

## RESEARCH AGREEMENT

**THIS AGREEMENT** effective this \_\_\_\_ day of \_\_\_\_\_ 2000, by and between \_\_\_\_\_, (hereinafter "Sponsor") and the REGENTS OF THE UNIVERSITY OF MICHIGAN, a non-profit educational institution (or its agent) of the State of Michigan (hereinafter "University").

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

**NOW, THEREFORE**, in consideration of the promises and mutual covenants herein contained, the parties hereto agree to the following:

### ARTICLE 1 - DEFINITIONS

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

1.1 "Project" shall mean the research project described in DRDA 00-\_\_\_\_ under the direction of \_\_\_\_\_ as Project Director entitled \_\_\_\_\_.

1.2 "Contract Period" is from \_\_\_\_\_, 2000, through \_\_\_\_\_, 200\_, unless earlier terminated pursuant to this Agreement.

1.3 "Joint Intellectual Property" shall mean individually and collectively all inventions, improvements or discoveries which are made jointly as defined in U.S. Patent law by one or more employees of Sponsor and one or more employees of University in performance of the Project during Contract Period.

1.4 "University Intellectual Property" shall mean individually and collectively all inventions, improvements or discoveries which are conceived or made solely as defined by U.S. Patent law by one or more employees of University in performance of the Project during Contract Period.

### ARTICLE 2 - RESEARCH WORK

2.1 University and Sponsor shall use reasonable efforts to perform such Project substantially in accordance with the terms and conditions of this Agreement.

2.2 In the event that the Project Director becomes unable or unwilling to continue Project, and a mutually acceptable substitute is not available, University or Sponsor shall have the option to terminate said Project.

### ARTICLE 3 - REPORTS AND CONFERENCES

3.1 Written program reports shall be provided by University to Sponsor periodically and a final report shall be submitted by University at the conclusion of the Contract Period.

3.2 During the term of this Agreement, representatives of University may meet with representatives of Sponsor at times and places mutually agreed upon to discuss the progress and results as well as ongoing plans, or changes therein, of Project to be performed hereunder.

#### **ARTICLE 4 - COSTS, BILLINGS, AND OTHER SUPPORT**

4.1 It is agreed that total costs to Sponsor hereunder shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). Payment shall be made by Sponsor within thirty days of receipt of monthly invoices for actual charges incurred by the University.

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

4.3 In the event of early termination of the Project by Sponsor pursuant to this Agreement, Sponsor shall pay all costs accrued by University as of the date of termination, including non-cancelable obligations, which shall include all non-cancelable contracts and fellowships or postdoctoral associate appointments called for in Project, incurred prior to the effective date of termination. After termination, any obligation of Sponsor for fellowships or postdoctoral associates shall end no later than the end of University's academic year during which termination occurs.

#### **ARTICLE 5 - PUBLICITY**

5.1 Sponsor will not use the name of University, nor of any member of University's Project staff, in any advertising, news release or other promotional activity 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 advertising or other promotional activity without the prior written approval of Sponsor. Nothing herein shall restrict either party's right to disclose the existence of this Agreement, the identity of the parties, or the nature and scope of the Project.

#### **ARTICLE 6 - PUBLICATIONS**

6.1 Sponsor recognizes that under University policy, the results of University Project must be available for publication and agrees that researchers engaged in Project shall be 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 Project, provided, however, that Sponsor shall have been furnished copies of any proposed publication or presentation for review at least thirty (30) days in advance of the submission of such proposed publication or presentation to a journal, editor, or other third party. Sponsor shall have thirty (30) days after receipt of said copies, to object to such proposed presentation or proposed publication because there is patentable subject matter which needs protection or because Confidential Information disclosed pursuant to Article 15, below, is contained therein. In the event that Sponsor makes such objection, said researcher(s) shall refrain from making such publication or presentation for a maximum of one hundred twenty (120) days from date of receipt of such objection in order for University to file patent application(s) with the United States Patent and Trademark Office or foreign patent office(s). directed to the patentable subject matter contained in the proposed publication or presentation. University will comply with Sponsor's request to delete or modify Confidential Information.

## **ARTICLE 7 - INTELLECTUAL PROPERTY**

7.1 All rights and title to University Intellectual Property under Project shall belong to University and shall be subject to the terms and conditions of this Agreement.

7.2 Rights to inventions, improvements and discoveries, whether or not patentable or copyrightable, relating to Project made solely by employees of Sponsor shall belong to Sponsor. Such inventions, improvements, and discoveries shall not be subject to the terms and conditions of this Agreement.

