon the mutual consent of the parties by amendment hereto. Either party may terminate this Agreement by giving the other party at least sixty (60) days prior written notice of such termination. In the case of such termination, University shall proceed in an orderly fashion to terminate any outstanding commitments and to stop the work as soon as it is practicable to do so.

14.2 In the event that either party commits a material breach of its obligations under this Agreement and fails to cure that breach within sixty (60) days after receiving written notice thereof, the other party may terminate this Agreement immediately upon written notice to the party in breach.

14.3 Termination of this Agreement, however effectuated, shall not release the parties from their rights and obligations under the above Articles on Consideration, Equipment and Other Property, Intellectual Property, Publications and Confidentiality, Indemnity and Insurance, Use of Name, and Audit and Retention of Records.

### **Article 15 – Entire Agreement, Modifications, Waiver, and Severance (E1, A1, W1, S2)**

15.1 This Agreement constitutes the entire agreement between the parties.

15.2 Any modifications to this Agreement must be executed in writing by authorized representatives of the parties.

15.3 The failure of a party in any instance to insist upon the strict performance of the terms of this Agreement will not be construed to be a waiver or relinquishment of any of the terms of this Agreement, either at the time of the party's failure to insist upon strict performance or at any time in the future, and such terms will continue in full force and effect.

15.4 Each clause of this Agreement is a distinct and severable clause and if any clause is deemed illegal, void or unenforceable, the validity, legality or enforceability of any other clause or portion of this Agreement will not be affected thereby.

**Article 16 – Notification to the Other Party (N1)**

16.1 All notification required by this Agreement shall be executed in writing by the parties hereto and shall be directed to the following individuals:

**For the University**

**For the Sponsor**

**Randall W. Draper, Director  
Office of Contracts and Grants  
3100 Marine Street  
Room 481  
572 UCB  
University of Colorado  
Boulder, CO 80309-0572**

**Copy to:**

**Dr. \_\_\_\_\_, PI  
\_\_\_\_\_ Dept.  
\_\_\_\_ UCB  
University of Colorado  
Boulder, CO 80309**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## 25.2. Non-federal Sponsored Research Agreement

This agreement (“Agreement”) is between \_\_\_\_\_ having a principal place of business at \_\_\_\_\_ (“Sponsor”) and the Regents of the University of Colorado, a body corporate, contracting on behalf of the University of Colorado at Boulder, a public educational institution of the State of Colorado (“University”).

Recital (R1) WHEREAS, the research program contemplated by this Agreement is of mutual interest and benefit to Sponsor and University, and will further University’s instructional and research objectives.

NOW, THEREFORE, the parties agree as follows:

### Article 1 – Proposed Work (S1)

1.1 University shall conduct the research project in accordance with the research plan, attached as Appendix A (“Project”), and standard scientific principles, in compliance with all applicable laws and regulations.

1.2 The Project will be under the direction and supervision of the University’s principal investigator, \_\_\_\_\_ (“PI”). If \_\_\_\_\_ ceases to serve as PI for any reason, University will promptly notify Sponsor and University and Sponsor shall use good faith efforts to identify a mutually acceptable replacement within thirty (30) days. If a suitable replacement cannot be identified within the thirty- (30)-day period, Sponsor shall have the right to terminate this Agreement upon written notice to University.

1.3 University may not subcontract the Project or any portion thereof to a third party without written authorization from Sponsor.

### Article 2 – Agreement Duration (P2)

2.1 This Agreement becomes effective on (“Effective Date”) and will terminate on \_\_\_\_\_ (“Termination Date”).

### Article 3 – Consideration (P1)

3.1 In consideration of the foregoing, Sponsor will reimburse University an amount not to exceed of \_\_\_\_\_ dollars (\$\_\_\_\_\_), including direct and indirect costs, in accordance with the budget described in the attached Appendix B and the following schedule:

3.2 If this Agreement is terminated for any reason prior to the Termination Date, Sponsor must reimburse University for all reasonable costs incurred by University for the Project through the date of termination, including costs, if any, necessary to effect the early termination of this Agreement. Such costs shall include commitments existing at the time the notice of termination is received that cannot be cancelled. However, in no event will Sponsor’s financial obligation for Project exceed the amount specified in Appendix B.

### Article 4 – Reporting Requirements(R3)

4.1 University will provide reports on the progress of Project in accordance with the following schedule: informal oral reports upon the reasonable request of Sponsor, brief written

reports semi-annually, and a formal written report within three (3) months of conclusion of the Project.

#### Article 5 – Equipment and Other Property (E3)

5.1 All equipment, materials, or other property purchased by University under the terms of this Agreement will become the property of the University upon acquisition.

#### Article 6 – Intellectual Property (I5)

6.1 Intellectual Property includes the following if they arise under this Agreement:

- a) any art or process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the patent laws of the United States (“Inventions”);
- b) original works of authorship fixed in a tangible medium of expression (“Works”); and
- c) data, test results, and laboratory notebook entries developed or made as a result of the Project (“Data”).

6.2 Title to all Intellectual Property made by University resulting from the Project shall reside in University.

6.3 University shall have sole responsibility for the preparation, filing, prosecution, maintenance, and enforcement of patents directed to Inventions, unless otherwise agreed by the parties in writing.

6.4 University shall notify Sponsor of the creation of any Intellectual Property, and Sponsor shall have thirty (30) days to elect an option to acquire an exclusive, worldwide, royalty-bearing license to University’s rights in such Intellectual Property. Such option, which shall extend for six (6) months after election, shall be granted to Sponsor without fee other than the consideration of the research sponsored herein and the reimbursement of University for all patent expenses incurred for a subject Invention prior to and during the option period and appertaining license negotiation period. If Sponsor notifies University in writing of its exercise of the option within the option period, then the parties shall proceed in good faith to negotiate a license agreement within sixty (60) days after notification of exercise. If Sponsor does not exercise this option, or notifies University that it will not exercise this option, or the parties fail to sign a license agreement within said sixty (60) day negotiation period, then Sponsor’s option to University’s rights in the subject Invention shall terminate.

#### Article 7 – Publications and Confidentiality (P3, C2)

7.1 The Principal Investigator has the right to publish or otherwise publicly disclose information gained in the course of the Project. University agrees to submit to Sponsor for its review, a copy of any proposed publication resulting from the subject research at least thirty (30) days prior to submission for publication. If Sponsor determines that the proposed publication contains patentable subject matter requiring patent protection, University shall delay publication for a period of time not to exceed thirty (30) days for the purpose of allowing the filing of patent applications.

Confidential Information (“Information”) shall mean all information provided by one party to the other and clearly identified as confidential by the transmitting party at the time of disclosure. In order to be considered Confidential Information, information disclosed orally or in any other transitory medium must be identified to the Recipient as confidential orally at the time of disclosure and in writing within thirty (30) days after such disclosure. Specifically excepted

from this definition is all information: (a) known by the receiving party at the time of disclosure; (b) publicly disclosed except by breach of this Agreement; (c) rightfully received by the receiving party from a third party without an express obligation of confidence; (d) independently developed by the employees or agents of either party without any use of Information provided by the other party; or (e) is required by law or regulation to be disclosed.

7.2 Each Party shall vigilantly protect the Information of the other from disclosure to third parties for a period of three (3) years from the date of receipt of such information, and no such disclosure shall be made without the disclosing Party's written permission. All written documents containing Information and other material in tangible form received by either Party under this Agreement shall remain the property of the disclosing Party, and such documents and materials, together with copies of excerpts thereof, shall promptly be returned to disclosing Party upon request, except one copy may be retained for archival purposes. Sponsor acknowledges that University is subject to the Colorado Public Records Act (C.R.S. §§ 24-72-201 et seq.). All plans and reports marked "Confidential" shall be treated by University as confidential to the extent permitted under §§ 24-72-204.

#### Article 8 – Liability and Insurance (I2, I4)

8.1 Sponsor agrees to indemnify and hold harmless, University, their Regents, officers, agents and employees from any liability, loss or damage they may suffer as a result of claims, demands, costs or judgments against them arising out of the activities to be carried out pursuant to the obligations of this Agreement, including but not limited to the use by Sponsor of the results obtained from the activities performed by University under this Agreement; provided, however, that the following is excluded from Sponsor's obligation to indemnify and hold harmless:

- a. the negligent failure of University to substantially comply with any applicable governmental requirements; or
- b. the negligence or willful malfeasance of any Regent, officer, agent or employee of University.

8.2 Both parties agree that upon receipt of a notice of claim or action arising out of the Research Program, the party receiving such notice will notify the other party promptly. Sponsor agrees, at its own expense, to provide attorneys to defend against any actions brought or filed against University, their Regents, officers, agents and/or employees with respect to the subject of the indemnity contained herein, whether such claims or actions are rightfully brought or filed; and subject to the statutory duty of The Colorado Attorney General, University agrees to cooperate with Sponsor in the defense of such claim or action.

8.3 Each party warrants and represents that it has adequate liability insurance for the protection of itself and its officers, employees, and agents, while acting within the scope of their employment by the party. University shall have the right to request the appropriate certificates of insurance from Sponsor for the purpose of ascertaining the sufficiency of such coverage.

#### Article 9 – Independent Contractor (I3)

9.1 In the performance of Project, neither party is authorized or empowered to act as agent for the other party. Neither party shall be bound by the acts or conduct of the other.

Article 10 – Compliance with Laws and Disputes (D2)

10.1 Each party agrees to comply with all applicable laws and regulations in the performance of Project.

10.2 (Governing Law) This Agreement is governed and construed in accordance with the laws of the State of Colorado.

10.3 In cases where a dispute arising in relation to this Agreement, the parties hereto shall make every effort to settle it upon mutual consultation.

Article 11 – Assignment (A4)

11.1 Neither party may assign or transfer any interest in this Agreement, without the prior written approval of the other party.

Article 12 – Use of Name (P4)

12.1 Each party agrees not to include the name of the other party in any advertising, sales promotion or other publicity matter without the prior written approval of the other party. However, nothing in this Agreement restricts either party from disclosing the existence of and nature of this Agreement (including the name of Sponsor) or from including the existence of and nature of this Agreement in the routine reporting of activities.

Article 13 – Audit and Retention of Records (R2)

13.1 In accordance with the Confidentiality provisions herein, Sponsor shall have access to pertinent documents and records of University to audit or examine. Documents relating to this Agreement shall be retained by the parties for a period of at least three years from the date of termination of Project.

Article 14 – Termination (T2)

14.1 This agreement may be renewed for additional periods upon the mutual consent of the parties by amendment hereto. Either party may terminate this Agreement by giving the other party at least sixty (60) days prior written notice of such termination. In the case of such termination, University shall proceed in an orderly fashion to terminate any outstanding commitments and to stop the work as soon as it is practicable to do so.

14.2 In the event that either party commits a material breach of its obligations under this Agreement and fails to cure that breach within sixty (60) days after receiving written notice thereof, the other party may terminate this Agreement immediately upon written notice to the party in breach.

14.3 Termination of this Agreement, however effectuated, shall not release the parties from their rights and obligations under the above Articles on Consideration, Equipment and Other Property, Intellectual Property, Publications and Confidentiality, Indemnity and Insurance, Use of Name, and Audit and Retention of Records.

Article 15 – Entire Agreement, Modifications, Waiver, and Severance (E1, A1, W1, S2)

15.1 This Agreement constitutes the entire agreement between the parties.

15.2 Any modifications to this Agreement must be executed in writing by the authorized representatives of the parties.

15.3 The failure of a party in any instance to insist upon the strict performance of the terms of this Agreement will not be construed to be a waiver or relinquishment of any of the terms of this Agreement, either at the time of the party's failure to insist upon strict performance or at any time in the future, and such terms will continue in full force and effect.

15.4 Each clause of this Agreement is a distinct and severable clause and if any clause is deemed illegal, void or unenforceable, the validity, legality or enforceability of any other clause or portion of this Agreement will not be affected thereby.

Article 16 – Notification to the Other Party (N1)

16.1 All notification required by this Agreement shall be executed in writing by the parties hereto and shall be directed to the following individuals:

For the University

For the Sponsor

Original to:

Randall W. Draper, Director  
Office of Contracts and Grants  
3100 Marine Street  
Room 481  
572 UCB  
University of Colorado  
Boulder, CO 80309-0572

Copy to:

Dr. \_\_\_\_\_, PI  
\_\_\_\_\_ Dept.  
\_\_\_\_\_ UCB  
University of Colorado  
Boulder, CO 80309

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## 26. University of Connecticut

**THIS AGREEMENT**, entered into and effective this    day of    , between The University of Connecticut, Storrs, Connecticut 06269, hereinafter referred to as the "University" and having principal offices at    , hereinafter referred to as the "Sponsor."

**RECITAL (R1) WHEREAS**, each party desires to enter into this Agreement for the benefits reasonably expected to be gained therefrom, and

**WHEREAS**, the University is authorized to enter into this Agreement under Section 10a-104, 10a-108, and 10a-110 to 10a-110g of the General Statutes of the State of Connecticut, as amended to date,

**NOW THEREFORE**, the parties mutually agree as follows:

1. **STATEMENT OF WORK (S1)**. The Sponsor hereby engages the University to utilize reasonable efforts to carry out a program entitled, "  
." ("Project")
2. **PRINCIPAL INVESTIGATOR (K1)**. The research will be supervised by
3. **DURATION OF AGREEMENT (P2)** . The term of this Agreement shall be from    , through    , unless terminated as provided herein or extended by mutual agreement.
4. **TOTAL COST (C4, P1)**. The total cost to the Sponsor for all direct and indirect costs incurred in the performance of this Agreement shall not exceed \$    , unless modified in accordance with Article 7, herein.
5. **POST AWARD ADMINISTRATION (C4)**. The Sponsor will pay for the cost of the research program on either a Firm Fixed Price or a Cost Reimbursement basis, as specified below. (**Select either A or B.**) The University must receive the advance payment prior to commencement of work.

A. **FIRM FIXED PRICE:**

- (1) **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, Office for Sponsored Programs, Whetten Graduate Center, 438 Whitney Road Extension, Unit 1133, University of Connecticut, Storrs, CT 06269-1133.

Invoices will be submitted to:

(2) **REPORTING REQUIREMENTS (R3).** No financial reporting of expenditures is required.

(3) **REBUDGETING.** The University is not required to notify the Sponsor of any rebudgeting requirements.

**B. COST REIMBURSEMENT:**

(1) **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, Office for Sponsored Programs, Whetten Graduate Center, 438 Whitney Road Extension, Unit 1133, University of Connecticut, Storrs, CT 06269-1133.

Invoices will be submitted to:

(2) **REPORTING REQUIREMENTS.** A cumulative report of expenditures and final invoice will be provided the Sponsor within ninety (90) days following completion of the Research Program. Unexpended funds will be returned to Sponsor.

(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. **OWNERSHIP OF EQUIPMENT (E3).** All equipment purchased or constructed for use in connection with the work under this Agreement, shall be the property of the University.

7. **MODIFICATIONS (A1).** The Sponsor and the University agree that this Agreement may be modified or changed by mutual consent. Such modification or changes shall be in writing and shall be signed by the original signatories or their successors.

8. **TERMINATION (T2).** This Agreement may be terminated by either party hereto by giving written notice to the other party sixty (60) days in advance of the specified date of termination. In the case of termination, the University shall be reimbursed for all uncancelable commitments made prior to the effective date of such termination. Notice of termination is sufficiently given if it is mailed, postage paid and addressed to:

A. In the case of the University, the address indicated in Article 5 herein.

B. In the case of the Sponsor:

9. **ASSIGNMENT (A4).** This Agreement shall not be assignable by either party without prior written consent of the other party.

10. **USE OF NAMES (P4).** The Sponsor agrees not to use the name of the University or any member of its staff, in sales promotion, advertising, or in any other form of publicity without obtaining, in writing, prior approval from the President of the University or his designee.

#### 11.0 **INTELLECTUAL PROPERTY (I5).**

11.1 Inventorship shall be determined according to United States patent law, and based on such the following definitions shall apply:

11.1.1 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.

11.1.2 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").

11.1.3 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.

11.2 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).

11.3 Sponsor may, at any time, request University to file a patent application on University IP or Joint IP.

11.3.1 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.

11.4 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.

11.4.1 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.

11.5 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.

11.6 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.

- 11.7 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. **PUBLICATIONS (P3).** Among several missions of a public research university is the generation of new knowledge to be made freely available so as to facilitate future understanding and to provide for public benefit. Accordingly,

A. University shall be free to publish any and all results of studies performed, including those supported by Sponsor, subject only to delays which provide for protection of proprietary information and patent rights. No restrictions are acceptable that limit the use and distribution of any student's research and/or thesis conducted in conjunction with his/her academic program.

B. University shall provide the Sponsor with a thirty (30) day period in which to review each publication to identify patentable subject matter and to identify any inadvertent disclosure of the Sponsor's proprietary information. If necessary to permit the preparation and filing of U.S. patent applications, the Principal Investigator may agree to an additional review period not to exceed sixty (60) days. Any further extension will require subsequent agreement between the Sponsor and University.

13. **RELATIONSHIP OF THE PARTIES.** This Agreement is made with each party as an independent party and not as an employee of the other party. Each party shall be solely liable for any claims, actions, demands or damages arising out of its performance of this Agreement.

14. **RIGHTS OF THIRD PARTIES (A2).** The Sponsor accepts that this Agreement will not limit the freedom of researchers who are, or are not, participants in this Agreement from engaging in research within the same field that is covered by this Agreement. Further, the Sponsor accepts that all rights specified herein are subject to rights of other sponsors specified in separate respective agreements.

15. **LIMITS OF LIABILITY (W2, I2).** The University makes no warranties, express or implied, as to any matter whatsoever including, without limitation, the condition of the research or any invention(s) or product(s), whether tangible or intangible, conceived, discovered, and/or developed under this Agreement; or the ownership, merchantability, or fitness for a particular purpose of the research or any such invention or product. The University shall not be liable for any direct, consequential, or other damages suffered by Sponsor or any licensee or any others resulting from the use of the research or any such invention or product.

16. **CLAIMS AGAINST THE UNIVERSITY (G1).** In the event of loss resulting from acts of omission or commission by University employees in connection with this Agreement, the Sponsor or any third party shall have recourse through the Connecticut Claims Commission as

provided under Chapter 53 of the Statutes of the State of Connecticut in which all claims against the State of Connecticut and The University of Connecticut shall be filed with the State of Connecticut Claims Commissioner.

17. **NONDISCRIMINATION (K1).** Nondiscrimination under Section 4a-60 of the Connecticut General Statutes, as amended to date, will be adhered to by the parties to this Agreement to ensure that employment practices under this Agreement will not permit discrimination against any person or group of persons on the grounds of race, color, religion, age, marital status, national origin, sex, mental retardation, physical disability, or sexual orientation in any manner prohibited by the laws of the United States or the State of Connecticut.

18. **GOVERNING LAWS (G1).** This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut.

This Agreement constitutes the entire understanding between the parties. No other terms and conditions, be they consistent, inconsistent, or additional to those contained herein, shall be binding upon either party to this Agreement unless and until such terms and conditions shall have been specifically accepted in writing by both parties.

## 27. University of Illinois

**Recital** (R1) This Sponsored Research Agreement (“Agreement”) is between THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, a body corporate and politic organized and existing under the laws of the State of Illinois, doing business on its Urbana-Champaign campus through the Office of Sponsored Programs and Research Administration, 1901 South First Street, Suite A, Champaign IL 61820-7406 (“UNIVERSITY”), and \_\_\_\_\_, organized and existing under the laws of \_\_\_\_\_ with its principal offices at \_\_\_\_\_ (“SPONSOR”). The parties may be referred to individually as “Party” and collectively as the “Parties”.

The Parties contemplate that the research to be performed under this Agreement will be of mutual interest and benefit; and

UNIVERSITY has determined that the research will further the instructional, research, public service or economic development objectives of UNIVERSITY consistent with its status as a public institution of higher education.

NOW, THEREFORE, the Parties agree:

### 1.0. The Research

**1.1. Statement of Work (S1).** UNIVERSITY will use reasonable efforts to perform the research project titled \_\_\_\_\_ and more fully described in the statement of work attached to this Agreement as Exhibit A (“Research”).

**1.2. Reports (R3).** UNIVERSITY will furnish to SPONSOR written progress reports of the Research in such detail that SPONSOR reasonably requests according to the following schedule:  
\_\_\_\_\_

**1.3. Principal Investigator (K1).** The Principal Investigator who will direct the Research for UNIVERSITY is \_\_\_\_\_. If the Principal Investigator becomes unable to perform this Agreement for any reason, UNIVERSITY may appoint a successor Principal Investigator with SPONSOR’s written approval. Either Party may terminate this Agreement in accordance with Section 3.5 if the Parties cannot agree on an acceptable successor within a reasonable time.

**1.4. Performance Period (P2).** UNIVERSITY will perform the Research during the period \_\_\_\_\_ through \_\_\_\_\_ (“Performance Period”). The Parties may extend the Performance Period by written amendment.

**1.5. Equipment/Supplies (E3).** Title to all equipment and property purchased by UNIVERSITY under this Agreement will be in and remain with UNIVERSITY even after completion or termination of the Agreement.

**2.0. Research Costs (C4, P1)**

**2.1. Budget.** SPONSOR will pay to UNIVERSITY the direct and the facilities and administration (“F&A”) costs (collectively “Research Costs”) described in Exhibit B (“Budget”) that UNIVERSITY incurs in performing the Research. The F&A cost rate set forth in the Budget will remain in effect during the Performance Period. SPONSOR is not liable for costs other than the Research Costs described in the Budget, and UNIVERSITY is obligated to perform only the Research funded by SPONSOR.

**2.2. Payment Schedule.** SPONSOR will pay to UNIVERSITY the Research Costs in U.S. dollars as follows:

This is a cost-reimbursement agreement. No more frequently than monthly, UNIVERSITY will submit invoices to SPONSOR evidencing the actual Research Costs incurred by UNIVERSITY in performing the Research. SPONSOR will pay the full amount due within 30 days from its receipt of an invoice.

This is a fixed-price agreement. Within 30 days of the Effective Date, SPONSOR will pay UNIVERSITY \$\_\_\_\_\_ and thereafter as follows: \_\_\_\_\_ for total compensation of \$\_\_\_\_\_.

**2.3. Remittance.** SPONSOR will pay UNIVERSITY through one of the following two payment options:

(a) By check made payable to the "University of Illinois" and mailed to:

University of Illinois at Urbana-Champaign
Grants & Contracts
P.O. Box 4610
Springfield, IL 62708-4610
U.S.A.

(b) By Automated Clearinghouse (“ACH”) sent to UNIVERSITY’s bank account:

Financial Institution	JP Morgan Chase Bank, N.A.
Address	East Old State Capitol Plaza P.O. Box 19266 Springfield, IL 62794-9266 USA
Nine-Digit Routing Transit Number	071000013
Depositor Account Title	The Board of Trustees of the University of Illinois, EDI Receipts and Federal Depository
Depositor Account Number	616002911
Type of Account	Checking



### **3.0. Effective Date and Termination (P2, T2)**

**3.1. Effective Date.** This Agreement is effective on the date signed by the last of the Parties to sign this Agreement unless otherwise provided in this section as follows: \_\_\_\_\_ (“Effective Date”).

**3.2. Expiration.** This Agreement will expire on the end date of the Performance Period, unless sooner terminated in accordance with this Section 3.

**3.3. Termination for Convenience.** Either Party may terminate this Agreement for convenience by providing 60 days’ advance written notice to the other Party.

**3.4. Termination For Breach.** Upon material breach, the aggrieved Party may terminate this Agreement provided that the breaching Party fails to cure the breach within 30 days after receipt of written notice. This remedy is in addition to any other remedies available at law.

**3.5. Immediate Termination.** Either Party may terminate this Agreement effective immediately upon notice to the other if: (a) the Parties cannot agree on an acceptable successor Principal Investigator; (b) SPONSOR has been declared insolvent, ceases (or threatens to cease) to carry on its business; or an administrator or receiver has been appointed over all or part of its assets; (c) SPONSOR’s failure to pay promptly; or (d) either Party is debarred or excluded from participating in any government program.

**3.6. Effect of Termination.** If SPONSOR terminates this Agreement for convenience, SPONSOR will pay for all Research Costs incurred through the date of termination, including all non-cancelable obligations, even though the obligations may extend beyond the termination date. For any other termination, SPONSOR will pay UNIVERSITY for all Research Costs incurred through the termination date. Termination will not affect the Parties’ rights and obligations accrued prior to termination.

### **4.0. Confidential Information (C2)**

**4.1. Confidentiality Obligation.** Each Party will advise its employees to use reasonable efforts to hold in confidence all proprietary information received from the other Party in connection with the Research (“Confidential Information”); provided, however, that each Party may share Confidential Information with third parties to the extent necessary to perform the Research under terms consistent with this Agreement. For written disclosures, the Party disclosing Confidential Information will mark the information “Confidential” at the time of disclosure. For oral or visual disclosures, the Party disclosing Confidential Information will designate the information “Confidential” at the time of disclosure and confirm such designation in writing to the other Party no later than 30 days after disclosure. Except as provided in Section 6.2, each Party’s obligation of confidentiality shall extend for three years from disclosure and shall not apply to information that: (a) was in recipient’s possession on a non-confidential basis prior to receipt from disclosing Party; (b) is in the public domain or is general or public knowledge prior to disclosure, or after disclosure, enters the public domain or becomes general or public knowledge through no fault of recipient; (c) is properly obtained by recipient from a

third party not under a confidentiality obligation to disclosing Party; (d) is explicitly approved for release by written authorization of disclosing Party; (e) is or has been developed by recipient independent of recipient's access to disclosing Party's Confidential Information; or (f) is required by law or court order to be disclosed.

**4.2. Response to Information Requests.** If UNIVERSITY receives a request under the Illinois Freedom of Information Act or a request by legal process to disclose Confidential Information, UNIVERSITY will use reasonable efforts to provide prompt notice to SPONSOR and will reasonably cooperate with SPONSOR to protect any SPONSOR Confidential Information.

