



SPONSORED RESEARCH AGREEMENT FIXED PRICE AGREEMENT # _____

THIS AGREEMENT, effective this ____ day of _____, 20____, by and between The Pennsylvania State University (hereinafter referred to as "University") and _____, having a principal place of business at: _____ (hereinafter referred to as "Sponsor").

- 1. Period of Performance.** Period of performance shall be from _____ to _____ (hereinafter referred to as "Period of Performance").
- 2. Research Work.** As used herein, "Project" shall mean those the research described in Appendix A hereof, under the direction of _____ (hereinafter referred to as "Principal Investigator"). University shall commence the performance of Project on the first day of Period of Performance and shall use reasonable best efforts to perform Project substantially in accordance with the terms and conditions of this Agreement. The Principal Investigator shall furnish Sponsor with reports regarding Project.
- 3. Fiscal Considerations.** This is a fixed price agreement. The total price of the Project will be _____. Payments shall be made in accordance with the payment schedule referenced in Appendix B. Sponsor shall be responsible for all collection costs associated with non-payment. University shall retain title to any equipment purchased with funds provided by Sponsor under this Agreement. In the event of early termination of this Agreement pursuant to Article 8 hereof, Sponsor shall pay all reasonable costs incurred and non-cancelable obligations incurred by University as of the date of termination.
- 4. Publicity.** Neither party to this Agreement will use the name, trademarks, or logos of the other party or its employees, in any publicity, advertising, or news release without the prior written approval of an authorized representative of that party.
- 5. Confidentiality.** As used herein, "Proprietary Information" shall mean any written information and data marked proprietary or non-written information and data disclosed which is identified at the time of disclosure as proprietary and is reduced to writing and transmitted to the other party within sixty (60) days of such non-written disclosure. Prior to disclosure of Proprietary Information to University by Sponsor, Sponsor shall notify Principal Investigator of its intent to disclose Proprietary Information; and Principal Investigator shall have the right to decline receipt of said information. Said Proprietary Information shall be sent only to Principal Investigator. Each party to this Agreement agrees to treat Proprietary Information received from the other with the same degree of care with which it treats its own Proprietary Information and further agrees not to disclose such Proprietary Information to a third party without prior written consent from the party disclosing Proprietary Information. The foregoing obligations of non-disclosure do not apply to Proprietary Information which is in the public domain, independently known, independently developed or obtained by University, or required by law or regulation to be disclosed. Unless otherwise agreed to in writing, the period of confidentiality shall be five (5) years from the date of receipt of Proprietary Information.
- 6. Publication.** Sponsor acknowledges that University, subject to prior review by Sponsor, shall have the right to publish any results of the Project that do not disclose Proprietary Information. University agrees not to publish or otherwise disclose Proprietary Information. Sponsor shall be furnished copies of any proposed publication or presentation at least 60 days before submission of such proposed publication or presentation. During that time, Sponsor shall have the right to review the material for Proprietary Information provided by Sponsor and to assess the patentability of any invention described in the material. If Sponsor decides that a patent application should be filed, the publication or presentation shall be delayed an additional seventy-five (75) days or until a patent application is filed, whichever is sooner. At Sponsor's request, Proprietary Information provided by Sponsor shall be deleted. Notwithstanding the limitations of Article 4, the University reserves the right to identify its sponsors in academic publications.
- 7. Intellectual Property.** As used herein, "Intellectual Property" shall mean those inventions and/or discoveries conceived and/or reduced to practice in performance of this Project 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. Sponsor has the right to take ownership of Intellectual Property. University reserves the right to file a provisional patent application to protect Intellectual Property in circumstances where University has an expedited need to publish or present results. University will promptly disclose Intellectual Property to Sponsor in writing. Sponsor has ninety (90) days from the receipt of the disclosure to request University to assign ownership to Sponsor. In consideration for assigning ownership, Sponsor shall reimburse University for any patent protection costs incurred. The Sponsor agrees to pay the University a 1% royalty on the net sales of products or processes utilizing Intellectual Property when annual sales of such products or processes exceed \$20 million. University retains the right to use Intellectual Property for non-commercial research and educational purposes. In the event University background intellectual property is required to practice Intellectual Property, University will negotiate an option or license to the extent such rights are available.
- 8. Termination.** Either party may terminate this Agreement upon ninety (90) days prior written notice to the other. In the event that 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 day of the receipt of such notice. 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, except insofar as Sponsor's breach of contract for failure to make payments under Article 3 shall cause Sponsor to forfeit its rights under Article 7. The rights and obligations of Article 5 of this Agreement shall survive termination.
- 9. Independent Contractor.** In the performance of project, the parties agree that University shall be an independent contractor. Neither party hereto 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.

