

SPONSORED RESEARCH AGREEMENT

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 P221, 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

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

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

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 19104-6205
Attention: Executive Director

23-1352685
Institution Tax Identification 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 REPORTS

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 RESEARCH RESULTS AND REPORTS

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

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 Sponsor 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

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

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

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

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 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 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, 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
P221 Franklin Building
3451 Walnut Street
Philadelphia, PA 19104-6205
Attn.: Executive Director

If to Principal Investigator:

If to Sponsor:

11.5 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 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 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 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 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
University of Pennsylvania

[Sponsor]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

I have read and agreed to the responsibilities of the Principal Investigator:

By: _____

Date: _____

Attachment A
Summary of Sponsored Research

- 1) Work Scope
- 2) Details of Program - See Appendix

Principal Investigator:

- 1) Name:
- 2) Phone Number:

Representative of Sponsor:

- 1) Name:
- 2) Phone Number:

Period of Performance:

Report Schedule:

Final report within thirty (30) days after termination

Budget:

Direct costs
Indirect costs
Total costs

Payment Schedule :

<u>Date Payment Due</u>	<u>Amount of Payment Due</u>
1. Within 30 days of signature	1.
2.	2.
3.	3.
4.	4.
5.	

Attachment B

Sponsor Confidential Information

The free publication and dissemination of research results and information is an essential and long-standing policy of the University of Pennsylvania ("Institution"). Because of the negative impact confidentiality obligations can have on the educational mission of the Institution and the free communication of research results, the Institution does not undertake to keep proprietary information provided by a commercial sponsor confidential. Under certain circumstances, however, the Institution recognizes that an Institution principal investigator (the "Principal Investigator") under a commercially sponsored research program may desire to receive confidential and proprietary information of the commercial sponsor ("Sponsor") that the Principal Investigator considers essential for the conduct of the research program. Accordingly, the Institution will permit the Principal Investigator to accept confidential information of a Sponsor under the terms and conditions of the agreement between the Sponsor and Principal Investigator stated below.

Agreement between Sponsor and Principal Investigator Concerning Sponsor Confidential Information

In connection with research to be conducted at the Institution sponsored by [Insert name of research sponsor] ("Sponsor") and relating to [Insert brief description of the research] (the "Sponsored Research"), Sponsor desires to provide [Insert name of Principal Investigator] ("Principal Investigator") with certain information that Sponsor considers confidential.

1. For purposes of this Agreement, "Confidential Information" means only confidential information of Sponsor related to the Sponsored Research that is disclosed to the Principal Investigator by Sponsor in writing and conspicuously marked as confidential and proprietary at the time of disclosure, or, if disclosed visually or orally, is stated to be confidential and proprietary at the time of disclosure and confirmed by a written summary describing the information in reasonable detail delivered by Sponsor to Principal Investigator within seven (7) days after disclosure. Notwithstanding anything to the contrary contained in this Agreement or the markings on any document disclosed by Sponsor, Confidential Information does not include:
 - (a) information that is reasonably required by scientific standards for publication of the Sponsored Research, or any information that is necessary for other scholars to verify the results of the Sponsored Research;
 - (b) information that is in the public domain at the time Sponsor discloses it to Principal Investigator or that thereafter enters the public domain through no fault of Principal Investigator;
 - (c) information that was known to Principal Investigator or to the Institution before the date Sponsor discloses it to Principal Investigator, or that becomes known to Principal Investigator or the Institution through a third party having an apparent bona fide right to disclose the information;
 - (d) information that is independently developed by Institution personnel;
 - (e) information that is disclosed by Principal Investigator or the Institution in accordance with the terms of Sponsor's written approval;
 - (f) information that 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 governmental authority.

2. The Principal Investigator retains the right to refuse to accept any Confidential Information that the Principal Investigator does not consider to be essential to the performance of the Sponsored Research or that the Principal Investigator believes to be improperly designated as Confidential Information.
3. In the event the Principal Investigator does accept any Confidential Information, for a period of three (3) years after Principal Investigator's acceptance of Confidential Information, Principal Investigator agrees to use efforts no less than those Principal Investigator employs with respect to Principal Investigator's own confidential information:
 - (a) not to disclose the Confidential Information to third parties without Sponsor's consent to such disclosure; and
 - (b) to use the Confidential Information only in furtherance of the Sponsored Research.
4. Sponsor specifically acknowledges its understanding that the Principal Investigator's efforts hereunder will not necessarily conform to prevailing commercial standards for the protection of confidential and proprietary information. Sponsor expressly agrees that the Institution shall not be liable for any disclosure of Sponsor's Confidential Information.
5. This Agreement sets forth the entire understanding of Sponsor and Principal Investigator with respect to the subject matter hereof, supersedes any prior agreement between Sponsor and Principal Investigator, and there are no other understandings or agreements, written or oral, between them relating to such subject matter. The Agreement may not be changed or supplemented in any way except by a written agreement duly executed by both Sponsor and Principal Investigator and approved by the Institution. This Agreement shall be governed by, enforced, and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to its principles of conflict of laws.

Sponsor

Principal Investigator

Date: _____

Date: _____