

APPLIED SPONSORED RESEARCH AGREEMENT

CORNELL UNIVERSITY

OFFICE OF SPONSORED PROGRAMS

THIS AGREEMENT is entered into by and between [Click here to enter text.](#), a corporation having powers under the laws of the [Click here to enter text.](#) (hereinafter referred to as "Sponsor") and Cornell University, a non-profit, tax-exempt, educational institution having corporate powers under the laws of the State of New York (hereinafter referred to as "University").

WITNESSETH:

WHEREAS, the effort contemplated by this Agreement is applied research, which applies the findings of prior research, towards their development into new products, services, processes, or methods; and

WHEREAS, such applied research is of mutual interest and benefit to University and to Sponsor, each a "Party" and collectively "Parties", and will further instructional and/or research objectives of University in a manner consistent with its status as a non-profit, tax-exempt, educational institution;

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

1. Definitions.

- 1.1. "Project" shall mean the work funded under this Agreement as described in Exhibit A, which is made a part of this Agreement hereof.
- 1.2. "Intellectual Property" shall mean patent rights, copyrights and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, and shall include the rights relating to (a) literary, artistic and scientific works; (b) inventions in all fields of human endeavor; (c) scientific discoveries; and (d) industrial designs.
- 1.3. "Sponsor Intellectual Property" shall mean Intellectual Property created, invented or discovered solely by one or more employees of Sponsor without the use of University resources.
- 1.4. "University Intellectual Property" shall mean Intellectual Property created, invented or discovered solely by one or more employees of University.
- 1.5. "Project Intellectual Property" shall mean Intellectual Property created during the Period of Performance and within the scope of the Project.
 - 1.5.1. "Sponsor Project Intellectual Property" shall mean Project Intellectual Property created, invented or discovered solely by one or more employees of Sponsor without the use of University resources.
 - 1.5.2. "University Project Intellectual Property" shall mean Project Intellectual Property created, invented or discovered solely by one or more employees of University.
 - 1.5.3. "Jointly Owned Project Intellectual Property" shall mean Project Intellectual Property created, invented or discovered jointly by one or more employees of University and Sponsor or by one or more employees of Sponsor with the use of University resources.

- 1.6. "Created" shall have the meaning attributed to it under 17 USC § 101, Copyrights. "Invented" and "discovered" shall have the meaning attributed to them under 35 USC Chapter 10 - Patentability of Inventions.
- 1.7. "Background Intellectual Property" shall mean Intellectual Property documented herein in Exhibit C ("Background Intellectual Property") that is deemed to be relevant to the Project and has 1) been developed by a Party, or 2) is in existence prior to the initiation of the Project, or 3) is developed by a Party during the Period of Performance of the Project but outside of the Project.
- 1.8. "Confidential Information" means confidential, scientific, business or financial information that is marked or designated in writing as "Confidential", or if disclosed orally, is identified as confidential at the time of disclosure and confirmed in written summary form within (30)
- 1.9. thirty days of oral disclosure, provided that such information:
 - (a) is not publicly known or available from other sources who are not under a confidentiality obligation to the source of the information;
 - (b) has not been made available by its owners to others without a confidentiality obligation;
 - (c) is not already known by or available to the receiving party without a confidentiality obligation; or
 - (d) is not independently developed by the receiving party.

2. Work. University agrees to use reasonable efforts to perform the Project.

3. Key Personnel. The following individuals are identified as key personnel for the performance of the Project: _____, Principal Investigator

If for any reason the Principal Investigator or any other key personnel becomes unable to continue the Project University and Sponsor shall attempt to agree upon a successor. If the Parties are unable to agree upon a successor, this Agreement shall be terminated in accordance with Article 12, Termination for Convenience.

4. Period of Performance. The "Period of Performance" and term of this Agreement will be _____ through _____.

5. Reports

5.1. During the term of this Agreement, University shall furnish Sponsor with letter reports summarizing the work conducted. A final report setting forth the accomplishments and significant findings shall be submitted by University within ninety (90) days of the expiration of this Agreement

5.2. Technical reports delivered by University to Sponsor shall include, as appropriate, all non-confidential and unencumbered underlying, relevant data, described in Exhibit A as deliverables. Sponsor agrees to include University's copyright notice in all copies of technical reports reproduced.

6. Costs and Payments.

6.1. It is agreed to and understood by the Parties that University shall be reimbursed for all costs incurred in connection with the Project up to the amount of \$_____ (the "Project Cost") as established by the budget in Exhibit B which is incorporated herein. While it is estimated that the Project Cost is sufficient to support Project expenses, University retains the right to reallocate funding among budget categories for allowable project-related costs in accordance with the budget.

- 6.2. Sponsor shall not be liable for any payment in excess of the Project Cost unless this Agreement is modified in writing. Within ninety (90) days after the termination of this Agreement University shall submit a final financial report setting forth costs incurred. The report shall be accompanied by a check in the amount, if any, of the excess of funds advanced over costs incurred.
- 6.3. University shall submit invoices to Sponsor on a monthly basis to the address specified in Article 22, Notices. In order to be eligible for reimbursement, invoices shall be for costs incurred as established by the budget, in accordance with the terms of this Agreement, University policies and OMB Circular A-21, and shall display expenses for reimbursement by budget category. Payment shall be made upon receipt of invoice. All checks shall be made payable to Cornell University and sent to the address specified in Article 22, Notices.
7. Equipment. Title to any equipment purchased or manufactured in the performance of the Project shall vest in University.
8. Use of Name. Neither Party shall use this Agreement or the name of the other Party for endorsement, advertising, news release, or in any other manner (except in publications noted in Article 10 below) without the prior written approval of the other Party. This provision shall not preclude University from publishing Sponsor's name, project title, University's principal investigator, project period and award amount in its publicly-available listing of sponsored projects.
9. Confidential Information.
- 9.1 Confidential Information shall be used solely for Project-related purposes. The receiving Party retains the right to refuse to accept any Confidential Information that it does not consider to be essential to the completion of the Project.
- 9.2 Where the receiving Party accepts Confidential Information, it agrees to use the same degree of care to protect the disclosing Party's Confidential Information as it would to safeguard its own information of like nature, but no less than a reasonable degree of care. The receiving Party may disclose Confidential Information to its employees, students, contractors, or agents who need to know such Confidential Information to further the Project, and will ensure that all such persons are informed about the confidentiality obligations associated with such Confidential Information.
- 9.3 The receiving Party shall be bound to protect the disclosing Party's Confidential Information for a period of two (2) years from the date of disclosure unless such information has already been published or publicly disclosed by the disclosing Party or a third party or is required to be disclosed by law or court order.
- 9.4 In the event that the Receiving Party (or anyone to whom Confidential Information is furnished by such Party as authorized herein) is required by law to disclose any Confidential Information of the Disclosing Party, the Receiving Party will provide the Disclosing Party with reasonably prompt notice thereof so that the Disclosing Party may seek a protective order or other appropriate remedy. In any event, the Receiving Party will (or will use its reasonable efforts to cause such person to whom Confidential Information was furnished to) furnish only that portion of the Confidential Information which is legally required to be furnished and will use its reasonably best efforts to obtain assurances that confidential treatment will be accorded to that portion of the Confidential Information so furnished.
- 9.5 Each Party shall deliver to the other Party all documents containing Confidential Information received pursuant hereto and all copies, extracts or other embodiments of such Confidential Information within ten (10) days after being requested to do so by such other Party.

10. Publication.

- 10.1. The Parties acknowledge that it is the University's mission to discover and disseminate knowledge for the purpose of scholarship, education and research. Consistent with this mission and with University policies on academic freedom, openness of research, classified research, and in accordance with Export Control Laws as defined in Article 17 of this Agreement, University shall have the right, at its discretion, to release information, present or to publish any material resulting from the Project, with the exception of sponsor-provided Confidential Information. University shall provide Sponsor with a thirty (30) day period in which to review each publication. Sponsor may request University to delay release of such proposed publication for a maximum of an additional sixty (60) days in order to protect Intellectual Property or sponsor provided Confidential Information described therein. No such delay shall be imposed on the filing of any student thesis or dissertation.
- 10.2. Sponsor will be given full credit and acknowledgment for the support provided to University in any publication resulting from the Project.

11. Project Intellectual Property.

- 11.1. All rights and title to Sponsor Project Intellectual Property shall vest in the Sponsor.
- 11.2. All rights and title to University Project Intellectual Property shall vest in the University.
- 11.3. All rights and title to Jointly Owned Project Intellectual Property shall vest jointly in the University and in the Sponsor.
- 11.4. University will provide Sponsor with a written disclosure of any University Project Intellectual Property promptly after such University Project Intellectual Property is disclosed by a University employee in accordance with University policy to the Cornell Center for Technology Enterprise & Commercialization ("CCTEC"). Sponsor will provide CCTEC with a written disclosure of any Sponsor Project Intellectual Property promptly after such Sponsor Project Intellectual Property is disclosed by a Sponsor employee to Sponsor. Each Party shall treat all Project Intellectual Property disclosures submitted by the other Party as Confidential Information.
 - 11.4.1 After University provides Sponsor a written disclosure of a University Project Intellectual Property, Sponsor shall, within sixty (60) days of the receipt of the written disclosure, inform University in writing of its election of rights provided in 11.7 below. If Sponsor fails to exercise its election rights in writing within said sixty (60) day period, all such rights shall be waived and Sponsor shall have no further rights to University Project Intellectual Property.
- 11.5. University has the first right to file patent applications for University Project Intellectual Property at its own discretion and expense. At the request of Sponsor, University may file at Sponsor's expense. Patent expenses shall include the cost of patent filing, prosecution, and maintenance in the United States and any foreign country in which the patent is filed. All patent expenses incurred in obtaining and maintaining any patent on Jointly Owned Project Intellectual Property shall be shared equally, except that if one Party declines to share in such expenses the other Party may take over the prosecution and maintenance thereof, provided that title to the patent remains in the names of both Parties.
- 11.6. Each Party will grant to the other a non-exclusive, fee-free and royalty-free, irrevocable, non-transferrable, world-wide license without the right to sublicense, to each Party's Project Intellectual Property created pursuant to and during the course of the Project solely for research and education purposes.

11.7 If Sponsor pays for patenting and/or other costs associated with the protection of University Project Intellectual Property and agrees to demonstrate reasonable efforts to commercialize University Project Intellectual Property in the public interest, Sponsor may, subject to any third party rights, elect from the legal rights described below in 11.7.1.1 and 11.7.1.2.

11.7.1.1 A non-exclusive and royalty-free license (a "NERF License") that is non-transferrable and without the right to grant sublicenses to third parties to University Project Intellectual Property in the jurisdiction in which Sponsor is paying for the patenting and/or other costs associated with protection; or

11.7.1.2 For a reasonable licensing fee to be negotiated with CCTEC, an exclusive, royalty-free license (an "ERF License") that is non-transferrable and without the right to grant sublicenses to third parties to University Project Intellectual Property and/or University's Interest in Jointly Owned Project Intellectual Property in the jurisdiction in which Sponsor is paying for the patenting and/or other costs associated with protection in an appropriate field-of-use to make, have made, use, have used, import and sell and have sold products that are: 1) protected by University Project Intellectual Property and 2) are uniquely and directly related to Sponsor's Background Intellectual Property. A University Project Intellectual Property is uniquely and directly related to Sponsor's Background Intellectual Property when: a) Sponsor's Confidential Information is either disclosed in a claim or as part the patent prosecution process of the University Project Intellectual Property; b) the University Project Intellectual Property incorporates Sponsor's Confidential Information and/or Sponsor's Background Intellectual Property; or c) the use of Sponsor's Confidential Information is required to practice the invention.

11.7.2 If University and Sponsor do not enter into a license agreement within three (3) months after Sponsor's election to proceed under Sections 11.7.1.1 or 11.7.1.2, then Sponsor's rights under Sections 11.7.1.1 and 11.7.1.2 shall expire.

11.7.3 Within the 30 days of University's written disclosure under Section 11.4, Sponsor additionally may:

(1) elect to negotiate with CCTEC (with payment of a one-time fee), during the Option Period described below, an option to include in the NERF License secured in Section 11.7.1.1 or in the ERF License secured in Section 11.7.1.2 the additional right to grant sublicenses to third parties under certain sublicense revenue-sharing arrangements between Sponsor and University. The Option Period shall begin on the date Sponsor secures the NERF License or the ERF License as provided for in Sections 11.7.1.1 and 11.7.1.2, respectively, above and shall expire three (3) months thereafter; or

(2) elect a free, six (6) month option to negotiate with CCTEC an exclusive, fee- and royalty-bearing license for any University Project Intellectual Property, University's interest in Jointly Owned Project Intellectual Property, and related, necessary Background Intellectual Property not otherwise encumbered. The exclusive license may include the right to grant sublicenses in the negotiated field-of-use and territory and other customary contractual terms.

12. Termination for Convenience. This Agreement may be terminated at any time by either Party giving the other Party at least sixty (60) days written notice of termination. In the event of termination, University will be reimbursed for all expenses and non-cancellable commitments incurred in accordance with the terms of this Agreement prior to the date of termination. In no event shall the liability of Sponsor exceed the Project Cost.

13. Independent Contractor.

- 13.1. In the performance of the Project University shall be deemed to be and shall be an independent contractor and, as such, University shall not be entitled to any benefits applicable to employees of Sponsor.
- 13.2. Neither Party is authorized or empowered to act as an 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.

14. Insurance.

- 14.1. University warrants and represents that University has adequate liability insurance, such protection being applicable to officers, employees, and agents while acting within the scope of their employment by University. University has no liability protection for any other person.
- 14.2. Each Party hereby assumes any and all risks of personal injury and property damage attributable to the negligent acts of that Party and the officers, employees, and agents thereof.

15. Warranties. Sponsor acknowledges and agrees that the Project results are delivered "as is". University makes no warranties, express or implied, as to those results or any inventions created, invented or discovered under this Agreement or as to the merchantability or fitness for a particular purpose of the Project results or any such inventions. University shall not knowingly infringe the legally protected intellectual property rights of third parties. Sponsor expressly understands that University will not complete a comprehensive patent, trade secret, or copyright search of the results presented and that Sponsor should complete its own search.

16. Limitation on Liability/Assumption of Risk. University expressly disclaims and Sponsor expressly assumes all liability and shall defend and indemnify University against any third party claims, including under any theory of strict liability, for any direct, consequential or other damages that result from the use of or reliance upon the Project results or any such inventions by Sponsor, licensee, or any third party.

17. Export Control. Each Party acknowledges that certain information or materials provided by the other under this Agreement may be subject to U.S. export control laws and regulations (collectively, "Export Control Laws"), which include (without limitation) the International Traffic in Arms Regulations (ITAR, 22 CFR Chapter 1, Subchapter M, Parts 120-130), Export Administration Regulations (EAR, 15 CFR Chapter VII, Subchapter C, Parts 730-774), and regulations and orders administered by the Treasury Department's Office of Foreign Assets Control ("OFAC Regulations"). Each Party agrees to comply with all Export Control Laws. Neither Party shall disclose any information subject to Export Control Laws unless and until a plan for the transfer, use, dissemination and control of the information has been approved by both Parties. Sponsor expressly acknowledges and agrees that University shall conduct the Project as "fundamental research" for purposes of Export Control Laws compliance, such that the Project results qualify as "public domain" under ITAR Parts 120.10(a)(5) and 120.11 or as "publicly available" under EAR Parts 734.3(b)(3) and 734.8(a) and (b).

18. Force Majeure. University shall not be liable for any failure to perform as required by this Agreement to the extent such failure to perform is reasonably beyond University's control, or by reason of any of the following: labor disturbances or labor disputes of any kind, accidents, failure of any governmental approval required for full performance, civil disorders or commotions, acts of aggression, floods, earthquakes, acts of God, energy or other conservation measures, explosion, failure of utilities, mechanical breakdowns, material shortages, disease or other such occurrences.

19. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of New York.
20. Assignment. This Agreement shall not be assigned by either Party without the prior written consent of the other Party.
21. Agreement Modification. Any modification to the terms of this Agreement shall be valid only if the change is made in writing and approved by mutual agreement of **authorized representatives** of the Parties hereto.
22. Notices. 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, or communication at the address given below or such other address as may hereafter be designated by notice in writing.

If to Sponsor:

Contractual:

Technical:

Invoices:

If to University:

Contractual: Office of Sponsored Programs
373 Pine Tree Road
Cornell University
Ithaca, New York 14853-2820 USA
Phone:
Fax: 607-255-5058
Email:

Technical: [Click here to enter text.](#)

Payments: Cornell University
Sponsored Financial Services
P.O. Box 22
Ithaca, NY 14851-0022 USA

Intellectual Property:

Cornell Center for Technology Enterprise and Commercialization
395 Pine Tree Road, Suite 310
Ithaca NY 14850
Phone: 607-254-4698
Fax: 607-254-5454

23. Survivability. The obligations set forth in Articles 5.2, 8, 9, 11 and 15 shall survive the expiration or termination of this Agreement.

This Agreement is the complete agreement of Sponsor and University and supersedes all prior understandings regarding the Project.

IN WITNESS WHEREOF, the Parties have caused these presents to be executed in duplicate on the dates indicated below.

SPONSOR

CORNELL UNIVERSITY
OFFICE OF SPONSORED PROGRAMS

Date

Date