

UNIVERSITY of HOUSTON



Sponsored Research Agreement

This Sponsored Research Agreement ("Agreement") is between the University of Houston, ("UH") an agency of the State of Texas pursuant to Chapter 111, Texas Education Code, and \_\_\_\_\_, a \_\_\_\_\_ existing under the laws of the State of \_\_\_\_\_ ("Sponsor") having its principal office at \_\_\_\_\_. The signatories to this Agreement shall be collectively referred to as the "Parties" and individually as a "Party", as applicable.

Sponsor desires that UH perform certain research work described below and is willing to advance \_\_\_\_\_ to sponsor the research;

The research program contemplated by this Agreement is of mutual interest and benefit to UH and to Sponsor, and will further the instructional and research objectives of UH in a manner consistent with its status as a non-profit, tax-exempt, educational institution;

UH is willing to perform the research and to grant certain rights to the patents and technology; and In consideration of the mutual covenants and promises, UH and Sponsor agree as follows:

- 1. Effective Date. Agreement is effective as of \_\_\_\_\_ ("Effective Date").
2. Statement of Work. UH agrees to use reasonable efforts to perform the research program entitled "\_\_\_\_\_" as detailed in Attachment "A". Sponsor understands that UH's primary mission is education and advancement of knowledge and, consequently, the research will be designed to carry out that mission. The manner of performance of the research is determined solely by the Principal Investigator. UH does not guarantee specific results, and the research will be conducted on a reasonable-effort basis.
3. Principal Investigator. The research will be under the direction of \_\_\_\_\_ ("Principal Investigator"). If, for any reason, he/she is unable to continue to serve as Principal Investigator and a successor acceptable to both UH and Sponsor is not available, this Agreement shall be terminated as provided in Section 7.
4. Period of Performance. The research shall be conducted during the period of \_\_\_\_\_ through \_\_\_\_\_ and will be subject to renewal only by mutual agreement of Parties.
5. Reimbursement of Costs. In consideration of the above, Sponsor will reimburse UH for all direct and indirect costs incurred in the performance of the research (including, without limitation, reasonable overhead), which shall not exceed the total estimated project cost of \$ \_\_\_\_\_ without written authorization from Sponsor.
6. Payment. An initial payment of \$ \_\_\_\_\_ shall be made at the time of execution of Agreement and subsequent payments shall be made as follows:

Payments shall be made to UH by Sponsor in advance in U.S. dollars, net of taxes or impost of any kind. Checks will be made payable to the University of Houston and sent to:

University of Houston System
Treasurer's Office
P.O. Box 988
Houston, Texas 77001-0988

For identification purposes, each payment shall include: i) the title of the research as identified in Attachment "A"; and, ii) Principal Investigator.

