

COST REIMBURSEMENT SPONSORED RESEARCH AGREEMENT

This Sponsored Research Agreement (“Agreement”), effective this [Day] of [Month], [Year], by and between [COMPANY Name] (hereinafter referred to as “COMPANY”), a corporation having its principal place of business at [address] and the **UNIVERSITY OF KENTUCKY RESEARCH FOUNDATION** (hereinafter referenced to as “FOUNDATION”), with offices and place of business at 109 Kinkead Hall, Lexington, KY 40506-0057 is to specify the mutual understanding of the Parties with regard to conducting a research project of mutual interest.

WHEREAS, the performance of the Scope of Work, as identified by COMPANY and described in Attachment 1 of this Agreement, is consistent with the COMPANY’s goals.

WHEREAS, FOUNDATION is available and qualified to perform the Research Project.

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

Article 1. Definitions

1.1. "Party" or “Parties” shall mean COMPANY or University of Kentucky Research Foundation, in singular or plural usage, as required by context.

1.2. "Research Project" shall mean the research, under the direction of [PI Name], funded by COMPANY under this Agreement as specified in Attachment 1 Statement of Work (“SOW”), which is incorporated herein as Attachment 1 and made a part of this Agreement.

1.3. “Researcher” or “Researchers” shall mean University of Kentucky faculty members, staff employees and students who work on the Research Project funded by COMPANY under this Agreement.

1.4. "Principal Investigator" shall mean FOUNDATION investigator under which the Research Project shall be conducted.

1.5. "Subcontract" shall mean any contract with a third party to whom FOUNDATION assigns part of the performance of any services pursuant to the Research Project.

Article 2. Statement of Work

2.1 FOUNDATION agrees to use reasonable efforts to perform the Research Project substantially in accordance with the terms and conditions of this Agreement.

2.2 The Parties shall not make material modifications or amendments to the Research Project without the prior written consent of the other Party.

2.3 COMPANY shall submit a written request to FOUNDATION to make any material modification or amendment to the scope of the Research Project., Any modification or amendment to this Agreement shall be executed by both Parties and be made part of this Agreement.

Article 3. Period of Performance

The period of performance of this Agreement shall commence on [Date] and shall terminate on [Date] unless extended by written mutual agreement of the Parties or is terminated in accordance with the provisions of Article 15. FOUNDATION shall notify COMPANY promptly of any reason that might contribute to the failure to perform within the specified performance period even if such reason is beyond the control and without fault or negligence of FOUNDATION.

Article 4. Payment

4.1 This is a cost reimbursement agreement. COMPANY shall reimburse FOUNDATION up to \$ [amount spelled out followed by numerical amount in US dollars] to perform the Statement of Work in accordance with the budget included in Attachment 1.

FOUNDATION shall submit invoices not more often than monthly and not less frequently than quarterly for allowable costs incurred in performance of the Statement of Work. All invoices shall be submitted using FOUNDATION's standard invoice, but at a minimum shall include current and cumulative costs and a breakdown of costs by major cost category. Invoices and questions concerning invoice receipt or payments shall be directed to the party's Financial Representative shown in Article 12. Company shall make payment within thirty (30) days of receipt of an invoice.

4.2 Checks shall be made payable to University of Kentucky Research Foundation and sent to:

University of Kentucky Research Foundation
c/o PNC Bank P.O. Box 931113
Cleveland, OH 44193

4.3 In the event of early termination of this Agreement pursuant to Article 15 hereof, within thirty (30) days of the termination date, COMPANY shall pay all reasonable costs incurred up to and including the effective date of termination, and for all non-cancelable obligations, including specific obligations for student support, made before the date of termination.

4.4 FOUNDATION reserves the right to stop work until payment is received whenever a payment becomes forty-five (45) days past due.

Article 5. Confidential Information

5.1 Definition. "Confidential Information" as used in this Agreement shall mean non-public information, whether written or tangible, disclosed by either Party, Affiliates, or a third party working on behalf of either Party, to the other Party, and marked with an appropriate legend such as "Confidential." Should information be disclosed orally or visually, to be deemed Confidential Information under this Agreement, the disclosing Party must immediately notify the receiving party of its confidentiality, and promptly reduce the information to writing within seven (7) business days of disclosure. Confidential Information as used in this Agreement does not include any information which: (a) is publicly available at the time of disclosure; b) becomes publicly available after disclosure through no fault of the receiving Party; (c) is lawfully in the receiving Party's possession prior to disclosure, as demonstrated by competent evidence, (d) is rightfully acquired by the receiving Party after disclosure by a third party who was lawfully in possession of the Confidential Information and was under no obligation to the disclosing Party to maintain its confidentiality, (e) is independently developed by the receiving Party without access or reference to the Confidential Information of the disclosing Party, or (f) is required by law (including the Kentucky Open Records Act), regulation and/or court order to be disclosed, provided that the receiving Party first provides the other Party with reasonable written notice of such required disclosure.

