

for reference only

*To establish a Sponsored Research Agreement at UC Berkeley, contact an Industry Alliances Office Contracting Officer for assistance.*

## **RESEARCH AGREEMENT**

**Between**

**Sponsor**

**And**

### **THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**

THIS AGREEMENT is made and entered into by and between \_\_\_\_\_, having an address of \_\_\_\_\_ ("Sponsor") and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a University Corporation, on behalf of and limited to its Berkeley campus, acting through its Industry Alliances Office at the University of California, Berkeley, 2150 Shattuck Avenue, 10<sup>th</sup> Floor, Berkeley, CA 94704-6701 ("University"). The parties hereto agree as follows:

#### **RECITALS**

WHEREAS, University has established a laboratory directed by \_\_\_\_\_, to conduct scientific research in the field of \_\_\_\_\_; and

WHEREAS, University and Sponsor have in common the desire to encourage and facilitate the discovery, dissemination and application of new knowledge; and

WHEREAS, Sponsor desires to provide financial support for research at the laboratory for the research described in Article I, and in order to obtain certain rights with respect to the results of the research;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants that follow, the parties identify the following terms of their agreement.

#### **ARTICLE I. CONDUCT OF RESEARCH**

- A. University shall conduct research, in a laboratory at its Berkeley campus under the direction of \_\_\_\_\_ ("Principal Investigator") in accordance with its proposal entitled "\_\_\_\_\_" which is attached hereto and incorporated herein as Exhibit A ("Research").

- B. The period of performance of this agreement will be from \_\_\_\_\_ through \_\_\_\_\_ (“Period of Performance”) unless extended by mutual written agreement or terminated in accordance with Article XI of this Agreement.
- C. University may not change Principal Investigator without the prior written concurrence of Sponsor.
- D. University will be solely responsible for the governance of the Research conducted under this Agreement. Professional and other staff working on the Research will be employees of University, appointed in accordance with and subject to University’s polices and procedures with respect to faculty and other personnel.
- E. Nothing in this Agreement will be construed as a promise by University to achieve any specific research result.

## **ARTICLE II. COST AND PAYMENT**

- A. Sponsor agrees to pay \$\_\_\_\_\_ to University (Tax I.D. number 94-6002123) in accordance with the budget attached hereto as Exhibit B, for support of the Research, payable quarterly in advance. Sponsor will provide the first payment to University within fifteen (15) days after execution of this agreement.. Payment should reference the Agreement No. and be mailed to:

Contracts and Grants Accounting  
ATTN: Director  
2195 Hearst Avenue, Room 130  
Mail Code 1103  
University of California  
Berkeley, California 94720-1103

Or if by electronic wire transfer to:

Bank of America  
Concord, California USA  
Routing No. 026009593  
Account No. 0175380001

If requested in writing by Sponsor, University will invoice Sponsor when payment is due. Invoice should be mailed to:

<Office Name>  
ATTN:  
<Sponsor Address 1>  
<Sponsor Address 2>  
<City, State Zip Code>

<Phone number>

<Email address>

- B. If, at any time, University has reason to believe that the cost of the work will exceed the amount set forth in Paragraph A above, University will notify Sponsor in writing, giving a revised budget for completion of the work. Sponsor will not be obligated to reimburse University for any cost in excess of the amount set forth in Paragraph A and University will not be obligated to continue the work or incur costs in excess of that amount unless and until this agreement is amended to increase the amount set forth above.
- C. Upon expiration or termination of this agreement University shall provide a final report of expenditures to Sponsor and return any unexpended or uncommitted funds to Sponsor.

### **ARTICLE III. CONFIDENTIAL INFORMATION**

- A. It is contemplated that the work of this agreement can be carried out without disclosing any of Sponsor's confidential information to University. However, should it become necessary for Sponsor to disclose Sponsor's confidential information, Sponsor will notify University in advance and in writing. Sponsor's confidential information will be clearly marked as such in writing. If information is orally disclosed which is deemed or desired to be confidential, such confidential information must be reduced to writing by Sponsor within thirty (30) days of oral disclosure and provided to University.
- B. Sponsor will treat as University's confidential information, all Invention Disclosure Reports and will not disclose or make available any information in such reports to any third party without University's prior written permission.
- C. The obligation of confidentiality under this Article III do not apply to any information that: a) was known to the party receiving the information prior to receipt thereof from the other party, b) was or becomes a matter of public information or publicly available through no act or failure to act on the part of the party receiving the information, c) is acquired by the party receiving the information from a third party entitled to disclose the information to it, or d) either party develops independent of the other party's confidential information.
- D. Neither party shall disclose to the other, confidential information that is technology as defined in 15 CFR 772, or technical data as defined in 22 CFR 120.10, unless and until the other party agrees in writing to receive such export controlled information.