7. **Termination.** Sponsor upon 60 days prior written notice and for good cause may terminate performance under this Agreement; performance may be terminated by UH if circumstances beyond its reasonable control preclude continuation of the research. As its sole liability upon termination, Sponsor shall pay UH as specified in Section 5 for all costs and non-cancelable commitments incurred in the performance of the research as of the effective termination date, including, without limitation, salaries for appointees for the remainder of their appointment, such reimbursement not to exceed the total estimated project cost specified in Section 5. Termination or cancellation of this Agreement shall not affect the rights and obligations of Parties accrued prior to termination. Any provisions of this Agreement, which by their nature extend beyond termination, shall survive such termination.
8. **Publicity.**
- a. Neither Party will use the name, logo, or image of or make reference to the other Party, or the other Party's employee(s), faculty or staff member(s) in a press release or any other advertising or other form of publicity in connection with work performed under this Agreement, if it is intended for use in the public media, except as required by the Texas Public Information Act or other law or regulation, without the written permission of the other; in the case of UH, that of the Director of Marketing in the Office of Institutional Advancement. UH, however, has the right to acknowledge Sponsor's support of the investigations under this Agreement in scientific or academic publications and other scientific or academic communications without Sponsor's prior approval. In any statements, Parties will describe the scope and nature of their participation accurately and appropriately. UH also has the right to identify the existence of this Agreement in internal documents available to the public without Sponsor's prior approval.
  - b. UH will be free to publish the results of research under this Agreement, with a copy of each publication provided to Sponsor.
9. **Intellectual Property.**
- a. Title to any invention, technology and intellectual property of any kind ("Invention") conceived, first produced, first composed or first reduced to practice in the performance of the research program under this Agreement remains with UH. UH has the sole right to determine the disposition of any Invention, including, without limitation, software programs, and all rights resulting from any Invention, including, without limitation, the right, at its sole discretion, to file a patent or copyright, and will so notify Sponsor.
  - b. In the event that UH files a patent or copyright on the Invention, Sponsor may elect one of the following alternatives by notice in writing to UH within 3 months after notification to Sponsor that a patent or copyright has been filed:
    - (1) A non-exclusive, non-commercial, non-transferable, royalty-free license for internal non-commercial purposes only, and the terms and conditions of such license will be set forth in and subject to separate license agreement between Parties; or
    - (2) A non-exclusive, non-transferable (without the right to sublicense), royalty-bearing license (in the designated field of use [\_\_\_\_\_]), to Sponsor in the United States and/or any foreign country elected by Sponsor (subject to Section 9(C) below) to make, have made, use, lease and sell products embodying or produced through the use of the Invention; provided Sponsor agrees to demonstrate its best efforts to commercialize the technology in the public interest, and the terms and conditions of such license will be set forth in and subject to a separate license agreement between Parties; or
    - (3) A royalty-bearing, limited-term exclusive license to Sponsor including the right to sublicense, in the United States and/or any foreign country elected by Sponsor to make, have made, use, lease, and sell (in the designated field of use [\_\_\_\_\_]) products embodying or produced through the use of

Invention, provided Sponsor agrees that any licensed products sold in the United States will be substantially manufactured in the United States, and the terms and conditions of such license will be set forth in and subject to a separate license agreement between Parties.

- c. If Sponsor elects alternative (ii) or (iii) from subparagraph (b), Sponsor shall notify UH of those foreign countries in which it desires a license, in sufficient time for UH to satisfy the patent or copyright law requirements of that country. Sponsor shall reimburse UH for the out-of-pocket costs, including, without limitation, patent or copyright filing, prosecution and maintenance fees related to those filings.
- d. In the event that UH declines to file a patent or copyright application, Sponsor may file in the United States and elsewhere, in the name of UH, and is entitled to elect between the above alternatives no later than 3 months after the filing date.
- e. Sponsor shall retain all invention disclosures submitted by UH in confidence and will use its best efforts to prevent their disclosure to third parties. Sponsor is relieved of this obligation only when this information becomes publicly available through no fault of Sponsor.
- f. In the event that UH elects to establish property rights other than patents to any tangible research property ("TRP"), e.g., biological materials developed during the course of the research, UH and Sponsor will determine the disposition of rights to such property by separate agreement. UH will, at a minimum, reserve the right to use and distribute TRP for non-commercial research purposes.

10. **Confidentiality Clause.**

- a. Confidential Information. For the purposes of this Agreement "Confidential Information" means all information relating to research, development, and intellectual property in the area of [\_\_\_\_\_], which is exchanged by Parties during the term of Agreement by any means, including written, electronic, and verbal, provided a written summary of the verbal information has been provided to Party receiving the information ("Receiving Party") within 30 days of such disclosure, and which is neither in the public domain, nor known to the Receiving Party before the time of the disclosure as evidenced by the written records of the Receiving Party.
- b. Exclusions. Confidential Information does not include information that:
  - (1) becomes public information or is generally available to the public other than by an unauthorized act or omission of the Receiving Party;
  - (2) is received by the Receiving Party from third parties who rightfully possess the information and have the legal right to make a disclosure;
  - (3) the Receiving Party and affiliates of the Receiving Party can show by written records it/they possessed the information before the time of the disclosure and that the information was acquired legally and not directly or indirectly from the other Party;
  - (4) is required by law to be disclosed to a government agency; or
  - (5) is generated by employees or affiliates of the Receiving Party who did not have access to the proprietary information as evidenced by written records.
- c. (c) Obligation. Except as required by law, each Party will maintain in strict confidence, and will not use or disclose, except as expressly permitted under this Agreement, any Confidential Information received from the other Party. Each Party further agrees to use the same degree of care to maintain the confidentiality of all Confidential Information received from the other Party that it uses to maintain the confidentiality of its own information of similar importance, but in no event will it use less than reasonable care.