5.2 Confidential Information of the disclosing Party shall be maintained by the receiving Party in strict confidence. The Parties shall not disclose the other Party's Confidential Information to any third party, except as set forth in this Agreement. Receiving parties may disclose Confidential Information to its employees having a need to know and who are needed to accomplish the purpose of the Research Project, and to officers, agents, and representatives only on a need-to-know basis; however, prior to making any such disclosures, Parties will apprise such of their duty and obligation to: (a) maintain Confidential Information in confidence, and (b) not use such information for any purpose other than in accordance with the terms and conditions of this Agreement. Furthermore, each Party expressly wishes to receive only that Confidential Information of the other party which is necessary for accomplishing the purposes of this Agreement and the performance of the Research Project, and each Party will take reasonable steps to limit its disclosure of Confidential Information only to that which is deemed necessary.

5.3 The Parties agree that the obligations of confidentiality and non-use imposed on them under this Agreement shall survive and continue for three (3) years following: (i) disclosure of Confidential Information in association with the Research Project.

ARTICLE 6. Reports

FOUNDATION shall provide in a timely manner those reports described in Attachment 1 Statement of Work. Such reports shall be in the format agreed to by the designated Technical Representatives.

Article 7. Patents and Inventions

7.1 Definitions. For purposes of this Article 7, the following terms have the following meanings:

- a) "Background Intellectual Property" or "Background IP" means any FOUNDATION or COMPANY intellectual property, including without limitation, any inventions, improvements and/or discoveries, including software, works, material and data, created and/or first reduced to practice prior to or outside the scope of this Agreement.
- b) "COMPANY Sole Intellectual Property" or "COMPANY Sole IP" means individually and collectively all Project IP created and/or first reduced to practice solely by one or more employees of COMPANY.
- c) "FOUNDATION Sole Intellectual Property" or "FOUNDATION Sole IP" means individually and collectively all Project IP created and/or first reduced to practice solely by one or more employees of FOUNDATION.
- d) "Joint Intellectual Property" or "Joint IP" means individually and collectively all Project IP created and/or first reduced to practice jointly by one or more employees of FOUNDATION and one or more employees of COMPANY.
- e) "Project Intellectual Property" or "Project IP" means any intellectual property, including without limitation, any inventions, improvements and/or discoveries, including software, works, material and data, whether protectable by patent or copyright, which is created and/or first reduced to practice in performance of work under this Agreement.

7.2 Ownership of Intellectual Property; Patent Prosecution and Maintenance

- a) All right, title and interest in and to all FOUNDATION Sole IP shall be owned solely by FOUNDATION.
- b) All right, title and interest in and to all COMPANY Sole IP shall be owned solely by COMPANY.
- c) All right, title and interest in and to all Joint IP shall be owned jointly by FOUNDATION and COMPANY.
- d) All Background IP is the separate intellectual property of FOUNDATION or

COMPANY, respectively, and is not affected by this Agreement. This Agreement shall not be construed as implying that either party hereto shall have a right or license to use any Background IP of the other party in connection with this Agreement or otherwise.

- e) The filing, prosecution and maintenance of patent applications and patents for any Project IP shall be carried out by the owner thereof at such owner's sole discretion and expense. FOUNDATION and COMPANY will cooperate in the filing, prosecution and maintenance of patent applications and patents for any Joint IP.

7.3 Licensing of Project Intellectual Property

- a) Notice to COMPANY. Upon FOUNDATION's receipt of a written invention disclosure describing any FOUNDATION Sole IP or Joint IP developed under this Agreement, it will notify COMPANY in writing and provide all available, pertinent information for evaluation by COMPANY.
- b) Option. FOUNDATION grants to COMPANY an exclusive first option to negotiate an exclusive or non-exclusive license, at COMPANY's sole election, under FOUNDATION's interest in any Project IP. The term of COMPANY'S option shall commence on the date FOUNDATION provides written notice of Project IP to COMPANY and expire ninety (90) days after written notice of such Project IP. COMPANY may exercise its option by written notice to FOUNDATION, prior to expiration of the ninety (90) day term of its desire to license such Project IP. FOUNDATION and COMPANY will negotiate in good faith to determine the terms of such license, which shall be for fair and valuable consideration, including a reasonable royalty rate and, subject to FOUNDATION's policies, include such other terms as are typical in licenses of similar intellectual property from not-for-profit organizations to for-profit organizations. If COMPANY does not exercise its option pursuant to this Section or fails to negotiate a license agreement within six (6) months after exercise of the option, then FOUNDATION shall be under no obligation to license such Project IP to COMPANY and FOUNDATION shall be free to license its interest in such Project IP to any party upon terms FOUNDATION deems appropriate.
- c) Reserved Rights. Notwithstanding anything to the contrary herein, FOUNDATION reserves the right, on behalf of itself and University of Kentucky, to practice any FOUNDATION Sole IP and Joint IP for noncommercial, educational and research purposes.

Article 8. Publication

Subject to the limitations of Article 5 Confidential Information, FOUNDATION shall have the right to publish any information or material resulting from the performance of the Research Project described in the Statement of Work. FOUNDATION shall furnish the COMPANY with a copy of any proposed publication thirty (30) days in advance of the proposed publication date for review and comment. COMPANY may request deletion of any COMPANY Confidential Information included in such proposed publication. COMPANY may also request to delay publication for a maximum of an additional sixty (60) days to pursue patent protection on any Project Intellectual Property described in the manuscript. The request for a publication delay shall be sent to FOUNDATION's Technical Representative and a copy provided to FOUNDATION's Administrative Representative within fifteen (15) days of receiving a copy of the proposed publication. Delays in publication shall not result in delays in the filing of the thesis or dissertation of any student who is performing some or all of the Statement of Work.

Article 9. Independent Contractor

Each of the Parties is an independent contractor solely responsible for its own business expenses and not the agent, partner, or employee of the other Party and as such, each Party shall not be entitled to any benefits, insurances, withholding, worker compensation or taxes applicable to employees of the other Party. Neither Party is authorized or empowered to act as agent or representative for the other Party 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. Each Party shall comply with all applicable laws and regulations.

Article 10. Governing Law

Both Parties agree to comply with all applicable federal, state, and local laws and regulations in the performance of this Project, as well as any requirements under the Statement of Work. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky. Any legal action involving this Agreement will be adjudicated in the Commonwealth of Kentucky, without regard to its conflict of laws doctrine.

Article 11. Modifications

Any agreement to modify 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 the authorized representatives of the Parties hereto. Any change in the Statement of Work that might impact cost, price, or delivery must be agreed to in writing prior to initiation of any work associated with the proposed change.

Article 12. Notices and Designated Representatives

All notices pertaining to this Agreement shall be in writing, and shall be deemed to have been duly given if hand delivered, sent via facsimile, electronic mail, or mailed by certified or registered mail, postage prepaid, and if addressed to the Party's designated representative(s) at the addresses shown below:

Technical Representative

COMPANY

Name:

Address:

Telephone:

Email:

FOUNDATION

Name:

Address:

Telephone:

Email:

Administrative Representative

COMPANY

Name:

Address:

Telephone:

Email:

FOUNDATION

Name: Kim C. Carter, Associate Director, University of Kentucky Research Foundation

Address: 109 Kinkead Hall

Lexington, KY 40506-0057

Telephone: 859-257-9420

Email: ospa@uky.edu

Financial Contact

COMPANY

Name:

Address:

Telephone:

Email:

FOUNDATION

Name: Paige G. Brown, Director, Research Financial Services

Address: 337 Frank D Peterson Service Building

Lexington, KY 40506-0005

Telephone: 859-257-3662

Email: UKRFInvoices@uky.edu

Article 13. Assignment and Subcontracts

Neither performance nor payment involving the whole or any part of the Research Project described under Attachment 1 may be assigned, subcontracted, transferred, or otherwise given or imposed on any other party by COMPANY or FOUNDATION without the prior written consent of the other Party.

Article 14. Use of Names

COMPANY shall not use the name of FOUNDATION or the University of Kentucky or any member thereof in any publicity, news release, or advertising without the express written permission of an authorized representative of FOUNDATION.

Article 15. Termination

15.1 Either Party may terminate this Agreement for any reason with sixty (60) days written notice by email, fax, or hard copy to both the designated technical and designated administrative contacts, as specified in Article 12, of the other Party. The termination notice shall include both the reason and the effective date of the termination. The rights and obligations of Article 5 of this Agreement shall survive termination.

15.2 In the event that either Party ceases, discontinues or indefinitely suspends its business activities related to the services to be provided under this Agreement, or voluntarily or involuntarily files for bankruptcy, this Agreement may be terminated with thirty (30) days written notice.

15.3 In the event that either Party commits any: (a) curable breach of or default in any of the terms or conditions of this Agreement, and fails to remedy such default or breach within thirty (30) days after receipt of written notice from the non-breaching or non-defaulting Party, or (b)

breach of or default in any of the terms or conditions of this Agreement that cannot by its nature be cured, then the non-breaching or non-defaulting Party may, at its sole discretion, and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by promptly 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.

15.4 FOUNDATION shall promptly notify COMPANY if at any time they are unable to provide the services of the Principal Investigator. FOUNDATION agrees to use reasonable efforts to identify FOUNDATION personnel of equivalent ability and propose such personnel as replacement. COMPANY's acceptance of the new Principal Investigator shall not be unreasonably withheld. If FOUNDATION cannot provide an alternate replacement for Principal Investigator that is acceptable to COMPANY, then COMPANY shall have the right, at its sole discretion, to terminate this Agreement.

15.5 Termination of this Agreement by either Party for any reason shall not affect the rights and obligations of the Parties that accrued prior to the effective date of termination of this Agreement.

15.6 Upon any termination, except for breach of or default in any of the terms or conditions of this Agreement, FOUNDATION shall deliver to COMPANY, in the state they exist, as of the date of termination, Research Results, including Confidential Information and property belonging to COMPANY. "Research Results" shall mean raw data where raw data was a part of the deliverables in the Statement of Work and a report summary where such was contemplated under the Statement of Work.

15.7 Within thirty (30) days after termination, COMPANY shall pay FOUNDATION for all costs incurred up to and including the effective date of termination, and for all non-cancelable obligations, including specific obligations for student support, made before the date of termination.

Article 16. Force Majeure

Neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to acts of God, fire, flood, epidemic, earthquake, other natural disaster, nuclear accident, strike, lockout, riot, freight embargo, public regulated utility, or governmental statutes or regulations superimposed after the fact.

Article 17. Export Controls

It is understood that FOUNDATION 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 COMPANY that the COMPANY will not re-export data or commodities to certain foreign countries without prior approval of the cognizant government agency. While FOUNDATION agrees to cooperate in securing any license which the cognizant agency deems necessary in connection with this Agreement, FOUNDATION cannot guarantee that such licenses will be granted.

It is the normal operational policy of the FOUNDATION that its work and the results of its research undertakings are exempt from compliance with U.S. governmental export regulations under the Fundamental Research Exemption. Should the COMPANY provide or transmit under this agreement any technology or data that is subject to governmental export regulatory compliance and does not qualify as exempt under the Fundamental Research Exemption, FOUNDATION reserves the right to refuse acceptance of such material or data and/or to terminate this agreement. Such refusal or termination shall not be considered a breach of the obligations of this Agreement.

Article 18. Disclaimer of Warranty

IN VIEW OF THE EXPERIMENTAL NATURE OF ANY RESEARCH PROJECT CONDUCTED HEREUNDER, FOUNDATION MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND WHETHER EXPRESS, STATUTORY, IMPLIED, OR OTHERWISE, IN CONNECTION WITH THE DELIVERABLES AND RESULTS PROVIDED BY FOUNDATION UNDER THIS AGREEMENT, AND FOUNDATION DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING THOSE OF NON-INFRINGEMENT, MERCHANTABILITY, OPERABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, APPROVABILITY BY REGULATORY AUTHORITIES, TIME AND COST OF DEVELOPMENT, PATENTABILITY AND BREADTH OF PATENT RIGHTS WITH RESPECT TO ANY INFORMATION, DESIGN, SPECIFICATION, PROTOTYPE OR ANY OTHER ITEM FURNISHED TO SPONSOR, OR TO OTHERS AT SPONSOR'S REQUEST, IN CONNECTION WITH THIS AGREEMENT OR THE SUBJECT THEREOF.

Article 19. Dispute Resolution

All claims, disputes or controversies arising under, out of, or in connection with this Agreement, which the Parties hereto shall be unable to resolve within sixty (60) days, shall be mediated in

good faith. The party raising such dispute shall promptly advise the other party of such claim, dispute or controversy in writing which describes in reasonable detail the nature of such dispute. Notwithstanding the foregoing, nothing in this clause shall be construed to waive any rights or timely performance of any obligations existing under this Agreement.

Article 20. Entire Agreement

This Agreement sets forth the full and complete understanding of the Parties. There are no representations, warranties, understandings or agreements other than those expressly set forth herein. In the event of a conflict between the terms of this Agreement and any special terms and conditions in the SOW, the terms of this Agreement shall control. Any terms or conditions inconsistent with or in addition to the terms and conditions herein contained shall be void and of no effect unless specifically agreed to in writing and signed by both Parties.

Article 21. Severability

If any provision hereof is held unenforceable or void, the remaining provisions shall be enforced in accordance with their terms.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in as of the day and year first above written.

Authorized Official of COMPANY

Authorized Official of FOUNDATION

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____