## **5.0. Publication/Public Presentations (P3)**

**5.1. Review Period.** UNIVERSITY researchers may publish or publicly disclose non-confidential Research results without SPONSOR interference after providing SPONSOR a 30-day period for review and comment. Upon written notice by SPONSOR that the proposed publication contains SPONSOR Confidential Information or enabling disclosures of Inventions (as defined below). UNIVERSITY will either revise the publication to eliminate such disclosures, or will delay publication for a limited period in its discretion to allow for preparation and filing of U.S. patent applications. The Parties will cooperate so that student theses or dissertations are not adversely affected by any delay.

**5.2. Copies of Publications.** UNIVERSITY will furnish SPONSOR with a copy of any publications resulting from the Research.

**5.3. Acknowledgment.** Each Party will acknowledge the contributions of the other Party in publications or public presentations as scientifically appropriate.

## **6.0. Intellectual Property (I5)**

**6.1. Inventions.** "Inventions" means those potentially patentable discoveries, including pending patent applications and issued patents, first conceived and actually reduced to practice in performance of the Research. UNIVERSITY shall own all Inventions first conceived and actually reduced to practice solely by UNIVERSITY employees or solely by SPONSOR employees through significant use of UNIVERSITY resources ("UNIVERSITY Inventions"). SPONSOR shall own all Inventions otherwise first conceived and actually reduced to practice solely by SPONSOR employees ("SPONSOR Inventions"). The Parties shall jointly own all Inventions first conceived and actually reduced to practice by both UNIVERSITY and SPONSOR employees ("Joint Inventions").

**6.2. Confidentiality of Invention Disclosures.** UNIVERSITY will promptly notify SPONSOR of any Invention disclosure received by its Office of Technology Management ("OTM"). SPONSOR shall treat all UNIVERSITY Invention disclosures as Confidential Information. Notwithstanding Section 4.1, SPONSOR's obligation of confidentiality for Invention disclosures shall continue until the Confidential Information becomes publicly

available through no fault of SPONSOR. Each Party will promptly notify the other of any Joint Inventions.

### **6.3. Patents**

**6.3.1. Patent Filing.** UNIVERSITY may, at its discretion and at its expense, file patent applications in the United States and in foreign countries for any UNIVERSITY or Joint Invention. UNIVERSITY also will, at SPONSOR's request and expense, file patent applications in the United States for UNIVERSITY or Joint Inventions. SPONSOR will make any such request to UNIVERSITY in writing and within 60 days of UNIVERSITY's notice of Invention disclosure. UNIVERSITY will keep SPONSOR promptly informed regarding the status of any patent application filed at SPONSOR's expense and will give SPONSOR reasonable opportunity to comment.

**6.3.2. Foreign Filing Election.** SPONSOR will notify UNIVERSITY of any foreign countries in which SPONSOR desires a license at least 60 days prior to the respective foreign filing due date.

**6.3.3. Costs.** If SPONSOR requests UNIVERSITY to file a patent application or if SPONSOR elects to license UNIVERSITY Inventions, SPONSOR will pay UNIVERSITY, within 30 days of invoice date, all documented costs to secure and maintain the patents.

**6.4. Licensing.** For any patent application on a UNIVERSITY Invention or Joint Invention, UNIVERSITY grants to SPONSOR (a) a non-exclusive, non-transferable, royalty-free license to practice the Invention for non-commercial purposes; and (b) the option to negotiate a royalty-bearing commercial license in a designated field of use and territory, which SPONSOR may elect by written notice to UNIVERSITY no later than six months after UNIVERSITY's notice of Invention disclosure.

**6.5. Background Intellectual Property.** Nothing in this Agreement grants to either Party any rights or interest in the other Party's Background Intellectual Property. "Background Intellectual Property" means (a) all works of authorship created outside the scope of this Agreement and (b) potentially patentable discoveries, including pending patent applications and issued patents, conceived or first reduced to practice outside the scope of this Agreement.

**6.6. CREATE Act.** The Parties agree by marking this box  that this Agreement constitutes a "joint research agreement" as that term is defined by the Cooperative Research and Technology Enhancement Act of 2004, 35 U.S.C. § 103(c)(3). In the event of any Inventions, the Parties will reasonably cooperate in invoking the CREATE Act and its companion regulations to overcome an obviousness rejection of a patent application.

### **6.7. Copyrights**

**6.7.1. Ownership.** Title to all original works of authorship created in performance of the Research and in which copyright may be claimed ("Copyrightable Works") shall vest initially in the author, subject to the policies of the Party that employs the author. Any joint work, as that

term is defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, as amended, shall be jointly owned, but co-owners shall have no duty of accounting for any profits.

**6.7.2. Internal Use License.** UNIVERSITY grants to SPONSOR a non-exclusive, royalty-free license to use, reproduce, prepare derivative works, display, distribute and perform all UNIVERSITY-owned Copyrightable Works other than computer software and its documentation and informational databases for SPONSOR's internal research purposes, provided that SPONSOR shall not have the right to distribute copies or derivative works to third parties. For UNIVERSITY-owned Copyrightable Works that are identified as a deliverable under the Statement of Work and in the nature of computer software (and its documentation) or informational databases, UNIVERSITY grants to SPONSOR for SPONSOR's internal research purposes a royalty-free, non-transferable, non-exclusive license to use, reproduce, prepare derivative works, display and perform such Copyrightable Works.

**7.0. Tangible Research Property (E3).** "Tangible Research Property" ("TRP") means those tangible (corporeal) items, as distinguished from intangible (intellectual) property, produced in performance of the Research. For purposes of illustration, TRP may include items such as: biological materials, computer media, drawings and diagrams, integrated circuit chips, prototype devices, and equipment. UNIVERSITY shall hold title to all TRP produced by UNIVERSITY with UNIVERSITY resources; provided, however, that title to TRP identified as a deliverable under the statement of work will vest in SPONSOR upon delivery by UNIVERSITY.

**8.0. Disclaimer of Warranties.(D1, W2)** UNIVERSITY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ITS PERFORMANCE UNDER THIS AGREEMENT. UNIVERSITY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, USE OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS WITH REGARD TO DATA, INVENTIONS, COPYRIGHTABLE WORKS, TRP, OR OTHER RESEARCH RESULTS PROVIDED BY UNIVERSITY.

**9.0. Limitation of/Release from Liability (L2)**

**9.1. Limitation of Liability.** UNIVERSITY SHALL NOT BE LIABLE TO SPONSOR FOR INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, INCIDENTAL OR OTHER DAMAGES (INCLUDING LOST REVENUE, PROFITS, USE, DATA OR OTHER ECONOMIC LOSS OR DAMAGE) HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY (WHETHER FOR BREACH OR IN TORT, INCLUDING NEGLIGENCE) ARISING FROM, RELATED TO, OR CONNECTED WITH SPONSOR'S USE OF DATA, INVENTIONS, COPYRIGHTABLE WORKS, TRP, OR ANY OTHER RESEARCH RESULTS PROVIDED BY UNIVERSITY, EVEN IF UNIVERSITY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

**9.2. Release from Liability (I2).** SPONSOR releases UNIVERSITY and its Trustees, officers, employees, and agents from all liability, and shall be responsible, for any and all costs, damages, and expenses, including attorney fees, arising from any claims, damages, and liabilities

asserted by third parties in connection with or arising from SPONSOR's use of data, Inventions, Copyrightable Works, TRP, or any other Research results provided by UNIVERSITY.

## **10.0. General Provisions (M1)**

**10.1. Fiscal Management.** UNIVERSITY will maintain complete and accurate accounting records in accordance with accepted accounting practices for institutions of higher education. UNIVERSITY will make the accounting records available for inspection and audit by SPONSOR or its authorized agent, at reasonable times upon reasonable notice at SPONSOR's expense for three years following the end of UNIVERSITY's fiscal year (July 1 - June 30) in which Research Costs are incurred.

**10.2. Use of Names (P4).** Neither Party will use the name of the other in any form of advertising or publicity without the express written permission of the other Party. SPONSOR shall seek permission from UNIVERSITY by submitting the proposed use, well in advance of any deadline, to the Associate Chancellor for Public Affairs, University of Illinois, Third Floor Swanlund Administration Building, 601 East John Street, Champaign, IL 61820; fax (217) 244-7124.

**10.3. Relationship of the Parties.** Neither Party is agent, employee, legal representative, partner or joint venturer of the other. Neither Party has the power or right to bind or commit the other.

**10.4. Governing Law (G1).** This Agreement will be governed by and construed in accordance with the laws of the State of Illinois, U.S.A., without reference to its conflict of law provisions.

**10.5. Third Party Beneficiaries (A4).** This Agreement does not create any rights, or rights of enforcement, in third parties.

**10.6. Severability (S2).** If a court of competent jurisdiction finds any provision of this Agreement legally invalid or unenforceable, such finding will not affect the validity or enforceability of any other provision of this Agreement and the Parties will continue to perform. If the Agreement cannot be performed in the absence of the provision, this Agreement will terminate upon 30 days' written notice by one Party to the other Party.

**10.7. Merger (A1).** 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.

**10.8. Amendments (A1).** No modification to this Agreement will be effective unless confirmed in a written amendment signed by each Party's authorized representative.

**10.9. Counterparts (A1).** The Parties may sign this Agreement in one or more counterparts, each of which constitutes an original and all of which together constitute the Agreement.

**10.10. Assignments (A4).** This Agreement shall bind, and inure to the benefit of, the Parties and any successors to substantially the entire assets of the respective Party. Neither Party may assign this Agreement without first obtaining the prior written consent of the other Party, and any attempted assignment is void.

**10.11. Force Majeure (F1).** Each Party will be excused from performance of the Agreement only to the extent that performance is prevented by conditions beyond the reasonable control of the affected Party. The Party claiming excuse for delayed performance will promptly notify the other Party and will resume its performance as soon as performance is possible.

**10.12. Export Control (E4).** Each Party acknowledges that performance of all obligations under this Agreement is contingent on compliance with applicable United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities. 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 SPONSOR that SPONSOR will not re-export data or commodities to certain foreign countries or nationals thereof without prior approval of the cognizant government agency.

**10.13. Resolution of Disputes (D2).** The Parties will enter into good faith negotiations to resolve any disputes arising from this Agreement. Resolution will be confirmed by written amendment to this Agreement. If the Parties cannot resolve any dispute amicably through negotiation, either Party may terminate this Agreement in accordance with Article 3.0.

**10.14. Survival (S3).** All terms of this Agreement that are intended to survive termination or expiration in order to be effective shall survive such termination or expiration.

**10.15. Waiver (W1).** No waiver of any right, remedy, power or privilege by any Party under this Agreement shall be effective unless made in writing. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or of any other provision of this Agreement.

**10.16. Notices (N1).** Any notice given under this Agreement will be in writing and will be effective upon receipt evidenced by: (a) personal delivery; (b) confirmed facsimile transmission; (c) return receipt of postage prepaid registered or certified mail; or (d) delivery confirmation by commercial overnight carrier. All communications will be sent to the addresses set forth below or to such other address designated by a Party by written notice to the other Party in accordance with this section:

UNIVERSITY: *For matters related to the Sponsored Research Agreement:*

University of Illinois

Director, Office of Sponsored Programs & Research Administration  
1901 South First Street  
Champaign, IL 61820-7406  
Telephone: (217) 333-2187

Fax: (217) 239-6830

UNIVERSITY: *For matters related to intellectual property and licensing:*

University of Illinois  
Director, Office of Technology Management  
319 Ceramics Building  
105 South Goodwin Avenue  
Urbana, IL 61801  
Telephone: (217) 333-7862  
Fax: (217) 265-5530

SPONSOR: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_

**10.17. Authorized Signatories.** Each Party represents that the individuals signing this Agreement on its behalf are authorized, and intend, to bind the organization in contract.

**THE BOARD OF TRUSTEES OF  
THE UNIVERSITY OF ILLINOIS                      SPONSOR**

\_\_\_\_\_  
Walter K. Knorr, ComptrollerSignature

\_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Name and Title of Authorized Signatory

ATTEST:

Date \_\_\_\_\_

\_\_\_\_\_  
Michele M. Thompson, Secretary

UNDERSTOOD AND AGREED:

\_\_\_\_\_  
Principal Investigator

## 28. University of Iowa

THIS AGREEMENT effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ (hereafter referred to as "Sponsor") and The University of Iowa, Iowa City, Iowa, a non-profit educational institution (hereinafter referred to as "University").

### WITNESSETH:

**Recital (R1)** WHEREAS, the research program contemplated by this Agreement is of mutual interest and benefit to University and to Sponsor, will further the instructional and research objectives of University in a manner consistent with its status as a non-profit, tax-exempt, educational institution, and may derive benefits for both Sponsor and University through inventions, improvements, and/or discoveries;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto agree to the following:

### ARTICLE 1 - Definitions

As used herein, the following terms shall have the following meanings:

1.1 "Project" shall mean the description of the project as described in Exhibit A hereof, under the direction of \_\_\_\_\_ as Principal Investigator.

1.2 "Contract Period" is \_\_\_\_\_, 20\_\_, through \_\_\_\_\_, 20\_\_.

1.3 "University Intellectual Property" shall mean individually and collectively all inventions, improvements and/or discoveries which are conceived and/or made (i) by one or more employees of University, or (ii) jointly by one or more employees of University and by one or more employees of Sponsor, in performance of the Project.

### ARTICLE 2 - Research Work (S1)

2.1 University shall commence performance of the Project promptly after the effective date of this Agreement, and shall use all reasonable efforts, care, and diligence to perform such Project in accordance with the terms and conditions of this Agreement. Anything in this Agreement to the contrary notwithstanding, Sponsor and University may at any time amend the Project by mutual written agreement.

2.2 In the event that the Principal Investigator becomes unable or unwilling to continue the Project, and a mutually acceptable substitute is not available, University and/or Sponsor shall have the option to terminate said Project pursuant to Article 10.1.

2.3 The University does not comply with Good Laboratory Practices (GLPs) as defined by the U.S. Food and Drug Administration in 21 C.F.R. 58.



**ARTICLE 3 - Reports and Conferences (R3)**

3.1 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.

3.2 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.

**ARTICLE 4 - Costs, Billings, and Other Support (C4, P1)**

4.1 It is agreed to and understood by the parties hereto that, subject to Article 2, total costs to Sponsor hereunder shall not exceed the sum of \_\_\_\_\_ Dollars (\_\_\_\_\_). Payment shall be made by Sponsor according to the following schedule:

[\_\_\_\_\_]

4.2 Invoices shall be submitted to the Sponsor representative listed in Article 17 for submission of invoices. Payments to University shall include Sponsor name, Principal Investigator name, project title and shall be submitted to the University representative listed in Article 17 for payment remittance.

4.3 [Sponsor shall loan/donate the following equipment to University under the following conditions: \_\_\_\_\_.] University shall retain title to any equipment purchased with funds provided by Sponsor under this Agreement.

4.4 Anything herein to the contrary notwithstanding, in the event of early termination of this Agreement by Sponsor pursuant to Article 10.1 hereof, Sponsor shall pay all costs accrued by University as of the date of termination, including non-cancelable obligations, which shall include all non-cancelable contracts and fellowships or postdoctoral associate appointments called for in Appendix A, incurred prior to the effective date of termination. After termination, any obligation of Sponsor for fellowships or postdoctoral associates shall end no later than the end of University's academic year following termination.

**ARTICLE 5 – Publicity (P4)**

5.1 Sponsor shall not use the name of University, nor of any member of University's Project staff, in any publicity, advertising, or news release or in any way imply endorsement of the University without the prior written approval of an authorized representative of University. University shall not use the name of Sponsor, nor any employee of Sponsor, in any publicity without the prior written approval of Sponsor. University may disclose, without Sponsor's approval, the terms of this Agreement that are a matter of public record under the Iowa Open Records Law, Iowa Code Chapter 22 (2005).

## **ARTICLE 6 – Publications (P3)**

6.1 Sponsor recognizes that under University policy, the results of University research must be publishable and agrees that researchers engaged in the Project shall be permitted to present research results at symposia, national or regional professional meetings, and to publish in journals, theses or dissertations, or otherwise of their own choosing, methods and results of the Project, provided, however, that Sponsor shall have been furnished copies of any proposed publication or presentation at least one (1) month in advance of the submission of such proposed publication or presentation to a journal, editor, or other third party. Sponsor shall have thirty (30) days, after receipt of said copies, to object to such proposed presentation or proposed publication because there is patentable subject matter or proprietary information of Sponsor that needs protection. In the event that Sponsor makes such objection, said researcher(s) shall refrain from making such publication or presentation for a maximum of six (6) months from date of receipt of such objection in order for University to file patent application(s) with the United States Patent and Trademark Office and/or foreign patent office(s) directed to the patentable subject matter contained in the proposed publication or presentation. Sponsor does not possess a right to delay publication if the publication or presentation contains only findings and conclusions of basic science or results that would not affect the ability of Sponsor to obtain a patent.

## **ARTICLE 7 - Proprietary Information (C2)**

7.1 It is the responsibility of Sponsor to mark or otherwise identify in writing prior to submission any information considered confidential that it deems necessary to share with University (“Confidential Information”). Oral disclosures of Confidential Information shall be identified as confidential at the time of disclosure and confirmed in writing within ten (10) business days of the disclosure. University shall have the right to accept or reject Sponsor’s Confidential Information. If such information is accepted it will be withheld by University from publication, and in all other respects shall be maintained by University as confidential and proprietary to Sponsor for a period of five (5) years after termination of this Agreement. University shall have no such obligation with respect to any portion of such Confidential Information which:

- a) is or later becomes generally available to the public by use, publication or the like, through no fault of University;
- b) is obtained on a non-confidential basis from a third party who disclosed the same to University;
- c) University already possesses, as evidenced by its written records, predating receipt thereof from Sponsor; or
- d) is required to be disclosed by law, regulation or court order.

7.2 All documentation concerning University Intellectual Property submitted to Sponsor in accordance with Article 8.4 shall be treated as confidential in order to preserve any patent rights.

## **ARTICLE 8 - Intellectual Property (I5)**

8.1 All rights, title and interest to University Intellectual Property under the Project, except as provided in Article 8.3, shall belong to University and shall be subject to the terms and conditions of this Agreement.

8.2 Rights to inventions, improvements, and/or discoveries, whether patentable or copyrightable or not, relating to the Project made solely by employees of Sponsor shall belong to Sponsor. Such inventions, improvements, and/or discoveries shall not be subject to the terms and conditions of this Agreement.

8.3 Rights to inventions, improvements, and/or discoveries conceived and/or made during the Contract Period, whether patentable or copyrightable or not, relating to the Project, which are made jointly by employees of University and employees of Sponsor, shall be the joint property of University and Sponsor and shall be subject to the terms and conditions of this Agreement.

8.4 University will promptly notify Sponsor of any University Intellectual Property conceived and/or made during the Contract Period under the Project. If Sponsor directs that a patent application or application for other intellectual property protection be filed, University shall promptly prepare, file, and prosecute such U.S. and foreign application in University's name. Sponsor shall bear all costs incurred in connection with such preparation, filing, prosecution, and maintenance of U.S. and foreign application(s) directed to said University Intellectual Property. Sponsor shall cooperate with University to assure that such application(s) will cover, to the best of Sponsor's knowledge, all items of commercial interest and importance. While University shall be responsible for making decisions regarding scope and content of application(s) to be filed and prosecution thereof, Sponsor shall be given an opportunity to review and provide input thereto. University shall keep Sponsor advised as to all developments with respect to such application(s) and shall promptly supply to Sponsor copies of all papers received and filed in connection with the prosecution thereof in sufficient time for Sponsor to comment thereon.

8.5 If Sponsor elects not to exercise its option granted in Article 9.1 or decides to discontinue the financial support of the prosecution and maintenance of the patent protection, all right, title and interest in such patent, patent application, and University Intellectual Property shall automatically revert to University. University shall then be free to file or continue prosecution or maintain any such application(s), and to maintain any protection issuing thereon in the U.S. and in any foreign country at University's sole expense.

## **ARTICLE 9 - Grant of Rights (I5)**

9.1 Subject to Article 8.3, University grants Sponsor the first option to elect an exclusive license to University Intellectual Property developed under this Agreement, and a right to sublicense any and all University Intellectual Property developed under this Agreement on terms and conditions to be mutually agreed upon. If Sponsor elects to exercise this option, Sponsor shall notify University in writing of its decision within one (1) year from the date of termination of this Agreement.

9.2 No grant described in this Article shall be construed to limit University's right to utilize University Intellectual Property for research or academic publication purposes.

#### **ARTICLE 10 - Term and Termination (P2, T2)**

10.1 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.

10.2 In the event that either party hereto shall commit any material breach or default in any of the terms or conditions of this Agreement, and also shall fail to remedy such default or breach within ninety (90) days after receipt of written notice thereof from the other party hereto, the party giving notice may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending notice of termination in writing to the other party to such effect, and such termination shall be effective as of the date of the receipt of such notice.

10.3 Termination of this Agreement by either party for any reason shall not affect the rights and obligations of the parties accrued prior to the effective date of termination of this Agreement. No termination of this Agreement, however effectuated, shall release the parties hereto from their rights and obligations under Articles 3.1, 4, 5, 6, 7, 8, 9 and 11.

#### **ARTICLE 11 - Independent Contractor (I3)**

11.1 In the performance of all services hereunder University shall be deemed to be and shall be an independent contractor and, as such, University shall not be entitled to any benefits applicable to employees of Sponsor.

11.2 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 to the acts or conduct of the other.

#### **ARTICLE 12 – Insurance (I4)**

12.1 Each party shall be liable for any and all claims for wrongful death, personal injury or property damage attributable to the negligent acts or omissions of that party and the officers, employees, and agents thereof.

12.2 University shall be responsible and agrees to pay for any and all claims for wrongful death, personal injury or property damage directly resulting from the negligence of University, its officers, employees and agents, and arising from activities under this Agreement to the full extent permitted by Chapter 669, Code of Iowa (2005), which is the exclusive remedy for processing tort claims against the State of Iowa.

**ARTICLE 13 - Governing Law (G1)**

13.1 This Agreement shall be governed and construed in accordance with the substantive laws of the State of Iowa, excluding its conflict of laws provisions.

**ARTICLE 14 – Assignment (A4)**

14.1 This Agreement shall not be assigned by either party without the prior written consent of the parties hereto.

14.2 This Agreement is assignable to any division of Sponsor, any majority stockholder of Sponsor, and/or any subsidiary of Sponsor, provided that such assignee assumes all of the rights, obligations and liabilities of Sponsor hereunder.

**ARTICLE 15 - Agreement Modification (A3)**

15.1 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.

**ARTICLE 16 – Warranties (W2)**

16.1 NO WARRANTIES, EITHER EXPRESSED OR IMPLIED, ARE MADE PART OF THIS AGREEMENT.

**ARTICLE 17 – Notices (N1)**

17.1 Notices, invoices, and communications, hereunder shall be given by registered or certified mail, or express delivery service, postage or delivery charge prepaid, and addressed to the party to receive such notice, invoice, or communication at the address given below, or such other address as may hereafter be designated by notice in writing. Notice shall be deemed made on the date of receipt.

If to Sponsor:

Phone:  
Fax:  
E-mail:

For Submission of Invoices:

Phone:  
Fax:  
E-mail:

If to University: The University of Iowa  
Division of Sponsored Programs  
Attention: \_\_\_\_\_  
2 Gilmore Hall  
Iowa City, Iowa 52242  
Phone: 319-335-2123  
Fax: 319-335-2130  
E-mail:

For Payment Remittance:  
The University of Iowa  
Grant Accounting Office  
B5 Jessup Hall  
Iowa City, Iowa 52242-1316  
Phone: 319-335-3801  
Fax: 319-335-0674

IN WITNESS WHEREOF, the parties have caused these presents to be executed in duplicate as of the day and year first above written.

SPONSOR

THE UNIVERSITY OF IOWA

By: Name: By: Twila Fisher Reighley  
Title: Title: Assistant Vice President for  
Research

Date: Date:

## **29. University of Miami**

**Recital (R1)** This Agreement ("Agreement") entered into this \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_, by and between the University of Miami, ("University") and \_\_\_\_ ("Company") to conduct scope of work entitled: \_\_\_\_ ("Scope") as described in the scope attached hereto as Exhibit A and made a part hereof which is subject to the following terms and conditions:

### **1. Principal Investigator (K1).**

The Principal Investigator(s) for the University shall be \_\_\_\_ . The Technical Director(s) for the Company shall be \_\_\_\_.

### **2. Amount of Grant (C4, P1).**

The amount of the grant for the conduct of the Scope is \$\_\_\_\_ . Fifty percent (50%) of this amount will be paid by Company to University upon execution of this Agreement. The balance of this grant will be paid to University in the following manner: \_\_\_\_.

**All payments shall be sent to:  
University of Miami  
Sponsored Programs  
P.O. Box 025405  
Miami, Florida 33102-5405**

It is expected that grant funds will be expended in general accordance with the budget attached. Actual expenditures may vary at the discretion of University.

### **3. Reporting Requirements (R3).**

\_\_\_\_\_

### **4. Term of Agreement (P2)**

Performance of this Agreement shall begin on \_\_\_\_ and shall not extend beyond the estimated completion date of \_\_\_\_, unless further extended by amendment of this Agreement, which shall be in writing and signed by all parties to this Agreement. Either Company or University may terminate this Agreement upon thirty (30) days written notice for any reason.

In the event of such termination, both Company and the University shall take all reasonable steps to cancel further costs in connection with this agreement. Company and University will be entitled to reimbursement for costs and non-cancelable obligations incurred prior to effective day of the termination, except in no event shall such reimbursement exceed the total amount stipulated in Section 2.

## **5. Publication Rights (P3).**

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.

