



Northeastern University

UNIVERSITY - INDUSTRY SPONSORED RESEARCH AGREEMENT

THIS SPONSORED RESEARCH AGREEMENT (the "Agreement"), effective this ___ day of ___, 20__ ("Effective Date") is made by and between Northeastern University, a non-profit institution of higher education, being duly organized under the laws of the Commonwealth of Massachusetts, and having a principal place of business at 360 Huntington Avenue, Boston, Massachusetts 02115 (hereinafter referred to as "University"), and

with a principal place of business at
hereinafter referred to as ("Sponsor").

RECITALS:

1. The research program contemplated by this Agreement is of mutual interest and benefit to the University and Sponsor, will further the multiple missions of University (Instruction, Research, and Public Service) in a manner consistent with its status as a non-profit, tax-exempt, education institution, and may benefit the Sponsor, the University, and society by the advancement of science and engineering through discovery.
2. The University and Sponsor desire to enter into an agreement to conduct research to accomplish the above stated goals;

NOW, THEREFORE, in consideration of the foregoing premises and of mutual covenants and promises set forth below, the parties agree to the following:

1. Definitions

As used herein, the following terms shall have the following meanings:

- 1.1. "Research Project" shall mean the description of the project as described in Exhibit 1 hereof.
- 1.2. "Term of Research Project" is _____, ___ through _____, ___
- 1.3. "Project Intellectual Property" means inventions or discoveries first made during and as a direct result of the performance of the Research Project together with any resulting patents on which a University employee, graduate student, post-doctoral fellow, researcher or contractor is or should be a named inventor under the standards of U.S. patent laws.
- 1.4. "Proprietary Information" means any disclosed written information and/or data marked as proprietary, or any disclosed non-written information and/or data, which the disclosing party identifies at the time of disclosure as proprietary, and reduces to writing and transmits to the receiving party within twenty (20) days of the

non-written disclosure. Proprietary Information shall not include any disclosed written information or data developed as part of this Research Project, except as provided in Section 6.

2. Research Work

2.1. The Research Project shall be conducted under the direction of
("Principal Investigator"). Sponsor's Technical/Scientific Representative shall be
, or such other representative as Sponsor may subsequently
designate in writing.

2.2. University shall use reasonable efforts consistent with the missions of the University to perform the Research Project in accordance with the terms and conditions of this Agreement. The manner of performance of the Research Project shall be determined solely by the Principal Investigator, and the University does not guarantee specific results.

3. Reports

3.1. The Principal Investigator shall furnish Sponsor reports summarizing progress on the Research Project as stated in Exhibit 1. The Principal Investigator shall prepare and submit, on behalf of the University, a final report to the Sponsor within sixty (60) days of conclusion of the Term of the Research Project. All such reports shall be deemed University Proprietary Information subject to the confidentiality obligations of Section 7.

4. Compensation

4.1. In consideration of University's agreement to undertake the Research Project, Sponsor shall pay University a total of _____ dollars (\$) for the Term of Research Project. This obligation is independent of and is not contingent upon Sponsor's execution of a purchase order. Payment shall be paid, in advance, to University in installments as set forth in the following schedule of amounts and due dates:

- a. _____ dollars (\$) upon execution of the Agreement;
- b. _____ dollars (\$) after the Effective Date of the Agreement; and
- c. _____ dollars (\$) within thirty (30) days of receipt of the Principal Investigator's final report.

4.2. Payments made in compensation for the Research Project shall be made payable to "Northeastern University" with reference to the Principal Investigator and shall be sent to:

Via Mail or Courier:

Northeastern University,
Attn: Director, Research Finance
360 Huntington Avenue
460-177
Boston, MA 02115, USA

Via Wire Transfer: Bank

of America
100 Federal Street
Boston, MA 02110
Routing No.: 011000138
Acct. No.: 009373819714

4.3. University shall retain title to any equipment purchased with funds provided by Sponsor under this Agreement.

4.4. In the event of early termination of this Agreement pursuant to Section 9 hereof, Sponsor shall pay all reasonable costs and non-cancelable obligations incurred by University as of the date of termination.

