

RESEARCH AGREEMENT

THIS AGREEMENT is entered into and effective as of the ____ day of _____ 200__ ("Effective Date") by and between "SPONSOR" a _____ corporation with offices in _____, _____ (hereinafter "SPONSOR"); The University of Tennessee, a public higher educational institution of the State of Tennessee, with offices in Knoxville, Tennessee (hereinafter "the UNIVERSITY"); and The University of Tennessee Research Corporation, a non-profit Tennessee corporation, with offices in Knoxville, Tennessee, (hereinafter "UTRC").

WITNESSETH

WHEREAS, the research program contemplated by this Agreement is of mutual interest and benefit to the UNIVERSITY and to "SPONSOR" and will further the instructional and research objectives of the UNIVERSITY [and the research objectives of "SPONSOR"] in a manner consistent with its [UNIVERSITY's] status as a public higher educational institution of the State of Tennessee.

NOW, THEREFORE, the parties agree as follows:

1. STATEMENT OF WORK AND PRINCIPAL INVESTIGATOR.

1.1 The UNIVERSITY agrees to use its reasonable best efforts to perform the research project ("Project") as set out in the Statement of Work titled, " _____," attached hereto and incorporated herein by reference as Appendix A.

1.2 The UNIVERSITY's obligations as stated in Article 1.1 above shall be carried out under the supervision of _____, Principal Investigator. The inability of _____ for any reason to continue to serve in this capacity until the normal conclusion of this project shall not be considered a breach of this Agreement and shall not subject the UNIVERSITY to any liability. However, in such event that _____ cannot serve, the UNIVERSITY and "SPONSOR" shall endeavor to agree upon a successor(s). If the UNIVERSITY and "SPONSOR" are unable to agree, this Agreement may be terminated upon written notice by either party.

2. RESEARCH SUPPORT BY "SPONSOR".

2.1 The total research support to be provided by "SPONSOR" is \$_____. Payments shall be made to the UNIVERSITY by "SPONSOR" according to the following schedule:

(NOTE: Insert schedule of payments.)

2.2 Checks shall be made payable to The University of Tennessee and shall be mailed to the following address:

(NOTE: Insert name, title, and address of individual to whom checks are to be sent.)

2.3 All funds provided by "SPONSOR" under this Agreement may be used at the discretion of the UNIVERSITY.

3. TERM AND TERMINATION.

3.1 The term of this Agreement shall commence on the Effective Date and shall terminate _____ from the Effective Date, unless sooner terminated in accordance with the provisions set out herein. This Agreement may be extended, renewed, or otherwise amended at any time by the mutual written consent of the parties hereto.

3.2 In the event that either the UNIVERSITY or "SPONSOR" defaults in the due performance of its obligations

or covenants hereunder or in the event that any representation or warranty by either of them proves to be false or incorrect, and such default or breach is not cured within thirty (30) days of written notice thereof, then the party giving such notice may elect to terminate this Agreement by giving written final notice to the defaulting party, and this Agreement shall terminate upon the giving of such notice as provided in Article 10 below. The parties recognize that the results of any particular research project cannot be guaranteed even through the use of the UNIVERSITY's reasonable best efforts; therefore, it is specifically agreed that the failure of the UNIVERSITY to achieve specific research results shall not constitute a default or breach of this Agreement.

3.3 Either UNIVERSITY or "SPONSOR" may terminate this Agreement upon written notification to the other party at least thirty (30) days prior to the effective date of termination.

3.4 If the total funds paid by "SPONSOR" by the date of termination are insufficient to cover the costs and commitments incurred by the UNIVERSITY in the performance of the research, "SPONSOR" shall reimburse the UNIVERSITY for same within thirty (30) days of termination, provided that in no event shall "SPONSOR" be responsible for any amount in excess of that stated in Article 2.1 hereof.

3.5 In the event of termination of this Agreement by the UNIVERSITY for default on the part of "SPONSOR", or termination of this Agreement by "SPONSOR" without cause, the Option granted under Article 7 below shall thereupon terminate automatically.

4. EQUIPMENT.

4.1 Title to any equipment purchased, manufactured, or otherwise acquired in the course of the work under this Agreement shall vest in the UNIVERSITY, notwithstanding any contribution directly or indirectly from "SPONSOR".