## **6. Indemnification (I2)**

Company agrees to indemnify and hold harmless the Principal Investigator, University of Miami, its Trustees, officers, faculty, employees and students (hereinafter "University Indemnitees") against any and all losses, expenses, claims, actions, lawsuits and judgments thereon (including attorney fees through the appellate levels), which may be brought against University Indemnitees by reason of personal injury, illness or death to any person, arising out of or reasonably attributable to the activities to be carried out in this Scope provided that any loss, liability or damage resulting from (1) failure to adhere to the terms of the protocol, (2) failure to comply with any sponsor or governmental requirements, or (3) acts of negligence or willful malfeasance or misconduct by the University Indemnitees is excluded from this agreement to indemnify, defend and hold harmless.

The provisions of this paragraph and paragraph 8 shall continue after the termination of this Agreement.

## **7. Insurance (I4).**

Company agrees to carry and keep in force, at its expense, product liability insurance with limits not less than \$5,000,000 and in addition, general liability insurance with limits not less than \$1,000,000 per person and \$3,000,000 aggregate to cover liability for damages on account of bodily or personal injury or death to any person, or damage to property or any person. Such insurance shall not be canceled for any cause without at least thirty (30) days prior written notice to University. Such insurance shall contain an endorsement naming University as an additional insured with respect to this Agreement.

Prior to execution of this Agreement, Company shall provide a certificate of insurance or a self-insurance letter (if Company is self-insured) stating the limits of coverage.

## **8. University Employees (K1)**

Unless otherwise approved in writing by University, only University employees shall participate in any professional and technical activities of this Scope. Company agrees to release, hold harmless and indemnify University from and against any and all losses, claims, or damages, including bodily injury or death or property damage, and including attorney fees through the appellate level, suffered by Company, and its agents and employees while on University premises, or arising out of or relating to any act or omission of Company, its agents and



employees, provided that such loss, claim or damage does not arise out of negligence of University.

#### **9. Use of Name (P4)**

Company agrees that it will not under any circumstances use the name of University or any faculty or employee in advertising, publicity, or otherwise, without the express written permission of University Vice President for Business Services, Alan J. Fish, 1507 Levante Avenue, Coral Gables, Florida 33124-1432. University shall acknowledge Company's support of the research program under this Agreement in scientific publications and other scientific communications.

#### **10. Materials (E3)**

All equipment and materials acquired for use in connection with the research program will be the property of University at the termination of the program. Except as may be otherwise provided in this Agreement, title to any equipment provided by Company to University shall pass to University at the time of delivery thereof to University.

#### **11. WARRANTIES (W2)**

**UNIVERSITY MAKES NO WARRANTIES, EXPRESS OR IMPLIED AND HEREBY DISCLAIMS ALL SUCH WARRANTIES, AS TO ANY MATTER WHATSOEVER INCLUDING, WITHOUT LIMITATION, THE CONDITION 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. UNIVERSITY SHALL NOT BE LIABLE FOR ANY DIRECT, CONSEQUENTIAL, OR OTHER DAMAGES SUFFERED BY ANY LICENSEE OR ANY THIRD PARTIES RESULTING FROM THE USE OF THE RESEARCH OR ANY SUCH INVENTION OR PRODUCT.**

The provisions of this paragraph shall continue beyond the termination of this Agreement.

#### **12. Federal Regulations (H1)**

No human subject testing shall be conducted under this Agreement. Any studies involving the use of vertebrate animals shall comply with all state and federal statutes, rules and regulations governing animal care and use. Any studies involving isotopes must comply with any and all applicable state and federal rules, regulations and statutes. Recombinant DNA research shall be performed in accordance with regulations promulgated as Guidelines for Research Involving Recombinant DNA Molecules, U.S. Department of Health and Human Services, Public Health Service, and National Institutes of Health.

**13. Conflicts (A1)**

In the event there is a conflict with the terms of this Agreement, the protocol or any other documents pertaining to this Scope, the terms of this Agreement shall govern.

**14. Governing Law (G1)**

This Agreement shall be governed by the laws of the State of Florida. Any disputes arising herefrom shall be subject to jurisdiction of the state and federal courts residing in Miami-Dade County, Florida.

IN WITNESS THEREOF, the parties have executed this agreement by their duly authorized officers on the date first herein set out:

**UNIVERSITY OF MIAMI**

**COMPANY**

\_\_\_\_\_  
Authorized Organizational Representative

\_\_\_\_\_  
Authorized Company Representative

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**PRINCIPAL INVESTIGATOR**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date

### **30. University of North Carolina**

Recital (R1) This Master Agreement is among the constituent institutions of The University of North Carolina and The University of North Carolina.

WHEREAS, the Office of the President of the University of North Carolina and its sixteen constituent institutions desire to facilitate and simplify the process of contracting with each other, and

WHEREAS, the parties agree to be bound by terms and conditions contained in this Master Agreement, and WHEREAS, it is anticipated that constituent institutions will effect Subagreements between one another under this Master Agreement. A Subagreement consists of a Subagreement Cover Sheet attached hereto as Appendix I and the elements deemed generally appropriate to establish a meaningful and prudent contractual relationship which collectively constitute an obligation for the FUNDING INSTITUTION to pay the amounts described and for the RECIPIENT to perform the work defined on the Subagreement Cover Sheet and in the Appendices attached thereto and

WHEREAS, the parties are referred to in this Master Agreement as follows: The FUNDING INSTITUTION is the party issuing a Subagreement for the conduct of a sponsored activity pursuant to this Master Agreement, the RECIPIENT is the party accepting a Subagreement, and the SOURCE is the party providing the funding to the FUNDING INSTITUTION about which a Subagreement relates, and

WHEREAS, the parties desire to enter into this Master Agreement for the mutual benefits reasonably expected to be gained therefrom;

NOW THEREFORE, the parties hereto mutually agree as follows:

#### **I, REPRESENTATIONS AND CERTIFICATIONS (K1):**

RECIPIENT, by signature affixed to a Subagreement, certifies that:

A. Pursuant to the requirement of OMB Circular A-129, it is not delinquent on any Federal debt.

B. Pursuant to Executive Order 12549 and its implementing rule, it presently is not debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.

C. No federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the Subagreement. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or

an employee of a Member of Congress in connection with the Prime Award, grant, contract or cooperative agreement, the RECIPIENT must complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying."

D. It has implemented a written and enforced conflict of interest policy consistent with the National Science Foundation Policy, "Investigator Financial Disclosure Policy," as published in the Federal Register, July

II, 1995, and with any subsequent amendments to the policy.

E. It is in compliance with the Drug-Free Workplace Act of 1988, Public Law 100-690, Title V, Subtitle D.

34 CFR Part 85, and Subpart F.

F. It agrees to notify FUNDING INSTITUTION immediately if there is any change of status in (a) through (e) above.

## II. ASSURANCES (K1)

A. Civil Rights and Equal Employment Opportunity: The RECIPIENT must comply with Title VI and VII of the Civil Rights Act of 1964, and Executive Order 11246 and certifies that it has a valid Assurance of Compliance on file with the DHHS {Form HHS 441 }. For any contract entered into pursuant to a Subagreement, the RECIPIENT agrees to incorporate by reference paragraphs {I} through {7}, Part n, Subpart

B, section 202, Executive Order 11246.

B. Protection of Human Subjects: Any activity under a Subagreement that involves the use of human subjects is governed by applicable policies and federal regulations. The RECIPIENT agrees that any human research protocol conducted under a Subagreement must be reviewed and approved by a designated Institutional Review Board (IRB) and certifies that this IRB is in full compliance with all relevant federal regulations.

C. Vertebrate Animals: Pursuant to the Animal Welfare Act and the Public Health Service Policy on Humane Care and Use of Laboratory Animals, RECIPIENT agrees that any animal research protocol conducted under a Subagreement must be reviewed and approved by RECIPIENT's Institutional Animal Care and Use Committee (IACUC) and certifies that this IACUC is in full compliance with all federal regulations and has an approved Assurance on file with DHHS.

## III. EXAMINATION OF RECORDS (R2)

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 of no less than three

(3) 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 FUNDING INSTITUTION and its authorized representative, unless such disclosure is prohibited by law.

#### IV. AUDIT (R2)

Audits will be conducted in compliance with standards established by the North Carolina Office of State Auditor and where applicable OMB Circular A-133.

#### V. USE OF NAMES (P4)

Neither party to a Subagreement may use the names, service marks, trademarks, or logos of the other party (or any of its investigators) or any derivative thereof, in any public announcement, advertising, or promotional sales literature without the prior written consent of the other party.

#### VI. MODIFICATION OF MASTER AGREEMENT (A3)

No waiver, alteration or modification of any of the provisions of this Master Agreement shall be binding unless mutually agreed upon by The University of North Carolina Office of the President and each of the sixteen constituent institutions that comprise the University of North Carolina System. Any such changes must be expressed in written amendments to this Master Agreement, and must be signed by the authorized representatives of each of the parties. However, any term or provision of this Master Agreement is subordinate to any conflicting term or provision of an individual Subagreement that is fully executed by the parties to the Subagreement.

#### VII. MODIFICATION OF SUBAGREEMENT (A1)

No waiver, alteration or modification of any of the provisions of a Subagreement is binding unless mutually agreed upon between FUNDING INSTITUTION and RECIPIENT, Certain changes to Subagreements may be effected via an expedited modification process, These include extension of performance periods and budget revisions (when such require input from FUNDING INSTITUTION as stated in Subagreement special provisions). Expedited changes must be evidenced by a request for the change attested to by an authorized signor of the organization requesting the change and a response from the authorizing organization. All other changes require bilateral, written agreement among the parties evidenced by a formal, signed modification using the Subagreement Cover Sheet.

#### VIII. GENERAL CHARACTERISTICS OF SUBAGREEMENT (C4, P1)

A. Rebudgeting: Unless otherwise stipulated in the Special Terms and Conditions of a Subagreement, the RECIPIENT must be provided the same rebudgeting authority for the Subagreement as the FUNDING INSTITUTION has been granted in the prime agreement. .

B. F&A Recovery: Unless otherwise stipulated in the Special Terms and Conditions of a Subagreement, the FUNDING INSTITUTION may not restrict facilities and administrative cost (F&A) recovery by the RECIPIENT other than to accept restrictions promulgated by SOURCE.

C. Fiscal Matters: RECIPIENT shall be reimbursed by the FUNDING INSTITUTION for effort performed under a Subagreement upon presentation of an invoice as described in block 16 of the Subagreement coversheet. Block 16 of the coversheet shall also specify invoice frequency, format for reimbursement requests, and delivery date for final invoice. Special Terms and conditions such as type of contract and reimbursement based upon deliverables shall be addressed in Block 6 and continued in Block 18 of the Subagreement coversheet.

FUNDING INSTITUTION, in its sole judgement, shall determine whether costs are allowable under this Subagreement in accordance with any applicable laws and regulations. Costs for which prior approval is required will be contingent upon FUNDING INSTITUTION receiving like approval of those specific costs from the SOURCE. In the event RECIPIENT is in noncompliance with Article IV, Audit, of the Master Agreement, FUNDING INSTITUTION may withhold payment of invoices pending resolution of the noncompliance issue.

The RECIPIENT assumes the responsibility for reimbursement to FUNDING INSTITUTION a sum of money equivalent to the amount of any expenditures disallowed should the SOURCE or other authorized representative rule through audit exception or other formal review that the expenditures from funds allocated to the RECIPIENT for direct and/or indirect costs were not made in compliance with stated terms and conditions of this Subagreement.

#### IX. COPYRIGHT (15)

The RECIPIENT retains copyright when publications or similar materials are developed by RECIPIENT's personnel from work supported in whole or in part by a Subagreement. Any such copyrighted materials are subject to (a) a royalty-free, non-exclusive, and irrevocable license to the FUNDING INSTITUTION to reproduce, distribute, display, perform and make derivative noncommercial educational and research purposes and (b) a royalty-free, non-exclusive, and irrevocable license to SOURCE to reproduce, translate, publish, use and dispose of such materials.

#### X. PATENTS AND INVENTIONS (15)

Any invention or discovery made or conceived in the performance of a Subagreement (hereinafter called "*INVENTION*"), and any patent granted on such *INVENTION* shall be jointly or individually owned by RECIPIENT and/or FUNDING INSTITUTION in accordance with the following criteria:

A. Title to any *INVENTION* made or conceived jointly by employees of both RECIPIENT and FUNDING INSTITUTION in the performance of a Subagreement (hereinafter called "*JOINT INVENTION*") vests jointly in FUNDING INSTITUTION and RECIPIENT.

B. Title to any *INVENTION* made or conceived solely by employees or students of either RECIPIENT or FUNDING INSTITUTION in the performance of a Subagreement vests in the party whose employees or students made or conceived the *INVENTION* or discovery.

## XI. PUBLICATION (P3)

RECIPIENT and its investigators are free to publish papers dealing with the results of the research project sponsored under a Subagreement. However FUNDING INSTITUTION must be given the opportunity to review such papers prior to any publication thereof and shall so indicate on the Subagreement Cover Sheet under Special Terms and Conditions or in the Appendices thereto.

## XII. SIMILAR RESEARCH

Nothing in a Subagreement may be construed to limit the freedom of the RECIPIENT or of its researchers who are participants under the Subagreement from engaging in similar research made under grants, contracts, or agreements with parties other than the FUNDING INSTITUTION.

## XIII. LIABILITY (L2)

It is understood that the FUNDING INSTITUTION'S and RECIPIENT's liability hereunder are limited in accordance with the North Carolina Tort Claims Act, N.e. General Statute Sec. 143-291, *et seq.*

## XIV. FORCE MAJEURE (F1)

Neither party shall be liable for any failure to perform as required by a Subagreement, to the extent such failure to perform is caused by any reason beyond the control of the parties hereto, or by reason of any of the following: labor disturbances or disputes of any kind, accidents, failure of any required governmental approval, civil disorders, acts of aggression, acts of God, energy or other conservation measures, failure of utilities, mechanical breakdowns, material shortage, disease, or similar occurrences.

## XV. TERMINATION (T2)

A. A Subagreement may be terminated by either party, with or without cause, by giving thirty (30) 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.

B. 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.

C. 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 the actual costs incurred, as documented and illustrated by the 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.

## XVI. SEVERABILITY (S2)

If a court of competent jurisdiction holds any provision of the Master Agreement or of a Subagreement to be invalid, such holding shall have no effect on the remaining provisions of the Master Agreement or Subagreement, and they shall continue in full force and effect.

## XVII. GOVERNING LAW (G1)

The laws of the State of North Carolina govern validity and interpretation of the provisions, terms, and conditions of this Master Agreement and all Subagreements.

## XVIII. INCORPORATION (E1)

The parties mutually agree to set forth in attachment or incorporate by reference this Master Agreement in subsequent Subagreements by and between the parties hereto.

## XIX. SURVIVABILITY (S3)

To the extent the terms of this Master Agreement prevail over the terms of an individual Subagreement and the terms of the prime agreement, those terms that survive the termination of the Master Agreement or any individual Subagreements include at a minimum, and may include others as outlined in individual Subagreements, Articles III, IV, V, IX, X, XI, XII, XIII, XVI, XVII.



### **31. University of Northern Texas**

This Master Research Agreement is entered into this \_\_\_ day of 20\_\_\_, by and between the University of North Texas (hereinafter called "UNT"), and with a principal place of business in (hereinafter called "Sponsor"), collectively the Parties.

Recital (R1) Whereas, Sponsor and UNT have numerous mutual research and development interests that are conducive both to the academic mission of UNT and Sponsor; and Whereas, from time to time, these mutual interests may result in a desire for Sponsor to provide funding in support of various research programs in exchange for receiving certain rights in the research results.

NOW, THEREFORE, the parties agree as follows:

#### **1. Field of Research (S1)**

UNT will use all reasonable efforts to perform research projects as contemplated in task orders issued under this Master Research Agreement (hereinafter called "Research")

#### **2. Task Orders (S1)**

A Task Order will be issued by Sponsor upon their decision to fund a proposal submitted to them by UNT. The Task Order form outlined in Appendix A of this Master Research Agreement shall be used and shall include as attachments: (1) The final statement of work outlined in UNT's proposal; and, (2) A budget detailed by primary budget categories (Personnel, Equipment, Tuition, Subcontracts, Supplies, and Other) and a budget justification that ties the budget needs to the statement of work.

#### **3. Period of Performance (P2)**

The term of this Master Research Agreement is for three (3) years from last signature and will be subject to renewal only by mutual written agreement of the parties. Task orders issued under this Master Research Agreement will identify the period of performance for individual projects.-- 2

4. Payment of Costs In consideration of UNT's performance hereunder, Sponsor will pay UNT the amount agreed upon in each individual task order. These task order amounts may not be exceeded by UNT without prior written authorization of Sponsor. Sponsor will make payment on a cost-reimbursement basis upon receipt of UNT invoice. Payments shall be sent to:.

#### **5. Confidentiality (C2)**

A. In the performance of the Research, it may be necessary for one party to receive information that is proprietary and confidential to the disclosing party. All such information must be disclosed by the disclosing party in writing and designated as confidential or, if disclosed orally, must be identified as confidential at the time of disclosure and confirmed in writing and designated as confidential within thirty (30) days of such disclosure. Except as otherwise provided herein, for a period of five (5) years following the date of such disclosure, the receiving party agrees to use the confidential information only for purposes of this Agreement and further agrees that it will not disclose or publish such information except that the restrictions of article 5(a) do not apply to:

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

B. In addition to the obligations of paragraph (a) above, the disclosing party must notify the receiving party in writing if any confidential information being disclosed is on the U.S. Munitions List (USML), the Commerce Control List (CCL) or is subject to the Export Administration Regulation (EAR) Uprior to disclosureU of any such confidential information.

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

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6. Reporting (R3). UNT will deliver to Sponsor periodic a final report showing the results of the activity performed in accordance with the Research as outlined in the individual task orders delivered under this master agreement.

#### 7. Inventions (I5)

A. Any invention or discovery made or conceived in the performance of the Research (hereinafter called "Invention"), or any patent granted on such Invention is owned by UNT and/or Sponsor in accordance with the following criteria:

(i) Title to any Invention made or conceived solely by employees of UNT in the performance of the Research vests in UNT.

(ii) Title to any Invention made or conceived jointly by employees of both UNT and Sponsor in the performance of the Research (hereinafter called "Joint Invention") vests jointly in UNT and Sponsor.

(iii) Title to any Invention made or conceived solely by employees of Sponsor in the performance of the Research vests in Sponsor.

B. UNT has the right to file and prosecute patent applications on any Invention to which UNT has sole title as set forth in article 7(a).

C. Both parties must discuss and determine the countries in which they file patent application on each Joint Invention. Each party has the right to file at its cost such patent applications in the countries where the other party has indicated no interest in filing such patent applications. In such case the non-filing party must cooperate with the party filing patent applications, e.g., in the preparation of necessary documents for the filing, assignment and subsequent prosecution of such patent applications.

#### 8. License (I5)

A. In consideration for sponsoring the Project, the UNT shall grant to Sponsor a fully paid up, non-exclusive, non-transferable, royalty-free license (without the right to sublicense) to use all results of the Research owned by UNT, either solely or jointly, exclusively for Sponsor's own internal, research and development purposes.

B. Sponsor also has the first right to negotiate for a fee or royalty-bearing exclusive license or fee bearing option to any UNT and/or UNT's interest in Joint Intellectual Property, provided that Sponsor pays all costs for the preparation, filing, prosecution and maintenance of such Intellectual Property ("Negotiation Right"). Sponsor has 90 days following disclosure of an Intellectual Property by the UNT to exercise its Negotiation Right (the "Negotiation Period"). The Sponsor must submit a written notice to UNT, within the Negotiation Period, in order to exercise their Negotiation Right. If the Negotiation Period expires before UNT receives the Sponsor's written notice exercising the Negotiation Right or as provided below, the Sponsor shall have no further rights to the Intellectual Property.

C. If Sponsor has not begun good faith, substantive negotiations with UNT for an option or license to such Intellectual Property within 90 days of the date of Sponsor's exercising its Negotiation Right in accordance paragraph 8(b), UNT may, in its sole and unfettered discretion, terminate Sponsor's Negotiation Right.

D. Further, if Sponsor and UNT have not negotiated a mutually agreeable license agreement on or before twelve months from the disclosure of the Intellectual Property by the UNT, then UNT may, in its sole and unfettered discretion, terminate Sponsor's Negotiation Right. Sponsor is only obligated to pay expenses incurred and noncancelable obligations that have accrued up to the date that UNT terminates Sponsor's Negotiation Right.

9. Publications (P3) UNT has the right to publish any of the results of the Research. UNT must furnish Sponsor with a copy of any proposed publication or public disclosure, at least 60 days in advance of the proposed publication date to allow for the protection of Sponsor's proprietary, confidential, or patentable information.

#### 10. Termination (T2)

A. Performance under this Agreement or any task order may be terminated by Sponsor at any time upon 60 days written notice to UNT. Upon receipt of notification, UNT must proceed in an orderly fashion to limit or terminate any outstanding commitments and/or to conclude the Research contemplated in affected task orders. UNT must be reimbursed by Sponsor for all costs and noncancelable commitments incurred in performance of the Research on affected task orders prior to receipt of termination notice.

B. UNT may terminate performance on any task order if circumstances beyond its control preclude the continuation of the Research contemplated in any such task order. If UNT terminates, UNT must reimburse Sponsor all unexpended funds, except for those funds needed to pay for noncancelable commitments.

11. Use of Names (P4). Neither party will use the name of the other in any form of advertising or publicity without the express written permission of the other party. 12. UIndemnification:U Sponsor shall also release, indemnify, defend, and hold harmless UNT on demand for, from and against any and all losses, liabilities, suits, judgments, obligations, fines, penalties, claims, costs and expenses (including reasonable attorneys' fees) arising out of Sponsor's use of UNT Facilities and Equipment, including but not limited to, claims relating to products liability, property damage, personal injury, negligence, or death.

12. Notices (N1). Any notices required to be given or which may be given under this Agreement and any resulting task orders must be in writing and delivered by first-class mail or facsimile addressed to the parties as follows: For Sponsor: For UNT: Kristi Lemmon Director of Sponsored Projects Office of Sponsored Services \_\_\_\_\_ University of North Texas \_\_\_\_\_ 1501 Chestnut St. \_\_\_\_\_ Hurley Administration Building, Suite 160 \_\_\_\_\_ Denton, TX 76203-5250 Facsimile: \_\_\_\_\_ Facsimile: 940-565-4277 e-mail: e-mail: HULemmon@unt.edu

13. Independent Parties (I3). For purposes of this Agreement and all resulting task orders the parties are independent contractors and neither may be considered an agent or an employee of the other at any time or for any purpose. No joint venture, partnership or like relationship is created between the parties by this Agreement.

14. Assignment (A4). This Agreement and all resulting task orders are binding upon and inure to the benefit of the parties and may be assigned only to the successors to substantially the entire business and assets of the respective parties. Any other assignment by either party without the prior written consent of the other party is void.

15. Governing Law (G1). This Agreement shall be governed by the laws of the State of Texas.

16. Liability (I2). Sponsor will indemnify and hold harmless UNT, its trustees, officers, employees and agents from and against any liabilities, damages, or claims (including attorneys' fees) arising out of injuries (including death) or property damage suffered by any person arising out of Sponsor's use or possession of the results or Inventions produced hereunder or as a result of Sponsor's negligence or willful misconduct in the performance of this Agreement and any resulting task orders.

17. Order of Precedence (A2). If any provisions stated in this Agreement, resulting Sponsor purchase orders (contemplated on occasion as a functional aspect of Sponsor's accounting and procurement system), and/or any resulting task orders are in conflict, the order of precedence, beginning with the first to last, shall be (1) this Agreement, (2) any resulting task orders, and (3) the Sponsor purchase order. The parties understand and agreed that any purchase order or similar document issued by Sponsor will be for the sole purpose of establishing a mechanism for payment of any sums due and owing hereunder. Notwithstanding any of the terms and conditions contained in said purchase order, the purchase order will in no way modify or add to the terms and conditions of this Agreement.

18. Entire Agreement (E1) Unless otherwise specified herein, this Agreement embodies the entire understanding of the parties for this project and any prior or contemporaneous representations, either oral or written, are hereby superseded. No amendments or changes to this Agreement or any resulting task orders including, without limitation, changes in the field of research, total estimated cost, and period of performance, are effective unless made in writing and signed by authorized representative of the parties. IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first hereinabove written.

UNIVERSITY OF NORTH TEXAS \_\_\_\_\_ (sponsor) By: \_\_\_\_\_  
By: \_\_\_\_\_ Name: Andrew M. Harris  
Name: \_\_\_\_\_ Title: Vice President for Finance Title: \_\_\_\_\_  
& Business Affairs Date: \_\_\_\_\_  
Date: \_\_\_\_\_

**Master Research Agreement #:** \_\_\_\_\_ - \_\_\_\_\_ **Individual Task Order** Task Order #: \_\_\_\_\_ - \_\_\_\_\_  
Upon execution by the parties below, the Research Project specified herein shall be awarded and performed in accordance with the Master Research Agreement (“Master Agreement”) # \_\_\_\_\_ - \_\_\_\_\_ which is incorporated herein in its entirety and was executed by and between Sponsor and UNT. The project specifications shall include the following:

1. Project Title:
2. Principal Investigator at UNT:
3. Project Director at Sponsor:
4. Period of Performance:
5. Amount of Funding from Sponsor:
6. Invoicing Frequency:
  - i. Monthly
  - ii. Quarterly
  - iii. Other; specify:
7. Technical Reporting Requirements:
  - i. Quarterly;
  - ii. Semi-Annually;
  - iii. Annually;
  - iv. Final (90days post term)
8. Other terms:

Attachment (1): Statement of Work Attachment (2): Budget The authorized employees or agents of the parties hereto agree to the terms of this Task Order as indicated by their signatures below.