10. Indemnity. Each party assumes all risks of personal injury, bodily injury including death, and property damage caused by the negligent acts or omissions of that party. Except as provided above, Sponsor shall fully indemnify and hold harmless University against all claims and costs (including counsel fees) 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. Sponsor will hold University harmless from any claims arising from third party claims that the work performed hereunder infringes third party intellectual property rights. University has no knowledge of any such claims. Projects involving human subjects research (i.e., projects that require IRB approval) may be subject to additional terms and conditions, consistent with similar University research programs. In the event any project or portion thereof funded under this agreement requires the use of human research subjects, the then current IRB project terms, which are available online at <http://www.research.psu.edu/osp/negotiate-agreements/industry-other/t-csra>, shall apply and be incorporated herein by reference.

11. Notices. Notices, invoices, communications, and payments delivered hereunder shall be deemed made to the party designated to receive such items at the addresses identified in Appendix B. Notice given pursuant to this Article shall be effective as of the day of receipt of notice.

12. 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 any applicable protocol or statement of work. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania.

13. Dispute Resolution. Any and 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. By not later than five (5) business days after the recipient has received such notice of dispute, each party shall have selected for itself a representative who shall have the authority to bind such party, and shall additionally have advised the other party in writing of the name and title of such representative. By not later than ten (10) business days after the date of such notice of dispute, the party against whom the dispute shall be raised shall select a mediation firm in Pennsylvania and such representatives shall schedule a date with such firm for a mediation hearing not to exceed one (1) day in length, and less where applicable. The parties shall enter into good faith mediation and shall share the costs equally. If the representatives of the parties have not been able to resolve the dispute within fifteen (15) business days after such mediation hearing, the parties shall have the right to pursue any other remedies legally available to resolve such dispute in either the Courts of the Common Pleas of Centre County of Pennsylvania or in the United States District Court for the Middle District of Pennsylvania, to whose jurisdiction for such purposes the University and Sponsor each hereby irrevocably consents and submits. Notwithstanding the foregoing, nothing in this clause shall be construed to waive any rights or timely performance of any obligations existing under this Agreement.

14. General Provisions

14.1 *Non-assignability.* The rights and obligations of the parties under this Agreement shall not be assignable without written permission of the other party.

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

14.3 *Entire Agreement.* 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.

14.4 *Export Control Regulations.* Both parties are subject to applicable U.S. export laws and regulations and shall use their reasonable best efforts to comply with any and all reporting or licensing requirements contained therein. Prior to delivery to the University of any export controlled information, materials, technology, or know-how (collectively "Controlled Content"), Sponsor shall notify the University's contractual contact, as identified in Appendix B below, and inform such contact of the Sponsor's intention to disclose or deliver the Controlled Content. At such time, University's contractual offices shall have a reasonable period, not to exceed seven (7) business days, to evaluate the request for disclosure or delivery of the Controlled Content. University's contractual office shall have, in its sole discretion, the right to accept or decline receipt of such Controlled Content. Upon receipt of written notification from University of its acceptance of delivery of the identified Controlled Content, in a manner consistent with this provision, Sponsor may disclose and/or deliver the Controlled Content only to the attention of the named Principal Investigator as identified in Appendix B.

IN WITNESS WHEREOF, the parties hereto 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 Sponsor

Name: _____
Title: _____
Date: _____

Name: _____
Title: _____
Date: _____

APPENDIX B

| Contacts | University | Sponsor |
|--------------------|---|---|
| Contractual | Name/Title: John W. Hanold, Assoc. VP for Research, Director of Sponsored Programs Address: Office of Sponsored Programs 110 Technology Center Building University Park, PA 16802-7000 PH: (814) 865-1372 FX: (814) 865-3377 Email: osp@psu.edu | Name/Title: Address: PH: FX: Email: |
| Billing | Name/Title: Richard Killian Director, Research Accounting Address: The Pennsylvania State University 227 W. Beaver Ave., Suite 401 State College, PA 16801-4819 PH: (814) 865-7525 FX: (814) 865-3910 Email: Res-Acct@psu.edu | Name/Title: Address: PH: FX: Email: |
| Technical | Name/Title: Address: PH: FX: Email: | Name/Title: Address: PH: FX: Email: |

Net 30 days upon receipt of invoice

Other Payment Terms (explain in the box below):