5. Publicity

5.1. Neither party will use the name of the other party, or any name of the other party's employee(s), in any publicity, advertising, or news release without the prior written approval of an authorized representative of that party. University shall, however, acknowledge Sponsor's support for the investigations being pursued under this Agreement. In any such statements, the relationship of the parties shall be accurately and appropriately described.

5.2. To seek authorization to use the University name, Sponsor shall contact the University's Office of Marketing and Communications at (617) 373-5453 and reference this agreement.

6. Publication

6.1. The parties recognize the need to balance the Sponsor's corporate responsibility to protect its Intellectual Property and Proprietary Information with the University's public responsibility to freely disseminate scientific findings for the advancement of knowledge. University recognizes that the public dissemination of information based upon the research performed under this Agreement shall not contain Sponsor's Proprietary Information without its approval. Similarly, Sponsor recognizes that the University must have the right to freely publish the scientific results of the Research Project and subject to Sections 6 and 7 of the Agreement, may present the scientific results of the Research Project at symposium, international, national or regional professional meetings or publish the scientific results in publications, presentations or abstracts.

6.2. Sponsor agrees that University, subject to review by Sponsor, shall have the right to publish results of the Research Project. University shall furnish Sponsor with copies of any proposed publication or presentation at least thirty (30) days before submission of such proposed publication or presentation, or at least five (5) days before submission of any proposed abstracts. During that time, Sponsor shall have the right to review the material for Proprietary Information it provided to University and to assess the patentability of any invention described in the material. Sponsor shall provide any response to University, in writing, within the respective thirty (30) or five (5) day review period. Sponsor shall maintain such material in confidence in accordance with Section 7. If the Sponsor decides that a patent application should be filed, the publication or presentation shall be delayed an additional thirty (30) days or until a patent application is filed, whichever is sooner. Following receipt of Sponsor's written request within the thirty (30) or five (5) day review period, University shall remove such Sponsor's Proprietary Information identified by Sponsor from the proposed publication, presentation or abstract. If University does not receive a request from Sponsor within the thirty (30) or five (5) day review period, Sponsor shall be deemed to have no objection and University shall be free to publish such material. Sponsor may not edit the publication, or limit dissemination, of the research results in any other way.

6.3. All drafts and information, including identification or description of any potentially patentable inventions, provided by University to Sponsor under this Section 6 shall be deemed University Proprietary Information subject to the confidentiality obligations of Section 7.

7. Confidentiality

7.1. During the Term of the Agreement, the parties may be disclosing Proprietary Information to each other. Prior to disclosure by Sponsor, Sponsor shall inform Principal Investigator of its intent to disclose Proprietary Information; University and Principal Investigator shall have the right to decline receipt of said information. Said Proprietary Information shall be sent only to the Principal Investigator. Each party agrees to treat Proprietary Information received from the other with the same degree of care with which it treats its own Proprietary Information, but not less than reasonable care, and further agrees not to disclose such Proprietary Information to a third party without prior written consent from the disclosing party.

7.2. The foregoing obligations of non-disclosure do not apply to Proprietary Information which:

- a. was known to the recipient prior to the disclosure hereunder;
- b. was received by the recipient without restriction from a third party who was not under an obligation of confidence to University, Sponsor or a third party regarding such information;
- c. is in the public domain at the time of disclosure hereunder or subsequently enters the public domain without the fault of the recipient;
- d. has been independently developed by personnel of recipient without access to such Proprietary Information, and recipient can substantiate any claim of independent development by competent proof; or
- e. is required to be disclosed pursuant to a valid subpoena, court order or other requirement of applicable law. Prior to making any such disclosure the disclosing party shall make all reasonable efforts to advise the other party of the required disclosure so that the other party may seek legal protection for such information.

7.3. Unless otherwise agreed to in writing, the obligations under this section shall terminate three (3) years after the date of receipt of Proprietary Information.

8. Intellectual Property

8.1. The parties recognize the need to balance Sponsor's ability to reasonably commercialize technologies, products, or processes with University's responsibility to ensure the broadest public benefit from the results of the Research Project. University recognizes that one of the prime reasons Sponsor has entered this Research Agreement is an effort to secure, through the creation or enhancement of technologies, a market position with regard to its products or processes. At the same time, Sponsor recognizes that University has an obligation to utilize the knowledge and technology generated by University research in a manner which maximizes societal benefit and economic development and which provides for the education of graduate and undergraduate students.