UNIVERSITY OF NORTH TEXAS \_\_\_\_\_ (sponsor) By: \_\_\_\_\_  
By: \_\_\_\_\_ Name: Andrew Harris  
Name: \_\_\_\_\_ Title: Vice President for Finance Title: \_\_\_\_\_  
& Administration Date: \_\_\_\_\_  
Date: \_\_\_\_\_

### **32. University of Pennsylvania**

This Sponsored Research Agreement ("Agreement") is made by and between The Trustees of the University of Pennsylvania, a Pennsylvania nonprofit corporation (" Institution"), with offices located at Office of Research Services, Franklin Building, Room P121, 3451 Walnut Street, Philadelphia, PA 19104-6205, and

\_\_\_\_\_, \_\_\_\_ a corporation organized and existing under the laws of ("Sponsor"), having a place of business at \_\_\_\_\_.

This Agreement is effective as of the \_\_\_\_\_ day of \_\_, 20\_\_ ("Effective Date").

### **RECITALS (R1)**

Institution and Sponsor are entering into this Agreement since Sponsor desires to fund the research of Dr. \_\_\_\_\_ of Institution's School of \_\_\_\_ in certain specific areas. Sponsor desires to support such research conducted by Institution in accordance with the terms and conditions of this Agreement. The research program contemplated by this Agreement is of mutual interest to Sponsor and Institution and furthers the educational, scholarship and research objectives of Institution as a nonprofit, tax-exempt, educational institution, and may benefit both Sponsor and Institution through the creation or discovery of new inventions.

In consideration of the promises and mutual covenants contained herein, and intending to be legally bound hereby, the parties hereto agree as follows:

### **1. DEFINITIONS**

1.1 "Institution Intellectual Property" means all patentable inventions conceived and reduced to practice in the conduct of the Sponsored Research during the term of this Agreement, including all United States and foreign patent applications claiming said patentable inventions, including any divisional, continuation, continuation-in-part (to the extent that the claims are directed to said patentable inventions), and foreign equivalents thereof, as well as any patents issued thereon or reissues or reexaminations thereof. Institution Intellectual Property also includes all significant copyrightable software created in the conduct of the Sponsored Research during the term of this Agreement.

1.2 "Principal Investigator" means \_\_\_\_\_ who has agreed to serve as faculty investigator for the Sponsored Research and shall be responsible for the conduct, supervision and administration of the Sponsored Research.

1.3 " Research Results " means all data and information which are generated in the performance of the Sponsored Research during the term of this Agreement. Research Results expressly excludes Institution Intellectual Property.

1.4 "Sponsored Research" means the research program described in Attachment A to this Agreement.

## **2. SPONSORED RESEARCH**

2.1 Institution shall commence the Sponsored Research after the Effective Date of this Agreement and upon payment by Sponsor of any funds owed, and shall use good faith efforts to conduct such Sponsored Research substantially in accordance with the terms and conditions of this Agreement. Sponsor acknowledges that Institution and the Principal Investigator shall have the freedom to conduct and supervise the Sponsored Research in a manner consistent with Institution's educational and research missions.

2.2 If the services of the Principal Investigator become unavailable to Institution for any reason, Institution shall be entitled to designate another member of its faculty who is acceptable to Sponsor to serve as the Principal Investigator of the Sponsored Research. If a substitute Principal Investigator has not been designated within sixty (60) days after the original Principal Investigator ceases his or her services under this Agreement, either party may terminate this Agreement upon written notice thereof to the other party, subject to the provisions of Article 9.

## **3. TERM OF AGREEMENT (P2)**

3.1 The initial term of this Agreement shall begin on the Effective Date of this Agreement and shall end on \_\_\_ unless terminated sooner pursuant to Sections 2.2 or 9.1 hereof. This Agreement may be extended or renewed only by mutual written agreement executed by duly authorized representatives of the parties.

## **4. REIMBURSEMENT OF COSTS, PAYMENT (C4, P1)**

4.1 Sponsor shall reimburse 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 \$\_\_\_\_\_ 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 \$\_\_\_\_\_ unless it has agreed in writing to provide additional funds.

4.2 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", and sent to:

Office of Research Services  
University of Pennsylvania  
P-221 Franklin Building  
3451 Walnut Street  
Philadelphia, PA 19104-620 5  
Attention: Executive Director  
23-1352685  
Institution Tax Id entification Number

4.3 Title to any equipment, laboratory animals, or any other materials made or acquired with funds provided under this Agreement shall vest in Institution, and such equipment, animals, or materials shall remain the property of Institution following termination of this Agreement.

## **5. RECORDS AND R EPORTS (R3, R2)**

5.1 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. SPONSOR'S RIGHTS IN R ESEARCH R ESULTS AND R EPORTS (R2, R3)**

6.1 Sponsor shall have the right to use Research Results disclosed to Sponsor in records and reports for any reasonable purpose. Sponsor shall need to obtain a license to use Research Results from Institution if such use would infringe any copyright or any claim of a patent application or issued patent owned by Institution.

6.2 Institution and the Principal Investigator hereby grant Sponsor a royalty-free, nontransferable, non-exclusive right to copy, reproduce and distribute any research reports furnished to Sponsor under this Agreement. Sponsor may not charge fees for said research reports, use said research reports for advertising or promotional activities, or alter or modify said research reports without the prior written permission of Institution.

## **7. INTELLECTUAL PROPERTY (I5)**

7.1 Institution shall retain all right, title and interest in and to the Institution Intellectual Property and any patents, copyrights, software and tangible research materials and other intellectual property related thereto.

7.2 Principal Investigator shall provide Institution and Sponso r a written disclosure of any Institution Intellectual Property reasonably considered patentable. Sponsor shall advise Institution in writing, no later than thirty (30) days after receipt of such disclosure, whether it requests Institution to file and prosecute patent applications related to such Institution Intellectual Property. If Sponsor does not request Institution to file and prosecute such



patent applications, Institution 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 Section 7.5 hereof.

7.3 Institution shall control the preparation and prosecution of all patent applications and the maintenance of all patents related to Institution Intellectual Property. With regard to any patent applications filed at the request and expense of Sponsor, Institution will consult with Sponsor on patent prosecution. Sponsor shall reimburse Institution 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 Institution to prosecute under Section 7.2 hereof.

7.4 Principal Investigator shall provide Institution and Sponsor a written disclosure of any copyrightable software created in the conduct of the Sponsored Research during the term of this Agreement that Principal Investigator reasonably considers to be scientifically valuable.

7.5 In consideration of Sponsor's funding of the Sponsored Research and payment for intellectual property expenses as provided for in Section 7.3, Institution grants Sponsor a first option to negotiate to acquire a license on commercially reasonable terms to practice Institution Intellectual Property. Institution and Sponsor will negotiate in good faith to determine the terms of a license agreement as to each item of Institution Intellectual Property for which Sponsor has agreed to make payment for intellectual property expenses as provided for in Section 7.3, if any. If Sponsor and Institution fail to execute a license agreement within six (6) months after disclosure of the Institution Intellectual Property to Sponsor, or if

Sponsor fails to make payment for intellectual property expenses as provided for in Section 7.3, Institution shall be free to license the Institution Intellectual Property to any party upon such terms as Institution deems appropriate, without any further obligation to Sponsor.

7.6 Any license granted to Sponsor pursuant to Section 7.5 hereof shall be subject to Institution's right to use and permit other non-profit organizations to use Institution Intellectual Property for educational and research purposes and, if applicable, to the rights of the United States government reserved under Public Laws 96-517, 97-256 and 98-620, codified at 35 U.S.C. 200-212, and any regulations issued thereunder.

## **8. CONFIDENTIALITY, PUBLICATION, USE OF NAME (C2, P3, P4)**

8.1 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.

8.2 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.

8.3 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.

8.4 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.

## **9. TERMINATION (T2)**

9.1 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.

9.2 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.

9.3 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.

## **10. DISCLAIMER OF WARRANTIES, INDEMNIFICATION (W2, I2)**

10.1 INSTITUTION MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES WITH RESPECT TO THE CONDUCT, COMPLETION, SUCCESS OR PARTICULAR RESULTS OF THE SPONSORED RESEARCH, OR THE CONDITION, OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE

SPONSORED RESEARCH OR ANY INSTITUTION INTELLECTUAL PROPERTY OR RESEARCH RESULTS OR THAT USE OF THE INSTITUTION INTELLECTUAL PROPERTY OR RESEARCH RESULTS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT OF A THIRD PARTY. INSTITUTION SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES SUFFERED BY SPONSOR OR ANY OTHER PERSON RESULTING FROM THE SPONSORED RESEARCH OR THE USE OF ANY INSTITUTION INTELLECTUAL PROPERTY, ANY RESEARCH RESULTS OR ANY PRODUCTS RESULTING THEREFROM.

10.2 Sponsor shall defend, indemnify and hold harmless Institution, the Principal Investigator and any of Institution's faculty, students, employees, trustees, officers, affiliates and agents (hereinafter referred to collectively as the "Indemnified Persons") from and against any and all liability, claims, lawsuits, losses, damages, costs or expenses (including attorneys' fees), which the Indemnified Persons may hereafter incur, or be required to pay as a result of Sponsor's use of the results of Sponsored Research or any Institution Intellectual Property or Research Results or as a result of any breach of this Agreement or any act or omission of Sponsor, its employees, affiliates, contractors, licensees or agents. Institution shall notify Sponsor upon learning of the institution or threatened institution of any such liability, claims, lawsuits, losses, damages, costs and expenses and Institution shall cooperate with Sponsor in every proper way in the defense or settlement thereof at Sponsor's request and expense. Sponsor shall not dispose or settle any claim admitting liability on the part of the Institution without Institution's prior written consent.

## **11. ADDITIONAL PROVISIONS (M1)**

11.1 No rights hereunder may be assigned by Sponsor, directly or by merger or other operation of law, without the express written consent of Institution. Any prohibited assignment of this Agreement or the rights hereunder shall be null and void. No assignment shall relieve Sponsor of responsibility for the performance of any accrued obligations, which it has prior to such assignment.

11.2 Waiver (Waiver). A waiver by either party of a breach or violation of any provision of this Agreement will not constitute or be construed as a waiver of any subsequent breach or violation of that provision or as a waiver of any breach or violation of any other provision of this Agreement.

11.3 Assignment (A2). Nothing herein shall be deemed to establish a relationship of principal and agent between Institution and Sponsor, nor any of their agents or employees, nor shall this Agreement be construed as creating any form of legal association or arrangement which would impose liability upon one party for the act or failure to act of the other party. Nothing in this Agreement, express or implied, is intended to confer on any person other than the parties hereto or their permitted assigns, any benefits, rights or remedies.

11.4 Notices (N1). Statements, reports and other communications under this Agreement shall be in writing and shall be deemed to have been received as of the date dispatched if sent by public overnight courier (e.g., Federal Express) and addressed as follows:

If to Institution:

Office of Research Services University of Pennsylvania P121 Franklin Building  
3451 Walnut Street  
Philadelphia, PA 19104-6205  
Attn.: Executive Director

If to P rincipal Investigator:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Sponsor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11.5 Governing Law (G1). This Agreement shall be construed and governed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to conflict of law provisions. The parties hereby submit to the exclusive jurisdiction of and venue in any state or federal courts located within the Eastern District of Pennsylvania with respect to any and all disputes concerning the subject o f this Agreement.

11.6 Employment Discrimination (K1). Institution and Sponsor shall not discriminate against any employee or applicant for employment because of race, color, sex, sexual or affectional preference, age, religion, national or ethnic origin, handicap, or because he or she is a disabled veteran or veteran of the Vietnam Era.

11.7 Force Majeure (F1). Neither party shall be liable for any failure to perform as required by this Agreement to the extent such failure to perform is due to circumstances reasonably beyond such party's control, including, without limitation, labor disturbances or labor disputes of any

kind, accidents, failure of any governmental approval required for full performance, civil disorders or commotions, terrorism, acts of aggression, acts of God, energy or other conservation measures imposed by law or regulation, explosions, failure of utilities, mechanical breakdowns, material shortages, disease, or other such occurrences.

11.8 Government Laws (G1). Sponsor shall comply with all laws, regulations and other legal requirements applicable to Sponsor in connection with this Agreement, including but not limited to any legal requirements applicable to Sponsor's use of the results of the Sponsored Research or any Institution Intellectual Property or Research Results and laws controlling the export of technical data, computer software, laboratory prototypes, and all other export controlled commodities.

11.9 Entire Agreement (E1). This Agreement embodies the entire understanding between the parties relating to the subject matter hereof and supersedes all prior understandings and agreements, whether written or oral. This Agreement may not be varied except by a written document signed by duly authorized representatives of both parties.

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereby execute this Agreement as of the date first written above.

The Trustees of the [Sponsor] University of Pennsylvania

By: \_\_\_\_\_ By: \_\_\_\_\_ Name: \_\_\_\_\_  
\_\_\_\_\_ Name : \_\_\_\_\_ Title: \_\_\_\_\_  
Title: \_\_\_\_\_ Date: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ I have read and agreed to the responsibilities of the Principal

Investigator:

By: \_\_\_\_\_ Date: \_\_\_\_\_

### **33. University of Rochester**

**THIS RESEARCH AGREEMENT** ("Agreement") is entered into on (DATE) by and between (SPONSOR'S NAME AND ADDRESS) ("Sponsor") and the University of Rochester ("Rochester"), a non-profit educational institution and a body having corporate powers under the laws of the State of New York of the United States of America with business offices located at 5th Floor Hylan Building, RC Box 270140, Rochester, New York 14627.

#### **RECITALS (R1)**

Rochester, through the Department ( ) in the School of ( ), has valuable experience, and skill, and ability in (RESEARCH TITLE).

Sponsor desires to have Rochester undertake a research project in accordance with the scope of work described in Exhibit A, Research Summary.

The obligations the UR has as a "non-profit, tax-exempt educational institution" are the basis for many of the positions that UR expresses in this Research Agreement. The research program contemplated by this Agreement is of mutual interest and benefit to Rochester and Sponsor, and will further Rochester's instructional and research objectives in a manner consistent with its status as a non-profit, tax exempt educational institution. However, the UR recognizes that the terms of the Agreement also must be consistent with the Sponsor's goals and responsibilities.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants herein contained, the parties hereto hereby agree as follows:

1. **STATEMENT OF WORK (S1)**. Rochester agrees to use its reasonable efforts to perform the research project described in Exhibit A ("the Research"), which Exhibit is incorporated herein. Access to work carried on in Rochester's laboratories in the course of the Research shall be entirely under the control of Rochester personnel. The concepts of academic freedom and faculty control over their scientific inquiry are fundamental to UR's mission. Obviously, sponsors should be consulted as necessary.

#### **2. KEY PERSONNEL. (K1)**

In collaborative agreements, it is very appropriate to list key personnel at the Sponsor's site as well.

(A) The following individuals are identified as key personnel for the performance of the Research at Rochester:

1. (Name), Principal Investigator
2. (Name), Other
3. (Name), Other

3. **PERIOD OF PERFORMANCE (P2)**. This Agreement is effective for the period (DATE) through (DATE) and may be extended only by written agreement of the parties.

4. REIMBURSEMENT OF COSTS (P1). Rochester shall be reimbursed by the Sponsor for all direct and indirect costs incurred in connection with the Research up to the amount of \$\_\_\_\_\_. (Budget attached as Exhibit B). While it is estimated that this amount is sufficient to conduct the Research, Rochester may submit to the Sponsor a revised budget requesting additional funds. Rochester shall not be obligated to expend funds in excess of those provided under this Agreement to conduct the Research. requests indirect costs using the same rates approved by the U.S. Government for Federally-Sponsored research. Rates lower than the Federally negotiated rate must be approved by the Dean's Office.

**PAYMENT TERMS (*ORPA must select one of the following options*)**

Option A: This is fixed price agreement. Upon execution of this Agreement, Rochester will submit an invoice for full payment due within thirty (30) days from receipt of the invoice. Payment terms are selected in accordance accordance with the work statement. Normally, the UR asks for payment in advance in order to have working capital for

Option B: This is a fixed price agreement. Upon execution of this Agreement, Rochester will submit invoices for payment due within thirty (30) days from receipt of the invoice in accordance with the following schedule: research projects. If the Sponsor requires an accounting of actual funds at the end end of the Research, that can be accommodated.

60% due upon execution of this Agreement;  
30% due \_\_\_\_days from the start date of the project;  
10% due upon receipt of all deliverables

Option C: This is a cost-reimbursable agreement. Rochester will submit quarterly (or monthly) invoices based on actual expenditures pursuant to the budget outlined in Exhibit B. Invoices will be due within 30 days of receipt. Checks shall be made payable to the University of Rochester and shall be sent to:

University of Rochester  
Office of Research Accounting and Costing Standards  
260 University Towne House  
Rochester, New York 14620

For purposes of identification, each payment shall include the title of the Research and the name of the Principal Investigator.

5. EQUIPMENT (E3). Rochester may be required to purchase equipment or the components thereof for its own use in connection with the Research. Title to any such equipment purchased or manufactured in the performance of the work funded in connection with this Agreement shall vest in Rochester.

6. INTELLECTUAL PROPERTY (I5).

(A) Inventorship of inventions conceived during the course of performing research under this Agreement ("Inventions") will be determined in accordance with U.S. Patent laws and

ownership shall follow inventorship. Rochester represents that all of its employees who may be involved in the Research have agreed to assign to Rochester all rights to Inventions, technology and software developed under this Agreement. As a matter of policy and subject to IRS Revenue Procedure 97-14, UR retains exclusive ownership of patents resulting from inventions made solely by UR personnel. This principle is consistent with US Patent laws.

(B) Patents - Rochester and Sponsor shall promptly provide in confidence a complete written disclosure to each other of any Invention first conceived or discovered in the performance of the work funded under this Agreement. If requested by Sponsor in writing within (30-60) days of the complete written disclosure, Rochester shall, at Sponsor's request and expense, pursue and obtain patent protection for the Invention in consultation with Sponsor. If Sponsor requests that Rochester pursue protection on any such Invention, Sponsor shall have a <90-180> day period from the date that Rochester files for patent protection for the Invention to negotiate the terms of a license agreement and Rochester and the Sponsor agree to negotiate these license terms in good faith. During this period, Rochester will not offer a commercial license to any other party. For patents that result from the Research, the Sponsor is always entitled to a nonexclusive royalty-free license for internal research use. In addition, other licensing options may be negotiated. In the event Sponsor does not agree to pursue patent protection within the <30-60> day period after the complete written disclosure of the Invention, Rochester may file at its own expense and Sponsor shall have no further rights to that patent application or the Invention.

(C) Unpatented Technology - All rights in technology (such as biological materials) created in the performance of the Research for which Rochester does not seek patent protections shall be owned by Rochester. Upon receipt of a written description or sample of such technology, Sponsor shall have a <60-120> day period to negotiate the terms of a license agreement and Rochester agrees to negotiate these license terms in good faith. During this period, Rochester will not offer a commercial license to any other party.

(D) Software - Ownership of software created during the course of performing the Research shall belong to the employer of the The Sponsor is entitled to a royalty-free, nonexclusive license for copyright other than performing the Research shall belong to the employer of the author of such software and shall be determined in accordance with U.S. Copyright law. Upon receipt of a copy of such software, Sponsor shall have a <60-120> day period to negotiate the terms of a license agreement and Rochester agrees to negotiate these license terms in good faith. During this period, Rochester will not offer a commercial license to any other party. software, such as for technical reports delivered under the Agreement.

(E) License Terms - Any license granted shall be subject to Rochester's intellectual property policies and Rochester's agreement with other sponsors of research and providers of research materials. Such license shall provide:

1. for Sponsor (and its sublicensees, if any) to exert its best efforts to introduce products and services utilizing the licensed technology into public use as rapidly as practicable; UR seeks to partner with Sponsors that will develop and commercialize technologies quickly, so that they are of benefit to the public.



2. for a royalty that is usual and customary in the trade; Subject to IRS Procedure 97-14, UR is notable to pre-set a royalty; it can identify and;
3. for termination in the event Sponsor has not introduced licensed products or services into public use, or is not actively seeking to do so, within a time period acceptable to Rochester; negotiate a royalty when the technology is identified.
4. for indemnity terms acceptable to Rochester;
5. for Rochester to retain a nonexclusive license, with the right to grant licenses to non-profit and academic institutions for non-commercial research purposes only;
6. that the license shall be subject, when research is funded by the United States government to rights retained by the government in accordance with P.L. 96-517, as amended by P.L. 98-620, and when such funding is NIH funding, Rochester's obligations regarding the *NIH Guidelines for Obtaining and Disseminating Biomedical Research Resources*, including, but not limited to, the obligation to ensure that research tools will be available to academic research community on reasonable terms. If the research has also been funded by the US Government, the Sponsor's rights are subject to the non-exclusive, royalty-free license rights of the US Government and the requirement for substantial manufacture in the US. If the research has also been funded by NIH, NIH expects that research tools derived from NIH funding will be made available for non-commercial purposes.
7. PUBLICATION (P3). Rochester agrees to provide Sponsor, in confidence, with an advanced copy of any publication resulting from the Research not less than thirty (30) days prior to the submission to a journal or any other public disclosure. At the request of the Sponsor, Rochester agrees to delay the publication for a period of sixty (60) days from the date the publication was originally provided to the Sponsor for the filing of any relevant patent applications. In addition, Rochester agrees to remove any Confidential Information of the Sponsor. UR believes that scholarly publication is a fundamental right and responsibility of its researchers. Sponsors may review manuscripts prior to publication, but UR will not accept terms that require "approval" by the Sponsor.
8. CONFIDENTIALITY (C2). The UR will exercise reasonable efforts to maintain in confidence proprietary
  - (A) Unless otherwise required by law, Rochester will exercise reasonable effort to maintain in confidence proprietary or tradeseecret information disclosed or submitted to Rochester by the Sponsor which is designated in writing as confidential information at the time of disclosure ("Confidential Information"). information disclosed by the Sponsor. The Sponsor should recognize that the research = to be performed will be conducted in an academic environment that encourages open collaboration among investigators, post-docs and graduate students.
  - (B) Confidential Information does not include information which:

1. was known to Rochester prior to the disclosure hereunder;
2. was received from a third party not under an obligation of confidence to Sponsor;
3. is in the public domain at the time of disclosure hereunder or subsequently entered the public domain without the fault of the recipient;
4. is independently known prior to receipt thereof or is discovered independently by an employee or student of Rochester who had no access to the information supplied by the Sponsor under this Agreement; or
5. is required to be disclosed by law.

(C) Rochester retains the right to refuse to accept any such information, which is not considered to be essential to the completion of the Research. The obligations of confidentiality under this paragraph shall survive and continue for three (3) years after the termination of this Agreement.

9. REPORTS (R3). Rochester shall furnish Sponsor letter reports during the term of this Agreement summarizing the work conducted. A final report setting forth the accomplishments and significant research findings shall be prepared by Rochester and submitted to the Sponsor within ninety (90) days of the expiration of the Agreement. UR recognizes that satisfactory research reports are essential for Sponsors to monitor the progress of the Research. Sponsors may utilize results and data for any reasonable purpose.

10. TERMINATION (T2). This Agreement may be terminated by either party at any time upon the receipt of sixty (60) days written notice to the other party except as specifically provided in paragraphs numbered 13, 14 and 15. In addition, if Sponsor fails to make any payment required hereunder, this agreement shall terminate on the tenth day after Rochester mails notice of such failure, unless payment is received before such tenth day. Rochester may also terminate immediately if circumstances beyond its control prevent continuation of the Research. Upon notification, Rochester shall proceed in an orderly fashion to limit or terminate any outstanding commitments and/or to conclude the research. All costs associated with termination shall be allowable, including non-cancelable commitments incurred prior to receipt of termination notice and all expenses which have not been reimbursed to Rochester by Sponsor. In the event of termination, Rochester shall submit to Sponsor a final financial report in accordance with Paragraph 4 of this Agreement. Any costs and commitments incurred in excess of funds provided will be invoiced to Sponsor and will be payable by Sponsor within thirty (30) days.

11. NOTICES (N1). Any notices given under this Agreement shall be in writing and delivered by certified or registered return receipt mail, postage prepaid, or by facsimile addressed to the parties as follows:

For Sponsor: For Rochester:

Name: \_\_\_\_\_ Director  
Office of Research and Project Administration  
Title: \_\_\_\_\_ 5th Floor Hylan Building RC Box 270140  
Address: \_\_\_\_\_ Rochester, New York 14627  
Telephone: \_\_\_\_\_ (585) 275-4031 (Telephone)  
Facsimile: \_\_\_\_\_ (585) 275-9492 (Facsimile)

12. PUBLICITY (P4). Neither party shall use the name, tradenames 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.

13. WARRANTY (W2). ROCHESTER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION 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 OF A PARTICULAR PURPOSE OF THE RESEARCH OR ANY SUCH INVENTION OR PRODUCT.

Rochester shall not be liable for any direct, consequential, or other damages suffered by any licensee or any others resulting from the use of the Research or any such invention or product. The provisions of this paragraph shall survive termination of this Agreement. The UR undertakes research only on a best efforts basis and will not guarantee a successful outcome or any particular results. Research is, by nature, unpredictable and without guarantee of success.

14. USE OF RESEARCH RESULTS AND PRODUCT LIABILITY (L2). Sponsor agrees to hold harmless, indemnify and defend Rochester from all liabilities, demands, damages, expenses and losses arising out of use by any third party or by the Sponsor, or by any party acting on behalf of or under authorization from the Sponsor, or out of any use, sale of other disposition by the Sponsor, or by any party acting on behalf of or under authorization from the Sponsor, of products made by use of the results of the Research performed hereunder. The provisions of this paragraph shall survive termination.

15. INDEMNIFICATION (I2). Sponsor hereby waives and agrees to indemnify, defend, and hold harmless Rochester and its employees and students from any loss, claim of damages, or liability of any kind, including reasonable legal fees, court costs and other expenses in litigation or settlement of any claims, arising out of or in connection with this Agreement, except to the extent that such loss, claim of damage, or liability arises in whole from the sole negligence of Rochester. The provisions of this paragraph shall survive termination of this Agreement.

