

Collaboration Agreement

Effective as of [date] (the "Effective Date"), [company], a company with a place of business at [address] ("Company") and [university name and address] ("University") agree as follows:

1. Background

- 1.1 Company and University (each a "party" and collectively, the "parties") anticipate an on-going collaborative relationship in the area of [area].
- 1.2 This relationship may involve one or more interactions, including but not limited to sponsored research, exchange of technology and information, access to facilities and personnel, and licenses under intangible property rights.
- 1.3 This Collaboration Agreement provides a contracting framework intended to expedite interactions between Company and University.

2. Collaboration

- 2.1 This Agreement provides default conditions under which specific interactions, called "Tasks", may be undertaken. Company and University may also develop contracts other than through this Agreement. It is anticipated that Tasks may involve circumstances that require changes from the defaults given here, and both Company and University have full discretion whether to accept any given Task under this Agreement whether following the defaults or with changes. It is anticipated that this Agreement may be amended from time to time to reflect preferred practices. It is understood that this Agreement may contain provisions that are generally not acceptable to Company, University, or both, but that may be modified as conditions require in various ways to become acceptable. Since the conditions cannot be fully anticipated in advance, such incompatible provisions are desirable over none at all by establishing a common base from which to reason toward final agreement on any given Task.

3. Tasks

- 3.1 *Task Agreements.* Under this Collaboration Agreement, Company and University may enter into one or more Task Agreements. Task Agreements may include, but are not limited to, teaming agreements in anticipation of submitting proposals for sponsored research to funding agencies; research sponsored by Company at University; use of facilities at University by Company personnel; use of facilities at Company by University personnel; exchange of data, materials, and technology for research purposes; and licenses to develop technology managed by University. Each Task Agreement will be in writing, reference this Collaboration Agreement, and set out particulars as necessary with regard to objective, scope, personnel, funding, term, and any special circumstances.
- 3.2 *Precedence.* If there is any disagreement between this Collaboration Agreement and any given Task Agreement, the terms and conditions of the Collaboration Agreement will control except for those terms and conditions in the Task Agreement identified as "Additional Terms", which shall take precedence over default terms and conditions of the Collaboration Agreement.

4. Payment Management

- 4.1 In those cases in which a Task involves funding from one Party to the other, the funding Party will pay Task expenses, direct and indirect, in accordance with a Detailed Budget for the Task, which provides an estimate of the total costs of the Task for which Company is responsible. Payment will be made quarterly in advance unless provided otherwise in the Task Agreement. The funded Party will invoice the funding Party for amounts due.

4.2 For payments to University: Checks shall be made payable to [university, payment instructions].

For payments to Company: Checks shall be made payable to [company, payment instructions].

4.3 If at any time the funded Party believes that Task costs will exceed the amount in the Detailed Budget, the funded Party will notify the funding Party in writing, giving a revised budget for completion of the Task. The funding Party will not be obligated to reimburse the funded Party for any cost in excess of the amount in the Detailed Budget, and the funded Party will not be obligated to continue the Task or incur costs in excess of the amount in the Detailed Budget unless this Agreement is amended with approval of the funding Party to increase the funding committed to the Task.

5. Records and Reports

5.1 University and Company will provide reports of Task activity to each other, including on-going reports as mutually agreed and a written final report of the accomplishments and significant findings of the Task, submitted to Company within ninety (90) days of the end of the Task.

5.2 University and Company will maintain financial records, supporting documents and other records pertaining to each Task for three (3) years from the end date of each Task Agreement.

6. Publication and Publicity

6.1 Tasks are anticipated to be collaborative, with Company and University personnel working together. Information developed in or provided to Tasks by either Company or University is intended to become publicly available in the normal course of scholarly publishing and instruction, and in the case of Company, consistent with Company policies on public release. For purposes of the CREATE Act, Tasks under this Agreement constitute joint research and the parties, date of execution, and terms and conditions of this Agreement and any Task Agreement may be disclosed. For purposes of Export Control, neither Company nor University place any restrictions on information provided to or developed by the other.

6.2 Company and University may publish, disseminate, disclose, and use technical information (except as limited herein) received from the other or first developed under a Task. Copies of any proposed publication by University or Company will be provided to the other for review at least ten (10) days prior to submission for publication. Either party may request removal of any of its proprietary information or works of authorship which may have been inadvertently included in such proposed publications, and either party may identify potentially patentable inventions which the parties should consider for patent protection.