11. **Notices.** Any notices required to be given or which are given under this Agreement will be in writing delivered by prepaid, first class, certified mail return receipt requested (airmail if no domestic) addressed to Parties as follows:

UH	SPONSOR
Director, Contracts and Grants	_____
University of Houston	_____
316 E Cullen Building	_____
Houston, TX 77204-2015	_____

In the event notices, statements, and payments required under this Agreement are sent by certified or registered mail by one Party to the other Party at the above address, they are deemed to have been given or made as of the date mailed; otherwise, as of the date received.

12. **Liability.**

a. **Sponsor agrees to indemnify and hold harmless UH, its System, their Regents, officers, agents and employees from any liability, loss, claim, damage or liability of any kind arising out of or in connection with the activities to be carried out pursuant to the obligations of this Agreement, including but not limited to the use by Sponsor of the results obtained from the activities performed by UH under this Agreement; provided, however, that the following is excluded from Sponsor's obligation to indemnify and hold harmless: the gross negligence, or willful malfeasance of any Regent, officer, agent or employee of UH or System.**

b. **Both Parties agree that upon receipt of a notice of claim or action arising out of the activities to be carried out pursuant to the project described in Attachment A, Party receiving the notice will notify the other Party promptly. Sponsor agrees, at its own expense, to provide attorneys to defend against any claim or action brought or filed against UH, its System, their Regents, officers, agents and/or employees with respect to the subject of the indemnity, whether the claim or action is rightfully brought or filed; subject to the statutory duty of the Texas Attorney General, UH agrees to cooperate with Sponsor in the defense of the claim or action. Sponsor agrees that any proposed settlement to any claim or action will not be entered into without the prior written consent of UH, which consent will not be unreasonably withheld.**

INITIAL \_\_\_\_\_

13. **Warranties.** UH makes no warranties, expressed or implied, as to any matter whatsoever, including without limitation the condition of the research or any Invention(s), product(s) or property(ies) of any kind, whether tangible or intangible, conceived, discovered or developed under this Agreement, or the ownership, Merchantability or Fitness for a Particular Purpose of the research, or any such Invention(s), product(s) or property(ies). UH is not liable for any direct, indirect, consequential, special or other damages suffered by any licensee or any others resulting from the use of the research or any Invention(s), product(s) or property(ies).

INITIAL \_\_\_\_\_

14. **Assignment.** This Agreement is binding on and inures to the benefit of Parties. This Agreement is not assignable by either party without the prior written consent of the other party; any attempted assignment contrary to this section is void.

15. **Governing Law.** This Agreement, and all questions relating to its validity, interpretation, performance, and enforcement (including, without limitation, provisions concerning limitations of action), are governed by and construed under the laws of the State of Texas (exclusive of the conflict of law provisions). With regard to any dispute arising out of or relating to this Agreement and to the extent permitted by applicable law, each of Parties submit to the non-exclusive jurisdiction of any state or federal court sitting in Houston, Harris County, Texas and agrees that all claims with respect to an action or proceeding may be heard and determined in that court.