5. PUBLISHING.

5.1 UNIVERSITY reserves to itself the sole right to publish the results of the Project in whole or in part, in that manner the UNIVERSITY determines appropriate in the selection of form and content and publication forum. In order that premature public disclosure of such information does not adversely affect the interests of the parties, the UNIVERSITY shall provide a copy of all manuscripts for publication to "SPONSOR" for information and review. "SPONSOR" shall have the right to request delay of publication for a period not to exceed ninety (90) days after receipt of such manuscript. Should "SPONSOR" fail to make a written request for delay in publication within thirty (30) days after receipt of any manuscript from the UNIVERSITY, UNIVERSITY shall be free to publish the manuscript as submitted and UNIVERSITY shall incur no liability to "SPONSOR" thereafter.

6. CONFIDENTIALITY.

6.1 The UNIVERSITY and "SPONSOR" recognize that the conduct of a research program may require the transfer of proprietary information between the parties. Accordingly, it is agreed that the acceptance by either of them of the other's proprietary information shall be subject to the following:

- A. The term "Confidential Information" as used herein, in the case of documentary information, shall include only that documentary information which is clearly marked as proprietary (or confidential) at the time when it is given to the receiving party. "Confidential Information" which is originally orally disclosed shall include only that information which is identified as being proprietary or confidential by written communication sent within a reasonably prompt period of time after it is disclosed to the receiving party.

- B. The subject matter of the Confidential Information is to be limited to that which is relative to the research outlined in the Statement of Work under Article 1 above.
- C. The receiving party will not publish or otherwise reveal to any third party the Confidential Information (properly designated) of the disclosing party without the disclosing party's written permission, unless the information:
- (1) is already lawfully in the receiving party's possession at the time of receipt from the disclosing party as evidenced by appropriate documentation;
 - (2) is or later becomes public through no fault of the receiving party;
 - (3) is published by the UNIVERSITY and or its employee(s) in accordance with the provisions of Article 5 above;
 - (4) is lawfully received from a third party having no obligation of confidentiality to the disclosing party either directly or indirectly;
 - (5) has been in the possession of the receiving party for five (5) years or longer; or
 - (6) is required by law, including the Tennessee Public Records Act, T.C.A. 10-7-503 et seq., to be disclosed.

7. INTELLECTUAL PROPERTY.

7.1 Pre-Existing Intellectual Property Rights of the Parties. With the exception of _____, no party claims by virtue of this Agreement any right, title, or interest in (a) any issued or pending patents or any copyrights owned or controlled by another party or (b) any previous invention, process, or product of another party, whether or not patented or patentable.

7.2 Definition. The term "Intellectual Property" shall mean all inventions and developments (whether or not patentable) and other creative works (excluding theses, dissertations and scholarly publications) developed in the course of the performance of the work under this Agreement, including without limitation any patent, trademark, copyright, trade secret, mask work right, or other property right pertaining to same.

7.3 Allocation of rights.

- A. Both UNIVERSITY and "SPONSOR" agree to promptly disclose to the other all Intellectual Property developed in the course of the work under this Agreement.
- B. All Intellectual Property developed solely by the UNIVERSITY or jointly by the UNIVERSITY and "SPONSOR" in the performance of work under this Agreement shall be owned by the UNIVERSITY. In accordance with its Statement of Policy on Patents, Copyrights, and Licensing, the UNIVERSITY hereby assigns to UTRC its entire right, title, and interest in such Intellectual Property.
- C. UTRC hereby grants to "SPONSOR" an exclusive option ("Option") to acquire a worldwide (to the extent possible) royalty-bearing license to use any Intellectual Property generated in the course of the work under this Agreement.

