

**SPONSORED RESEARCH AGREEMENT**

**Between**

**Cleveland State University Research Corporation and**

THIS AGREEMENT effective , 2018 by and among **.**, a corporation having a place of business at (hereinafter referred to as “Sponsor”) and **Cleveland State University Research Corporation**, a 501(c)(3) support organization state-supported university and instrumentality of the State of Ohio with a principle address at 2121 Euclid Avenue, Cleveland, Ohio 44115 (hereinafter referred to as "CSURC").

WITNESSETH

WHEREAS, the research program contemplated by this Agreement is of mutual interest and benefit to CSURC and to Sponsor, will further the instructional and research objectives of CSURC in a manner consistent with its status as a non-profit, tax-exempt, education institution, and may derive benefits for both Sponsor and University through inventions, improvements, and/or discoveries.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto agree to the following:

**Article 1 - Definitions**

As used herein, the following terms shall have the following meanings:

* + 1. "Project" shall mean each program of research activities to which the parties have mutually agreed in writing pursuant to a separate Project Proposal attached as Exhibit A hereto, each such Project to be conducted under the direction of Principal Investigators identified therein.

1.2 “Contract Period” for each Project is the term set forth in the Project Proposal Form for that Project.

1.3 “Principal Investigator” or “PI” is the person, designated by CSURC, and accepted by Sponsor, who is directly responsible for executing, directing, overseeing and reporting a Sponsored Project under this Agreement.

1.4 “Intellectual Property” means and includes all technical information, inventions, trade secrets, patents, copyrights, trademarks, research, developments, discoveries, software, know-how, methods, techniques, formulae, data, processes, specimens, biological materials, software, designs, drawings, sketches and other proprietary ideas, whether or not patentable or copyrightable, developed during a Sponsored Project.

1.5 "CSURC Intellectual Property" shall mean individually and collectively all Intellectual Property that is conceived and/or made solely by one or more employees of University in performance of Project. It is understood and agreed by the parties that any person who is a University employee, faculty member or student as defined in 3345.14 O.R.C. shall be considered to be a University employee herein.

1.6 "Sponsor Intellectual Property" shall mean individually and collectively all Intellectual Property that is conceived and/or made solely by one or more employees of Sponsor in performance of Project.

1.7 "Joint Intellectual Property" shall mean individually and collectively all Intellectual Property which is conceived and/or made jointly by one or more employees of University and by one or more employees of Sponsor in performance of Project.

**Article 2 - Research Work**

2.1 University shall commence the performance of each Project promptly after the effective date of such Project as set forth in the corresponding Project Proposal, and shall use reasonable efforts to perform such Project substantially in accordance with the terms and conditions of this Agreement. Anything in this Agreement to the contrary notwithstanding, Sponsor and University may at any time amend Project by mutual written agreement.

* 1. In the event that the Principal Investigator becomes unable or unwilling to continue Project, and a mutually acceptable substitute is not available, University and/or Sponsor shall have the option to terminate said Project.
	2. Except to the extent necessary to perform the Projects hereunder, University is granted no rights in Sponsor’s intellectual property.

**Article 3 - Reports and Conference**

3.1 University shall deliver to Sponsor written reports of the results of the Projects and such other information and things as may be specified in the applicable Project Proposal (such reports, results and other information and things collectively “Deliverable(s)”), according to the schedule set forth in the Project Proposal. Any other provisions of this Agreement notwithstanding, University shall treat the Deliverables as the Confidential Information of Sponsor pursuant to the terms of Section 9 hereof.

3.2 The Project may contemplate the completion of certain milestones as may be set forth in the Project Proposal. University shall notify Sponsor as soon as practicable if the Project, or any phase thereof, will not be completed by the date set forth in the Project Proposal.

3.3 During the term of this Agreement, representatives of University will meet with representatives of Sponsor at least twice a year at times and places mutually agreed upon to discuss the progress and results, as well as ongoing plans, or changes therein, of Projects to be performed hereunder.

**Article 4 - Costs, Billings, and Other Support**

4.1 It is agreed and understood by the parties hereto that, subject to Article 2, total costs to Sponsor for each Project hereunder shall not exceed the amount set forth in the Project Proposal with respect to that Project. Payment shall be made by Sponsor according to the payment schedule set forth in the Project Proposal.

4.2 Sponsor shall loan/donate to the University such equipment as may be set forth in the Project Proposal under the conditions set forth therein. University shall retain title to any equipment purchased with funds provided by Sponsor under this Agreement unless otherwise specifically agreed by the parties.

4.3 Anything herein to the contrary notwithstanding, in the event of early termination of this Agreement by either party pursuant to Article 10 hereof, Sponsor shall pay all costs accrued by University as of the date of termination.

4.4 All payments hereunder shall be made by Sponsor to University net sixty (60) days upon Sponsor’s receipt of an invoice from University, such invoices to be issued quarterly or as otherwise specified in the Project Proposal.

**Article 5 -- Publicity**

5.1 Sponsor will not use the name of University, nor of any member of University's Project staff, in any publicity, advertising, or news release without the prior written approval of an authorized representative of University. University will not use the name of Sponsor, nor any employee of Sponsor, in any publicity without the prior written approval of Sponsor, except that University shall make available, upon request, the title and description of a research project, the name of the researcher, and the amount and source of funding provided for such project, provided that University obtains prior written consent from Sponsor before disclosing the source of funding.

**Article 6 – Publications**

6.1. Sponsor recognizes that under University policy, the results of Projects must be publishable and agrees that Researchers engaged in each Project shall be permitted to present at symposia, national, or regional professional meetings, and to publish in journals, theses or dissertations, or otherwise of their own choosing, methods and results of the Project, provided, however, that Sponsor shall have been furnished copies of any proposed publication or presentation in advance of the submission of such proposed publication or presentation to a journal, editor, or other third party. Sponsor shall have thirty (30) days after receipt of said copies to object to such proposed presentation or proposed publication because it contains Sponsor’s confidential information or patentable subject matter that needs protection. In the event that Sponsor makes such objection, said Researcher(s) shall redact the confidential information and refrain from making such publication or presentation for a maximum of two (2) months from date of receipt of such objection in order for University to file patent application(s) with the United States Patent and Trademark Office and/or foreign patent office(s) directed to the patentable subject matter contained in the proposed publication or presentation.

**Article 7 - Intellectual Property**

7.1 All rights and title to: (i) University Intellectual Property shall belong to University, (ii) Sponsor Intellectual Property shall belong to Sponsor, and (iii) Joint Intellectual Property shall belong jointly to University and Sponsor. Both University and Joint Intellectual Property shall be subject to the terms and conditions of this Agreement. Sponsor Intellectual Property shall not be subject to the terms and conditions of this Agreement.

7.2 University will promptly notify Sponsor of any University or Joint Intellectual Property conceived and/or made during the Contract Period under the Project. Sponsor shall provide University written notice within six (6) months of notification by University whether to prepare and file patent applications on behalf of University and/or Sponsor. If Sponsor directs that a patent application or application for other intellectual property protection be filed, University shall promptly prepare, file and prosecute such U.S. and foreign application in University's name if for University Intellectual Property, and in both University’s and Sponsor’s names if for Joint Intellectual Property. Sponsor shall bear all costs incurred in connection with such preparation, filing, prosecution, and maintenance of U.S. and foreign application(s) directed to such Intellectual Property. Sponsor shall cooperate with University to assure that such application(s) will cover, to the best of Sponsor's knowledge, all items of commercial interest and importance. While University shall be primarily responsible for making decisions regarding scope and content of application(s) to be filed and prosecution thereof, Sponsor shall be given an opportunity to review and provide input thereto. At Sponsor’s request, University shall keep Sponsor advised as to developments with respect to such application(s) and shall use best efforts to supply to Sponsor copies of papers received and filed in connection with the prosecution thereof in sufficient time for Sponsor to comment thereon.

7.3 If Sponsor elects not to seek protection pursuant to Article 7.2, or decides to discontinue the financial support of the prosecution or maintenance of the protection, or elects not to exercise its option pursuant to Article 8, University shall be free to file or continue prosecution or maintain any such application(s), and to maintain any protection issuing thereon in the U.S. and in any foreign country at University's sole expense and for its own purposes, and Sponsor shall not have rights thereunder except as granted under Articles 7 and 8 herein.