6.3 The following will not be disclosed or distributed publicly without obtaining prior approval: (a) educational records, including dissertations and other work products of degree research; (b) scholarly manuscripts in preparation for publication; (c) information in oral or written form disclosing patentable inventions made in the course of a Task or pertaining to efforts to secure patent protection for such inventions, including information provided pursuant to Paragraph 8.1, below; and (d) business, personal, and other information as may be regulated by applicable federal and state laws and regulations.

6.4 Either party may delay public release of information first developed in a Task for up to sixty (60) days in order to protect potential patent rights in any invention developed in or introduced into a Task.

6.5 It is contemplated that a Task will be carried out without disclosing to University any of Company's proprietary information in the form of trade secrets or information subject to export control or other regulations that require screening of individuals for citizenship. However, should it become necessary for a party to disclose such confidential information, that disclosure will take

place under a separate Task identifying the nature of the confidential information and setting forth the conditions for handling, use, and non-disclosure. University's academic environment is by its nature and intentionally not established to secure information from disclosure by means of trade secret controls. Company acknowledges that University's reasonable efforts to secure confidential information will be to inform University personnel of the handling requirements for confidential Company information clearly marked or identified and provided to the University's point of contact.

- 6.6 Neither party will use the names or identifiers of the other in any publicity, advertising, or news release without prior written approval of the other party. Annual reports, reports to government agencies, and in compliance with legal requirements or under other contracts are not restricted by this provision.

7. Intellectual Property, Equipment, and Tangible Materials

- 7.1 *Ownership of Task Developments.* Inventions, discoveries, software, and other works of authorship made solely in the course of a Task ("Task Developments") will be documented and reported by University and Company to each other. Title to inventions made solely by University personnel or by anyone using University non-public facilities shall be retained by the University for disposition. Title to inventions made solely by Company personnel and not involving any use of University facilities shall be retained by Company for disposition. Inventions made jointly by University and Company personnel shall be owned by University and Company jointly, except that University and Company will confer regarding any inventions made within the scope of pending patent applications of either University or Company prior to making a final determination of ownership. Inventorship will be determined in accordance with United States patent law.

- 7.2 *No Implied Licenses.* Nothing in this Agreement or any Task 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, software, data or other proprietary works of the other party.

- 7.3 *Task Commons.* University and Company under their respective intangible property rights permit, to the extent they legally are able to do so, the use of information, works of authorship, inventions, materials, technology, and equipment as provided by one to the other for the performance of Tasks undertaken under this Agreement, but for no other purposes except as specified in writing.

- 7.4 *Non-exclusive Option.* To the extent that University shall have the legal right to do so, University will offer Company for one year from the date of disclosure to Company of any Task Development an option to acquire a non-exclusive, worldwide license in said Task Development .

- 7.5 Company may exercise this option with respect to any such Task Development upon payment to University of a reasonable license consideration to be established solely at the discretion of Company. This option for a non-exclusive license remains in effect regardless of any proceedings with regard to an exclusive license.

- 7.6 University reserves the right in any license granted to permit the use of its inventions for research, education, and to alleviate health and safety needs. To the extent that any University invention has been supported by federal funding, University also reserves the right to grant to the United States government a license consistent with the requirements of its federal contract, such as those set forth in 37 CFR 401.14(a)(b).

- 7.7 *Exclusive Option.* To the extent that University shall have the legal right to do so, University will offer Company a time-limited right to negotiate an exclusive commercial license to any Task Development specified as a deliverable in the Task Agreement. Company will advise University in writing within sixty (60) days of disclosure of such Task Development to Company whether

Company desires to secure from University an exclusive commercial license. Company will have six (6) months from the date of election above to conclude a license agreement with University. Such period may be extended by mutual agreement. Said license will contain reasonable terms consistent with industry practice. During the period of negotiation provided above Company will reimburse University for University's direct costs associated with preparing, filing, and maintaining patent or other intellectual property protection for any such Task Development.

7.8 University will own any equipment, components, supplies, or tangible materials acquired or produced by University in the performance of a Task unless otherwise provided in that Task Agreement.

8. Risk

8.1 University shall defend, indemnify and hold Company, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorney's fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of University, its officers, agents, or employees.

8.2 Company shall defend, indemnify and hold University, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Company, its officers, agents, or employees.

8.3 INFORMATION, MATERIALS, RIGHTS, AND DELIVERABLES PROVIDED BY ONE PARTY TO THE OTHER UNDER THIS AGREEMENT AND ANY TASK AGREEMENTS ARE "AS IS" WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER PARTY MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY THAT ANYTHING PROVIDED BY ONE PARTY TO THE OTHER WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER RIGHTS. IN NO EVENT SHALL EITHER PARTY (INCLUDING ITS PERSONNEL, CONTRIBUTORS, OR LICENSORS) BE LIABLE TO THE OTHER FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF SUCH SUBJECT MATTER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

9. Term and Termination

9.1 *Term and Renewals.* This Agreement will be effective as of the Effective Date when fully executed by both parties and will remain in effect for five (5) years from the Effective Date unless terminated earlier as provided herein. This Agreement will renew for additional three (3) year terms unless notice is given by a party that the Agreement should not renew at the next renewal date.

9.2 *Termination.* Either Party may terminate this Agreement upon ninety (90) days' prior written notice, and unless specifically exempted by the notifying party and accepted by the notified party, such termination will terminate all Task agreements made under this Agreement. Any exempted agreements will remain in full force and effect, obtaining the benefit of the survival of provisions of

this Agreement until such time as such exempted agreements expire or are terminated as provided herein.

- 10.3 *Task Agreement Termination.* Either party may terminate Task agreements upon ninety (90) days prior written notice to the other party. In the event of such termination, a party receiving funding from the other will refund all unexpended and unobligated funds to the funding party after withholding amounts necessary to discharge uncancelable obligations. It is understood that for University, graduate student support is one such uncancelable obligation.
- 10.4 *Survival.* Termination of this Agreement will not affect the rights and obligations of the parties accrued prior to the date of termination, including those of Task agreements.
- 10.5 The parties will attempt to settle amicably any dispute arising under this Agreement, including any Task agreement made pursuant to this Agreement, prior to the commencement of any legal action. If a problem arises in the performance under, interpretation of, or administration of this Agreement or any such Task agreement, the party identifying the problem will promptly notify the other party. If the problem cannot be addressed to the satisfaction of the parties within thirty (30) days of notice, then senior executives of both parties will promptly negotiate in good faith in an attempt to reach a resolution. If the problem cannot be resolved through such negotiation, then the parties shall consider mediation and/or arbitration as alternatives to litigation.

11. Notices

- 11.1 Whenever any notice is to be given pursuant to this Agreement, it will be made in writing and delivered by first-class mail, postage prepaid, overnight courier service, or sent via email as a pdf file attachment to the following addresses:

University: [address]
Attention: Director

Company: [address]
Attention: CEO

- 11.2 University and Company may change the address information above by notice to the other party.

12. General

- 12.1 University and Company are independent contractors. Neither party 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 shall be bound by the acts or conduct of the other.
- 12.2 This Agreement shall be governed and construed in accordance with the laws of [jurisdiction].
- 12.3 This Agreement may not be assigned by either party without the prior written consent of the other party, except in the case of a successor to Company's business whether by merger, sale of substantially all Company's assets or by sale of stock.
- 12.4 Nothing in this Agreement shall be construed to limit the freedom of researchers at University, whether participants in any Task or otherwise, from engaging in similar research made independently under other grants, contracts, or agreements. It is understood by Company that University may concurrently develop similar inventions, technology, works of authorship, or data with overlapping or functionally competing characteristics and intellectual property claims ("Other Assets"). While it is not the intention of University to withhold access to such Other Assets, neither is it the University's intention or obligation to identify or provide access to such Other Assets under this Agreement or any Task agreement.

- 12.5 Any change in the terms of this Agreement shall be valid only if the change is made in writing, references this Agreement, and approved by authorized representatives of University and Company.
- 12.6 This Agreement, together with its Task agreements, constitutes the entire understanding between the parties hereto and there are no collateral, oral or written agreements or understandings.
- 12.7 This Agreement may be executed in counterparts, each of which is to be deemed an original and all of which together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below written.

For UNIVERSITY

For COMPANY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____