16. **Governing Language.** In the event that a translation of this Agreement is prepared and signed by Parties for the convenience of Sponsor, this English language version is the official version and governs if there is a conflict between the two.
17. **Export Controls.** It is understood that UH 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 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 UH agrees to cooperate in securing any license which the cognizant government agency deems necessary in connection with Agreement, UH cannot guarantee the license will be granted.
18. **Force Majeure.** UH is not responsible to Sponsor, Sponsor's affiliates and sublicensees, and any other party for failure to perform any of the obligations imposed by this Agreement, provided the 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 cause beyond the reasonable control of UH.
19. **Consultation.** Selected personnel of Sponsor, designated in writing by Sponsor to UH, have the right to confer with Principal Investigator and his/her associates regarding the research, both personally and by telephone. Access to work carried on in UH laboratories and facilities in the course of these investigations is entirely under the control of UH personnel but will be made available to the personnel designated by Sponsor for reasonable periods and at times as are mutually convenient.
20. **Reports.** UH will furnish Sponsor periodic letter reports during the term of this Agreement summarizing the research conducted. A final report setting forth the accomplishments and significant research findings will be prepared by UH and submitted to Sponsor within 90 days of the expiration of Agreement.
21. **Equipment.** Title to any equipment or supplies purchased or fabricated in the performance of the work funded under this Agreement vests in UH upon acquisition.
22. **Independent Inquiry.** Nothing in this Agreement is construed to limit the freedom of researchers who are participants in this Agreement, whether paid under this Agreement or not, from engaging in similar research inquiries made independently under other grants, contracts or agreements with parties other than Sponsor.
23. **Independent Contractor.** In the performance of all services: (a) UH is deemed to be and is an independent contractor and, as such, UH is not entitled to any benefits applicable to employees of Sponsor; (b) Neither Party is authorized or empowered to act as agent for the other for any purpose and will not enter into any contract, warranty, or representation as to any matter on behalf of the other. The acts or conduct of one bind neither of the other.
24. **Insurance.**
  - a. UH warrants and represents that it has adequate liability insurance, such protection being applicable to officers, employees and agents while acting within the scope of their employment by UH. UH has no liability insurance policy that can extend protection to any other person.
  - b. Each Party assumes any and all risks of personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents.
25. **Entire Agreement.** Unless otherwise specified, this Agreement embodies the entire understanding between UH and Sponsor for this project, and any prior or contemporaneous

representations, either oral or written, are superseded. No amendments or changes to this Agreement, including without limitation, changes in the Statement of Work, total estimated cost and period of performance, is effective unless made in writing and signed by authorized representatives of Parties.

- 26. **Severability.** Should a court of competent jurisdiction later consider any provision of this Agreement to be invalid, illegal, or unenforceable, it will be considered severed from this Agreement. All other provisions, rights, and obligations continue without regard to the severed provision, provided that the remaining provisions of this Agreement are the intention of Parties.
- 27. **Remedies Cumulative.** The rights and remedies provided to UH in this Agreement are cumulative in nature and shall be in addition to any such other rights and remedies available at law and in equity. UH's failure to assert a right under this Agreement, or to insist upon compliance with any term or condition of this Agreement does not constitute a waiver of that right, or excuse a similar subsequent failure to perform any term or condition by Sponsor.
- 28. **Construction of Agreement.** Parties have negotiated this Agreement and the language in this Agreement will not be construed against UH. The headings used herein are for reference and convenience only and will not enter into the interpretation of this Agreement. In construing this Agreement where context requires, references to the singular will include the plural and references to the plural will include the singular.
- 29. **Transfer Restricted.** Sponsor cannot transfer the rights granted pursuant to this Agreement to any party other than to a successor to the business interest of Sponsor relating to the INVENTION, without the prior written approval of UH.
- 30. **Agreement Binding.** This Agreement is binding upon the successors, legal representatives, and assignees of UH and Sponsor.

The Parties have caused this Agreement to be executed by their duly authorized representatives.

**UNIVERSITY OF HOUSTON**

**SPONSOR**

\_\_\_\_\_  
Signature Date  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Signature Date  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Note: Modification of this Form requires approval of OGC**