8.2. University shall own all right and title to Project Intellectual Property made solely by University's personnel. University and Sponsor shall own jointly Project Intellectual Property made jointly by University's and Sponsor's personnel. Sponsor shall own all right and title to intellectual property made solely by Sponsor's personnel.

8.3. University will notify Sponsor of any Project Intellectual Property promptly after an invention disclosure is received by the University's Center for Research Innovation (CRI). Such disclosure shall be sufficiently detailed for Sponsor to assess the patentability of the invention and Sponsor shall maintain such disclosure in

confidence pursuant to the terms of Section 7. University (i) may file a patent application at its discretion, and (ii) will file a patent application on Sponsor's request and at Sponsor's expense.

8.4. Upon notice of Sponsor's election to file a patent application under Section 8.3, University shall file such applications, using counsel of University's choice after due consultation with Sponsor. Sponsor shall reimburse University for its out of pocket costs incurred in connection with the preparation and filing of such application.

8.5. University hereby grants Sponsor the first option to negotiate a license to University's rights in Project Intellectual Property. Such license shall be royalty bearing, of limited-term and non-exclusive or upon Sponsor's election (and to the extent the University may be free to do so) exclusive within the Sponsor's field of commercial interest. This option shall extend for ninety (90) days from the receipt of the invention disclosure or patent application as described in Section 8.3 above, whichever occurs first, and shall lapse if not exercised in writing by Sponsor within such time. Upon exercise of the option, Sponsor shall have ninety (90) days to negotiate and execute a license. In the event the parties fail to reach a mutually acceptable license agreement within that period, Sponsor's rights under this Section 8.5 shall expire.

8.6. Sponsor understands that University must comply with the provisions of the Bayh Dole Act. Any license negotiated pursuant to paragraph 8.5 shall be subject to the University Patent Policy and University's prior agreements with others and shall without limitation as to other terms provide for (i) a reasonable royalty on net sales of products utilizing the licensed technology to be paid to University; (ii) reasonable milestone payments; (iii) University to retain a non-exclusive license, with the right to grant sublicenses to other nonprofit academic institutions, for academic, teaching, research purposes only; (iv) reimbursement of any unreimbursed out-of-pocket patent costs; (v) University, if and to the extent applicable to the licensed invention, to preserve the rights of the United States of America as set forth in Public Laws 96-517 and 98-620 (codified at 35 U.S.C. 200 et seq.) and for Sponsor to comply with the provisions of 35 U.S.C. 204, as amended from time to time, (vi) reasonable diligence obligations in the case of an exclusive license, and (vii) for Sponsor to indemnify University and carry appropriate liability insurance. To the extent that the U.S. government's approval may be deemed necessary to transfer license rights hereunder to Sponsor, Sponsor shall provide whatever reasonable assistance is required, and will reimburse University for all external costs associated therewith.

8.7. Copyright to copyrightable materials, including computer software, resulting from the Research funded under this Agreement shall vest in University with a royalty free, non-exclusive, non-transferable license to Sponsor for its noncommercial use. University shall grant Sponsor an option to negotiate an exclusive license to any such material(s) it wishes to develop for commercial purposes on reasonable terms and conditions, including a reasonable royalty, as the parties may agree in a subsequent writing.

9. Termination

9.1. Either party may terminate this Agreement upon ninety (90) days prior written notice to the other.

9.2. In the event that either party hereto commits any material breach of any terms or conditions of this Agreement, and also fails to reasonably remedy such breach within sixty (60) days after receipt of written notice thereof, the non-breaching party may, at its option and in addition to any other remedies that it may have at law or in equity, terminate this Agreement by sending notice of termination in writing to the other party to such effect. Termination shall be effective as of the day of the receipt of such notice.

9.3. Termination of this Agreement by either party for any reason shall not affect the rights and obligations of the parties accrued prior to the effective date of termination of this Agreement, except insofar as Sponsor's

breach of contract for failure to make payments under Section 4 shall cause Sponsor to forfeit its rights under Section 8.

9.4. Sections 4, 5, 6, 7, 8, 11 and 12 and any other provisions of this Agreement that by their nature extend beyond termination hereof shall survive such termination.