**Article 8 - Grant of Rights**

8.1 In consideration of Sponsor’s participation as a sponsor of a project, University grants to Sponsor:

1. a perpetual, world-wide, non-exclusive, paid-up license, with the right to assign, divide, sublicense, or otherwise transfer, to use and otherwise practice under University and Joint Intellectual Property the results of the Project, and to and to make, have made, use and sell products and services using or incorporating such results; and
2. pursuant to Article 7.3, Sponsor may elect executing a first option for a royalty-bearing, world-wide, exclusive license with the right to sublicense, to use and otherwise practice under University and Joint Intellectual Property the results of the Project, and to make, have made, use and sell products and services using or incorporating such results. The option shall extend for a time period of six (6) months from the date of the any invention disclosure submission of such Intellectual Property to Sponsor.

8.2 Except as otherwise expressly provided for herein, no license under any patent, copyright, proprietary or property right owned or controlled by either Party is granted herein to the other Party, by implication or otherwise.

**Article 9 – Confidentiality**

9.1 In the performance of the Project, it may be necessary for one party (the “disclosing party”) to disclose to the other party (the “receiving party”) information that is proprietary and confidential to the disclosing party (“Confidential Information”). All such Confidential Information must be disclosed in writing and designated as confidential or, if disclosed orally, must be identified as confidential at the time of disclosure and confirmed in writing and designated as confidential within thirty (30) days of such disclosure. Except as otherwise provided herein, for a period of five (5) years following the date of such disclosure, the receiving party agrees to use Confidential Information received from the disclosing party only for purposes of this Agreement and further agrees that it will not disclose or publish such Confidential Information except that the restrictions of this Section shall not apply to:

(a) information that is or becomes publicly known through no fault of the receiving party;

(b) information learned from a third party entitled to disclose it;

(c) information already known to or developed by receiving party before receipt from disclosing party, as shown by receiving party's prior written records;

(d) information for which receiving party obtains the disclosing party's prior written permission to publish;

(e) information required to be disclosed by court order or operation of law; or

(f) information that is independently developed by the receiving party’s without the use of Confidential Information received from the disclosing party.

9.2 The receiving party shall protect the disclosed Confidential Information from unauthorized use or disclosure using the same degree of care that receiving party to protect its own confidential information of the like nature, but use at least reasonable care to prevent any other disclosure of such Confidential Information..

9.3 The receiving party shall not analyze or cause to be analyzed samples provided by the disclosing party to determine the chemical composition of samples except as may be needed to carry out the purpose of the Project. Any results from the analysis of the samples will be considered Sponsor’s Confidential Information.

**Article 10 - Term and Termination**

10.1 This Agreement shall become effective upon the date first hereinabove written and shall continue in effect for the full duration of the Project, or if multiple Projects, until the last to expire, unless sooner terminated in accordance with the provisions of this Article. The parties hereto may, however, extend the term of this Agreement for additional periods as desired under mutually agreeable terms and conditions that the parties reduce to writing and sign.

10.2 In the event that a party hereto shall commit a material breach of its obligations under a specific Project under this Agreement, and also shall fail to cure such breach within thirty (30) days after receipt of any notice thereof from another party hereto, the party giving notice may, at its option and in addition to any other remedies that it may have at law or in equity, terminate that specific Project by sending notice of termination in writing to the other parties to such effect, and such termination shall be effective as of the date of the receipt of such notice.

10.3 University may terminate a Project if circumstances beyond its control preclude the continuation of the Project.

10.4 Sponsor may terminate a Project under this Agreement without cause upon sixty (60) days prior written notice.

10.5 Either party may terminate this Agreement without cause upon sixty (60) days written notice.

10.6 Termination of this Agreement by a 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.

10.7 Upon termination of this Agreement, all rights and obligations hereunder shall terminate except for rights obtained or obligations assumed under the provisions of Articles 8, 9 and 14 which shall survive for the time periods indicated or indefinitely when no time period is indicated.

**Article 11 - Independent Contractor**

In the performance of all services hereunder:

11.1 The parties shall be deemed to be and shall be independent contractors and, as such, the employees of a party shall not be entitled to any benefits applicable to employees of the other;

11.2 No party is authorized or empowered to act as agent for the others for any purpose and shall not on behalf of another enter into any contract, warranty, or representation as to any matter. No shall be bound by the acts or conduct of other.