## **ARTICLE IV. REPORTS OF RESEARCH RESULTS**

- A. Principal Investigator shall submit written annual reports to Sponsor, summarizing Research activity not reported pursuant to Article IV (B) below (“Technical Report”) and will submit a final technical report to Sponsor within 90 days of the end of the Period of Performance. Subject to any limitations imposed by Article III (B) above, or University’s patent rights, Sponsor shall be free to use Technical Reports for any legal purpose.
- B. University will promptly make a report to Sponsor with respect to any patentable idea, design, concept, technique, discovery or improvement conceived and first actually reduced to practice in the conduct of Research during the Period of Performance under this Agreement (“Invention”) reported to it by Principal Investigator or an individual under his/her direction (“Invention Disclosure Report”). Except to the extent permitted under a license agreement entered into pursuant to Article V hereof, Sponsor will use Invention Disclosure Reports only for the purpose of evaluating its interest in future research or possible commercial development of Research results reported in an Invention Disclosure Report.

## **ARTICLE V. SPONSOR LICENSES**

- A. Subject to any limitations imposed by law or by the terms of a government grant or contract, Sponsor will be entitled to negotiate a license in good faith from University, at royalty rates and other materials terms and conditions to be negotiated in good faith by the parties, for any Invention. University is free to enter into a licensing agreement for any Invention with any other person if Sponsor does not give notice of commencement to negotiate a license with respect to any Invention within 90 days after receipt of an Invention Disclosure Report in accordance with Article IV(B), or if the parties are unable to reach agreement on the terms of the license agreement within 180 days after receipt of an Invention Disclosure Report.
- B. Subject to Sponsor’s license rights described herein, University will have sole right, title and interest to any Invention or other Research result.
- C. Except as expressly provided above, nothing contained in this Agreement shall be deemed to grant either directly or by implication , estoppel, or otherwise any license under any patents, patent applications or other proprietary interests of any other invention, discovery or improvement of either party.

## **ARTICLE V. PATENT PROSECUTION**

- A. Within ninety (90) days of receiving an Invention Disclosure Report under Article IV(B), Sponsor will advise University in writing whether it wishes a patent application to be made with respect to an Invention.

- B. If Sponsor determines that it wishes an application to be made for an Invention, then University, by counsel it selects, in consultation with counsel appointed by Sponsor, will prepare, file and prosecute such application in University's name and in countries designated by Sponsor. Sponsor will reimburse University for all documented expenses it has incurred and will pay expense incurred in the future in so filing and prosecuting such applications, and in the maintenance of patents that Sponsor requests University to maintain.
  
- C. If Sponsor does not wish to have a patent application filed or prosecution continued with respect to an Invention in a particular country or countries, University may file such application or continue prosecution at its own expense, and University will be free to enter into a licensing agreement for, or otherwise dispose of, its patent rights in such Invention for the countries for which University has filed such applications or continued such prosecution at its own expense with any other person or persons on any terms.

#### **ARTICLE VI. PUBLICATION**

Subject to its obligation of nondisclosure set forth in Article III above, University will have the right to copyright, publish, disclose, disseminate and use, in whole and in part, any data or information received or developed under this agreement. Copies of any proposed scientific articles, papers and abstracts will be provided to Sponsor thirty (30) days prior to submission for Sponsor's review, comment, and identification of any of Sponsor's confidential information which was inadvertently included and which Sponsor wishes to have deleted. University agrees to remove such Sponsor's confidential information prior to publication. Sponsor will review the proposed publications and, if it can do so without compromising its present patent rights, waive all or a portion of the review period. During this review period, Sponsor may also identify patentable inventions for which it wishes University to file for patent protection. In such case, University will delay publication up to an additional sixty (60) days in order to file such patent application. At the end of the review periods, the authors will have the right, in their sole discretion, to submit for publication such scientific articles, papers and abstracts.