## 16. COMPLIANCE (G1).

(A) COMPLIANCE WITH FRAUD AND ABUSE LAWS. Sponsor represents and warrants that neither it, nor any of its officers, directors, shareholders holding a fifty percent or greater equity interest in Sponsor, employees and agents: have been excluded from participation in any of the Government Health Programs of the Private Health Plans (an "Exclusion");

1. have been indicted for, convicted of or pled guilty or nolo contendere to any felony or misdemeanor related to the practice of a health care profession, the Fraud and Abuse Laws or controlled substances (a "Criminal Conviction");
2. have had a civil monetary penalty assessed against them (including monies paid through a settlement process) for presenting a false or fraudulent claim to any of the Government Health Programs (a "Civil Monetary Assessment"); or
3. are now or have ever been under investigation by any government agency for conduct which might result in any of the above (a "Government Investigation").

(B) COMPLIANCE WITH HIPAA. Sponsor acknowledges that Rochester is a "Covered Entity" within the meaning of the Health Insurance Portability and Assurance Act ("HIPAA") and that information may be exchanged under the terms of this Agreement that would constitute "protected health information" ("PHI") as that term is used in HIPAA. Therefore, in connection with PHI, Sponsor agrees that: a) it may not use or disclose such information other than in connection with this Agreement; and b) it may not disclose such information in a manner that would violate the proposed regulations under HIPAA if such disclosure were done by Rochester. Sponsor agrees to adopt appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement and to report to Rochester any use or disclosure of PHI in violation of this Agreement of which it becomes aware as soon as reasonably practicable. Sponsor agrees that that if any portion of its obligations under this Agreement are performed through a subcontractor or agent that the subcontractor or agent must agree to the same restrictions and conditions that apply to the Sponsor with respect to PHI. Sponsor must make PHI available pursuant to section 164.514(a) ("Right of access for inspection or copying") of the proposed privacy regulations pursuant to HIPAA. In connection with this obligation, Sponsor agrees to make its internal practices, books and records relating to the use and disclosure of PHI available to Health and Human Services Administration for the purpose of determining compliance with the privacy regulations. Sponsor agrees that upon termination of this Agreement, Sponsor will return or destroy all PHI received from Rochester and will not retain copies of such information.

17. FORCE MAJEURE (F1). Rochester shall not be liable for any failure to perform as required by this Agreement, to the extent such failure to perform is caused by any reason beyond Rochester's control, or by reason of any of the following occurrences: labor disturbances or labor disputes of any kind, accidents, failure of any governmental approval required for full performance, civil disorders or commotion's, 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.

18. ASSIGNMENT (A4). 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.

19. SEVERABILITY (S2). In the event a court of competent jurisdiction holds any provision of this Agreement to be invalid, such holding shall have no effect on the remaining provisions of this Agreement, and they shall continue in full force and effect.

20. INDEPENDENT CONTRACTOR (I3). Each party shall be deemed to be an independent contractor of the other party, and neither shall be considered an agent, employee, joint venture or partner of the other. Neither party shall have authority to make warranties or representations or enter agreements on behalf of the other, nor shall either party be bound by the acts, statements or conduct of the other.

21. INDEPENDENT INQUIRY. Nothing in this Agreement shall be construed to limit the freedom of researchers who are participants in this Agreement, whether paid under this Agreement, or not, from engaging in similar research inquiries made independently under other grants, contracts or agreements with parties other than the Sponsor.

22. HEADINGS. The paragraph headings herein are for convenience only and shall not affect the construction or interpretation of this Agreement.

23. ENTIRE AGREEMENT CHANGES (A1). This Agreement and its appendices contain the entire agreement between the parties, and supersede any prior or contemporaneous representations or agreements, written or oral regarding the subject matter thereof. No amendments or changes to this Agreement shall be effective unless made in writing and signed by authorized representatives of Rochester and Sponsor. All correspondence regarding terms of this Agreement shall be sent as specified in Paragraph 11.

24. GOVERNING LAW (G1). This Agreement shall be governed by the laws of the State of New York as adjudicated by a court of competent jurisdiction.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in duplicate by proper persons thereunto duly authorized.

(Sponsor's Name) University of Rochester

By: \_\_\_\_\_ By: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

### **34. University of South Carolina**

This Research Agreement is by and between the University of South Carolina Research Foundation, a non-profit corporation organized under the laws of the State of South Carolina, with offices at Byrnes Building 5th floor, 901 Sumter Street, University of South Carolina, Columbia, South 29208, (hereinafter referred to as "USCRF"), and [insert company name], a for-profit corporation organized under the laws of [insert State of incorporation] and having offices at [insert address] (hereinafter referred to as "SPONSOR").

#### **RECITAL (R1)**

WHEREAS, the University of South Carolina (hereinafter referred to as "UNIVERSITY") is a multi-campus public institution serving the entire State of South Carolina through teaching, research and creative activity, and service;

WHEREAS, USCRF is organized and operates exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the UNIVERSITY, including but not limited to promoting, encouraging and aiding scientific research and investigation at the UNIVERSITY and transferring and licensing its technology;

WHEREAS, the USCRF has the capacity to receive, hold, disburse and account for funds in connection with research and related intellectual property developed by the UNIVERSITY; Whereas, UNIVERSITY has an active research program concerning [insert area of interest]; Whereas, SPONSOR is also interested in that research and wishes to encourage and assist in supporting certain aspects of the research;

Whereas, USCRF and SPONSOR wish to combine their mutual interest in this research; Therefore, USCRF and SPONSOR agree to the terms stated below.

#### **1. SCOPE OF WORK (S1)**

The Scope of Work shall be as described in the research proposal entitled "[insert proposal title]" and dated [insert date], (Proposal) and incorporated into this Agreement as Attachment I.

#### **2. PROJECT PERIOD (P2)**

The Agreement will be effective for [insert period of performance] commencing [insert start date] through [insert end date]. This period may be amended by mutual written agreement by authorized representatives of USCRF and SPONSOR.

#### **3. BEST EFFORTS**

Based on an addendum to an underlying agreement between USCRF and USC, this project will be performed by [insert PI], Principal Investigator, in the Department of [insert department], University of South Carolina.

As an independent agent, USCRF will apply its best efforts to complete the research described in the Scope of Work statement.

#### **4. KEY PERSONNEL (K1)**

The project director will be [insert PI], who 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 provision of this Agreement if a satisfactory substitute is not identified.

#### **5. DIRECTION OF RESEARCH (S1)**

Direction of the research will rest with USCRF. It is agreed, however, that USCRF, through its project director, will maintain continuing communication with a designated liaison for the SPONSOR. The frequency and nature of these communications will be mutually defined by USCRF's project director and SPONSOR's liaison person.

#### **6. FUNDING AND PAYMENT SCHEDULE (P1)**

SPONSOR will provide funding in the amount of \$[insert dollar value for total effort]. Payment of \$[insert dollar value] is due upon execution of agreement. Thereafter, payment of \$[insert dollar value] is due at the beginning of each calendar quarter beginning within 3 months after award.

Checks should be made payable to USCRF and sent to University of South Carolina Research Foundation PO Box 751475, Charlotte NC 28275.

#### **7. INTELLECTUAL PROPERTY (I5)**

7.1. Intellectual Property (IP). IP means any and all patents or rights to patent, copyrights, trademarks, and any and all technical data and computer software within the scope of the agreement developed as a direct result of the research project (PROJECT).

7.2. Background IP. IP not arising within the research but of use to the PROJECT, the rights to which are controlled by UNIVERSITY or SPONSOR, and which is expressly made available to the PROJECT by the controlling party.

7.3. Ownership. "UNIVERSITY IP" means Intellectual Property developed solely by UNIVERSITY. "SPONSOR IP" means Intellectual Property developed solely by SPONSOR Personnel. "Joint IP" means Intellectual Property developed jointly by SPONSOR Personnel and University Personnel or which are made solely by employees of SPONSOR utilizing UNIVERSITY facilities. "UNIVERSITY Background IP" means Background IP in the possession of UNIVERSITY. "SPONSOR Background IP" means Background IP in the possession of SPONSOR. UNIVERSITY and SPONSOR shall not, by performance under this Agreement, obtain any ownership interest in the other parties' Background IP.

7.4. Title. Title to UNIVERSITY IP shall vest with UNIVERSITY. Title to SPONSOR IP shall vest with SPONSOR. Title to Joint IP shall vest jointly with UNIVERSITY and SPONSOR unless UNIVERSITY and SPONSOR agree otherwise. Both SPONSOR and UNIVERSITY have the right to make, have made, reproduce, use, sell, and offer to sell Joint IP without consultation with the other party, unless an exclusive license is negotiated between USCRF and SPONSOR.

## **8. LICENSE**

To the extent it has the legal right to do so, USCRF grants SPONSOR the first option to negotiate, in good faith, for a royalty-bearing license for all UNIVERSITY IP and/or an exclusive royalty-bearing license for all Joint IP made in the course of work resulting from the PROJECT.

SPONSOR shall have (2) two months from USCRF notification of disclosure of any UNIVERSITY IP and/or Joint IP to notify UNIVERSITY that it wants to enter into such a license agreement. The parties shall negotiate in good faith for a period not to exceed (4) four months from SPONSOR's notification or a longer period of time if the parties mutually agree to extend negotiations. If SPONSOR and UNIVERSITY fail to enter into an agreement within the (4) four month period of time SPONSOR forgoes any rights to UNIVERSITY IP and exclusive rights to Joint IP. Until UNIVERSITY IP and/or Joint IP has been presented as set forth above, USCRF shall not offer UNIVERSITY IP or Joint IP rights to any third party. UNIVERSITY shall retain unrestricted rights to use and to transfer to other universities and non-profits UNIVERSITY IP and/or Joint IP for research purposes.

## **9. PATENTS**

In the event SPONSOR elects to exercise its option as detailed in Article 8. License, it shall be obligated to reimburse USCRF for all patent filing, prosecution and maintenance expenses (US and Foreign) for the licensed UNIVERSITY IP and/or Joint IP. Failure to reimburse patent expenses within 30 days of written request for reimbursement shall be basis to terminate option and SPONSOR forgoes rights to UNIVERSITY IP and/or exclusive rights to Joint IP.

## **10. DISCLAIMER OF WARRANTIES (W2)**

All information received from or technology developed with the UNIVERSITY is experimental in nature and the USCRF makes no express or implied warranties or representations with respect to its utility, safety, merchantability, or fitness for a particular purpose. All warranties express or implied arising out of or in connection with furnishing, performance, or use of any UNIVERSITY technology are hereby disclaimed.

## **11. CONFIDENTIALITY (C2)**

The USCRF and SPONSOR recognize that certain technical information and/or tangible technical materials provided by disclosing party under this Agreement may be valuable, proprietary assets of disclosing party ("CONFIDENTIAL INFORMATION"). Accordingly, the receiving party shall use its reasonable efforts to maintain and assure the confidential and proprietary nature of the disclosing party's CONFIDENTIAL INFORMATION. In particular, the receiving party will not publish or otherwise make public the disclosing party's CONFIDENTIAL INFORMATION without first receiving written permission from disclosing party. Finally, the receiving party will not transfer the disclosing party's CONFIDENTIAL INFORMATION to any third party unless the receiving party has first received the disclosing party's written permission to do so.

The obligations of confidentiality assumed by the USCRF and the SPONSOR under this Article shall apply to CONFIDENTIAL INFORMATION which is provided to the receiving party by the disclosing party in written form, including samples which are designated in writing as being



confidential, and to information which is initially disclosed orally and the substance of such oral disclosure is reduced to writing and transmitted to the receiving party within 20 days of oral disclosure.

The obligations of non-disclosure and the limitation upon the right to use CONFIDENTIAL INFORMATION (including test results) imposed upon the parties to this Agreement shall not apply to the extent that the receiving party can demonstrate that the information disclosed by the disclosing party: (a) was in the possession or control of, or was independently developed by, the receiving party prior to the time of disclosure hereunder, as evidenced by the receiving party's prior written records; or (b) at the time of disclosure or thereafter becomes public knowledge through no fault or omission of the receiving party; or (c) was lawfully obtained by the receiving party from a third party under no obligation of confidentiality to the disclosing party; or (d) is disclosed pursuant to an order of law after the receiving party has given notice to the disclosing party of such order and has cooperated with disclosing party's efforts, if any, to obtain a protective order or confidentiality agreement with provisions equivalent to the provisions of this Agreement.

When the CONFIDENTIAL INFORMATION is no longer required for the purposes of this Agreement, receiving party shall return it or dispose of it as directed by disclosing party. Receiving party's obligations of confidentiality with respect to CONFIDENTIAL INFORMATION provided under this Agreement will expire two (2) years after the termination date of this Agreement.

## **12. PUBLICATION (P3)**

SPONSOR recognizes that under USCRF policy, the results of the project must be publishable and agrees that researchers engaged in the project shall be permitted to present at symposia, national or regional professional meetings and to publish in journals, theses or dissertations, or otherwise of their own choosing, methods and results of project, provided, however, that SPONSOR shall have been furnished copies of any proposed publications or presentations at least 30 days in advance of the submission of such proposed publication or presentation to a journal, editor, or other third party. SPONSOR shall have 30 days, after receipt of said copies, to object in writing to such proposed presentation or proposed publication either because there is patentable subject matter which needs protection and/or there is Confidential Information of SPONSOR contained in the proposed publication or presentation.

In the event that SPONSOR makes such objection, the parties shall negotiate an acceptable version, and the researcher(s) shall refrain from making such publication or presentation for a maximum of 60 days from date of receipt of such objection in order for USCRF to file patent application(s) with the United States Patent and Trademark Office and/or foreign patent office(s) directed to the patentable subject matter contained in the proposed publication or presentation. Authorship of published research results will take into account the contributions of collaborators for both the SPONSOR and USCRF.

It is understood that in no case can this provision for delay of publication cause a delay in the normal academic progress of a graduate student of The University of South Carolina with respect to preparation and submission of a graduate thesis or dissertation.

USCRF's obligations of obtaining SPONSOR review with respect to PUBLICATIONS provided under this Agreement will expire one (1) year after the termination date of this Agreement.

### **13. INSURANCE AND LIABILITY (I4)**

13.1 Insurance. USCRF shall carry such workers' compensation, employer's liability, comprehensive general liability, and other insurance sufficient in amount to cover the performance of its obligations hereunder. Upon reasonable request of SPONSOR, USCRF shall furnish SPONSOR with a certificate or certificates of insurance evidencing that appropriate insurance coverages are in full force and effect.

13.2 LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY AMOUNTS REPRESENTING LOSS OF PROFIT, LOSS OF BUSINESS, OR OTHER INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF THE OTHER PARTY.

### **14. USE OF NAMES (P4)**

USCRF and SPONSOR each agree that they will not use the name, trademark, or other identifier of the other for any advertising, promotion, or other commercially related purpose except with advance written approval. Notwithstanding the forgoing the parties may satisfy any reporting requirements of their respective organizations.

### **15. FORCE MAJEURE (F1)**

Any delay or failure of either party to perform its obligations hereunder shall be excused if, and to the extent that it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), inability to obtain power, material, labor, equipment or transportation, or court injunction or order.

### **16. GOVERNMENT COMPLIANCE (G1)**

SPONSOR and USCRF agree to comply with all federal, state and local laws, Executive Orders, rules, regulations and ordinances which may be applicable to such party's performance of its obligations under this Agreement.

### **17. NO IMPLIED WAIVER (W1)**

The failure of either party at any time to require performance of any provision of this Agreement shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either party of a breach of any provision constitute a waiver of any succeeding breach of the same or any other provision.

**18. RELATIONSHIP OF PARTIES (I3)**

USCRF and SPONSOR are independent contracting parties and nothing in this Agreement shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

**19. SEVERABILITY (S2)**

If any term of this Agreement is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of this agreement shall remain in full force and effect.

**20. ASSIGNMENT (A4)**

Unless otherwise indicated elsewhere in this Agreement, neither party to this Agreement may assign nor transfer any rights or obligations arising from this Agreement without the prior written consent of the other party.

**21. NOTICES (N1)**

Unless otherwise indicated elsewhere in this Agreement, all notices and communications in connection with this Agreement will be addressed to the following:

<b>University of South Carolina Research Foundation</b>	<b>[Sponsor]</b>
Name: Greg Howell Title: Industrial Contracts Administrator Address: USCRF Byrnes Building, 5th Floor 901 Sumter Street Columbia, SC 29208-0001 (803) 777-1119	Name: Title: Address:    ( ) - (phone)
(803) 777-4136 (fax)	( ) - (fax)

**22. TERMINATION (T2)**

Either USCRF or SPONSOR may terminate this Agreement by giving thirty (30) days written notice to the other. In the event of such termination, USCRF will cease further obligation of project funds and will take all reasonable steps to cancel or otherwise reduce outstanding obligations. SPONSOR will be obligated to pay actual costs and firm commitments to the date of termination.

**23. MODIFICATIONS (A1)**

Any modification, alteration or amendment to this Agreement must be in writing and signed by both Parties hereto.

**24. GOVERNING LAW (G1)**

This Agreement shall be governed by the laws of the state of South Carolina.

**25. ENTIRE AGREEMENT (E1)**

This Agreement constitutes the entire understanding between the SPONSOR and the USCRF, and any previous discussion, negotiations, agreements or the like are superseded by this Agreement.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by persons thereunto duly authorized and their official seals to be affixed hereto, the day and year set forth below:

**University of South Carolina**

**[Sponsor] Research Foundation**

### 35. University of Southern California

This Research Agreement (this "Agreement") is entered into as of \_\_\_\_\_ (the "Effective Date") by and between \_\_\_\_\_, a \_\_\_\_\_ ("Sponsor") and the University of Southern California, a California non-profit public benefit corporation ("USC").

#### RECITALS (R1)

WHEREAS, the research project contemplated by this Agreement is of mutual interest and benefit to USC and to Sponsor, will further the instructional, scholarship and research objectives of USC in a manner consistent with its status as a non-profit educational institution, and may result in benefits for both Sponsor and USC through inventions, improvements and discoveries;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

#### 1. DEFINITIONS

- 1.1 "Commitment" means the financial payment made by Sponsor to USC as specified in the Statement of Work.
- 1.2 "Confidential Information" shall have the meaning ascribed to it in Section 9.1 of this Agreement.
- 1.3 "Copyrightable Material" means any material or other property developed or reduced to practice in the course of conducting the research specified for the Project that is or may be copyrightable or otherwise protectable under Title 17 of the United States Code.
- 1.4 "Invention" means any invention or discovery developed or reduced to practice in the course of conducting the research specified for the Project that is or may be patentable or otherwise protectable under Title 35 of the United States Code.
- 1.5 "Noncancellable Obligations" means noncancellable obligations, including noncancellable graduate fellowships and appointments called for or incurred for the Project that are incurred prior to the effective date of termination.
- 1.6 "Principal Investigator" shall be \_\_\_\_\_.
- 1.7 "Project" means the project as described in the Statement of Work.
- 1.8 "Sponsor Supplied Material" has the meaning ascribed to it in Section 3.3 of this Agreement.

- 1.9 “Statement of Work” means the form attached hereto as Exhibit A and which is incorporated herein in its entirety by this reference.
- 1.10 “USC Personnel” means persons employed, appointed, engaged or authorized by USC from time to time to work for or in connection with USC as professors, investigators, fellows, graduate or undergraduate students, staff, consultants, or in other capacities.
- 1.11 “USC Intellectual Property” means all existing or future Copyrightable Material, Inventions, improvements, discoveries, trade secrets, data, and know-how conceived or made in whole or in part by USC Personnel and Sponsor personnel working in collaboration with the USC Personnel in the course of their work with USC or using USC facilities, resources, equipment or funds under this Agreement.

**2. GENERAL CONTACT INFORMATION (K1)**

USC:

Technical/Scientific

*Principal Investigator Name*

*Department*

*School*

*address*

*tel#*

*fax#*

*email*

Contractual

*Contact Name*

*Title*

*address*

*tel#*

*fax#*

*email*

Sponsor:

Technical/Scientific

*Contact Name*

*Title*

*address*

*tel#*

*fax#*

*email*

Contractual

*Contact Name*

*Title*

*address*

*tel#*

*fax#*

*email*

Notwithstanding the general contact information above, any notices shall be provided as set forth in Section 16.6 of this Agreement.

### 3. RESEARCH PROJECT (S1)

3.1 USC shall use reasonable efforts to perform the research set forth in the Project substantially in accordance with the terms and conditions of this Agreement and USC's Code of Ethics.

3.2 Nothing in the Agreement shall be construed to limit the freedom of USC Personnel, whether participants in this Agreement or not, from engaging in similar research inquiries made independently under other grants, contracts or agreements with parties other than Sponsor.

3.3 Sponsor hereby grants to USC a non-exclusive, worldwide, perpetual, royalty-free license to use any, information, equipment, supplies, or other support Sponsor supplies to USC in furtherance of this Agreement in connection with the Project ("Sponsor Supplied Material").

3.4 Sponsor represents and warrants to USC that: (a) it is the sole owner of the Sponsor Supplied Material, and (b) nothing contained in the Sponsor Supplied Information nor the exercise of the rights granted to USC infringes upon the proprietary rights of any third party.

### 4. PRICE AND PAYMENT SCHEDULE (C4, P1)

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

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

4.2 Checks shall be made payable to the University of Southern California (Fed ID No. 95-1642394) and sent to:

University of Southern California  
Sponsored Projects Accounting  
File # 52095  
Los Angeles, CA 90074-2095  
ATTN: Cindy Lee, Manager

### 5. TERM/TERMINATION (T2)

5.1 This Agreement is entered into as of the Effective Date and shall continue until \_\_\_\_\_ unless earlier terminated pursuant to this Section. This Agreement shall not be effective until it is executed by both parties.

5.2 This Agreement may be terminated by either party for any reason, with or without cause, upon thirty (30) days prior written notice to the other party. Sponsor shall allow full credit to, or reimburse, USC for any Noncancellable Obligations incurred by USC prior to termination.

5.3 In the event Sponsor commits a material breach of this Agreement, USC may provide written notice of the breach and Sponsor shall have ten (10) business days within which to remedy the breach. If Sponsor fails to remedy the breach within such period, the Agreement automatically shall terminate upon the expiration of the ten (10) day cure period. In such an event, Sponsor shall not later than thirty (30) days after such termination, pay to USC any outstanding amounts remaining to be paid, including any Noncancellable Obligations incurred by USC prior to termination. Sponsor's payment under this Section 5.3 does not preclude USC from pursuing any other remedies under law or equity, which shall be in addition to the remedy specified in this Section 5.3.

5.4 In the event of termination or expiration of this Agreement: (i) Sponsor shall promptly return to USC all USC Confidential Information in Sponsor's possession or control, (ii) USC shall promptly return to Sponsor all Sponsor Confidential Information in USC's possession or control, (iii) Sponsor shall pay all costs accrued by USC as of date of termination, including Noncancellable Obligations, and (iv) each party shall provide to the other party a written statement certifying that it has complied with the foregoing obligations. All rights, benefits and licenses granted to Sponsor under this Agreement shall terminate upon such termination.

5.5 The provisions and obligations of Sections 3, 5, 7, and 9-15 shall survive notwithstanding the expiration or termination of this Agreement.

## 6. **REPORTS (R3)**

USC shall furnish Sponsor with annual reports or reports at such other frequency as set forth in the Statement of Work.

## 7. **TRADEMARKS (P4)**

Neither party shall use the name, trade name, trademark or other designation of the other party or its affiliates in connection with any products, promotion or advertising without the prior written permission of the other party.

## 8. **PUBLICATIONS (P3)**

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.

## 9. **CONFIDENTIAL INFORMATION (C2)**

9.1 During the course of this Agreement, the parties may provide each other with certain information, data, or material in writing which the disclosing party has clearly marked or identified in writing as confidential or proprietary in nature ("Confidential Information"). The receiving party shall receive and hold Confidential Information in confidence and agrees to use



its reasonable efforts to prevent disclosure to third parties of Confidential Information in the manner the receiving party treats its own similar information, but in no case less than reasonable care shall be exercised by the receiving party.

9.2 The receiving party shall not consider information disclosed to it by the disclosing party as Confidential Information such information which: (a) is now public knowledge or subsequently becomes such through no breach of this Agreement; (b) is rightfully in the receiving party's possession prior to the disclosing party's disclosure as shown by written records; (c) is disclosed to the receiving party by an independent third party who, to the best of the receiving party's knowledge, is not under an obligation of confidentiality for such information to the disclosing party; or (d) is independently developed by or for the receiving party without benefit of Confidential Information received from the disclosing party as shown by written records.

9.3 Each party acknowledges that the Confidential Information of the other party is owned solely by such party, and that the unauthorized disclosure of such information may cause irreparable harm and significant injury, the degree of which may be difficult to ascertain. Accordingly, each party agrees that the other party will have the right to seek an immediate injunction enjoining any breach of this Agreement, as well as the right to pursue any and all other rights and remedies available at law or in equity for such breach.

## **10. INTELLECTUAL PROPERTY RIGHTS (I5)**

10.1 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.

10.2 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.

10.3 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.

## **11. RIGHT TO OPTION AND LICENSE (I5)**

USC grants Sponsor a time-limited first right to negotiate a commercial option or worldwide, royalty-bearing license, to USC Intellectual Property. Such first right must be exercised within six (6) months after disclosure of USC Intellectual Property to Sponsor in accordance with Section 10.2 above. USC and Sponsor shall negotiate the terms of any such option or license in good faith.

## **12. COMPLIANCE WITH LAWS (G1)**

12.1 USC and Sponsor agree to abide by all applicable Federal, State, and local laws, rules, regulations, and ordinances in the performance of this Agreement.

12.2 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.

## **13. WARRANTY DISCLAIMER (W2)**

13.1 USC makes no warranties for any purpose whatsoever, express or implied, as to the Project or the results of the Project, including the merchantability or fitness for a particular purpose of the Project or the results of the Project under this Agreement.

13.2 Sponsor agrees that it will not rely solely upon technical information provided by USC or the Principal Investigator in developing any invention or product, but will independently test, analyze and evaluate all inventions and products prior to manufacture and distribution of such inventions and products.

13.3 Neither the Principal Investigator, Sponsor, nor any other person is authorized to give any warranty in the name of or on behalf of USC.

