

UNIVERSITY OF NEW MEXICO

CORPORATE SPONSORED RESEARCH AGREEMENT

Research Agreement No. **SPAS #** _____.

THIS AGREEMENT is made and entered into as of the _____ Day of _____, 20_____, by and between _____ a **[nonprofit]** corporation incorporated under the laws of the state of _____ (hereinafter called “Sponsor”), and the Regents of the University of New Mexico, a New Mexico institution of higher education (hereinafter called “UNM”).

WHEREAS, the research program contemplated by the Agreement is of mutual interest and benefit to UNM and to Sponsor, and will further UNM’s educational and research objectives;

WHEREAS, both Parties believe and represent that the research program is funded entirely by Sponsor, without funds contributed directly or passed through from the federal government and without funding contributions from other sponsors or from UNM, and that the research does not involve encryption or classified technology;

NOW, THEREFORE, the parties hereto agree as follows:

1. **STATEMENT OF WORK:** UNM shall use reasonable efforts to conduct the research program described in Exhibit A (the “Project”), and do so within the Total Project Cost as specified in Section 4.1. Notwithstanding, UNM may exercise its discretion and independent judgment as to the method and means of performing the Project. The schedule for delivery of all reports and deliverables is as set forth in the Statement of Work, Exhibit A.
2. **PARTY REPRESENTATIVES:**
 - 2.1. UNM’s Principal Investigator for the Project shall be _____ . UNM shall give Sponsor written notice of any change in its Principal Investigator. The Principal Investigator is responsible for performing the Project on behalf of UNM.
 - 2.2. UNM’s Contracting Officer is _____, Sponsored Project Services. UNM shall give Sponsor written notice of any change in its Contracting Officer. The Contracting Officer is responsible for interpretation, negotiation, extensions, amendments, or modifications of this Agreement.
 - 2.3. Sponsor’s Project Director is _____ . Sponsor shall give UNM written notice of any change in its Project Director. The Project Director shall be responsible for interpretation, negotiation, extensions, amendments, or modifications of this Agreement.

3. **PERIOD OF PERFORMANCE:** The Period of Performance under this Agreement is from _____ through _____, unless sooner terminated in accordance with this Agreement.

4. **COMPENSATION:**

4.1. The Total Project Cost shall be _____.

Alternative A:

REIMBURSEMENT OF COSTS: Sponsor shall reimburse UNM for all direct and indirect costs incurred in the performance of the Project. Indirect costs shall be calculated at fifty (50%) percent of total direct costs.

Upon execution of this Agreement, Sponsor shall pay to UNM an amount equal to the Total Project Cost. Payment shall be sent to UNM Contracts and Grants Accounting, Scholes Hall Room 206, Albuquerque, NM 87131. All checks shall reference the Research Agreement Number as listed on the first page of this Agreement. UNM shall set aside this amount for allocation to UNM's restricted accounts assigned for the Project on a reimbursement basis. All amounts neither expended nor committed after this Agreement has ended shall be refunded to Sponsor.

Alternative B:

FIXED-FEE: Sponsor shall pay UNM the Total Project Cost for UNM's services hereunder. Sponsor shall remit fifty-percent (50%) of the Total Project Cost upon execution by both parties of this Agreement. The remaining amount of the contract price due under this Agreement shall be payable in equal quarterly installments for the Period of Performance of this Agreement, and paid upon receipt of invoices from UNM issued quarterly. Invoices are due and payable within thirty (30) days. Any amendment changing either the Period of Performance or the Total Project Cost shall specify a new payment schedule.

5. **TERMINATION:**

5.1. Either party may at any time terminate this Agreement by giving the other party not less than sixty (60) days prior written notice, provided, however, that UNM may terminate this Agreement upon ten (10) days' notice if any payment due from Sponsor is not received before or upon the date due or within the ten (10) day notice period.

5.2. If so terminated, Sponsor shall remain responsible for payment to UNM for all work performed through the date of termination and for reimbursement to UNM of all non-cancelable commitments incurred for the Project.

6. PUBLICATIONS:

- 6.1. Sponsor recognizes that the University's mission is to publish and disseminate research results developed under sponsored research projects. Either Party's proposed publications related to the Project, whether intended to be in writing or by oral presentation, shall be submitted for review by the publishing party to the other party ("Reviewing Party") at least ninety (90) days prior to submission to third parties. The Reviewing Party shall determine whether any of its Proprietary Information, including trade secrets, is included in the proposed publication. The Reviewing Party may reasonably require that its Proprietary Information be removed from the proposed publication and that publication be delayed to permit the filing of patent applications. The Reviewing Party shall make such determination within forty-five (45) days of receipt of the proposed publication. However, in no event shall publication be delayed more than ninety (90) days after receipt of the proposed publication by the Reviewing Party.
- 6.2. The Parties shall each have the final authority to determine the scope and content of any publications or presentations made by their respective employees in accordance with the limitations of this section.

7. INTELLECTUAL PROPERTY:

- 7.1. "Invention" shall mean any discovery, concept or idea, whether or not patentable, conceived or first reduced to practice in whole or in part in performance of this Agreement.
- 7.2. UNM shall own any Inventions that are invented solely by UNM employees, students, or agents ("UNM Inventions"). Sponsor shall own any Inventions that are invented solely by Sponsor's employees or agents. Inventions invented jointly by UNM employees, students or agents and Sponsor employees or agents shall be owned jointly ("Joint Inventions").
- 7.3. UNM will retain ownership of the data arising out of the Project that UNM generates. Subject to other provisions of this Agreement, including those pertaining to proprietary information and intellectual property, Sponsor will have access to the data and may freely use such data in connection with any of its internal research, subject to the appropriate provisions for confidentiality for limited periods of time.
- 7.4. Each Party shall retain ownership of property that is developed solely by that Party's employees, including, but not limited to, prototypes, biogenic materials, samples, lab notebooks graphs, maps, drawings, and documents created under this Agreement (collectively, "Tangible Research Property"). However, UNM shall not retain ownership of Tangible Research Property that is a deliverable under this Agreement. Moreover, UNM shall retain the right to use and distribute copies of all deliverables for educational and/or research purposes.

- 7.5. Each Party shall notify the other Party of any Invention disclosed to it within thirty (30) days of its receipt of disclosure and such disclosure shall be considered Proprietary Information of UNM.
- 7.6. As between UNM and Sponsor, UNM shall own all right, title and interest in and to any and all copyrights and copyrightable materials, including data, created solely by UNM employees, students or agents in performance of this Agreement (collectively "UNM Copyrights"). As between UNM and Sponsor, Sponsor shall own all right, title and interest in and to any and all copyrights and copyrightable materials, including data, created solely by Sponsor employees or agents in performance of this Agreement (collectively, "Sponsor Copyrights"). As between UNM and Sponsor, UNM and Sponsor shall jointly own all right, title and interest in and to any and all copyrights and copyrightable materials, including data, created jointly by UNM employees, students, or agents and Sponsor employees or agents in performance of this Agreement (collectively, "Joint Copyrights"). UNM shall have the sole right to determine the disposition of UNM or Joint Copyrights, provided that Sponsor shall have option rights, in accordance with Section 7.7, in computer software and databases developed and delivered under the Statement of Work.
- 7.7. UNM hereby grants Sponsor an option, for a period of six (6) months from date Sponsor receives written notification from UNM of a UNM or Joint Invention or Copyright, to negotiate in good faith a royalty-bearing license to UNM's rights in such Invention or Copyright as provided in Section 7.6. However, neither Party shall, by virtue of this Agreement, acquire rights to inventions, copyrights, technical information, or tangible property concurrently created or acquired outside of this Agreement or that are owned by the other Party prior to entering into this Agreement, including any background technology required to practice Inventions. Such rights may or may not be available for licensing.
- 7.8. Any license to Sponsor as provided above will be granted by a separate license agreement signed by the parties which shall include at least the following terms and conditions: (a) an appropriate field of use; (b) mutually agreeable license fees and royalties; (c) mutually agreeable minimum royalties and/or other requirements of due diligence to develop and commercialize the Invention; (d) reimbursement of UNM's cost of patent filing, prosecution and maintenance; and (e) retention by UNM of a royalty-free right to use the Invention for teaching, research, or other educational or academic purposes.

