

**UNIVERSITY OF NEW HAMPSHIRE**

**RESEARCH AGREEMENT**

**RESEARCH AGREEMENT** (the "Agreement") between the University of New Hampshire, hereinafter referred to as "UNH," and \_\_\_\_\_, hereinafter referred to as "Sponsor."

This Agreement becomes effective as of the date of the last Authorized Representative's signature, the "Effective Date."

The research program contemplated by this Agreement is of mutual interest and benefit to UNH and to the Sponsor, and will further the instructional and research objectives of UNH in a manner consistent with its status as a non-profit, tax-exempt, educational institution.

**THEREFORE**, the parties hereto agree as follows:

1. **STATEMENT OF WORK.** UNH agrees to use reasonable efforts to perform the research program as described in Exhibit A (the "Research") to this Agreement.
2. **PRINCIPAL INVESTIGATOR.** The Research will be supervised by \_\_\_\_\_, the "Principal Investigator." If, for any reason this individual is unable to continue to serve as Principal Investigator and a successor acceptable to both UNH and the Sponsor is not available, this Agreement shall be terminated as provided in Article 6.
3. **PERIOD OF PERFORMANCE.** The Research shall be conducted during the period \_\_\_\_\_ (the "Starting Date") through \_\_\_\_\_ (the "Completion Date"). The Completion Date will be subject to extension only by mutual written agreement of both parties' authorized representatives.
4. **REIMBURSEMENT OF COSTS.** In consideration of the foregoing, the Sponsor will reimburse UNH for all direct and F&A (Facilities & Administrative or indirect) costs incurred in the performance of the Research, which shall not exceed the total estimated project cost of \$ \_\_\_\_\_ without written authorization from the Sponsor.
5. **PAYMENT.** Payment(s) shall be made to UNH by the Sponsor in advance in U.S. dollars, net of taxes or duty of any kind, as follows:

A lump sum of \$ \_\_\_\_\_, which shall be invoiced upon the execution of this Agreement.

Advanced payments in the amount of \$ \_\_\_\_\_, which shall be invoiced upon the execution of this Agreement and monthly/quarterly thereafter.

A final financial accounting of all costs incurred, by major budget category, and all funds received by UNH pursuant to this agreement, together with a check for any unexpended balance exceeding \$100 shall be submitted to the Sponsor within ninety (90) days following the Completion Date.

6. **TERMINATION.** Performance under this Agreement may be terminated by the Sponsor upon sixty (60) days' prior written notice to UNH's authorized representative. Performance may be terminated by UNH (1) if the Sponsor fails to make payment to UNH in accordance with the payment schedule stated in Article 5 above and does not remedy the non-payment within thirty (30) days' written notice from UNH or (2) if circumstances beyond UNH's reasonable control preclude continuation of the Research. Upon termination by either party, UNH will be reimbursed as specified in Article 4 for all costs and non-cancelable commitments incurred in the performance of the Research up to and including the effective date of termination, such reimbursement not to exceed the total estimated project cost specified in Article 4.
7. **EXPENDABLES AND EQUIPMENT.** UNH will own all expendables and equipment purchased or fabricated to perform the Research.
8. **PUBLICATIONS AND REPORTS.** The Principal Investigator will submit a final report to Sponsor within ninety (90) days of the Completion Date. The report will summarize the Research accomplishments and significant research findings.

UNH will be free to publish the results of the Research after providing the Sponsor with a thirty (30) day period in which to review each publication to identify patentable subject matter and to identify any inadvertent disclosure of the Sponsor's proprietary information. If necessary to permit the preparation and filing of U.S. patent applications, UNH may agree to an additional review period not to exceed sixty (60) days.

9. **MATERIALS PROVIDED BY SPONSOR.** If the Research described in Article 1 involves the Principal Investigator or members of the UNH research team accepting access to Sponsor's material, equipment, or other property, including those which the Sponsor considers of a confidential nature or background intellectual property; the rights and obligations of UNH and Sponsor with respect to such items shall be governed in accordance with 9.1 through 9.4, as follow:

**9.1. PROPRIETARY INFORMATION.**

A. For the purposes of this Agreement, "Proprietary Information" refers to information of any kind which is disclosed by the Sponsor to UNH and which, by appropriate marking, is identified as confidential and proprietary at the time of disclosure. In the event that proprietary information is provided visually or orally, obligations of confidentiality shall attach only to that

information which is identified as confidential and proprietary at the time of disclosure and is confirmed by the Sponsor in writing within ten (10) working days as being confidential.