**Article 12 – Indemnification**

12.1 UNIVERSITY 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 A SPONSORED PROJECT, OR THE CONDITION OF ANY INVENTION(S) OR PRODUCT(S), WHETHER TANGIBLE OR INTANGIBLE, CONCEIVED, DISCOVERED, OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF A PROJECT OR ANY SUCH INVENTION OR PRODUCT, OR ANY ACTIVITY PERFORMED OR DELIVERABLE PROVIDED HEREUNDER SHALL BE FREE OF INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS OR OTHER RIGHTS. UNIVERSITY SHALL NOT BE LIABLE FOR ANY DIRECT, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES SUFFERED BY SPONSOR OR ANY OTHER PERSON RESULTING FROM A PROJECT OR THE USE OF ANY SUCH INVENTION OR PRODUCT.

12.2 Sponsor agrees to defend, indemnify and hold harmless University, the PI and any of University faculty, students, volunteers, employees, trustees, officers, affiliates and agents (herein referred to collectively as the “Indemnified Persons”) from and against any and all liability, claims, lawsuits, losses, damages, costs or expenses (including documented attorney’s fees), which the Indemnified Persons may hereafter incur, suffer or be required to pay as a result of Sponsor’s use of the results of a Project or any Intellectual Property or as a result of any breach of this Agreement or any wrongful act or omission of Sponsor, its employees, affiliates, contractors, licensees or agents. University shall notify Sponsor upon learning of the initiation or threatened initiation of any such liability, claims, lawsuits, losses, damages, costs and expenses. Sponsor shall have the sole authority to defend or settle any such claims or suits, and University shall cooperate with Sponsor in every proper way in such defense or settlement thereof at Sponsor’s request and expense.

12.3 The parties to this Agreement understand and agree that University is a state-supported university and instrumentality of the State of Ohio, and thus is represented by the Attorney General for the State of Ohio or designee pursuant to Section 3345.15 of the Ohio Revised Code. In addition, no suit for money damages against University shall be compromised or settled without the approval of the Ohio Attorney General. Ohio Revised Code Section 2743.15.

**Article 13 - Insurance**

13.1 University represents that it has adequate liability insurance, such protection being applicable to officers, employees, and agents while acting within the scope of their employment by it, and each has no liability insurance policy as such that can extend protection to any other person.

13.2 Each party hereby assumes any and all risks of personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof.

**Article 14 - Governing Law**

14.1 This Agreement shall be governed and construed in accordance with the laws of the State of Ohio and any action or proceeding relating in any way to this Agreement or the subject matter hereof shall be brought and enforced exclusively in the competent courts of Ohio.

**Article 15 - Assignment**

15.1 This Agreement is assignable to any majority stockholder of Sponsor and/or any subsidiary of Sponsor in which Sponsor is a majority stockholder.

15.2 Other than as set forth in Article 15.1, this Agreement shall not be assigned by any party, or by an assignee of any party pursuant to Article 15.1, without the prior written consent of the parties hereto.

**Article 16 - Agreement Modifications**

16.1 Any agreement to change 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 authorized representatives of the parties hereto.

**Article 17 - Notices**

17.1 Notices, invoices, communications, and payments hereunder shall be deemed made if given by registered or certified envelope, postage prepaid, and addressed to the party to receive such notice, invoice, communication or payment at the address given below or such other address as may hereafter be designated by notice in writing:

|  |  |
| --- | --- |
| **Administrative for University:** | **Technical For University:** |
| Cleveland State University2121 Euclid AvenueCleveland, OH 44115-2214(216) 687-3607Attn.: Teri Kocevar |  |
|  |  |
| **Administrative for Sponsor:** | **Technical For Sponsor:** |

IN WITNESS WHEREOF, the parties have caused these presents to be executed in duplicate as of the day and year first above written.

**Cleveland State University (University)**   **(Sponsor)**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:

Name: Jerzy T. Sawicki, Ph.D. Name: \_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: President Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:

**DRAFT**

**EXHIBIT A**

***Attachment (1)***

Project Proposal