8. PROPRIETARY INFORMATION:

- 8.1. In performance of this Agreement it is likely that the Parties will disclose to each other, either in writing or orally, information which the disclosing Party deems to be proprietary and confidential (hereinafter, "Proprietary Information"). Proprietary Information shall consist of (a) written information clearly marked as "proprietary" or "confidential" and (b) oral information reduced to writing within thirty (30) days of oral disclosure and clearly marked as "proprietary" or "confidential." Notwithstanding the

above, all oral and written progress reports from UNM to Sponsor, including all reports required under the Statement of Work, whether or not marked or reduced to writing, shall also be deemed to be Proprietary Information of UNM. Proprietary Information shall be maintained in confidence for a period of three (3) years following the termination of this Agreement, except to the extent that it is required by law to be disclosed. Receiving Party shall use Proprietary Information solely for the purposes of this Agreement. Each Party shall protect the other Party's Proprietary Information from disclosure using at least the same degree of care as it uses to protect its own proprietary information. The disclosure of Proprietary Information shall not of itself be construed as a grant of any right or license with respect to the information.

8.2. Proprietary Information does not include information which receiving Party can demonstrate and document: (a) was in its knowledge or possession prior to receipt from disclosing Party; (b) was public knowledge or becomes public knowledge through no fault of receiving Party; (c) is or has been properly provided to receiving Party by an independent third party who has no obligation of confidentiality to disclosing Party; (d) is thereafter independently developed by receiving Party's employees without reference to the information from disclosing Party; or (e) is reasonably necessary to protect a Party's interests in a lawsuit, alternative dispute resolution process, or government investigation.

8.3. Neither Party shall knowingly convey Proprietary Information that is subject to federal export control restrictions under the EAR or the ITAR.

9. **EQUIPMENT:** Title to all equipment acquired or built by UNM with funds under this Agreement shall vest in UNM.

10. **UNM MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE WORK OR PRODUCTS OF WORK CREATED UNDER THIS AGREEMENT, INCLUDING THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR ANY SUCH INVENTION OR PRODUCT.**

Further, UNM shall not be liable for an amount greater than the total amounts to be paid as consideration for the services rendered by it under this Agreement. In any event, the liability of UNM hereunder shall be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-41-1 et seq., NMSA 1978, as amended.

11. **LIABILITY:** Neither Party shall be liable for incidental, consequential, or special damages for breach, nor shall either party be liable for breach for money damages in an amount greater than the total amount of money to be paid by Sponsor for the services rendered under this Agreement.

12. **INDEMNIFICATION:** Sponsor shall indemnify, defend, and hold UNM harmless from any loss, claim, damage, or liability of any kind arising out of Sponsor's use of work product created under the Project or in connection with this Agreement.

13. **ASSIGNMENT:** Neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assignable by UNM or Sponsor without the prior written consent of the other. Notwithstanding the foregoing, UNM may assign any Inventions created under this Agreement to Science & Technology Corporation @ UNM, the technology commercialization arm of UNM, which shall be bound by the provisions herein regarding Sponsor's right to license Inventions.
14. **WAIVER:** The waiver by either party of a breach of any provision of this Agreement shall not operate as or be considered a waiver by that party of any subsequent breaches.
15. **ARBITRATION:** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be submitted to binding arbitration in Albuquerque, New Mexico in accordance with the rules of the American Arbitration Association.
16. **REQUIRED NOTICES:** Any notice required to be given under this Agreement, and an invoice, payment, or communication associated with the performance of the Agreement, shall be deemed made if given by registered or certified mail, postage prepaid, and addressed either to the address given below or to such other address as may hereafter be specified in writing by the parties:

If to Sponsor:

 Attn: _____

If to UNM:

 Sponsored Project Services
 MSC05 3370
 1 University of New Mexico

 Albuquerque, NM 87131

17. **GOVERNING LAW:** This Agreement shall be construed in accordance with the laws of the State of New Mexico as they pertain to agreements executed and fully to be performed within New Mexico, or federal law where applicable, but in either case excluding that body of law relating to choice of law.
18. **CONSENT TO SERVICE OF PROCESS AND JURISDICTION:** Each party hereby irrevocably submits itself to the personal jurisdiction of the Courts of the State of New Mexico, Bernalillo County and the personal jurisdiction of the United States District Court for the District of New Mexico for the purpose of any suit, action or other proceedings arising out of or based upon this Agreement or the subject matter thereof. Each party agrees that it shall bring any such proceeding only in such courts.
19. **ENTIRE AGREEMENT:** This Agreement with its incorporated exhibits, if any, constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, commitments, offers, contracts and writings between the Parties and/or their officers, agents, or employees. Any amendments or further addenda hereafter made shall be in writing and executed with the same formality.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their respective duly authorized officers the day and year first above written.

**REGENTS OF THE UNIVERSITY
OF NEW MEXICO**

[Name of Company]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

2186a.reb