## **14. LIMITATION OF LIABILITY (L2)**

Notwithstanding anything to the contrary contained herein, to the maximum extent permitted by law, in no event will either party be responsible for any incidental, consequential, indirect, special, punitive, or exemplary damages of any kind, lost goodwill, lost profits, lost business or other indirect economic damages, whether such claim is based on contract, negligence, tort (including strict liability) or other legal theory, as a result of a breach of any warranty or any other term of this agreement, and regardless of whether a party was advised or had reason to

know of the possibility of such damages in advance. Additionally, USC's total liability under this agreement shall not be in excess of the total amount of Commitment paid by sponsor to USC under this agreement.

## **15. INSURANCE AND INDEMNITY (I4, I2)**

15.1 USC agrees to maintain adequate liability insurance, such protection being applicable to officers, employees and agents while acting within the scope of their employment by USC.

15.2 Sponsor agrees to hold harmless, indemnify and defend USC, its trustees, officers, employees and agents from all liabilities, demands, damages, expenses and losses, including reasonable attorneys' fees, arising out of (a) performance of this Agreement, except to the extent of USC's gross negligence or willful misconduct, (b) Sponsor's use of the results of the Project, or (c) Sponsor's use, manufacture or sale of products or inventions made by use of the results of the Project.

15.3 Sponsor warrants that at its sole cost and expense it maintains in effect a policy or program of comprehensive general liability insurance or self-insurance on an occurrence made basis in single limit coverage of not less than Two Million Dollars (\$2,000,000) per incident and Two Million Dollars (\$2,000,000) annual aggregate for death, bodily injury, illness or property damage to support the indemnification obligations assumed herein. Such policy shall name USC as an additional insured and shall provide for not less than thirty (30) days prior written notice before any cancellation or material change in coverage shall be effective. A Certificate evidencing the comprehensive general liability policy shall be delivered to USC upon request.

## **16. GENERAL PROVISIONS (M1)**

16.1 USC will function solely as an independent contractor under this Agreement and not as an agent, servant, employee, associate, joint venturer or partner of Sponsor, and nothing in this Agreement shall be deemed or construed to create the relationship of partnership or joint venture.

16.2 This Agreement shall not create any rights or confer a benefit in favor of any person or entity not a party to this Agreement. This Agreement, and all rights and obligations hereunder, shall be binding on the parties hereto and their respective heirs, successors, licensees and permitted assigns.

16.3 In the event of a dispute between the parties, the aggrieved party shall notify the other party and provide a detailed description of the alleged problem. The parties agree to use reasonable efforts to resolve such dispute by good faith negotiations and mutual agreement. In the event such informal resolution is not successful within a reasonable period of time, the parties hereby agree to submit any claim or dispute arising out of or relating to the terms of this Agreement to private and confidential arbitration by a single neutral arbitrator in Los Angeles, California. Subject to the terms of this paragraph, the Arbitration Rules of JAMS shall govern the arbitration proceedings. The arbitrator shall be appointed by agreement of the Parties hereto or, if no agreement can be reached, by JAMS pursuant to its Rules. The decision of the arbitrator shall be final and binding on all Parties to this Agreement, and judgment thereon may be entered

in any court of competent jurisdiction. The costs of the arbitration proceeding, including all attorneys' fees, shall be paid by the Party against whom the arbitrator rules. This arbitration procedure is intended to be the sole and exclusive method of resolving any claim arising out of or relating to this Agreement.

16.4 Neither party may assign, transfer or encumber its rights or obligations under this Agreement without the prior written consent of the other party hereto. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of the parties' respective successors and assigns.

16.5 No failure or delay by either party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise of any right, power or privilege.

16.6 Any notices given under this Agreement shall be in writing and delivered to the following addresses by return receipt mail, postage prepaid; by overnight courier service; or by facsimile transmission. Such notices shall be effective upon the third business day following mailing, if by mail; upon receipt, if by courier; or upon confirmation of successful transmission, if by facsimile.

USC:

University of Southern California  
Department of Contracts and Grants  
University Park Campus  
837 Downey Way, Room 330  
Los Angeles, CA 90089-1147  
Phone: (213) 740-7762

**OR**

University of Southern California  
Department of Contracts and Grants  
Health Sciences Campus  
1540 Alcazar Street, CHP 100  
Los Angeles, CA 90033  
Phone: (323) 442-2396

Fax: (213) 740-6070

Fax: (323) 442-2835

Attention: *Name* \_\_\_\_\_

Attention: *Name* \_\_\_\_\_

Senior Contract and Grant Administrator

Senior Contract & Grant

Administrator

with a copy to:

USC Office of the General Counsel  
University Park, ADM 352  
Bovard Administration Building  
Los Angeles, California 90089-5013  
Los Angeles, CA 90071  
Tel: (213) 740-7922  
Fax: (213) 740-3249

with a copy to the USC Principal Investigator named in Article 2.1.

Sponsor:

*name and address*

16.7 USC and Sponsor represent that they have the authority to enter into this Agreement and to perform their obligations hereunder, and the officer executing this Agreement is authorized to do so.

16.8 This Agreement may be modified or amended, including extension of the term of this Agreement, at any time only by a written amendment executed by both parties.

16.9 This Agreement constitutes the entire understanding between the parties hereto concerning the subject matter of this Agreement. There are no collateral, oral or written agreements or understandings. This Agreement supersedes any prior oral or written agreement or understanding between the parties.

16.10 In the event litigation or arbitration is commenced to enforce any of the terms of this Agreement, the prevailing party shall recover, as part of the award and judgment, its reasonable attorneys' fees and costs.

16.11 Both parties have had their legal counsel review, or have had the opportunity for legal counsel to review, this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date provided above in two or more counterparts, each as an original and all together as one instrument.

### **36. University of Southern Mississippi**

**RECITAL (R1)** WHEREAS, The University of Southern Mississippi has prepared a research program which will further the instructional and research objectives of The University of Southern Mississippi; and,

WHEREAS, The University of Southern Mississippi is qualified to perform this research and development; and, WHEREAS, the AGENCY desires to support the research program proposed by The University of Southern Mississippi;

NOW THEREFORE, the parties agree as follows: This is an agreement, hereinafter referred to as "Agreement", shall exist when this document has been signed by duly authorized representatives of the parties. This Agreement sets forth the terms of the performance and administration of work under the Agreement and consists of:

#### **Appendix A - General Terms and Provisions**

#### **Appendix B - Statement of Work and Budget**

**PARTIES:** The parties under this Agreement are listed and defined as follows:

**The University of Southern Mississippi**, Hattiesburg, Mississippi, hereinafter referred to as "University". **AGENCY**, City, State, hereinafter referred to as the "Agency".

**PERIOD OF PERFORMANCE (P2):** The period of performance shall extend from the execution date of this Agreement for a period of one (1) year.

**RESEARCH PROGRAM:** "XXXXXXX", as specified in Appendix B.

**TOTAL COST (C4):** The total reimbursement for this program shall not exceed the amount specified in Appendix B.

This Agreement contains all the terms and provisions of the Agreement between the parties hereto. No verbal understandings or negotiations leading up to the execution of this Agreement shall be treated or considered as part hereof unless they are fully set forth herein or specifically incorporated herein as an exhibit. This Agreement cannot be changed, modified, or supplemented except in writing signed by the authorized representatives of both of the parties hereto. None of the headings of the articles and sections herein shall be considered as terms of this Agreement, but are intended as identifying references only.

IN WITNESS WHEREOF, the undersigned, as authorized representatives of the respective parties, are agreed to all terms and provisions of this Agreement which is duly and fully executed as of the latest day and year written below.

**THE UNIVERSITY OF SOUTHERN MISSISSIPPI**

\_\_\_\_\_ Date \_\_\_\_\_

**AGENCY**

\_\_\_\_\_ Date \_\_\_\_\_

**UNIVERSITY REPRESENTATIVES (Key Personnel)**

**PROGRAM DIRECTOR (K1):** The Program Director will be responsible for the technical and programmatic aspects of the agreement. The Program Director for University is Dr. Xxxxx Xxxxx, Department of Xxxxxx, Box #####, Hattiesburg, MS, 39406-####. Telephone number: (###) ###-####.

**ADMINISTRATIVE OFFICER:** The Administrative Officer shall be responsible for the management of the agreement and is empowered to execute agreements and modifications on behalf of University. University’s Administrative Officer is Dr. Cecil D. Burge, Assistant Vice President for Research, Box 5116, Hattiesburg, MS 39406-5116. Telephone number: (601) 266-5116.

**CONTRACT ADMINISTRATOR:** The Contract Administrator shall be responsible for matters of contract administration including assistance in contract policies and provisions. The Contract Administrator for University is Ms. Connie Wyldmon, Interim Director, Research and Sponsored Programs, Box 5157, Hattiesburg, MS 39406-5157. Telephone number: (601) 266-4119 FAX: (601) 266-4312.

**ACCOUNT FISCAL MANAGER:** The Account Fiscal Manager shall be responsible for the financial related matters of the program. University’s Account Fiscal Manager is Ms. Cheryl Mowdy, Assistant Director, Disbursements and Restricted Funds, Box 5143, Hattiesburg, MS 39406-5143. Telephone number: (601) 266-5086.

**AGENCY'S REPRESENTATIVES (K1)**

**AGENCY REPRESENTATIVE:** The Agency Representative shall be responsible for all programmatic aspects of the agreement. The Agency's representative is

**ADMINISTRATIVE OFFICER:** The Administrative Officer shall be responsible for the management of the agreement and is empowered to execute agreements and modifications on behalf of University. Agency’s Administrative Officer is

**APPENDIX A  
GENERAL TERMS AND PROVISIONS**

**APPENDIX A - GENERAL TERMS AND PROVISIONS**

The following general terms and provisions are incorporated into this document in full force.

**1. GOVERNING LAWS (G1):** The provision of this agreement shall be construed according to, and the performance thereof governed by the laws of the State of Mississippi.

**2. PAYMENTS AND RECORDS (P1, R2):**

**2.1 PAYMENT:** Invoices are to be submitted no more frequently than quarterly and should reference the University or Agency Agreement number on all copies. Two (2) copies of all invoices, detailing current charges and total-to-date charges, should be sent to the Agency Fiscal Representative. The final invoice clearly marked final, must be submitted within 45 days after the expiration date of this Agreement.

**2.2 REIMBURSEMENT OF COSTS (C4, P1):** University reserves the right to transfer funds between budgetary categories in order to best meet the research objectives of the project. University reserves the right to discontinue work on this project if the Agency fails to pay invoices rendered by University within thirty (30) days of the invoice date, and in the event the project sum is expended prior to the expiration of this agreement, then this project shall terminate unless the Agency in writing, authorizes University to continue this project.

**2.3 REPORTS (R3):** At the end of each six (6) month period during the term of the project, University agrees to render to the Agency a brief, condensed letter report of its findings and progress. University agrees to provide the Agency, no later than thirty (30) days prior to the renewal date, a projection of the research to be undertaken during the succeeding year of the Agreement, together with a proposed budget for said year.

**3. INTELLECTUAL PROPERTY (I5):**

**3.1 PATENTS:**

**3.1.1** In order to protect any patentable invention, improvement, discovery, or any patent, trade secret or other intellectual property right applicable thereto made, conceived, or resulting from the performance of work by University and/or Agency personnel on the project:

**3.1.1.a** University and/or Agency shall require all personnel connected with the research project to promptly disclose all such patent rights to University and/or Agency;

**3.1.1.b** University and/or Agency shall require all personnel connected with the research project to assign to University and/or Agency the entire right, title, and interest in all such patent rights;



**3.1.1.c** University and/or Agency shall require all personnel connected with the research project: to testify in any legal proceedings, sign all applications for letters patents as well as all division, continuing, reissue and foreign applications, to make all rightful oaths, and generally to do everything possible to aid University and/or Agency or an agent to obtain and enforce proper protection for such patent rights in all countries;

**3.1.1.d** Any disclosure or written information relating to the application for intellectual property protection by or for University shall not be subject to any terms or interpretations relating to or referencing the publication or recording of information.

**3.1.2** Agency Intellectual Property: All rights and title to any invention, improvement, discovery, or any patent, trade secret or other intellectual property right applicable thereto made, conceived, or resulting from the performance of work by Agency personnel on the project shall reside with Agency and are subject to the terms and conditions of this Agreement.

**3.1.3** University Intellectual Property: All rights and title to any invention, improvement, discovery, or any patent, trade secret or other intellectual property right applicable thereto made, conceived, or resulting from the performance of work by University personnel on the project shall reside with University and are subject to the terms and conditions of this Agreement.

**3.1.4** Joint Intellectual Property: All rights and title to any invention, improvement, discovery, or any patent, trade secret or other intellectual property right applicable thereto made, conceived, or resulting from the performance of work jointly by University and/or Agency personnel on the project shall be considered joint intellectual property and shall reside with University and Agency as tenants in common and shall be subject to the terms and conditions of this Agreement.

**3.2 CONFIDENTIALITY (C2):** In connection with the research program hereunder, University and the Agency shall be free to exchange such technical information and know-how as may be necessary to carry out the objective of the program. Neither party shall be required to disclose to the other party technical information and know-how which it received in confidence from a third party or which is developed for a third party under conditions giving rise to an obligation of confidentiality. Employees, staff and/or students of University performing research hereunder shall enter into confidentiality agreements should such exchange of information be needed to conduct the project. University shall have the appropriate individuals execute said agreements and provide copies to the Agency. The Agency shall have the appropriate individuals execute said agreements and provide copies to University.

Notwithstanding any provision to the contrary contained herein, it is recognized that University is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act, §§25-61-1, et seq., Miss. Code Ann. If a public records request is made for any information provided to University pursuant to this agreement, University shall promptly notify the disclosing party of such request. The disclosing party shall promptly institute appropriate legal proceedings to protect its information. No party to this agreement shall be liable to the other party for disclosures of Information required by Court order or required by law.

### **3.3 PATENT FILINGS AND COST (I5, C4):**

**3.3.1** University will promptly notify Agency of any University intellectual property and/or Joint intellectual property conceived and/or made during the term under the project. In the event University and/or Agency believes that such intellectual property involves a patentable invention, University shall have the first right to file the patent application(s) if the invention solely involves University intellectual property and the Agency shall have the first right to file the patent application(s) if the invention involves Agency intellectual property and/or Joint intellectual property. The Agency shall have the option to seek intellectual property protection in the name of University on any inventions or discoveries arising from this project that involves University intellectual property and/or Joint intellectual property. In order to apply for, prosecute, and maintain patents in the name of University.

**3.3.2** If the party having the first right to file the patent application(s) elects to do so, that party shall promptly prepare the patent application in question and submit it to the other party for comments and input as to the scope and content of the application prior to filing. The party filing the first patent application shall also keep the other party informed as to the process of the prosecution of any patent application so filed by providing copies of all prosecution papers and soliciting input into patent office responses where appropriate. In the event the party having the first right to file the first patent application(s) elects not to do so, that party shall promptly inform the other party of its decision not to file and the other party, at its sole option, may proceed with the filing and prosecution of the patent application(s) in question. In such case, the party filing the application shall solicit the other party's comments and input on the scope and content of the application and keep the other party informed as to the significant prosecution events if the other party so requests.

**3.3.3** In any case given above, the non-filing party shall cooperate with the filing party in the preparation and prosecution of any application filed including the timely review and execution of any papers or documents required in connection with the filing and prosecution of the patent application.

**3.3.4** Agency shall bear all reasonable costs and expenses associated with filing and prosecution of any patent application which Agency files pursuant to the above. University shall retain mutually acceptable outside counsel to aid University in applying for, prosecuting, and maintaining United States and foreign patents. The Agency shall bear all reasonable costs and expenses associated with the filing, prosecuting, and maintaining of any patent application which University files, as set out above, provided the Agency agrees in advance with University's decision to file the patent application in question. In cases where University's patent filing and prosecution costs are paid by the Agency hereunder, University shall provide the Agency with itemized invoices of filing prosecution costs incurred (including detailed back-up information on outside counsel activities and costs where outside counsel is used) and the Agency shall pay such costs upon receipt of such invoices.

**3.3.5** If during prosecution of any application filed hereunder the prosecuting party should decide to abandon an application, it shall first give the other party the option of assuming responsibility for and cost of prosecution. The prosecuting party hereunder shall have the first responsibility for

maintaining any patents or other intellectual property which issue on applications it was prosecuting at issuance. If such prosecuting party elects not to pay any maintenance fee, it shall inform the other party in a timely manner and such other party may, at its option, elect to pay the maintenance fee. If Agency evidences no interest and/or demonstrates a loss of interest in any patent application filed hereunder either by direct notification to University or by failing to pay patent filing, prosecution and maintenance costs, as set out above, or by express abandonment of any application so filed, Agency shall be considered to have waived its right of first refusal for an exclusive license for the patent application and/or patent in question as provided in this Agreement and University shall be free to dispose of the patent or patent application in accordance with University policies.

**3.4 LICENSES:** The Agency shall have an option during a period of up to one (1) year from the date of filing said patent applications to obtain a world-wide exclusive license with the right to make, use, sell, manufacture, or sublicense others under the patent. If the Agency exercises the option to obtain said license, University and the Agency agree to negotiate in good faith the terms and conditions of such license including appropriate royalty payments if patent(s) come to fruition.

**3.5 PUBLICATION (P3):** University has the right, at its discretion, to publish in recognized scientific journals any results arising from the research project. University shall transmit to the Agency a copy of any submitted complete manuscript for a journal six months prior to publication and any revised manuscript sixty (60) days prior to publication; and any preprinted abstract of a presentation at a scientific meeting two months prior to the actual public dissemination date.

#### **4. MODIFICATIONS AND AMENDMENTS (A1):**

**4.1 CHANGE OF PRINCIPAL INVESTIGATORS (K1):** The Principal Investigators may not be changed, nor may their efforts be substantially redirected, without approval by the Agency. If the Principal Investigators should become unavailable to the project for a period exceeding three (3) months, University shall make good faith and best efforts to locate a replacement and upon receipt of the Agency's approval, appoint a replacement. In the event University is unable to locate an acceptable replacement this Agreement shall be terminated in accordance with Appendix A. of this Agreement.

**4.2 AMENDMENTS (A1):** This Agreement constitutes the entire agreement between University and the Agency. Any changes or modifications shall be accomplished by written amendment to this Agreement executed by the duly authorized representatives of parties.

**4.3 TERM AND TERMINATION (P2, T2):** The period of performance shall extend from the execution date of this Agreement for a period of 12 months and shall be automatically renewed for one (1) year terms thereafter, provided that either party may terminate this Agreement with or without cause by providing written notice to the other party no later than sixty (60) days prior to the anniversary date of this Agreement. Except as otherwise specifically provided herein, this Agreement and all the rights and obligations hereunder shall terminate five (5) years following the completion of research under the Agreement. Upon termination, University will be

reimbursed as specified in Appendix A., for all costs and non-cancelable commitments incurred in the performance of the research, such reimbursement not to exceed the total estimated project cost specified in this Agreement.

**4.4 NOTICES (N1):** All notices to be sent hereunder, except as otherwise provided herein, shall be in writing and shall for purposes be deemed to be fully given and received when forwarded by prepaid first-class mail to the respective parties.

**END APPENDIX A**

**APPENDIX B**

**STATEMENT OF WORK AND BUDGET**

### **37. University of Toledo**

This Sponsored Research Agreement (“Agreement”) is entered by and between the University of Toledo (“UT”), an institution of higher education of the State of Ohio, located at 2801 West Bancroft Street, Toledo, Ohio 43606 and \_\_\_\_\_ (“Company”), a company organized and existing under the laws of the State of \_\_\_\_\_ and having its principal place of business at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, each a “Party” or together the “Parties.”

#### RECITALS (R1)

Whereas, UT has as its employee Dr. \_\_\_\_\_, the “Principal Investigator”, who has expertise in the field of \_\_\_\_\_ research and applications; and

Whereas, the Principal Investigator has proposed a research project entitled, “\_\_\_\_\_” (hereinafter defined in Attachment A and incorporated as a part hereof); and

Whereas, Company is in the business of discovering, developing and marketing \_\_\_\_\_ products and is interested in studying the research of the Principal Investigator for possible use and desires to support such research by UT in accordance with the terms and conditions of this Agreement; and

Whereas, the research program contemplated by this Agreement furthers the educational, scholarship and research objectives of UT as a nonprofit, tax-exempt educational institution, and may benefit both Company and UT through the creation or discovery of new inventions.

Now, therefore, in consideration of the foregoing premises and mutual promises set forth herein, the Parties agree as follows:

#### 1. DEFINITIONS

1.1 “Calendar Year” means a period beginning January 1 and ending December 31.

1.2 “Sponsored Research” is the research program as described in Attachment A.

1.3 “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.

1.4 “Intellectual Property” means and includes all technical information, inventions, trade secrets, patents, copyrights, trademarks, research, developments, discoveries, software, know-how, methods, techniques, formulae, data, processes, specimens, biological materials, software, designs, drawings, sketches and other proprietary ideas, whether or not patentable or copyrightable, and any improvements thereon developed during the Sponsored Research.

2. TERM (P2)

This Agreement shall be effective as of the date of the last Party to sign below ("Effective Date") and shall extend for a period of \_\_\_ (\_\_) year(s) the "Term", unless terminated sooner. The Term may be extended by written agreement of the Parties.

3. SPONSORED RESEARCH (S1)

3.1 UT shall commence the Sponsored Research promptly after the Effective Date of this Agreement and upon payment by Company of any funds owed, and shall use reasonable efforts to conduct such Sponsored Research in accordance with the terms and conditions of this Agreement. Company acknowledges that UT and the PI shall have the freedom to conduct and supervise the Sponsored Research in a manner consistent with UT's research mission. This Agreement shall not be construed to limit the freedom of individuals participating in the Sponsored Research to engage in any other research.

3.2 During the Term of this Agreement, any changes in the direction or scope of the Sponsored Research must be in writing as an amendment to this Agreement and agreed to by mutual consent of the Parties by their authorized representatives.

3.3 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.

4. REIMBURSEMENT OF COSTS, PAYMENT (C4, P1)

4.1 Company agrees to reimburse UT for all direct and indirect costs incurred in the conduct of the Sponsored Research in an amount not to exceed the total amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_.00) ("Project Funds") as set forth in Attachment B. Company acknowledges that this amount is a good faith estimate only and not a guarantee of the cost of the Sponsored Research. UT agrees that Project Funds will be spent substantially in accordance with the budget estimate set forth in Attachment B. If at any time UT determines that it will require additional funds for the Sponsored Research, it shall notify Company and provide an estimate of the additional amount. Company shall not be liable for any costs exceeding the Project Funds unless it has agreed in writing to provide additional funds.

4.2 Additional funds for expenditures (if applicable) agreed to by Company are set forth in Attachment C. UT shall provide Company with itemized statements reflecting the expenditure of such additional funds and Company shall reimburse UT for such additional expenditures of funds within thirty (30) days after receipt of such statement.

4.3 All payments are to be made by check payable in United States Dollars, to "The University of Toledo", and sent to the following address:

Mr. Gary Andres  
Grants Accounting Office, MS226  
The University of Toledo  
2801 W. Bancroft Street  
Toledo, OH 43606

4.4 UT shall maintain accurate records and books of account relating to this Agreement in accordance with generally accepted accounting practices, and shall make such records and books available to Company upon reasonable notice during UT's normal business hours, but not more frequently than once each Calendar Year.

4.5 Company agrees that title to any equipment, supplies, or other materials made or acquired with funds provided under this Agreement shall vest in UT, and such items shall remain the property of UT following termination.

## 5. CONFIDENTIAL INFORMATION (C2)

5.1 During the Term of the this Agreement, UT and Company contemplate that confidential and/or proprietary information owned or controlled by them, either individually or collectively as the case may be, relating to the Research Program will be disclosed to each other.

5.2 Confidential Information is defined as any information disclosed between the Parties, including but not limited to, scientific knowledge, know-how, processes, inventions, techniques, formulae, products, business operations, royalty rates, licensing terms, business plans, marketing plans, customer requirements, designs, sketches, photographs, drawings, specifications, reports, any correspondence between the Parties, studies, findings, data, plans or other records, specimens, biological materials, and/or software.

5.3 Each Party will protect the Confidential Information with the same degree of care as it applies to protect its own proprietary or confidential information. Internal dissemination of the Confidential Information by a Party shall be limited to employees whose duties clearly justify the need to know the Confidential Information and then only after a review of this Agreement and on the basis of a clear understanding by the employees of their obligation to maintain the proprietary or confidential status of the Confidential Information.

5.4 The obligation with respect to the protection and handling of Confidential Information is not applicable to the following:

- a. Information that is available to the general public at the time of disclosure; or
- b. Information that becomes available to the general public through no fault of the Parties; or
- c. Information that either Party can demonstrate by written documentation was in its possession before receipt of the Confidential Information from the other Party; or
- d. Information that the Parties can demonstrate by written documentation was disclosed to the Parties by a third party who has the lawful right to disclose such information; or
- e. Information that is required to be disclosed to comply with a court order, applicable law or government regulation, including the Ohio Public Records Act, provided that prior written notice

is given to the non-disclosing Party of such required disclosure and the disclosing Party takes lawful actions to avoid and/or minimize the degree of such disclosure.

6. INTELLECTUAL PROPERTY (15):

6.1 UT INVENTIONS: Any and all rights to Intellectual Property conceived of and/or reduced to practice during the Term of this Agreement, whether or not patentable or copyrightable, made solely by UT or its employees or agents (including, but not limited to, PI), regardless of where that Intellectual Property was conceived or created shall belong to UT (hereinafter "UT Invention"). UT agrees to promptly provide written notice of any UT Invention to Company. In consideration of Company's participation as a sponsor of the research, UT shall grant to Company a first option to negotiate to acquire a royalty-bearing license to practice UT Invention and to make, have made, use and sell products using or incorporating UT Invention. Any license agreement will not include the right to sublicense the UT Invention without the prior written consent and approval of UT; however, UT will retain the right to make and use the UT Invention for educational and research purposes only. UT and Company will negotiate in good faith to determine the terms of a license agreement. If UT and Company fail to execute a license agreement within three (3) months following the first disclosure of the UT Invention to Company, then UT shall be free to license the UT Invention to any party upon such terms as UT deems appropriate and without further obligation to Company.

6.2 COMPANY INVENTIONS: Any and all rights to Intellectual Property conceived of and/or reduced to practice during the Term of this Agreement, whether or not patentable or copyrightable, made solely by the employees of Company without the use of UT facilities or equipment shall belong to Company (hereinafter "Company Invention"). Company agrees to promptly provide written notice of any Company Inventions relating to Sponsored Research to UT. Company shall grant to UT the right to make and use the Company Inventions for educational and research purposes only.

6.3 JOINT INVENTIONS: Any and all rights to Intellectual Property conceived of and/or reduced to practice during the Term of this Agreement, whether or not patentable or copyrightable, made jointly by one or more Company employees and UT or its employees or agents (including, but not limited to, PI), or that are made solely by employees of Company utilizing UT facilities or equipment, shall belong to Company and UT jointly (hereinafter "Joint Invention"). Both Company and UT have the right to make, have made, reproduce, use, sell and offer to sell Joint Inventions without consultation with the other Party. In consideration of Company's participation as the sponsor of the research, UT shall grant to Company a first option to negotiate to acquire a royalty-bearing, exclusive license to practice Joint Invention subject to the retention by UT of the right to make and use the Joint Invention for educational and research purposes only. Any license agreement will not include the right to sublicense the Joint Invention without the prior written consent and approval of UT. UT and Company will negotiate in good faith to determine the terms of a license agreement. If UT and Company fail to execute a license agreement within three (3) months following the first disclosure of the Joint invention, then UT will be free to license the Joint Invention to any party upon such terms as UT deems appropriate and without further obligation to Company.



6.4 The following terms for the prosecution of patent applications and maintenance of patents shall be incorporated into any subsequent license agreement between UT and Company relating to said Intellectual Property:

6.4.1 UT shall control the preparation and prosecution of all patent applications and the maintenance of all patents related to UT Inventions and Joint Inventions. Company agrees to reimburse UT for all documented expenses (including legal fees, filing and maintenance fees or other governmental charges) incurred in connection with the filing and prosecution of the patent applications and maintenance of the patents that Company has requested UT to prosecute under this Section 6 hereof.

6.4.2 Company and UT shall mutually determine in a timely manner the foreign countries where the patent applications will be filed and prosecuted, and where the patents will be maintained. If Company declines to reimburse UT in accordance with Section 6.4.1 above for the filing, prosecution and maintenance costs in any jurisdiction, UT may pay such costs, but such patent applications shall be excluded from any license.

## 7. PUBLICATIONS (P3)

7.1 This Agreement does not restrict the right of any Party to disclose any results of the Sponsored Research through customary academic public disclosures such as scientific publications, research seminars, abstracts or poster presentations (the “Disclosing Party”), subject to the following conditions:

7.1.1 Neither Party may disclose any Confidential Information (as defined in Section 5) provided by the other Party.

7.1.2 The Disclosing Party will submit the proposed disclosure to the other Party for their review at least sixty (60) days before the planned date of disclosure (“Review Period”). The proposed disclosure must include a description of the oral presentation or, in the case of a manuscript or other proposed written disclosure, a current draft of such written disclosure. The Party reviewing the proposed disclosure may comment on the proposed public disclosure received from the Disclosing Party. The Disclosing Party shall give all comments due consideration, but is not obligated to alter the contents of the proposed public disclosure.

7.1.3 If, during the Review Period, the Party reviewing the proposed disclosure requests that the Disclosing Party delay disclosure in order to provide adequate time to file applications for applicable statutory protection (such as patent, trademark or copyright applications), the Disclosing Party will delay such disclosure for up to sixty (60) days after the end of the Review Period.

7.1.4 It is understood that in no case shall this provision for delay of publication be construed to permit a cause for delay in the normal academic progress of a graduate student of UT with respect to preparation and submission of a graduate thesis or dissertation.

7.2 Neither Party shall use the names, trade names, trademark, logo or other property of the other Party for any advertising or promotional literature without the prior written consent of the authorized representative of the other Party. Company acknowledges that UT is an institution of higher education of the State of Ohio and as such is subject to the Ohio Revised Code.

8. REPORTING OF RESULTS (R3):

The PI will provide a brief written progress report to Company, within thirty (30) days of the end of each Calendar Year during the Sponsored Research. Upon completion of the Sponsored Research, the PI will provide a brief summary report, within thirty (30) days of the termination of the Sponsored Research.

9. TERMINATION (T2):

9.1 Either Company or UT may terminate the Agreement if the other Party fails to discharge fully and promptly any of its obligations hereunder and fails to rectify any and all such defaults within sixty (60) days after written notice thereof is received by the other Party. Then and in that event the injured Party shall have the right to terminate the Agreement at the expiration of such sixty (60) day period.

9.2 Company shall reimburse UT for any outstanding expenses incurred up to the date of the termination notice, including noncancellable obligations and reasonable termination costs, but such costs shall not exceed the total funds allocated to this Agreement.

9.3 Termination of the Agreement shall not affect the rights and obligations of the Parties accrued before termination. Section 5 (Confidential Information duties) shall survive the termination or expiration of this Agreement.

10. DISCLAIMER OF WARRANTIES, INDEMNIFICATION (W2, I2):

**10.1 UT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES WITH RESPECT TO THE CONDUCT, COMPLETION, SUCCESS OR PARTICULAR RESULTS OF THE SPONSORED RESEARCH, OR THE CONDITION OF 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 SPONSORED RESEARCH OR ANY SUCH INVENTION OR PRODUCT. UT SHALL NOT BE LIABLE FOR ANY DIRECT, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES SUFFERED BY SPONSOR OR ANY OTHER PERSON RESULTING FROM THE SPONSORED RESEARCH OR THE USE OF ANY SUCH INVENTION OR PRODUCT.**

10.2 Company agrees to defend, indemnify and hold harmless UT, the PI and any of UT's faculty, students, employees, trustees, officers, affiliates and agents (herein referred to collectively as the "Indemnified Persons") from and against any and all liability, claims, lawsuits,

losses, damages, costs or expenses (including documented attorney's fees), which the Indemnified Persons may hereafter incur, suffer or be required to pay as a result of Company's use of the results of the Sponsored Research or any Intellectual Property or as a result of any breach of this Agreement or any wrongful act or omission of Company, its employees, affiliates, contractors, licensees or agents. UT shall notify Company upon learning of the initiation or threatened initiation of any such liability, claims, lawsuits, losses, damages, costs and expenses and UT shall cooperate with Company in every proper way in the defense or settlement thereof at Company's request and expense.

10.3 Company understands that UT is an institution operated pursuant to authority conferred by the State of Ohio and, as a state institution pursuant to the constitution of the State of Ohio, it may not lend or give credit of the State or otherwise make indemnification. Company acknowledges that it is expressly understood that this Agreement does not confer upon Company any right or claim to indemnification by UT, be it expressed or implied.

11. FORCE MAJEURE (F1):

The failure of either Party to perform any term of the Agreement when caused by or resulting from fire, floods, embargoes, government regulations, prohibitions or interventions, war, acts of war (whether war be declared or not), acts of terrorism, insurrections, riots, civil commotions, strikes, lockouts, acts of God, or any other cause beyond the control of such Party, shall not constitute a default or breach under any terms of the Agreement.

12. SEVERABILITY (S2):

If the court of last resort having proper jurisdiction declares any term, clause or provision of the Agreement void, invalid, or unenforceable, such term, clause or provision will be deemed severed from the Agreement.

13. APPLICABLE LAW (G1):

This Agreement shall be construed and interpreted under the laws of the State of Ohio, without reference to its conflict of laws provisions or the conflict of laws provisions of any other jurisdiction.

14. NOTICES (N1):

Any notice, request, demand or other communication that either Party wishes to give to the other Party must be in writing and will be deemed properly given when hand delivered or deposited with the U.S. postal service authorities for transmittal by registered or certified mail, postage prepaid. Email alone will not suffice for notice. The communications will be sent to all of the following addresses or such other addresses as the Parties from time to time may specify:

To Company:

To UT:

Frank Calzonetti, Ph.D.  
Vice President for Research Development  
Office of Research Development, MS 1034  
The University of Toledo  
3000 Arlington Ave.  
Toledo, Ohio 43614

cc: Stephen Snider  
Director, Licensing and Contracts  
Office of Research Development, MS 1034  
The University of Toledo  
3000 Arlington Ave.  
Toledo, Ohio 43614  
stephen.snider@utoledo.edu

15. HEADINGS, CAPTIONS, SECTIONS (A2):

All headings, captions, titles, articles, sections or paragraphs set forth in this Agreement have been inserted merely to facilitate reference and are for convenience only. They shall have no bearing upon and should not be construed or interpreted to form a substantive part of any of the provisions of this Agreement, nor restrict or enlarge any substance or part of this Agreement.

16. COUNTERPARTS AND SIGNATURES:

This Agreement may be executed in two or more counterparts. Each counterpart shall be deemed an original and all counterparts together shall constitute one and the same document. Facsimile, photocopy or scanned electronic version or photocopied signatures of the Parties will have the same legal validity as original signatures.

17. SCOPE OF THE AGREEMENT (S1):

The Agreement along with Attachments A, B, and C constitute the entire understanding between the Parties pertaining to the subject matter hereof and supersede all prior negotiations, documents, agreements, and representations. This Agreement shall take precedent over the terms, conditions, and instructions of any Purchase Order issued by Company. None of the terms, covenants and conditions of the Agreement can be waived except by written consent of the Party waiving compliance. Alterations of or additions to the Agreement must be made in writing and duly executed by representatives of the Parties hereto. No representative of UT or Company has been authorized to make any representation, warranty, or promise not contained herein.

In Witness Whereof, the Parties hereto have caused this Agreement to be executed, in duplicate originals, by their respective officers thereto duly authorized to be effective as of the Effective Date.

The University of Toledo

\_\_\_\_\_

\_\_\_\_\_  
Frank Calzonetti, Ph.D.  
Vice President for Research Development  
Date: \_\_\_\_\_

\_\_\_\_\_  
Name:  
Title:  
Date: \_\_\_\_\_

### 38. University of Vermont

**Recital (R1)** This Research Agreement (the “Agreement”) is by and between the University of Vermont and State Agricultural College, a Vermont not-for-profit corporation and institution of higher education with offices at 85 South Prospect Street, 340 Waterman Building, Burlington, VT 05405 (“UVM”), and <<Company Name>>, a <<>> corporation having a place of business at <<Company Address>> (“Sponsor.”)

**Whereas**, the research program contemplated by this Agreement is of mutual interest and benefit to UVM and Sponsor and will further the instructional and research objectives of UVM in a manner consistent with its status as a non-profit, tax-exempt, educational institution;

**Now, therefore**, the parties hereto agree as follows:

- 1. Statement of Work (S1).** UVM agrees to use its best efforts to perform the research program as set forth in Attachment I (“Research Program”).
- 2. Principal Investigator (K1).** The research program will be supervised by \_\_\_\_\_ who will be designated as the “Principal Investigator” at UVM. In the event that the Principal Investigator leaves or is reassigned to another program, UVM shall notify Sponsor in writing. Any individual appointed to replace Principal Investigator must have the written approval of Sponsor.
- 3. Period of Performance (P2).** This Agreement shall be effective for <<the period>> commencing \_\_\_\_\_ (the “Starting Date”) through \_\_\_\_\_ (the “Completion Date”). The Completion Date may be extended by mutual written agreement by authorized representatives of the parties.
- 4. Direction of Research (K1).** Direction of the Research Program will rest with UVM. It is agreed that Sponsor, through <<Sponsor Contact>>, a Sponsor employee designated to be the primary contact with the Principal Investigator (“Sponsor Liaison”), will have opportunities to advise UVM and Principal Investigator regarding the Research Program.
- 5. Reports (R3).** UVM, through its Principal Investigator, shall make progress reports, either orally or in written form, to Sponsor on an annual basis. Final results of the Research Program will be delivered in the form of a written report within ninety (90) days of the Completion Date.
- 6. Financial Conditions (C4, P1).** Sponsor will provide funding in the amount of <<>>dollars (US\$<<>>). Payment of <<>>dollars (US\$<<>>) is due upon execution of this Agreement. Thereafter, payment of <<>> dollars (US\$<<>>) is due at the beginning of each calendar quarter beginning three (3) months after the Effective Date.

OR

In consideration of the foregoing, Sponsor will reimburse UVM for all direct and indirect costs incurred in the performance of the Research, which shall not exceed the total estimated project cost of <<>> (US\$<<>>) without written authorization from the Sponsor. Sponsor will make

actual payments to UVM upon receipt of monthly invoices. A final financial accounting of all costs incurred and all funds received by UVM shall be submitted to Sponsor within ninety (90) days of the close of the Completion Date.

**7. Publication (P3).** UVM shall be free to disclose and publish the results of the Research Program after providing Sponsor with a thirty (30) day period to review each publication to identify any patentable subject matter and to identify any inadvertent disclosure of the Sponsor's proprietary information. If necessary to permit the preparation and filing of a patent application, the Principal Investigator and UVM may agree to an additional review period not to exceed sixty (60) additional days.

**8. Patents and Inventions (I5).**

a. Definition of Invention. For purposes of this agreement, "Invention" shall mean any discoveries, inventions, know-how, modifications, improvements, or other rights (whether or not protectable under state, federal, or foreign intellectual property laws) that are conceived, made or reduced to practice by the parties in the performance of the Research Program.

b. Title to Inventions. Title to any Invention conceived, made or first reduced to practice by UVM personnel shall remain with UVM ("UVM Inventions"). Title to any invention conceived by both Sponsor and UVM personnel shall be jointly owned ("Joint Invention.") Title to any Invention conceived, made or first reduced to practice by Sponsor personnel shall remain with Sponsor.

c. Disclosure and Filing of Inventions. Sponsor shall be notified of any UVM or Joint Invention promptly after the Principal Investigator discloses such to UVM. UVM (i) may file a patent application at its own discretion or (ii) shall do so at the request of Sponsor and at the Sponsor's expense.

d. Licensing Options.

(i) Sponsor shall have a royalty-free, non-exclusive license to use UVM Inventions for research and development purposes.

(ii) Sponsor shall have an option to negotiate a royalty-bearing, sublicenseable, exclusive license to any UVM Invention or UVM's interest in any Joint Invention (the "Option"). Sponsor shall have ninety (90) days after Sponsor's receipt of UVM's written disclosure of such UVM or Joint Invention to elect this Option. If Sponsor does elect to exercise the Option, UVM and Sponsor shall negotiate in good faith a license agreement containing commercially reasonable terms and conditions. If Sponsor does not elect this Option or if UVM and Sponsor are unable to reach agreement within six (6) months after Sponsor has exercised the Option, this Option shall terminate and each party shall have the right to exploit their interest in any Joint Inventions without account to the other party.

**9. Confidential Information (C2).** During the term of this agreement, the parties may disclose certain proprietary information (“Confidential Information”) to each other. All such Confidential Information shall be clearly designated as “CONFIDENTIAL” at the time of disclosure. The recipient party agrees that during the term of this Agreement and for a period of three (3) years thereafter, the recipient party will not use or disclose the Confidential Information to any third party without the prior written consent of the disclosing party. Notwithstanding the above, the recipient party shall have no obligation with respect to any Confidential Information that:

- a. is or later becomes generally available to the public by use, publication or the like, through no fault of the recipient party;
- b. is obtained from a third party with the legal right to disclose same to the recipient party;
- c. the recipient party already possessed such information prior to disclosure by the disclosing party, as shown by written records;
- d. is independently developed by the recipient party
- e. is required by law or regulation to be disclosed.

If the Confidential Information is required to be disclosed pursuant to subsection 9.e, the party required to make that disclosure shall notify the other to allow that party to assert whatever exclusions or exemptions maybe available to it.

**10. Use of Data (P3).** Subject to the terms of Section 8 above, each party may retain and use data resulting from this Research Program for its own purposes.

**11. Equipment (E3).** UVM shall retain title to any equipment purchased with the funds provided under this Agreement.

**12. Indemnification (I2).** 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.

**13. Insurance (I4).** 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.

**14. No Representations and Warranties (W2).** UVM makes no representations or warranties of any kind, express or implied, concerning the research or any intellectual property rights, including, without limitation, warranties of merchantability, validity of any intellectual property rights or claims, whether issued or pending, or the absence of latent or other defects, whether or not discoverable. Specifically, and not to limit the foregoing, UVM makes no warranty or representation (i) regarding the validity or scope of the Research Program or any intellectual property rights optioned or granted hereunder and (ii) that the exploitation of the



Research Program or any intellectual property rights will not infringe any patents or other intellectual property rights of UVM or of a third party.

**15. Compliance with Laws (E4).** UVM and Sponsor agree to comply with all federal, state and local laws, executive orders, rules, regulations and ordinances which may be applicable to such party's performance of its obligations under this agreement. UVM's obligations to transfer technology to Sponsor, provide technical information and reports to Sponsor, and otherwise perform under this Agreement are contingent upon compliance with applicable United States export control laws and regulations. The transfer of certain technical data and commodities may require a license from a cognizant agency of the United States Government or written assurances by Sponsor that Sponsor shall not export technical data, computer software or certain commodities to specified foreign countries without prior approval of an appropriate agency of the United States Government. UVM does not represent that a license shall not be required, nor that, if required, it shall be issued. In addition, Sponsor certifies that no information or materials that it discloses or transfers to UVM are controlled by US export control laws. If Sponsor wishes to disclose information or materials controlled by US export control laws, Sponsor shall notify UVM prior to disclosure and shall not disclose or transfer said information or materials until Sponsor receives notice from UVM that it intends to accept said information or materials.

**16. Termination (T2).** 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.

**17. General.**

a. Notices (N1). Any notices required to be given or which shall be given under this Agreement shall be in writing and be addressed to the parties as shown below. Notices shall be delivered by certified or registered first class mail (air mail if not domestic) or by commercial courier service and shall be deemed to have been given or made as of the date received.

If to UVM:  
Program Director, Pre-Award Services  
Office of Sponsored Programs  
University of Vermont  
231 Rowell Building  
106 Carrigan Drive  
Burlington, VT 05405  
Tel: 802-656-4067  
Fax: 802-656-3190

If to Sponsor:  
**PLEASE ADVISE**

Inquiries relating to billing and payment under this Agreement shall be addressed to the parties as shown below.

If to UVM:  
Marcy Whittle, Director  
University of Vermont  
Grant Contract Administration Services  
85 South Prospect Street  
223 Waterman Building  
Burlington, VT 05405

If to Sponsor:  
**PLEASE ADVISE**

b. Independent Contractors (I3). 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.

c. Assignment (A4). This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors to substantially the entire business and assets of the respective parties hereto. This Agreement shall not be assignable by either party without the written consent of the other party; any attempted assignment is void.

d. Create Act. No party shall invoke the CREATE ACT without written consent of the other party.

e. Governing Law (G1). This Agreement shall be governed in all respects by the laws of the State of Vermont without regard to its conflict of laws principles, and Sponsor and University agree to submit to the jurisdiction of the courts of the State of Vermont.

f. Force Majeure (F1). Neither party shall be responsible to the other for failure to perform any of the obligations imposed by this Agreement, provided such failure shall be occasioned by fire, flood, explosion, lightning, windstorm, earthquake, subsidence of soil, failure of destruction, in whole or in part, or machinery or equipment, or failure of supply of materials, discontinuity in the supply of power, government interference, civil commotion, riot, war, strikes, labor disturbance, transportation difficulties, labor shortage or any cause beyond its reasonable control.

18. Entire Agreement (E1). This agreement embodies the entire understanding between Sponsor and UVM, and any prior or contemporaneous representations, either oral or written, are hereby superseded. If any term of this Agreement is deemed invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, the other provisions of this Agreement shall remain in full force and effect. No amendments or changes to the Agreement, including without limitation, changes in the statement of work, total estimated cost, or period of performance, shall be effective unless made in writing and signed by the authorized representative of the parties.



### **39. University of Wisconsin**

This Sponsored Research Agreement (the "Agreement") is entered into on \_\_\_\_\_ (the "Effective Date") by and between the Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin-Milwaukee (the "University") and \_\_\_\_\_, a \_\_\_\_\_ corporation with its principal place of business at \_\_\_\_\_ (the "Sponsor").

#### **RECITALS (R1)**

**Whereas** the project contemplated by this Agreement is of mutual interest and benefit to the University and to the Sponsor and will further the University's instructional and research objectives in a manner consistent with its status as a nonprofit, tax-exempt educational institution,

**NOW THEREFORE**, in consideration of the mutual covenants and promises herein made, the University and the Sponsor agree as follows:

#### **1. Statement of Work (S1)**

The Sponsor desires to have the University undertake a research project entitled \_\_\_\_\_ (the "Project"). The University will use its own facilities and its reasonable best efforts to conduct the Project, which is described in Exhibit A.

#### **2. Principal Investigator (K1)**

The Project will be supervised by \_\_\_\_\_ or a successor as mutually agreed to by the parties (the "Principal Investigator"). If a successor acceptable to both the University and the Sponsor is not available, this agreement shall be terminated as provided in Article 5.

#### **3. Performance Period (P2)**

The Project shall be carried out from the Effective Date through and including \_\_\_\_\_ (the "Term"). The parties may extend the Project under mutually agreeable terms.

#### **4. Compensation and Reimbursement Of Costs (P1)**

The University shall be reimbursed by the Sponsor for all direct and indirect costs incurred in connection with the Project up to the amount of \$ \_\_\_\_\_ in accordance with the budget attached hereto as Exhibit B (the "Budget"). The Principal Investigator may transfer funds within the budget as needed without the Sponsor's approval so long as the scope of work under the Project remains unchanged.

The University shall invoice the Sponsor on a quarterly basis. Payments are due within thirty (30) days from receipt of the invoice.

- Checks shall be made payable to the University of Wisconsin-Milwaukee and sent to

Grants Accountant  
Office of Sponsored Programs  
University of Wisconsin-Milwaukee  
P.O. Box 340  
Milwaukee, Wisconsin 53201

- For identification purposes, each payment shall include the invoice number and account number (if different from invoice number).

### **5. Termination (T2)**

The Sponsor or the University may terminate performance under this Agreement upon ninety (90) days written notice. In the event that either party hereto shall commit any material breach of or default in any of the terms or conditions of this Agreement and also shall fail to remedy such default or breach within thirty (30) days after receipt of written notice thereof from the other party, the party giving notice may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending written notice of termination to the other party, and such termination shall be effective as of the date of the receipt of the notice.

Upon termination, the Sponsor shall reimburse the University for all costs and non-cancelable commitments incurred in good-faith in the performance of the Project and in accordance with the Budget, and not yet paid for, so long as such reimbursement combined with other payment does not exceed the total estimated cost of the Project stated in Section 4.

### **6. Intellectual Property Rights (I5)**

All persons, other than clerical or non-technical personnel, who participate in the Project while employed by, enrolled in or under appointment to the University shall disclose to the University any invention, computer software or mask work (collectively, "Intellectual Property") made by them, in whole or in part, during and in the course of the Project. In consideration of their participation in the Project, all such persons shall, if requested, be required to assign Intellectual Property to the University or its intellectual property management organization ("IPMO") to the extent necessary to enable the University to fulfill its obligations to the Sponsor under this Agreement. Upon the timely request of the Sponsor, the University, or its IPMO, shall enter into good faith negotiations with the Sponsor for a license in such University-owned Intellectual Property.

### **7. Publication (P3)**

The University and its employees shall have the right, at their discretion, to release information or to publish any data, writings, or material resulting from the research or to use such in any way for internal purposes. The University shall furnish the Sponsor with a copy of any proposed

publication in advance of the proposed publication date and grant the Sponsor thirty (30) days for review and comment. Within this period, the Sponsor may request the University, in writing, to delay such publication for a maximum of an additional sixty (60) days in order to protect the potential patentability of any invention described therein, and the University shall comply with any such request so long as it is reasonable. Such delay shall not, however, be imposed on the filing of any student thesis or dissertation. The Sponsor's rights under this section are subject to the University's compliance with the Wisconsin Open Records Law, Wis. Stat. 19.31 *et seq.* The obligations of the University under this paragraph shall survive and continue for one (1) year after termination of this Agreement.

#### **8. Consultation (R3)**

Selected personnel of the Sponsor, designated by the Sponsor to the University, shall have the right to confer with the Principal Investigator and his/her associates for such reasonable periods and at such times as are mutually convenient.

#### **9. Publicity (P4)**

Neither party shall use the name of the other party or any of the other party's agents or employees in connection with any products, promotion, or advertising without the prior written approval of the other party. This shall not apply to internal documents available to the public that identify the existence of the Agreement.

#### **10. Reports (R3)**

The University shall furnish to the Sponsor periodic letter reports during the term of this Agreement summarizing the progress of the Project. A final report setting forth the accomplishments and significant research findings shall be prepared by the University and submitted to the Sponsor within ninety (90) days of the expiration of this Agreement.

#### **11. Proprietary Data (C2)**

Unless otherwise required by law, the University will exercise its best effort to maintain in confidence proprietary or trade secret information disclosed or submitted to the University by the Sponsor which is designated in writing as confidential or proprietary information at the time of disclosure. Confidential or proprietary information does not include information which at the time of receipt:

- is generally available in the public domain or thereafter becomes available to the public through no breach of this Agreement by the University; or
- was independently known prior to receipt thereof or was discovered independently by an employee of the University who had no access to the information supplied by the Sponsor under this Agreement; or
- was made available to the University as a matter of lawful right by a third party having no obligations of confidentiality to the disclosing party; or
- was not disclosed in writing or reduced to writing and marked with an appropriate confidentiality legend within thirty (30) days after disclosure; or
- is required by law or regulation to be disclosed.