- D. The "Option Period" shall commence on the Effective Date of this Agreement and shall terminate on the earlier of the following: (a) six months after the termination date of this Agreement; or (b) termination of the Option by operation of the provisions of Article 3.5 above; or (c) proper exercise of the Option by "SPONSOR" unless "SPONSOR" is then in default or breach of its obligations under this Agreement.
- E. "SPONSOR" may exercise the Option during the Option Period by giving written notice of same to UTRC.
- F. Upon proper exercise of the Option by "SPONSOR" as described above, UTRC and "SPONSOR" will then negotiate in good faith in an effort to reach a commercialization agreement satisfactory to both parties, the negotiation period not to exceed six (6) months. Upon the first to occur of (a) termination of the Option by operation of the provisions of Article 3.5 above; or (b) expiration of the six-month Option Period with the Option unexercised; or (c) expiration of the six-month negotiation period, UTRC shall have no further obligation to "SPONSOR" under this agreement with regard to the Intellectual Property and in the absence of a further agreement between UTRC and "SPONSOR", "SPONSOR" agrees that it will not thereafter use Intellectual Property for any commercial or non-commercial purpose.
- G. During the Option Period, UTRC and "SPONSOR" will confer concerning the proper protection of Intellectual Property. UTRC shall be responsible for evaluating the Intellectual Property and shall, in the sole exercise of its discretion, determine whether and to what extent any Intellectual Property should be protected by the intellectual property laws of the United States and all foreign countries, subject to the rights of "SPONSOR" as expressly set forth herein. Within thirty (30) days after receipt of an invoice from UTRC, "SPONSOR" shall reimburse UTRC for all out-of-pocket expenses incurred by UTRC during the Option Period in the filing, prosecution, and maintenance of United States and foreign patent applications and other forms of intellectual property protection for the particular Intellectual Property under consideration.
- H. All patent applications and issued patents and other forms of intellectual property protection sought and/or obtained on Intellectual Property shall be owned by UTRC.
- I. It is understood and agreed that any rights granted by or to any party by the terms of this Agreement shall in all respects be subject to any rights claimed or restrictions imposed by the United States government or any agency thereof, whether such rights or restrictions arise out of federal funding of the underlying research or otherwise.

8. BINDING AGREEMENT.

8.1 This Agreement shall be binding upon and inure to the benefit of each of the parties hereto, their successors and assigns; provided, however, that this Agreement is not assignable or transferable, in whole or in part, by any party without the prior written consent of the other.

9. LIABILITY.

9.1 Neither the UNIVERSITY nor UTRC makes any warranties, either expressed or implied, as to the work to be performed under this Agreement or the merchantability or fitness for a particular purpose of the work or any Intellectual Property or product arising out of the work. Neither the UNIVERSITY nor UTRC shall be liable for any direct, consequential, or other damages suffered by "SPONSOR" or others resulting from the work performed hereunder or any such Intellectual Property or product.

9.2 "SPONSOR" will indemnify UNIVERSITY and UTRC and their respective trustees, directors, officers, employees and agents and hold them harmless from every loss, cost or damage for judgments, awards or the compromise of any claim arising out of the research conducted hereunder, the use of Intellectual Property or the results of the work performed hereunder or the advertisement, manufacture, use or sale of any product or process by "SPONSOR", its sublicensees, dealers or customers.

10. MISCELLANEOUS.

10.1 "SPONSOR" will not use the name of another party in any form of publicity, promotion, or advertising without the prior written permission of that party. Likewise, except as required in the UNIVERSITY's normal operating procedures, e.g. listing of sponsored projects/awards in a staff newspaper, etc., neither UTRC nor the UNIVERSITY will use the name of "SPONSOR" in any form of publicity, promotion, or advertising without the prior written permission of "SPONSOR".

10.2 All communications and notices between the parties shall be deemed effective on the date of mailing when sent by certified mail return receipt requested and addressed as follows:

A. If to "SPONSOR": _____

Tel: _____
Fax: _____

B. If to UNIVERSITY:

Technical: _____

Tel: _____
Fax: _____

Administrative: _____

Tel: _____
Fax: _____

C: If to UTRC:

1534 White Avenue, Suite 403
Knoxville, TN 37996-1527
Tel: (865) 974-1882
Fax: (865) 974-2803

NOTE: Payments to the UNIVERSITY by "SPONSOR" shall be addressed as set out in Article 2.2 of this Agreement.

Otherwise all communications and notices shall be effective on the date of actual receipt by the addressee. Any party may change its address by written notice duly given to the other parties.

10.3 The UNIVERSITY's relationship to "SPONSOR" in the performance of this Agreement is that of an independent contractor.

10.4 This Agreement is made and entered into in the State of Tennessee and its validity and interpretation and the legal relations of the parties shall be governed by the laws of the State of Tennessee.

10.5 This instrument contains the entire and only agreement between and among the parties respecting its subject matter. No modification, renewal, extension, or waiver of any of its provisions shall be binding unless made in writing and signed by the party against whom enforcement is sought.

IN WITNESS WHEREOF, signifying their acceptance of and agreement to be bound by the terms and conditions of this Agreement, the signatures of the parties are affixed hereto.

"FULL NAME OF SPONSOR"

THE UNIVERSITY OF TENNESSEE

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

THE UNIVERSITY OF TENNESSEE RESEARCH CORPORATION

By _____

Ann J. Roberson

President _____

Date _____