10. Independent Contractor

10.1. In the performance of all services hereunder, University shall be deemed to be and shall be an independent contractor.

10.2. Neither party is authorized or empowered to act as 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.

11. Indemnity, Liability, Limitation of Liability, Disclaimer of Warranties

11.1. Sponsor shall defend, fully indemnify and hold harmless University, its trustees, officers, employees, students, agents, successors, heirs and assigns against all claims arising out of Sponsor's use, commercialization, or distribution of information, materials, products or reports which result in whole or in part from the research performed pursuant to this Agreement, including without limitation claims for personal injury, property damage, and infringement of intellectual property.

11.2. University shall not be responsible or liable with respect to any subject matter of this Agreement under any contract, negligence, strict liability or other theory for any indirect, incidental, special or consequential damages including, but not limited to, loss of revenues and loss of profits.

11.3. University's liability to Sponsor for any claim related to or arising from this Agreement or the relationship created by this Agreement shall be limited to the amount paid by Sponsor to University pursuant to Section 4.1.

11.4. University will perform the Research Project in accordance with generally accepted professional standards. THE UNIVERSITY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR INFRINGEMENT OF INTELLECTUAL PROPERTY.

12. Notices

Notices, invoices, and communications hereunder shall be deemed made if given by overnight courier or 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 to the other party in writing:

All Communications and Reports from University to Sponsor concerning the Research Project shall be sent to:

Notices with respect to any rights or obligations of Sponsor under this Agreement shall be sent to:

All Communications and Reports from Sponsor to University concerning the Research Project shall be sent to:

Northeastern University,
360 Huntington Avenue
Boston, MA 02115
Phone:
Email:

Notices with respect to any rights or obligations of University under this Agreement shall be sent to:

Director, Grants & Contracts
Office of Research Administration & Finance
Northeastern University, 540-177
360 Huntington Avenue
Boston, MA 02115-5000
Phone: (617) 373-5600
Fax: (617) 373-4595
oraf@northeastern.edu

Notice given pursuant to this Section shall be effective as of the day of receipt of notice.

13. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. Sponsor hereby expressly consents to the exclusive personal jurisdiction of the state and federal courts located in the Commonwealth of Massachusetts for any dispute arising from or relating to this Agreement.

14. General Provisions

14.1. Non-assignability – The rights and obligations of the parties under this Agreement shall not be assigned without the prior written permission of the other party.

14.2. Entire Agreement – This Agreement contains the entire and only agreement between the parties respecting the subject matter hereof and supersedes or cancels all previous and contemporaneous negotiations, agreements, commitments and writings between the parties on the subject of this Agreement, including, but not

limited to, non-disclosure agreements between Sponsor and University and/or Principal Investigator. Should processing of this Agreement require issuance of a purchase order or other contractual document, all terms and conditions of said document are hereby deleted in their entirety. This Agreement may not be amended in any manner except by an instrument in writing signed by the duly authorized representatives of each of the parties hereto.

14.3. Export Control Regulations – Sponsor agrees that it shall comply with all applicable export control regulations of the United States of America. Sponsor shall be responsible for obtaining all information regarding such regulations that is necessary for Sponsor to comply with such regulations. Sponsor shall provide written notice to University if Sponsor intends to disclose any export controlled information or technology to the University. Such notice will include the proper export classification and a reference to the applicable export control laws and regulations. Export controlled information shall be labeled as “export controlled” with a reference to the applicable U.S. laws and regulations. The University reserves the right, in its sole discretion, to refuse or accept such information or use it in performance of the Research Project. Sponsor shall indemnify and hold harmless the University against any claims, damages, losses or costs arising out of Sponsor’s breach of this Section. Notice required under this section shall be sent to Principal Investigator, with a copy to the University’s Office of Research Administration.

14.4. 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 is 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 other cause beyond its reasonable control.

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IN WITNESS WHEREOF, the parties have caused these presents to be executed in duplicate as of the day and year first above written.

By an Authorized Official of

**By an Authorized Official Of
Northeastern University**

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: Director, Grants & Contracts, Office of Research
Administration & Finance

Date: _____

Agreement Read and Acknowledged By:

NU Principal Investigator

EXHIBIT 1
RESEARCH PROJECT

Statement of Work