B. UNH shall use the Sponsor's Proprietary Information solely for the purposes of the Research. It is agreed by the Sponsor and UNH that the disclosure of Proprietary Information shall not be construed as a grant of any right or license with respect to such information except as set forth herein or in a duly executed license agreement.

C. The Sponsor and UNH agree that all Proprietary Information communicated by the Sponsor and accepted by UNH in connection with this Agreement shall be kept confidential by UNH as provided herein unless specific written release is obtained from Sponsor. UNH agrees to make Proprietary Information available only to those employees and students who require access to it in the performance of this Agreement and to inform them of the confidential nature of such information. UNH shall exert reasonable efforts to maintain such information in confidence.

UNH shall be deemed to have discharged its obligations hereunder provided UNH has exercised the foregoing degree of care and provided further that UNH shall immediately, upon discovery of any disclosure not authorized hereunder, notify the Sponsor and take reasonable steps to prevent any further disclosure or unauthorized use.

When the Proprietary Information is no longer required for the purposes of this Agreement, UNH shall return the Proprietary Information or dispose of it as directed by the Sponsor. UNH's obligations of confidentiality with respect to Proprietary Information provided under this Agreement will expire three (3) years after the Effective Date of this Agreement.

D. It is agreed by the Sponsor and UNH that the above obligations of confidentiality shall not attach to information that:

(i) is publicly available prior to the date of this Agreement or becomes publicly available thereafter through no wrongful act of UNH;

(ii) was known to UNH prior to the date of disclosure or becomes known to UNH thereafter from a third party having an apparent bona fide right to disclose the information;

(iii) is disclosed by UNH in accordance with the terms of the Sponsor's prior written approval;

(iv) is disclosed by the Sponsor without restriction on further disclosure;

(v) is independently developed by UNH;

(vi) UNH is obligated to produce pursuant to an order of a court of competent jurisdiction or a valid administrative or Congressional subpoena, provided that UNH (i) promptly notifies the Sponsor and (ii) cooperates reasonably with the Sponsor's efforts to contest or limit the scope of such order.

## **9.2. PRE-EXISTING RIGHTS.**

Sponsor shall retain all title right and interest in any pre-existing intellectual property that shall be the subject or focus of the research conducted under the scope of this agreement, including U.S. patent application #\_\_\_\_\_ with a filing date of \_\_\_\_\_.

## **9.3. INDEMNIFICATION.**

Sponsor will indemnify, defend, and hold harmless The University of New Hampshire, its trustees, directors, employees, agents, subcontractors, and students ("Indemnitees") from any liability, damage, loss, or expense (including reasonable attorneys' fees and expenses of litigation) incurred by or imposed upon the Indemnitees or any one of them in connection with any claims, suits, actions, demands, or judgments arising out of or connected with this Agreement or the research done under this Agreement, except to the extent that the liability is due to the gross negligence and willful misconduct of UNH. UNH will promptly notify Sponsor of any claim and will cooperate with Sponsor in the defense of the claim. Sponsor will, at its own expense, provide attorneys reasonably acceptable to UNH to defend against any claim with respect to which Sponsor has agreed to indemnify UNH. This indemnity will not be deemed excess coverage to any insurance or self-insurance UNH may have covering a claim. Sponsor's indemnity will not be limited by the amount of Sponsor's insurance. The provisions of this clause will survive termination of this Agreement.

## **9.4. INSURANCE**

- A. **UNH Coverage.** UNH will maintain Workers' Compensation insurance or other coverage on its employees as required by New Hampshire law, and will self-insure or maintain insurance covering its liability under this Agreement.
- B. **Sponsor Coverage.** Sponsor will procure and maintain during the term of this Agreement comprehensive liability and product liability insurance to the full amount of Sponsor insurance limits, but in no event less than \$2,000,000 per occurrence, with a reputable and financially secure insurance carrier. The insurance will include The University of New Hampshire, its trustees, directors, employees, agents, subcontractors, and students as additional insureds with respect to this Agreement. This insurance will be written to cover

claims incurred, discovered, manifested, or made during or after the expiration of this Agreement.

- C. **Certificate.** Before executing the Agreement, Sponsor will provide UNH with a Certificate of Insurance evidencing primary coverage and requiring 30 days prior written notice of cancellation or material change to UNH. Sponsor will advise UNH, in writing, that it maintains excess liability coverage over primary insurance for at least the minimum limits set forth above.
- D. **Primary Coverage.** Sponsor's insurance will be primary coverage. UNH's insurance or self-insurance will be excess and noncontributory.
- E. **Continued Coverage.** If Sponsor's insurance is written on a claims-made basis, as opposed to an occurrence basis, Sponsor will purchase the coverage necessary to ensure continued and uninterrupted coverage of all claims, including those made after the policy expires or is terminated.

## 10. INTELLECTUAL AND OTHER PROPERTY

- 10.1 UNH owns the entire right, title, and interest, including all patents, copyrights, and other intellectual property rights, in and to all technology developed under this Agreement using UNH facilities and/or by UNH personnel including, but not limited to, all faculty, staff, students, visiting scholars and scientists, and postdoctoral appointees ("UNH Technology"). Sponsor owns all interests, including all patents, copyrights, and other intellectual property rights, in and to all technology developed under this Agreement by Sponsor personnel using Sponsor facilities ("Sponsor Technology"). Technology that is jointly developed by UNH and Sponsor personnel will be jointly owned ("Joint Technology").
- 10.2 UNH will provide Sponsor with a complete, written, confidential disclosure of any UNH Technology after the disclosure is received by the UNH Office for Research Partnerships and Commercialization.
- 10.3 UNH may file patent applications at its own discretion and expense, or at the request of Sponsor at Sponsor's expense. If Sponsor elects to license UNH Technology, Sponsor will pay the costs of patent filing, prosecution and maintenance in the United States and any foreign country Sponsor elects.
- 10.4 By giving written notice to the UNH Office for Research Partnerships and Commercialization within 3 months after notice of UNH Technology, Sponsor may elect one of the following alternatives:
  - (a) **Non Exclusive License.** A nonexclusive, nontransferable (without the right to sublicense) license in a designated field of use to make, have made, use, and sell

products covered by the UNH Technology, on terms to be negotiated; or

**(b) Exclusive License.** A royalty-bearing, limited-term, exclusive, field-of-use license (subject to third-party rights, if any), including the right to sublicense, in the United States or any other country elected by Sponsor (subject to Paragraph 10.7 below) to make, have made, use, and sell products covered by the UNH Technology, in exchange for Sponsor's agreement to diligently commercialize and to substantially manufacture in the United States licensed products sold in the United States.

**10.5** Title to and the right to determine the disposition of any copyrights or copyrightable material first produced or composed in the performance of the Research shall remain with UNH. Sponsor shall be entitled to elect license rights from the following license options by notice in writing to the UNH Office for Research Partnerships and Commercialization within three (3) months after UNH's notification or delivery to the Sponsor of copyrightable material that is required to be delivered to the Sponsor in accordance with Exhibit A.

10.5.1 The Sponsor shall be entitled to elect an irrevocable, royalty-free, non-transferable, non-exclusive right and license to use, reproduce, make derivative works, display, distribute and perform all such copyrightable materials for the Sponsor's internal research purposes. Except as specified to be developed and delivered under the Research, such license will not apply to computer software and its documentation and/or informational databases.

10.5.2 The Sponsor shall be entitled to elect a royalty-bearing license to use, reproduce, display, distribute and perform such copyrightable materials, including computer software and its documentation and/or informational databases, for commercial purposes. Computer software for which a patent application is filed shall be subject to paragraph 10.4. above.

**10.6** All licenses of this Section 10 elected by Sponsor are effective as of the date the parties negotiate and sign a subsequent license agreement, which will contain indemnity, insurance, and no-warranty provisions, in addition to other customary terms and conditions.

**10.7** Sponsor may, at its option under 10.4(b) exclusively license UNH's rights in Joint Technology.

**10.8** Sponsor will notify UNH of those other countries in which it desires a license in sufficient time for UNH to satisfy the patent-law

requirements of those countries. Sponsor will reimburse UNH for out-of-pocket costs related to those foreign filings, including patent filing, prosecution, and maintenance fees.

**10.9** If Sponsor does not provide written notice to the UNH Office for Research Partnerships and Commercialization within 3 months of a written disclosure under Paragraph 10.4, 10.5, or 10.8, UNH has no further obligations to the Sponsor and may license the UNH Technology to third parties.

**10.10** UNH represents that all of its employees, students, and consultants who participate in the Research Program will be obligated to assign to UNH all their rights in UNH Technology.

**11. USE OF NAMES.** Neither party will use the name of the other, or that of any of its trustees, officers, faculty, students, employees or agents, or any trademark owned by the other in any advertising or other form of publicity without the written permission of the other party's authorized representative.

**12. REPRESENTATIONS AND WARRANTIES.** UNH MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING THE RESEARCH OR ANY INTELLECTUAL PROPERTY RIGHTS, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, VALIDITY OF ANY INTELLECTUAL PROPERTY RIGHTS OR CLAIMS, WHETHER ISSUED OR PENDING, AND THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE. Specifically, and not to limit the foregoing, UNH makes no warranty or representation (i) arising out of any course of dealing; (ii) regarding the validity or scope of the Research or any intellectual property rights optioned or granted hereunder; and (iii) that the exploitation of the Research or any intellectual property rights will not infringe any patents or other intellectual property rights of UNH or of a third party.

IN NO EVENT SHALL UNH, ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, AND STUDENTS, BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGES OR INJURY TO PERSONS OR PROPERTY AND LOST PROFITS, REGARDLESS OF WHETHER UNH SHALL BE ADVISED, SHALL HAVE OTHER REASON TO KNOW OR IN FACT SHALL KNOW OF THE POSSIBILITY OF THE FOREGOING. THIS ARTICLE 12 SHALL SURVIVE THE EXPIRATION OR ANY EARLIER TERMINATION OF THIS AGREEMENT.

**13. NOTICES AND INQUIRIES.**

Any notices required to be given or which shall be given under this Agreement shall be in writing and delivered by mail, by hand, or by facsimile to the parties as follows:

**UNH**

(name)  
(address)  
(phone)  
(fax)

**SPONSOR**

(name)  
(address)  
(phone)  
(fax)

Inquiries related to billing and payment under this Agreement shall be addressed to the parties as shown below.

**UNH**

(name)  
(address)  
(phone)  
(fax)

**SPONSOR**

(name)  
(address)  
(phone)  
(fax)

14. **ASSIGNMENT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors to substantially the entire business and assets of the respective parties hereto. This Agreement shall not be assignable by either party without the prior written consent of the other party; any attempted assignment is void.
15. **GOVERNING LAW.** The validity and interpretation of this Agreement and the legal relationship of the parties to it shall be governed by the laws of the State of New Hampshire and the applicable United States Federal law.
16. **FORCE MAJEURE.** Neither party shall be responsible to the other for failure to perform any of the obligations imposed by this Agreement, provided such failure shall be occasioned by fire, flood, explosion, lightning, windstorm, earthquake, subsidence of soil, failure or destruction, in whole or in part, of machinery or equipment, or failure of supply of materials, discontinuity in the supply of power, governmental interference, civil commotion, riot, war, strikes, labor disturbance, transportation difficulties, labor shortage or any cause beyond its reasonable control.
17. **EXPORT CONTROLS.** It is understood that UNH is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities, and that its obligations hereunder are contingent on compliance with applicable U.S. export laws and regulations (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979). The transfer of certain technical data and commodities may require a license from the cognizant agency of the United

States Government and/or written assurances by the Sponsor that the Sponsor will not re-export data or commodities to certain foreign countries without prior approval of the cognizant government agency. While UNH agrees to cooperate in securing any license which the cognizant agency deems necessary in connection with this Agreement, UNH cannot guarantee that such licenses will be granted.

18. **ENTIRE AGREEMENT.** Unless otherwise specified, this Agreement and its Exhibits embody the entire understanding between UNH and the Sponsor for the Research, and any prior or contemporaneous representations, either oral or written, are hereby superseded. No amendments or changes to this Agreement, including without limitation, changes in the statement of work, total estimated cost and period of performance, shall be effective unless made in writing and signed by authorized representatives of the parties.

**UNIVERSITY OF NEW HAMPSHIRE**

**(SPONSOR NAME)**

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Manager, Contracts & Export Controls

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

I, \_\_\_\_\_, named as Principal Investigator, acknowledge that I have read this Agreement in its entirety and will use reasonable efforts to uphold my obligations and responsibilities set forth herein:

Signature: \_\_\_\_\_

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