The University retains the right to refuse to accept any such information that is not considered to be essential to the completion of the research. The obligations of the University under this paragraph shall survive and continue for one (1) year after termination of this Agreement.

#### **12. Liability (I2)**

The Sponsor agrees to hold the University harmless from any loss, claim, damage, or liability of any kind involving an employee or agent of the Sponsor arising out of or in connection with this Agreement, except to the extent that it is founded upon or grows out of the acts or omissions of any of the employees or agents of the University of Wisconsin System while acting within the scope of their employment or agency where protection is afforded by §§ 893.82 and 895.46(1), Wis. Stats.

#### **13. Warranties (W2)**

**THE UNIVERSITY MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION 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.** The University shall not be liable for any direct, indirect, consequential, special, or other damages suffered by any licensee or any others resulting from the use of the research or any such invention or product.

#### **14. Equipment (E3)**

Title to any equipment or supplies purchased or manufactured in the performance of the Project shall vest in the University upon acquisition and University shall retain title to all such equipment.

#### **15. Assignment (A4)**

Neither party shall assign this Agreement to another without the prior written consent of the other party; however, the Sponsor may assign this Agreement to a successor in ownership of all or substantially all its business assets, provided that 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 without prior written consent shall be void.

#### **16. Independent Inquiry (A2)**

Nothing in this Agreement shall be construed to limit the freedom of researchers who are participants in this Agreement, whether paid under this Agreement or not, from engaging in similar research inquiries made independently under grants, contracts or agreements with parties other than the Sponsor.

#### **17. Independent Contractor (I3)**

In the performances of all services hereunder:

- the University shall be deemed to be an independent contractor and, as such, shall not be entitled to any benefits applicable to employees of the Sponsor; and

- 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 party shall be bound by the acts or conduct of the other.

- 

**18. Insurance (I4)**

The University warrants and represents that it is self-funded for liability insurance as an agency of the State of Wisconsin, such protection being applicable to officers, employees, and agents while acting within the scope of their employment by the University. The University has no liability insurance policy as such that can extend protection to any other person.

Each party hereby assumes any and all risks of personal injury and property damage attributable to the negligent acts or omissions of that party and its officers, employees, and agents.

**19. Notices (N1)**

Notices and communications hereunder shall be deemed made if given by registered or certified envelope, postage prepaid, and addressed to the party to receive such notice, invoice, or communication at the address given below, or such other addresses as may hereafter be designated by notice in writing.

**If to Sponsor (for legal or administrative matters):**

Name

Address

City, State, ZIP

**If to Sponsor (for technical matters):**

Name

Address

City, State, ZIP

**If to University (for legal or administrative matters):**

Peggy Vanco, Director  
Office of Sponsored Programs  
University of Wisconsin-Milwaukee  
3203 North Downer Avenue, MIT 273  
Milwaukee, Wisconsin 53211  
Telephone: (414) 229-4853  
Facsimile: (414) 229-5000  
E-mail: pvanco@uwm.edu



**If to University (for technical matters):**

Name (UWM Principal Investigator)

Address

City, State, ZIP

**20. Governing Law (G1)**

The laws of the State of Wisconsin, United States of America, shall govern this Agreement.

**21. Export Control (E4)**

Sponsor acknowledges that the export of goods and/or technical data from the United States may require some form of export control license from the U.S. Government. Sponsor agrees that it will not disclose, export or re-export any materials or technical data received under this Agreement to any countries for which the U.S. Government requires an export license, unless the Sponsor has obtained prior written authorization first from the U.S. Office of Export Control or other authority responsible for such matters. Sponsor agrees that it is responsible for any fees or expenses associated with obtaining an Export License, if required. UWM does not represent that a license shall not be required nor that, if required, it shall be issued.

**22. Purchase Order (E1)**

In the event that the Sponsor issues a purchase order pertaining to the Project and listing UWM as vendor, the terms of this contract shall constitute the entire agreement between the parties and shall prevail over and supersede any conflicting, additional or supplemental terms and conditions included or incorporated in the purchase order.

**23. Entire Agreement (E1)**

Unless otherwise specified, this Agreement embodies the entire understanding between the University and the Sponsor regarding the Project, and any prior or contemporaneous representations, either oral or written, are hereby superseded. No amendments or changes to this Agreement, including without limitation, changes in the statement of work, total estimated cost, and period of performance, shall be effective unless made in writing and signed by authorized representatives of the parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in duplicate by proper persons thereunto duly authorized.

**Sponsor**

**The Board of Regents of the University of Wisconsin System on Behalf of the University of Wisconsin-Milwaukee**

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

—

Date \_\_\_\_\_

Title

Date

---

#### 40. Virginia Polytechnic Institute

Recital (R1) This Material Transfer Agreement (“Agreement”) effective as of \_\_\_\_\_, 200\_, is entered into by \_\_\_\_\_ (“Provider”), and **Virginia Polytechnic Institute and State University** (“Recipient”).

The Recipient has requested sample(s) of experimental material(s) for the purposes of \_\_\_\_\_ (“Purpose”).

The material(s) to be provided are \_\_\_\_\_ (*provide full description of material to be provided*) \_\_\_\_\_ (“Material”), which Material is the exclusive property of Provider.

Provider’s Scientist, \_\_\_\_\_ (*Name*) \_\_\_\_\_, \_\_\_\_\_ (*title and Department*) \_\_\_\_\_, will provide Recipient’s Scientist, \_\_\_\_\_ (*Name*) \_\_\_\_\_, \_\_\_\_\_ (*Title*) \_\_\_\_\_, with the Material.

The parties agree to the following terms and conditions for this material transfer (S1):

1. The Material is the property of Provider and is to be used by Recipient solely for research purposes and only under the direction of the Recipient’s Scientist. Recipient agrees that it shall make no attempt to analyze the Material to determine its composition.
2. Recipient shall not transfer received or modified Material to any other party without the prior written consent of Provider.
3. The following data and related information will be supplied to the Provider’s Scientist at the end of the experiments: \_\_\_\_\_ (*identify the testing data/information to be delivered—ex: report outlining the studies that were done, a summary of the results and its conclusions regarding the performance of the Material*) \_\_\_\_\_  
\_\_\_\_\_. Provider shall be granted an irrevocable royalty free license to said information for educational, noncommercial, and research purposes. Provider will not disclose these data to a third party without prior approval by the Recipient.
4. Intellectual Property (I5) Nothing in this Agreement grants any rights, either expressly, by implication, estoppel, or otherwise, any license under any invention, patent, or in any know-how of the Provider nor any rights to use the Material or any product or process related thereto or derived therefore for profit making or commercial purposes. If Recipient desires to use Material and related patents, if any, for profit-making or commercial purposes, Recipient agrees to negotiate in good faith a license with Provider prior to making any profit-making or commercial use. Provider shall have no obligation to grant such license to Recipient, and may grant exclusive or non-exclusive licenses to others who may be

investigating uses of the Material. Any such exclusive license shall provide for Recipient to complete the research to be accomplished by Recipient under this Agreement.

5. Recipient shall make the following payment to cover cost of shipping or preparation of material: \_\_\_\_\_ (*amount required, if any*)\_\_\_\_\_.
6. Recipient expressly agrees that its use of material shall be in compliance with all applicable local, state and federal procedures, rules, regulations and laws.
7. The provision of Material to Recipient is understood to alter in no way any rights of the U.S. Government or other research sponsor or Provider.
8. Warranty (W2) Any Material delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties. PROVIDER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS.
9. Indemnity (I2) Except to the extent prohibited by law, Recipient assumes all liability for damages which may arise from its use, storage or disposal of the Material. Provider will not be liable to Recipient for any loss, claim or demand made by Recipient, or made against Recipient by any other party, due to or arising from the use of the Material by Recipient, except to the extent permitted by law when caused by the gross negligence or willful misconduct of Provider.
10. Publication (P3) This Agreement shall not be interpreted to prevent or delay publication of research resulting from the use of the Material. Recipient's Scientist agrees to provide appropriate acknowledgment of the source of the Material in all publications.
11. Publicity (P4) Neither party will use the name of the other in any advertising or make any form of representation or statement in relation to the Research which would constitute an express or implied endorsement of any commercial product or service without first having obtained written permission of the other Party.
12. Termination (T2) Either party may terminate this Agreement at any time, in which case Recipient will discontinue within thirty (30) days its prospective use of the Material for research until such time as a new agreement between the parties is established. If no agreement is established between the parties, Recipient agrees, upon direction of Provider, to return any unused portions of the Material to the Provider, or dispose of it in a manner mutually agreeable to both parties.
13. Export Controls (E4). It is understood that both parties are subject to U.S. laws and regulations controlling the export of certain items, commodities, defense articles, Confidential Information, proprietary technical data or source code, collectively hereafter

referred to as “Items.” Each party is obligated to comply with applicable U.S. export laws and regulations (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979). Prior to providing any Items which are subject to U.S. export laws and regulations, and prior to furnishing any Items where oral instruction or inspection may disclose technical data subject to such export controls, the disclosing party shall notify receiving party’s contracting officer in writing of the Items and applicable export controls. Receiving party shall have the right to decline or limit the receipt of such Items, and any task requiring receipt of such Items. The transfer of Items may require a license from the cognizant agency of the U.S. government. The parties agree to cooperate in securing any license which the cognizant agency deems necessary in connection with this Agreement.

14. **Governing Law (G1)** This Agreement is governed by and interpreted in accordance with the laws of the Commonwealth of Virginia, without giving affect to principles of conflict of law.

15. **Entire Agreement (E1)** This Agreement represents the entire, complete, and final understanding between the parties on the subject matter herein and supersedes any previous or other understandings, commitments, or agreements, oral or written.

IN WITNESS WHEREOF, the parties have, through duly authorized representatives, executed this Agreement effective as of the date in the preamble hereof.

**Virginia Polytechnic Institute  
and State University**

**Provider**

By: \_\_\_\_\_

By: \_\_\_\_\_

John Rudd  
Name

\_\_\_\_\_  
Name

Acting Assistant Vice President for  
Sponsored Programs Administration  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **41. Washington State University**

### **ARTICLE 1 – PARTIES (E3)**

1.1 THIS AGREEMENT is made and entered into by and between Washington State University, an institution of higher education and an agency of the state of Washington, hereinafter referred to as “University,” and, hereinafter referred to as “Sponsor.” In this Agreement, the above entities are jointly referred to as Parties.

### **ARTICLE 2 – PURPOSE (S1)**

2.1 The research program contemplated by this Agreement is of mutual interest and benefit to University and Sponsor.

2.2 The performance of such research is consistent, compatible and beneficial to the academic role and mission of University as an institution of higher education.

In consideration of the mutual premises and covenants contained herein, the Parties hereto agree to the following terms and conditions.

### **ARTICLE 3 – DEFINITIONS**

3.1 “Budget” shall mean the Project Budget contained in *Attachment B–Budget*, which is hereby incorporated by reference.

3.2 “Project Director(s)” shall be \_\_\_\_\_.

3.3 “Sponsor Liaison” shall be [name], a Sponsor [employee, agent, contractor] designated by Sponsor to be the primary contact with the Project Director.

3.4 “Scope of Work” shall mean the research described in *Attachment A–Scope of Work* which is hereby incorporated by reference, and that is under the direction of the Project Director(s).

### **ARTICLE 4 – SCOPE OF WORK (S1)**

4.1 Scope of Work. University agrees to perform the activities entitled “\_\_\_\_\_” as described in *Attachment A–Scope of Work*.

4.2 University agrees to use its reasonable best efforts to perform the Scope of Work. Sponsor acknowledges that this Agreement is for the research effort described in *Attachment A–Scope of Work* and that University does not represent or guarantee that the desired research results will be obtained under this Agreement.

4.3 Reporting Requirements.

4.3.1 Progress Reports. University shall provide written reports on the progress of the research as follows:

4.3.2 Final Report. A final written report shall be furnished at the completion of the Contract Term.

**ARTICLE 5 – CONTRACT TERM (P2)**

5.1 This Agreement shall become effective on and shall be completed on unless a time extension is mutually agreed upon in writing between the Parties in accordance with Article 18–Amendments.

**ARTICLE 6 – PAYMENT TERMS (P1)**

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

[Insert Payment Schedule]

6.2 Project Budget. *Attachment B–Budget* sets forth the Project Budget. Deviations 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.

6.3 Invoices. Periodic invoices will be provided, in accordance with 6.1, but not more often than monthly, using the standard University invoice. Payments are due to University within forty-five (45) days from the University invoice date. Checks should be made payable to Washington State University and sent to: Controller’s Office, Attn: Sponsored Projects Finance Office, Washington State University, Pullman, WA 99164-1025.

Invoices should be sent to:

Name/Title: \_\_\_\_\_ Phone: \_\_\_\_\_ Address: \_\_\_\_\_ Fax: \_\_\_\_\_ Address: \_\_\_\_\_ E-mail: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_

6.4 The balance of any amounts which remain unpaid more than thirty (30) days after they are due to the University shall accrue interest at the rate of the lesser of one and one-half percent (1.5%) 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 delays.

## **ARTICLE 7 – EQUIPMENT (E3)**

7.1 University shall retain title to any equipment purchased with funds provided by Sponsor under this Agreement.

## **ARTICLE 8 – KEY PERSONNEL(K1)**

8.1 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.

## **ARTICLE 9 – CONTROL OF RESEARCH (K1)**

9.1 Control of Scope of Work rests entirely with University. However, the Parties agree that University, through its Project Director, shall maintain communication with a designated liaison for Sponsor. University's Project Director and Sponsor's Liaison shall mutually define the frequency and nature of these communications.

## **ARTICLE 10 – CONFIDENTIAL INFORMATION (C2)**

10.1 "Confidential Information" shall mean information in written, graphic, oral or other tangible form protected by trade secret or other right of non-disclosure, including without limitation algorithms, formulae, techniques, improvements, technical drawings and data, and computer software. Confidential Information shall not include information which (a) was in the receiving party's possession prior to receipt of the disclosed information; (b) is or becomes a matter of public knowledge through no fault of the receiving party; (c) is received from a third party without a duty of confidentiality; (d) is independently developed by the receiving party; (e) is required, upon advice of counsel, to be disclosed under operation of law (f) is reasonably ascertained by University or Sponsor to create a risk to a trial subject or to public health and safety.

10.2 It is understood that as an educational institution of the state of Washington, University is subject to Washington State laws and regulations including the Washington Public Disclosure Act, RCW 42.17.250 et seq. (<http://www.leg.wa.gov/wsladm/rcw.htm>). If a Public Disclosure Act request is made to view Sponsor's Confidential Information, and the University's Public Records Officer either determines that no exemption to disclosure applies or is unable to determine whether an exemption to disclosure applies, University will notify Sponsor of the request and the date that such records will be released to the requester unless Sponsor obtains a court order enjoining that disclosure. If Sponsor fails to obtain a court order enjoining disclosure, University will release the requested information on the date specified.

10.3 To the extent allowed by law, University and Sponsor agree to use reasonable care to avoid unauthorized disclosure of Confidential Information, including without limitation taking measures to prevent creating a premature bar to a United States or foreign patent application. Each party will limit access to Confidential Information received from another party hereto to



those persons having a need to know. Each party shall employ the same reasonable safeguards in receiving, storing, transmitting, and using Confidential Information that prudent organizations normally exercise with respect to their own confidential information of significant value.

10.4 Any Confidential Information shall be in written, graphic, or other tangible form or reduced to such form within thirty (30) days of disclosure and shall be clearly identified as confidential at the time of or within thirty (30) days of disclosure. Confidential Information shall not be disclosed by the receiving party to a third party for a period of five (5) years from receipt of such information unless the disclosing and receiving parties agree otherwise and in writing at the time of disclosure. Third parties include all governmental offices unless disclosure is required by law or reasonably ascertained by University or Sponsor to be necessary to public health and safety.

10.5 The terms of confidentiality set forth in this Agreement shall not be construed to limit the parties' right to independently develop products without the use of another party's Confidential Information.

#### **ARTICLE 11 – PUBLICATION (P3)**

11.1 University reserves the right to publish or permit to be published by University employees the results of Project research undertaken by University employees. To prevent untimely disclosure or exploitation of Sponsor Confidential Information, University shall provide Sponsor Liaison with a copy of any proposed publication resulting from the Project at least thirty (30) days prior to submission for publication. Sponsor shall have thirty (30) days (the "Pre-publication Review Period") from receipt of the draft to review the proposed publication. If Sponsor determines that Sponsor Confidential Information is included in the proposed publication, University will at Sponsor's request remove such Sponsor Confidential Information prior to submission for publication. If the proposed draft publication contains Sponsor Confidential Information, the Sponsor may request that University's submission of the draft for publication be delayed for up to sixty (60) days beyond the end of the Pre-publication Review Period. If Sponsor seeks to delay publication, Sponsor shall make such request in writing prior to the expiration of the Pre-publication Review Period together with identification of the information or materials of concern and reasons why delay is warranted.

University may delay publication by ninety (90) days to allow University or Sponsor, as the case may be, to seek patent protection.

#### **ARTICLE 12 – PUBLICITY (P4)**

12.1 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.

## **ARTICLE 13 – TERMINATION (T2)**

13.1 Termination for Convenience. This Agreement may be terminated by either party hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred prior to the date of termination. In the event of Termination for Convenience of this Agreement by Sponsor, Sponsor shall pay all reasonable costs and non-cancelable obligations incurred by University as of the date of termination.

13.2 Termination for Cause. In the event either party shall commit any material breach of or default in any terms or conditions of this Agreement, and also shall fail to remedy such default or breach within sixty (60) days after receipt of written notice thereof, the non-breaching party may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending notice of termination in writing to the other party to that effect. Termination shall be effective as of the day of receipt of such notice.

13.3 Termination of this Agreement shall not relieve either party of any obligations incurred prior to the date of termination including, but not limited to, any obligation of the Sponsor to pay the option fee set forth in Article 16.

## **ARTICLE 14 – DISPUTE RESOLUTION (D2)**

14.1 Except as otherwise provided in this Agreement, when a dispute arises between the Parties and it cannot be resolved by direct negotiation, any party may request a dispute resolution panel (DRP). A request for a DRP must be in writing, state the disputed issues(s), state the relative positions of the Parties and be sent to all Parties. Parties must provide a response within thirty (30) days unless the Parties mutually agree to an extension of time. Each party shall designate a representative. The representatives shall mutually select an additional member.

The DRP shall evaluate the facts, Agreement terms, and applicable statutes and rules and make a determination by majority vote. The decision is binding on the Parties.

14.2 Nothing in this Agreement shall be construed to limit the Parties' choice of a mutually acceptable dispute resolution method in addition to the dispute resolution procedure outlined above.

## **ARTICLE 15 – DISCLAIMER (W2)**

UNIVERSITY MAKES NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT.

## **ARTICLE 16 – INTELLECTUAL PROPERTY (15)**

16.1 “Intellectual Property” shall mean Invention, Copyright, Trademark and any Proprietary Information produced under the Scope of Work.

16.2 University Intellectual Property. University shall own all rights and title to Intellectual Property created solely by University employees.

16.3 Sponsor Intellectual Property. Sponsor shall own all rights and title to Intellectual Property created solely by Sponsor and without use of University resources under this Agreement.

16.4 Joint Intellectual Property. University and Sponsor shall jointly own all rights and title to Intellectual Property made jointly by University and Sponsor pursuant to this Agreement.

16.5 Consistent with University policy, University may assign Intellectual Property to the Washington State University Research Foundation (“WSURF”). For purposes of this Article, University shall mean either WSU or WSURF for Intellectual Property assigned to it.

16.6 “Invention” shall mean certain inventions and/or discoveries conceived and/or reduced to practice in performance of the Scope of Work and resulting patents, divisionals, continuations, or substitutions of such applications, all reissues and foreign counterparts thereof, upon which a University employee or agent is a named inventor.

16.7 “Invention Disclosure(s)” shall mean a written disclosure of a potentially patentable Invention(s) provided to the University’s Office of Intellectual Property Administration.

16.8 “Copyright” shall mean any work developed under the Scope of Work that is subject to copyright under copyright law.

16.9 “Proprietary Information” means all data, sequences, and any other information obtained or developed during the course of the Scope of Work.

16.10 “Trademark” shall mean any trade or service marks developed under the Scope of Work whether or not registered under either state or federal trademark law.

16.11 University hereby grants to Sponsor a nonexclusive right to use any University Intellectual Property produced under this Scope of Work for its internal non-commercial research purposes and the first right to elect an Option to negotiate an exclusive or non-exclusive license (to the extent allowed under 37 CFR 401.14) to University Intellectual Property and/or University’s ownership interest in Joint Intellectual Property produced under this Scope of Work (Option Rights). University shall notify Sponsor of such Intellectual Property within thirty (30) days of University’s Office of Intellectual Property Administration’s receipt of University Invention Disclosure forms from University inventors. Within sixty (60) days of Sponsor receiving such notification from University, Sponsor shall indicate to the Washington State University Research Foundation (WSURF) in writing its intent to enter into an Option

Agreement containing terms Option Agreement shown at [http://wsurf5.respark.wsu.edu/agmts/agmts\\_opt.htm](http://wsurf5.respark.wsu.edu/agmts/agmts_opt.htm). In consideration of WSURF's granting Sponsor Option Rights, Sponsor agrees to pay WSURF a non-refundable Option Issue Fee of Seven Thousand Five Hundred U.S. Dollars (US \$7,500) and all Sponsor-authorized patent costs within thirty (30) days of WSURF's submission of an invoice or invoices to Sponsor. In the event that Sponsor exercises its Option to negotiate a license, the parties shall negotiate the license terms in good faith. The license shall contain terms standard for agreements between universities and industry including, without limitation, clauses providing for payment of license issue fee and maintenance fees; reasonable royalties and/or other compensation to WSURF; reimbursement of WSURF for all past, present, and future expenses incurred in the preparation, filing, prosecution, issuance, and maintenance of Intellectual Property rights; and product liability indemnification and insurance requirements which are acceptable to WSURF. Such terms and conditions shall take into consideration the funding provided by Sponsor hereunder and the commitment that will be made by Sponsor to develop a commercial product. In the event that WSURF and Sponsor do not execute a written license agreement within one hundred and eighty (180) days following Sponsor's written notice of intent to negotiate a license agreement, WSURF shall be free to negotiate with and to enter into license agreements, including exclusive license agreements, with third parties for the Options Rights.

16.12 Invention Disclosures submitted to Sponsor by University are regarded by University as confidential. Sponsor shall not disclose any information contained in Invention Disclosures to any third party without University's prior written permission.

16.13 If Sponsor declines to enter into a license with University under this Article, Sponsor agrees for itself, its employees, successors, and assigns to be bound by a secrecy obligation for five (5) years with respect to information contained in the Invention Disclosure.

16.14 University hereby grants to Sponsor a royalty-free license to use Copyrights, with the exception of copyrighted software, for its non-commercial use. University hereby grants to Sponsor the right to negotiate a license for commercial use of Copyrights on reasonable terms and conditions, including a reasonable royalty, as the Parties hereto agree in a subsequent writing.

16.15 Sponsor understands that University must comply with the provisions of the Bayh-Dole Act.

## **ARTICLE 17 – INDEMNITY (12)**

17.1 Each party to this Agreement shall be responsible for its own acts and/or omissions and those of its officers, employees and agents. Sponsor shall fully indemnify and hold harmless University against all claims arising out of Sponsor's use, commercialization, or distribution of Intellectual Property or products that result in whole or in part from the Scope of Work.

**ARTICLE 18 – AMENDMENTS (A1)**

18.1 This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

**ARTICLE 19 – ASSIGNMENT (A4)**

19.1 The work to be provided under this Agreement, and any claim arising hereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

19.2 Notwithstanding the foregoing, and consistent with University policy, Sponsor agrees that University may assign any Inventions, Copyrights, or Trademarks developed under this Agreement to the Washington State University Research Foundation.

**ARTICLE 20 – NOTICES (N1)**

20.1 Any notice or communication required or permitted under this Agreement shall be delivered by overnight courier, or by registered or certified mail, postage prepaid and addressed to the party to receive such notice at the address given below or such other address as may hereafter be designated by notice in writing. Notice given hereunder shall be effective as of the date of receipt of such notice:

**University:**

Name/Title: \_\_\_ Phone: \_\_\_\_\_ Address: \_\_\_\_\_ Fax: \_\_ Address: \_\_\_\_\_ E-mail: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_

**Sponsor:**

Name/Title: \_\_\_ Phone: \_\_\_\_\_ Address: \_\_\_\_\_ Fax: \_\_  
Address: \_\_\_\_\_ E-mail: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_

**ARTICLE 21 – GOVERNING LAW (G1)**

21.1 This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in the Superior Court of Whitman County.

**ARTICLE 22 – SEVERABILITY (S2)**

22.1 If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

**ARTICLE 23 – ORDER OF PRECEDENCE (A1)**

23.1 In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable statutes and regulations;
2. Terms and Conditions contained in the basic Agreement;
3. *Attachment A–Scope of Work*;
4. *Attachment B–Budget*;
5. Any other attachments; and
6. Any other provisions incorporated by reference or otherwise into this Agreement.

**ARTICLE 24 – ALL WRITINGS CONTAINED HEREIN (E1)**

24.1 This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date set forth herein by their duly authorized representatives.

**WASHINGTON STATE UNIVERSITY SPONSOR**

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Name: \_\_\_\_\_ Name: \_\_\_\_\_ Title: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_ Date: \_\_\_\_\_

**ATTACHMENT A – SCOPE OF WORK OGRD # \_\_\_\_\_**

(See Article \_\_)

Description:

**ATTACHMENT B – BUDGET OGRD # \_\_\_\_\_**

(See Articles \_\_and \_\_)

Salaries and Wages	\$_____
Fringe Benefits	\$
Travel	\$
Supplies/Services	\$
Equipment	\$
Subcontracts	\$
Other Direct Costs	\$
 Total Direct Costs	 \$
 Indirect Costs	 \$_____

[\_\_ \_% MTDC of \$\_\_\_\_\_]

Total Costs \$\_\_\_\_\_