#### **ARTICLE VIII. FINANCIAL RECORDS AND REPORTS**

- A. Financial records, supporting documents and other records pertaining to this agreement shall be maintained and retained by University for a period of three (3) years from the termination of this Agreement.
  
- B. University will submit a final financial report to Sponsor within ninety (90) days of termination or expiration of the Research.

## **ARTICLE IX. TITLE TO PROPERTY**

Title to all equipment acquired by University to perform Research and all equipment, materials, and other tangible results of the Research will vest in University upon acquisition.

## **ARTICLE XII. USE OF NAMES AND TRADEMARKS**

The parties agree that neither will use the name, insignia, or symbols of the other party, or its employees in any advertisement, press release or publicity with reference to this agreement or any product or service resulting from this Agreement, without prior written approval of the other party.

## **ARTICLE XI. TERM OF THE AGREEMENT**

- A. This Agreement shall be effective as of the start date of the Period of Performance, or the date of the last signature, whichever occurs first, and shall continue in full force and effect until the end date of the Period of Performance, unless earlier terminated as provided herein.
- B. Upon thirty (30) days' prior written notice, either party may terminate this Agreement for a material breach of the Agreement by the other party if such breach has not been cured within thirty (30) days after written notice of the breach has been given. Either party may terminate this Agreement upon thirty (30) days prior written notice if Principal investigator becomes unavailable to oversee the Research.
- C. This Agreement shall automatically terminate if either party commits any act of bankruptcy, becomes insolvent, files a petition under any bankruptcy or insolvency act, or has any such petition filed against it.
- D. The parties' obligations under Articles III (Confidential Information), VI (Patent Prosecution), VII (Publication) and X (Use of Names and Trademarks), and except for termination because of Sponsor's default, Sponsor's rights under Article V (Sponsor Licenses) shall survive the termination or expiration of this Agreement.
- E. On termination of this Agreement because of Sponsor's default, Sponsor will have no further rights hereunder, and all license granted pursuant to Article V will automatically terminate on the date of termination of this Agreement.
- F. In the even of termination for any reason , University will refund all unexpended and unobligated funds to Sponsor, after withholding amounts necessary to discharge University's uncancellable obligations.

## **ARTICLE XII. NOTICES**

Any notice required or permitted under this Agreement will be given in writing, will reference this Agreement, and will be deemed effectively given either upon personal delivery to the party to be notified, ten (10) business days after being sent by registered or certified mail, postage prepaid, three (3) business days after deposit with a reputable commercial overnight courier, with written verification of receipt, or on the date of facsimile transmission, provided that the notice is confirmed in another wiring sent the following day by registered or certified mail. All notice will be sent to the addresses set forth below, or to such other address as may specify by notice hereunder.

If to University:           The Regents of the University of California  
Industry Alliances Office  
2150 Shattuck Avenue, 10<sup>th</sup> Floor  
University of California at Berkeley  
Berkeley, CA 94704-6701  
Attention:

Sponsor:                   Name  
                                  Address  
                                  Attention:

## **ARTICLE XIII. ASSIGNMENT**

This Agreement may not be assigned by one party without the written consent of the other party.

## **ARTICLE XIV. ELECTRONIC COPY**

The parties to this document 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 document in a court of law based solely on the absence of an original signature.

## **ARTICLE XV. GOVERNING LAW**

This Agreement will be governed by the laws of the State of California.

## **ARTICLE XVI. SCOPE OF THIS AGREEMENT**

This Agreement states the entire contract between the parties with respect to the subject matter of the agreement and supersedes any previous written or oral representations, statements, negotiations, or agreements. This Agreement may be modified only by written amendment executed by the authorized representatives of both parties.

**IN WITNESS WHEREOF**, the parties hereto have caused this agreement to be executed by their duly authorized representatives.

For

For The Regents of the University of  
California

("Sponsor"):

("University"):

By:

By:

Name:

Name:

Title:

Title:

Date:

Date: