

SPONSORED RESEARCH AGREEMENT

This Sponsored Research Agreement (the “Agreement”) made and effective as of (the “Effective Date”) is entered into by and between (hereinafter, “Sponsor”) with a principal place of business at and The University of Toledo, a public institution of higher education of the State of Ohio (hereinafter, “University”) with a principal place of business at 2801 W. Bancroft St., Toledo, Ohio 43606-3390, individually, a “Party” and collectively, the “Parties”.

WHEREAS, the project contemplated by this Agreement is of mutual interest and benefit to Sponsor and to University, will further the instructional and research objectives of University in a manner consistent with its status as a non-profit, tax-exempt, education institution, and may derive benefits for both Sponsor and University through inventions, improvements, and/or discoveries.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

1. Definitions

- 1.1. “Intellectual Property” means and includes all technical information, inventions, trade secrets, patents, copyrights, trademarks, research, developments, discoveries, software, know-how, methods, techniques, formulae, data, processes, specimens, biological materials, software, designs, drawings, sketches and other proprietary ideas, whether or not patentable or copyrightable, developed during the Sponsored Project.
- 1.2. “Joint Intellectual Property” means individually and collectively all Intellectual Property that is conceived and/or made jointly by one or more employees of University and by one or more employees of Sponsor in performance of the Sponsored Project.
- 1.3. “Principal Investigator” or “PI” is the person, designated by University, and accepted by Sponsor, who is directly responsible for executing, directing, overseeing and reporting the results of the Sponsored Project under this Agreement.
- 1.4. “Sponsor Intellectual Property” means individually and collectively all Intellectual Property conceived of and/or made solely by the employees of Sponsor without the use of University facilities or equipment in performance of the Sponsored Project.
- 1.5. “Sponsored Project” is a program to which the Parties have mutually agreed in writing using the form which is attached hereto as Exhibit A.
- 1.6. “University Intellectual Property” means individually and collectively all Intellectual

Property that is conceived and/or made solely by one or more employees of University in performance of the Sponsored Project. It is understood and agreed by the Parties that any person who is a University employee, faculty member or student as defined in Ohio R.C. 3345.14 will be considered to be a University employee herein.

2. Term

- 2.1. This Agreement is effective as of the Effective Date and will extend for a period of _____ year(s) (the “Term”), unless terminated earlier by either Party pursuant to Article 10 of this Agreement.

3. Sponsored Project

- 3.1. University will commence the Sponsored Project promptly after the effective date of this Agreement and upon payment by Sponsor of any funds owed. University will use reasonable efforts to conduct such Sponsored Project in accordance with the terms and conditions of this Agreement. Sponsor acknowledges that University and the PI have the freedom to conduct and supervise the Sponsored Project in a manner consistent with the University’s research mission. This Agreement will not be construed to limit the freedom of individuals participating in the Sponsored Project to engage in any other research.
- 3.2. During the Term of this Agreement, any changes in the direction or scope of the Sponsored Project must be in writing as an amendment and agreed to by mutual consent of the Parties by their authorized representatives.
- 3.3. If the services of the PI of the Sponsored Project become unavailable to University for any reason, University may designate another member of its faculty, who is acceptable to both Parties, to serve as the PI of such Sponsored Project. This acceptance is not to be unreasonably withheld. If a substitute PI is not designated within sixty (60) days after the original PI ceases his or her services under this Agreement, either Party may terminate this Agreement.

4. Costs

- 4.1. Sponsor shall pay to University the amount of _____ U.S. Dollars and _____ Cents (\$ _____).

5. Payments

- 5.1. Sponsor agrees that all payments for these experimental/technical services will be made by Sponsor to University net 30 days from date of invoice.

Invoices should be sent to:

Name:

Address:

Phone:

E-mail:

Payment to University may be made by check or ACH transfer:

Checks payable to “The University of Toledo” should be sent to:
University Accounts Receivable
The University of Toledo
P.O. Box #72327
Cleveland, OH 44192

ACH/EFT payments to:
Account Name: University of Toledo – Investment Account
Account # 01472257655
ABA routing number: 041215016

6. Publications

- 6.1. Sponsor acknowledges that the results of the Sponsored Project must be publishable and agrees that University researchers engaged in the Sponsored Project are permitted to present at symposia, national, or regional professional meetings, and to publish in journals, theses or dissertations, or otherwise of their own choosing, methods and results of the Sponsored Project, provided, however, that Sponsor will have been furnished copies of any proposed publication or presentation in advance of the submission of such proposed publication or presentation to a journal, editor, or other third party. Sponsor will have thirty (30) days after receipt of said copies to object to such proposed presentation or proposed publication because it contains patentable subject matter that needs protection. In the event that Sponsor makes such objection, University shall refrain from making such publication or presentation for a maximum of sixty (60) days from the date of receipt of such objection in order for University to file patent application(s) with the United States Patent and Trademark Office and/or foreign patent office(s) directed to the patentable subject matter contained in the proposed publication or presentation.

7. Intellectual Property

- 7.1. All rights and title to University Intellectual Property will belong to University. Sponsor Intellectual Property will belong to Sponsor. Joint Intellectual Property will belong jointly to University and Sponsor. Both University and Joint Intellectual Property will be subject to the terms and conditions of this Agreement.
- 7.2. University will notify Sponsor of any University Intellectual Property or Joint Intellectual Property conceived and/or made during the term of the Sponsored Project. If Sponsor directs that a patent application or application for other intellectual property protection be filed, University shall promptly prepare, file and prosecute such U.S. and foreign application in University’s name if for University Intellectual Property, and in both University’s and Sponsor’s names if for Joint Intellectual Property. Sponsor shall bear all costs incurred in connection

with such preparation, filing, prosecution, and maintenance of U.S. and foreign application(s). Sponsor shall cooperate with University to assure that such application(s) will cover, to the best of Sponsor's knowledge, all items of commercial interest and importance. While University is responsible for making decisions regarding scope and content of application(s) to be filed and prosecution thereof, Sponsor will be given an opportunity to review and provide input thereto. At Sponsor's request, University will keep Sponsor advised as to developments with respect to such application(s) and will use best efforts to supply to Sponsor copies of papers received and filed in connection with the prosecution thereof in sufficient time for Sponsor to comment thereon.

- 7.3. If Sponsor elects not to seek protection pursuant to Article 7.2, or decides to discontinue the financial support of the prosecution or maintenance of the protection, or elects not to exercise its option pursuant to Article 8, and thereby forego its rights thereto, University is free to file or continue prosecution or maintain any such application(s), and to maintain any protection issuing thereon in the U.S. and in any foreign country at University's sole expense and for its own purposes.

8. Grant of Rights

- 8.1. University shall grant to Sponsor a first option to negotiate to acquire a royalty-bearing license to practice University Intellectual Property and/or Joint Intellectual Property and to make, have made, use and sell products using or incorporating University Intellectual Property and/or Joint Intellectual Property. Any license agreement will not include the right to sublicense the University Intellectual Property and/or Joint Intellectual Property without the prior written consent and approval of University. However, University will retain the right to make and use the University Intellectual Property and/or Joint Intellectual Property for educational and research purposes only.
- 8.2. University and Sponsor will negotiate in good faith to determine the terms of a license agreement. If University and Sponsor fail to execute a license agreement within six (6) months following the first disclosure of the University Intellectual Property and/or Joint Intellectual Property to Sponsor, then University is free to license the University Intellectual Property and/or Joint Intellectual Property to any party upon such terms as University deems appropriate and without further obligation to Sponsor.

9. Confidential Information

- 9.1. During the Term of this Agreement, University and Institution contemplate that confidential and/or proprietary information owned or controlled by them, either individually or collectively as the case may be, relating to the Sponsored Project will be disclosed to each other.

- 9.2. Confidential Information is defined as any information disclosed between the Parties, including but not limited to, scientific knowledge, know-how, processes, inventions, techniques, formulae, products, business operations, royalty rates, licensing terms, business plans, marketing plans, customer requirements, designs, sketches, photographs, drawings, specifications, reports, any correspondence between the Parties, studies, findings, data, plans or other records, specimens, biological materials, and/or software.
- 9.3. In order for Confidential Information disclosed by one party to the other to be protected in accordance with this Agreement it must be clearly identified as Confidential Information at the time of its disclosure. If Confidential Information is disclosed either orally or visually, at the request of Recipient, Discloser will put such information in a written statement, and such written statement shall be delivered to Recipient within thirty (30) days of such oral or visual disclosure.
- 9.4. Each Party will protect the Confidential Information with the same degree of care as it applies to protect its own proprietary or confidential information. Internal dissemination of the Confidential Information by a Party shall be limited to employees whose duties clearly justify the need to know the Confidential Information and then only after a review of this Agreement and on the basis of a clear understanding by the employees of their obligation to maintain the proprietary or confidential status of the Confidential Information.
- 9.5. The obligation with respect to the protection and handling of Confidential Information is not applicable to the following:
 - 9.5.1. Information that is available to the general public at the time of disclosure; or
 - 9.5.2. Information that becomes available to the general public through no fault of the Parties; or
 - 9.5.3. Information that either Party can demonstrate by written documentation was in its possession before receipt of the Confidential Information from the other Party; or
 - 9.5.4. Information that the Parties can demonstrate by written documentation was disclosed to the Parties by a third party who has the lawful right to disclose such information; or
 - 9.5.5. Information that is required to be disclosed to comply with a court order, applicable law or government regulation, including the Ohio Public Records Act.
 - 9.5.5.1. In the event University receives a public records request for a record that Company has provided to University pursuant to this Agreement and Company has designated Confidential Information, University shall promptly notify Company of the request. Thereafter, Company shall have sole responsibility for initiating or defending such legal action as it deems necessary to prevent public disclosure of such

information, and shall pay all costs and expenses associated therewith.

10. Termination

- 10.1. Termination of Agreement with Cause. In the event that either Party commits a material breach of its obligations under this Agreement and fails to cure that breach within thirty (30) days after receiving written notice thereof, the other Party may terminate this Agreement immediately upon written notice to the Party in breach.
- 10.2. Termination of Agreement without Cause. Either Party may terminate this Agreement without cause upon sixty (60) days prior written notice. In the event Sponsor terminates this Agreement, Sponsor shall pay University for all financial obligations which are non-cancelable and honor stipend and/or tuition obligations to Graduate Students and/or Post-Doctoral employees through the remainder of the current semester/quarter.
- 10.3. Termination of this Agreement by a Party for any reason will not affect the rights and obligations of the Parties accrued prior to the effective date of termination of this Agreement. Notwithstanding the foregoing, Sponsor's rights under Articles 6, 7 and 8 will terminate upon early termination of this Agreement at Sponsor's request or as a result of Sponsor's unremedied default or breach of this Agreement.
- 10.4. Anything herein to the contrary notwithstanding, in the event of early termination of this Agreement by Sponsor, Sponsor shall pay all costs accrued by University as of the date of termination, including non-cancelable obligations, which will include all non-cancelable contracts and fellowships or post-doctoral associate appointments issued pursuant to the Sponsored Project, incurred prior to the effective date of termination. After termination, any obligation of Sponsor for fellowships or postdoctoral associates will end no later than the end of University's academic year following termination.

11. Disclaimer of Warranties; Indemnification

- 11.1. **UNIVERSITY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES WITH RESPECT TO THE CONDUCT, COMPLETION, SUCCESS OR PARTICULAR RESULTS OF THE SPONSORED PROJECT, OR THE CONDITION OF ANY INVENTION(S) OR PRODUCT(S), WHETHER TANGIBLE OR INTANGIBLE, CONCEIVED, DISCOVERED, OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE SPONSORED PROJECT OR ANY SUCH INVENTION OR PRODUCT, OR ANY ACTIVITY PERFORMED OR DELIVERABLE PROVIDED HEREUNDER SHALL BE FREE OF INFRINGEMENT OF THIRD-**

PARTY INTELLECTUAL PROPERTY RIGHTS OR OTHER RIGHTS. UNIVERSITY SHALL NOT BE LIABLE FOR ANY DIRECT, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES SUFFERED BY SPONSOR OR ANY OTHER PERSON RESULTING FROM THE SPONSORED PROJECT OR THE USE OF ANY SUCH INVENTION OR PRODUCT.

- 11.2. Sponsor agrees to defend, indemnify and hold harmless University, the PI and any of University faculty, students, volunteers, employees, trustees, officers, affiliates and agents (herein referred to collectively as the “Indemnified Persons”) from and against any and all liability, claims, lawsuits, losses, damages, costs or expenses (including documented attorney’s fees), which the Indemnified Persons may hereafter incur, suffer or be required to pay as a result of Sponsor’s use of the results of the Sponsored Project or any Intellectual Property or as a result of any breach of this Agreement or any wrongful act or omission of Sponsor, its employees, affiliates, contractors, licensees or agents. University shall notify Sponsor upon learning of the initiation or threatened initiation of any such liability, claims, lawsuits, losses, damages, costs and expenses and University will cooperate with Sponsor in every proper way in the defense or settlement thereof at Sponsor’s request and expense.

12. General Provisions

- 12.1. This Agreement and the rights of the Parties hereunder will be governed, construed, and interpreted in accordance with the laws of the State of Ohio. Any action brought to enforce this Agreement will be brought in Ohio.
- 12.2. In the event of any conflict in terms between documents relating to this Agreement, exhibits attached hereto, or grants hereunder, the terms of this Agreement will govern, except to the extent that such other document expressly contemplates superseding the terms of this Agreement and such other document is executed by authorized representatives of both Parties.
- 12.3. Sponsor acknowledges that University may use the services of employees, visiting professionals, and students who are not U.S. citizens or permanent resident aliens. Sponsor will comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR) (22 CFR §§ 120-130) and Export Administration Regulations (EAR) (15 CFR § 730-774). Sponsor will not disclose or provide to any employee or agent of the University any information subject to the licensing provisions of the ITAR or EAR without the prior written approval of the University, which may be requested by contacting exportcompliance@utoledo.edu.
- 12.4. Sponsor will not use the name of University, nor of any member of University's staff, in any publicity, advertising, or news release without the prior written approval of an authorized representative of University. University will not use the name of Sponsor, nor any employee of Sponsor, in any publicity without the

prior written approval of Sponsor; provided however, University may make available to the public, the title and description of the project, the name of the Principal Investigator, and the amount and source of funding provided for such project.

- 12.5. In the event that Sponsor is a party to any other agreement with University, a default by Sponsor of this or any other agreement will be deemed a default under all other agreements with University.
- 12.6. University is not responsible to Sponsor for failure to perform any of the obligations imposed by this Agreement, provided such failure is the result of 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 the reasonable control of University.
- 12.7. Neither Party may assign this Agreement without the prior written consent of the other Party.
- 12.8. This Agreement may be executed in one or more counterparts including signing a facsimile or scanned electronic version. Each counterpart will be deemed an original and all counterparts together will constitute one and the same instrument.
- 12.9. Any notices under this Agreement must be in writing and delivered by first-class mail, or e-mail addressed to the Parties as follows:

Administrative for University:

Anne Izzi
Director of Sponsored Programs
2801 W. Bancroft St., MS 218
Toledo, Ohio 43606-3390
419-530-6226
Anne.izzi@utoledo.edu

Technical For University:

Name
Address
Phone
Email

Administrative for Sponsor:

Name
Address
Phone
Email

Technical For Sponsor:

Name
Address
Phone
Email

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

THE UNIVERSITY OF TOLEDO

By: _____

By: _____

Frank J. Calzonetti, PhD
Vice President for Research

Date: _____ Date: _____

Exhibit A

Scope of Work

1. Title of Research Project:
2. Specific Work to be Performed:
3. Principal Investigator/Researchers:
4. Research Project Schedule:
5. Research Project Reports and Other Deliverables: