

**RESEARCH FUNDING AGREEMENT
BETWEEN
THE RECTOR AND VISITORS OF THE
UNIVERSITY OF VIRGINIA
AND**

THIS Agreement, entered into by and between The Rector and Visitors of the University of Virginia ("University"), a not for-profit Virginia educational institution of the Commonwealth of Virginia located at 1001 North Emmet Street, Charlottesville, Virginia 22903, and _____ ("Sponsor"), a for-profit _____ [state] corporation with its principal place of business at _____, is for the purpose as hereinafter set forth.

WHEREAS the research program contemplated by this Agreement is of mutual interest and benefit to University and Sponsor, and will further University's instructional and research objectives in a manner consistent with its status as an educational institution; and

WHEREAS University has agreed to use its personnel and facilities in the performance of the research project;

THEREFORE, the parties mutually agree as follows:

1. STATEMENT OF WORK: University agrees to use reasonable efforts to accomplish the research described in the statement of work incorporated herein as ATTACHMENT A ("Research"). Any changes to the Research must be made by mutual agreement in writing.
2. INDEPENDENT CONTRACTORS: With respect to its relation to Sponsor under this Agreement, University is an independent contractor and shall be free to exercise its discretion and independent judgment as to the method and means of performing the Research. University and its employees and students shall not, by virtue of this Agreement, be employees of Sponsor and, accordingly, shall not be entitled to any benefits or privileges provided by Sponsor to its employees.
3. TECHNICAL SUPERVISION: University's Project Director for the Research shall be _____, and University shall not change its Project Director without prior written approval of Sponsor. Sponsor's Project Director shall be _____, and Sponsor shall not change its Project Director without written notice to University.
4. PERIOD OF PERFORMANCE: Performance under this Agreement shall begin _____ and shall not extend beyond the estimated completion date of _____ ("Term") unless the Term is further extended for additional periods under terms as may be mutually agreed upon in writing. Sponsor agrees to give University notice in writing of its intention to continue the Research not less than sixty (60) days prior to the completion date specified herein.
5. SCHEDULE FOR REPORTS AND/OR DELIVERABLES: The schedule for delivery of reports or deliverables ("Research Deliverables") shall be as listed in ATTACHMENT A. Any changes to this schedule must be made by mutual agreement in writing.
6. COST AND PAYMENT:
 - (a) This is a fixed-price contract. Sponsor shall pay University for the performance of the Research in the amount of \$_____. The parties estimate that this amount is sufficient to complete the Research. If Sponsor requests a change in the Research, University may submit to Sponsor a revised budget requesting additional funds, and Sponsor shall respond to the request within thirty (30) days of receipt; provided that University shall have no obligation to proceed until any changes to the Research and/or the budget have been incorporated into this Agreement by written amendment pursuant to ARTICLE

19. Sponsor agrees that University has the authority to rebudget costs at the discretion of the University, provided that any rebudgeting shall be consistent with the goals of the Research. Sponsor is not entitled to any refund of funds not spent if all Research Deliverables have been met. The University shall have no obligation to continue the Research once the available funds have been expended.
- (b) Sponsor shall pay University for the total cost specified in SUBARTICLE (a) above within thirty (30) days of receipt of University's invoice. Checks shall be made payable to the University of Virginia and mailed to: Office of Sponsored Programs, P.O. Box 400195, Charlottesville, Virginia 22904-4195. The payment must reference the Research project title and University Principal Investigator for purposes of identification.
 - (c) Should a payment become sixty (60) days past due, University reserves the right to suspend performance of this Agreement until such payment is received.
7. INTELLECTUAL PROPERTY, DATA AND OTHER WORK PRODUCTS: The basic policy of the University, and one of the purposes of this Agreement, is to ensure that the results of sponsored research are applied in a manner which best serves the interests of the University and the public while also protecting the interests of the Sponsor. In furtherance of this purpose and policy, the following provisions are mutually agreed to:
- (a) For avoidance of doubt, ownership and other rights in and to pre-existing intellectual property of the parties shall not be affected by this Agreement or its performance; except that University shall have a limited right to utilize Sponsor's pre-existing intellectual property as may be reasonably necessary for performing the Research.
 - (b) University shall own the entire right, title and interest, including all patents, copyrights and other intellectual property rights, in and to all inventions, copyrighted materials, software, data or other work product conceived or developed in the performance of this Agreement ("Intellectual Property") by the employees of University ("University IP"). Sponsor shall own the entire right, title and interest, in and to all Intellectual Property conceived or developed by the employees of Sponsor ("Sponsor IP"). Intellectual Property that is jointly conceived or developed by Sponsor and University shall be jointly owned ("Joint IP").
 - (c) University will provide to Sponsor a confidential written disclosure of any University IP ("Disclosure").
 - (d) University may in its discretion and at its expense file and prosecute all patent applications and copyrights for University IP or Joint IP. Any decision to pursue protection of Joint IP will be made in consultation with Sponsor. If University elects not to file for protection of Joint IP, University shall provide written notice of its intent to Sponsor, and Sponsor may elect to file for protection at its own expense.
 - (e) Within one hundred and eighty (180) days from the filing of a provisional or other initial U.S. patent application or application for copyright registration for University IP or Joint IP, Sponsor and University shall mutually agree upon those foreign countries in which patent or copyright applications should be filed. The cost of filing and prosecuting any such foreign applications, including government fees, attorney's fees and translation fees,, shall be borne by Sponsor. Rights to such foreign countries shall be included in any license between University and Sponsor. With respect to a foreign country, Sponsor may discontinue assuming the costs of such filing and prosecution costs upon sixty (60) days written notice to University, and University may thereafter elect to assume these costs. Upon such discontinuance by Sponsor, the rights in those foreign countries shall be removed from any license between University and Sponsor, and University shall retain all rights to these patents and copyrights, including the right to license third parties without any obligation to Sponsor.

- (f) University hereby grants to Sponsor a non-exclusive, non-transferable, royalty-free license to University IP for internal research and development purposes.
 - (g) In addition, University hereby grants to Sponsor a first option to negotiate with University for an exclusive or non-exclusive license to any University IP, or for an exclusive license to University's share of any Joint IP. Sponsor may exercise the option by sending written notice to University within ninety (90) days following Disclosure. Upon exercise of the option, the parties shall negotiate in good faith an acceptable license agreement to include the following basic terms: (i) a mutually agreeable royalty rate; (ii) mutually agreeable minimum royalties or other forms of due diligence; and (iii) the right to sublicense. The license shall also provide that University shall, at no additional cost to Sponsor except for relevant travel costs, provide Sponsor with sufficient technical assistance to ensure transfer of the technology from University to Sponsor. If the parties fail to exercise its option within the 90-day option period, or if, after Sponsor exercises its option, the parties fail to execute a license agreement with respect to the technology covered by the Disclosure within six (6) months from the date the option is exercised, the option shall expire and University shall be free to negotiate with third parties without any obligation to Sponsor.
 - (h) Sponsor hereby acknowledges that under applicable state law the Intellectual Property Rights and corresponding obligations of the University may be assigned to the University of Virginia Patent Foundation at the discretion of the University, in which instance the Patent Foundation will discharge the University's Intellectual Property responsibilities under this ARTICLE 7.
8. EXPORT CONTROLS: It is understood that University 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 Sponsor that Sponsor will not re-export data or commodities to certain foreign countries without prior approval of the cognizant government agency. While University agrees to cooperate in securing any license which the cognizant agency deems necessary in connection with this Agreement, University cannot guarantee that such licenses will be granted.
9. PROPRIETARY INFORMATION: By "Proprietary Information," the parties mean information of a confidential or proprietary nature provided by Sponsor to University in connection with the Research. Except as provided in the next sentence, University shall use reasonable efforts not to disclose, in whole or in part, any Proprietary Information to any third party either during the Term or for a period of three (3) years following termination of this Agreement; however, Sponsor acknowledges that University, as a public educational institution, does not have the financial resources needed to sustain liability for disclosure of confidential information and cannot guarantee confidentiality. University shall have no obligation to prevent the disclosure, in whole or in part, of Proprietary Information that is:
- (a) Not identified as Proprietary Information in writing and appropriately marked at the time it is disclosed by Sponsor to University;
 - (b) Already known to University at the time it is disclosed by Sponsor to University;
 - (c) Known to a third party without the wrongful act or breach of this Agreement by University;
 - (d) Rightfully received by University from a third party on a non-confidential basis;
 - (e) Approved for release by written authorization of Sponsor;
 - (f) Developed independently by University without the aid or benefit of Proprietary Information disclosed to University by Sponsor; or
 - (g) Required by law, regulation, subpoena or government or judicial order to be disclosed.
10. PUBLICATION RIGHTS: University and its investigators shall be free to publish papers dealing with the results of the Research sponsored under this Agreement, except that such publication shall not disclose any of Sponsor's Proprietary Information (as that term is defined in ARTICLE 9) without the written consent of Sponsor. University further agrees to send Sponsor a copy of any such proposed publication thirty (30)

days prior to submission for publication; if no Sponsor response is received within twenty-five (25) days, the Sponsor's consent to publication shall be presumed. University, on request of Sponsor, shall delete any Proprietary Information in the proposed publication. Delays to permit patent applications to be filed shall be considered by University when applicable. No delay, however, will be imposed on the filing of any student thesis or dissertation. Any papers published shall give appropriate recognition to the support received from Sponsor.

11. **USE OF SPONSOR'S OR UNIVERSITY'S NAME:** Sponsor agrees that it shall not use the name of University in any advertising or publicity material or make any form of representation or statement in relation to the Research which would constitute an express or implied endorsement by University of any commercial product or service, and that it shall not authorize others to do so, without first having obtained written permission from University. Except as provided in ARTICLE 10, University agrees to be governed by the terms of this ARTICLE in the event that it wishes to make use of Sponsor's name.
12. **EQUIPMENT:** Unless otherwise stipulated, title to all equipment and supplies purchased in the performance of the Research shall vest in University. Any equipment provided by Sponsor to University for the performance of this work shall remain the property of Sponsor, and Sponsor agrees to retrieve such equipment at its own risk and expense within sixty (60) days of termination of this Agreement, or title such equipment shall automatically transfer to University without need for further action by Sponsor or University.
13. **LIABILITY AND INSURANCE:** Each party shall be acting as independent contractors in the performance of this work, and shall be responsible for the payment of claims for loss, personal injury, death, property damage, or otherwise arising out of any act or omission of their respective employees or agents in connection with the performance of this work for which they may be held liable under applicable law. Each party shall maintain at its sole expense adequate insurance or self-insurance coverage to satisfy its obligations under this Agreement. Nothing contained herein shall be deemed an express or implied waiver of the sovereign immunity of University or the Commonwealth of Virginia.
14. **NO WARRANTIES:** THIS RESEARCH IS EXPERIMENTAL IN NATURE. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, UNIVERSITY MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED WITH REGARD TO THE RESEARCH. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT SPONSOR USE OF THE RESEARCH DELIVERABLES OR INTELLECTUAL PROPERTY WILL NOT INFRINGE ANY THIRD PARTY PATENT, COPYRIGHT, TRADEMARK, OR OTHER THIRD PARTY RIGHTS. UNIVERSITY MAKES NO REPRESENTATION AS TO THE USEFULNESS OF RESEARCH DELIVERABLES OR INTELLECTUAL PROPERTY. IF SPONSOR CHOOSES TO EXPLOIT RESEARCH DELIVERABLES OR INTELLECTUAL PROPERTY IN ANY MANNER WHATSOEVER, SPONSOR DOES SO AT ITS OWN RISK.
15. **TERMINATION:**
 - (a) This Agreement may be terminated:
 - i. By either party with or without cause upon not less than sixty (60) days written notice to the other party; provided that in the event of termination by Sponsor, if any University student is supported under this Agreement, Sponsor shall remain responsible for the payment of such students' costs through the end of the current academic semester; or
 - ii. By University immediately upon written notice to Sponsor upon failure of Sponsor to cure a material breach of this Agreement, which includes but is not limited to failure to make payments hereunder, within thirty (30) days after a written demand for performance. In the event of such termination: (i) University shall have no obligation to negotiate license agreements contemplated

under this Agreement; and (ii) if any University student is supported under this Agreement, Sponsor shall remain responsible for the payment of such students' costs through the end of the current academic semester.

(b) Upon termination prior to completion of the Research, Sponsor shall be responsible for payment of all costs incurred by University in the performance of the Agreement prior to termination, and for University's reasonable non-cancelable commitments, not to exceed the total amount authorized in ARTICLE 6. University shall submit to Sponsor a written accounting of all costs for which Sponsor is responsible and of all funds received from Sponsor under this Agreement. If the Sponsor funds then received exceed costs incurred through the date of termination, University shall issue a check to Sponsor for the difference; if costs incurred through the date of termination exceed the Sponsor funds then received, University shall provide an invoice for the difference and Sponsor shall pay same within thirty (30) days of receipt.

16. RECORDS: University agrees to retain all books, financial records and other documents relative to this Agreement for three (3) years following completion or termination of the Agreement.

17. NOTICES: Any notice required to be given under this Agreement, and any invoice, payment, or communication associated with the performance of this Agreement shall be deemed made, if delivered either to the address given below or to such other address as may hereafter be specified in writing by the Parties:

If to Sponsor:

Phone: _____
Fax: _____
Email: _____

If to University:

Michael G. Glasgow, Jr.
Office of Sponsored Programs
University of Virginia
P.O. Box 400195
Charlottesville, VA 22904-4195
Phone: 434-924-4274
Fax: 434-982-3096
Email: mgg5e@virginia.edu

If to Sponsor on technical matters:

Phone: _____
Fax: _____
Email: _____

If to University on technical matters:

Phone: _____
Fax: _____
Email: _____

Notice shall be deemed to have been made, if by hand upon the date so delivered; if by registered or certified mail, postage prepaid and return receipt requested, upon third day after deposit in the United States mail; if by express courier service on the date actually delivered; and if by facsimile upon receipt.

18. UNAUTHORIZED REPRESENTATIONS: University and Sponsor shall incur no obligations pertaining to this Agreement as a result of any promise, representation, or statement by anyone without the actual authority to do so. The Director of the Office of Sponsored Programs is the authorized authority for University and Sponsor's signatory of this document is the responsible authority for Sponsor.

19. MODIFICATIONS AND NEGOTIATIONS: No waiver, alteration or modification of the provisions in this Agreement shall be binding unless in writing and mutually agreed upon. Any modifications or additions to this Agreement must be negotiated and approved through University's **Office of Sponsored Programs, P.O. Box 400195, Charlottesville, Va. 22904-4195** (phone: 434-924-4270; fax: 434-982-

3096). This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. This Agreement may be executed by Facsimile. The parties agree that Facsimile copies of signatures have the same effect as original signatures.

20. **APPLICABLE LAWS:** This Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia and applicable Federal laws, rules and regulations. Any legal action involving this Agreement or the Research will be adjudicated in the Commonwealth of Virginia.
21. **CLAIMS:** University and Sponsor shall not make any claims against each other for a failure to observe any condition herein made binding in the event that such condition is contrary to or inconsistent with any law, rule or regulation of the United States or the Commonwealth of Virginia.
22. **FORCE MAJEURE:** Neither party will be liable for any failure to perform as required by this Agreement if the failure to perform is caused by circumstances reasonably beyond its control, such as 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, acts of God, energy or other conservation measures, explosions, failure of utilities, mechanical breakdowns, material shortages, disease, thefts, or other such occurrences.
23. **SEVERABILITY:** Each paragraph and provision of this Agreement is severable from the entire Agreement; and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.
24. **ORDER OF PRECEDENCE:** In the event of any inconsistency between the terms of this Agreement and any documents attached hereto or incorporated herein, the terms of this Agreement will prevail.
25. **HEADINGS AND TITLES:** All titles and article headings contained in this Agreement are inserted only as a matter of convenience and reference. They do not define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.
26. **COLLECTION COSTS:** In the event it becomes necessary for University to commence collection proceedings or retain an attorney to enforce any of the terms of this Agreement, Sponsor shall pay attorneys' fees and the costs of collection incurred by University.
27. **ASSIGNMENT:** Except as provided in ARTICLE 7, neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assigned by University or Sponsor without the prior written consent of the other.
28. **WAIVER:** No failure or successive failures on the part of either party to enforce any covenant or agreement, and no waiver or successive waivers of any condition of this Agreement, shall operate as a discharge of such covenant, agreement, or condition, or render the same invalid, or impair the right of either party to enforce the same in the event of any subsequent breach or breaches. No failure on the part of either party to this Agreement to exercise, and no delay in exercising, any right, power, or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right.
29. **RIGHTS AND OBLIGATIONS:** Sponsor agrees to comply, and do all things necessary for University to comply, with all applicable Federal, State and local laws, regulations and ordinances, insofar as they relate to the Research.
30. **ENTIRE AGREEMENT:** This Agreement, together with any attachments hereto and any amendment or modification that may hereafter be agreed to by the parties in accordance with ARTICLE 19, constitute the entire understanding between the parties with respect to the subject-matter hereof and supersede any and all prior understandings and agreements, oral or written, relating hereto.

[Remainder of page intentionally left blank.]

IN WITNESS THEREOF, the parties have executed this Agreement by their duly authorized officers:

**THE RECTOR AND VISITORS OF
THE UNIVERSITY OF VIRGINIA**

By: _____
Gerald J. Kane
Director of Grants and Contracts
Office of Sponsored Programs

Date: _____

I have read and understand the terms and
conditions contained herein:

By: _____
Project Director, University

Date: _____

By: _____
Administrative Official Authorized to
Bind Sponsor

Date: _____

I have read and understand the terms and
conditions contained herein:

By: _____
Project Director, Sponsor

Date: _____

*[This Agreement, if unaltered, has been approved for use by the University of Virginia
Office of Sponsored Programs on June 6th, 2003, by the University's Office of General Counsel and Office of Risk
Management.]*

ATTACHMENT A

Proposal Title: _____

Principal Investigator: _____

Proposal Number: _____ Date: _____

Statement of work and schedule of reports and/or deliverables, if appropriate.