7.3 All rights and title to Joint Intellectual Property shall be jointly owned by Sponsor and University.

7.4 University will promptly notify Sponsor of any University Intellectual Property and Joint Intellectual Property. 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, or in the names of both parties if the invention is jointly owned. Sponsor shall bear all costs incurred in connection with such preparation, filing, prosecution, and maintenance of U.S. and foreign application(s) which are solely owned by the University. Sponsor shall pay one half of the costs incurred in connection with the preparation, filing, prosecution, and maintenance of U.S. and foreign applications which are jointly owned, unless Sponsor exercises its right to exclusively commercialize or directs University to file in which case Sponsor shall pay all such costs. 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 shall be responsible for making decisions regarding scope and content of application(s) to be filed and prosecution thereof, Sponsor shall be given an opportunity to review and provide input thereto. University shall inform Sponsor of all developments with respect to such application(s) and shall promptly supply to Sponsor copies of all papers received and filed in connection with the prosecution thereof in sufficient time for Sponsor to comment thereon.

7.5 If Sponsor elects not to exercise its option as described below or either party decides to discontinue or refrain from providing the financial support of the prosecution or maintenance of the protection, the other party shall be 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 such other party's sole expense.

## **ARTICLE 8 - GRANT OF RIGHTS**

8.1 University hereby grants Sponsor a royalty-free, non-exclusive license to use University Intellectual Property within its own organization for any noncommercial purpose.

8.2 University hereby grants the first option, at Sponsor's sole selection, for either (a) a non-exclusive, royalty-bearing license to use University Intellectual Property for any purpose except sublicensing, or (b) an exclusive royalty-bearing license with a right to sublicense. Terms and conditions of these licenses are to be negotiated in good faith and agreed upon between University and Sponsor. Provided the Sponsor has participated in bearing patent expenses as described in Section 7.4, above, this option shall extend for a period of sixty (60) days from the disclosure of University Intellectual Property to Sponsor.

8.3 In the event that Sponsor wishes to exclusively commercialize Joint Intellectual Property, Sponsor shall pay full patent costs for protection and maintenance such joint inventions and shall be given an option to an agreement, containing reasonable terms and conditions to be mutually agreed upon, whereby the University will refrain from exercising its rights to commercially exploit the Joint Intellectual Property. This option shall extend for a period of sixty (60) days from the disclosure of Joint Intellectual Property to Sponsor.

8.4 In the event that Sponsor acquires an exclusive license or right under subsections 8.2 or 8.3 of this Article, the University will retain the right to continue to use any University Intellectual Property and Joint Intellectual Property within the University for any purpose.

## **ARTICLE 9 - TERM AND TERMINATION**

9.1 This Agreement shall become effective upon the date first written above and shall continue in effect for the full duration of the Contract Period. The parties hereto may, however, extend the term of this Agreement for additional periods as desired under mutually agreeable terms and conditions which the parties reduce to writing and sign. Either party may terminate this agreement upon ninety days prior written notice to the other.

9.2 In the event that either party commits any breach of or default in any of the terms or conditions of this Agreement, and fails to remedy such default or breach within ninety days after receipt of written notice thereof from the other party, the party giving notice may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending notice of termination in writing to the other party. Such termination shall be effective as of the date of the receipt of such notice.

9.3 No termination of this Agreement, however effectuated, shall release the parties from their rights and obligations accrued prior to the effective date of termination.

## **ARTICLE 10 - INDEPENDENT CONTRACTOR**

10.1 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;

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.

## **ARTICLE 11 - INSURANCE AND INDEMNIFICATION**

11.1 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 insurance policy as such that can extend protection to any other person.

11.2 Each party hereby 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 thereof.

11.3 Sponsor understands that the University is an educational institution created under Article 8, Section 5 of the Michigan Constitution and operated pursuant to authority conferred by the State of Michigan. As a state institution the University is prohibited from lending the credit of the state pursuant to Article 9 of the Michigan Constitution. Sponsor acknowledges that this Agreement does not confer upon Sponsor any right of claim of indemnification by the University, either express or implied.

## **ARTICLE 12 - GOVERNING LAW**

12.1 This Agreement shall be governed and construed in accordance with the laws of the State of Michigan.

## **ARTICLE 13 - ASSIGNMENT**

13.1 Except as provided in Section 13.2, this Agreement shall not be assigned by either party without the prior written consent of the parties hereto.

13.2 This Agreement is assignable to any division of Sponsor, any majority stockholder of Sponsor, or any subsidiary of Sponsor in which fifty-one percent of the outstanding stock is owned by Sponsor.

## **ARTICLE 14 - AGREEMENT MODIFICATION**

14.1 Any agreement to change the terms of this Agreement in any way shall be valid only if the change is made in writing and approved by mutual agreement of authorized representatives of the parties hereto.

## **ARTICLE 15 - CONFIDENTIALITY**

15.1 University agrees to use the proprietary information and data acquired from Sponsor and identified as such at the time of disclosure ("Confidential Information") only in performing the services of this Agreement and not to disclose to any third party any such Confidential Information during and for a period of five (5) years from the date of disclosure. Confidential Information shall be disclosed in writing or reduced to writing within ten (10) days of disclosure to University.

15.2 The obligation to protect Confidential Information shall not apply to any information that: (1) is already in the possession of, or is independently developed by, University; (2) becomes publicly available other than through breach of this provision; (3) is received by University from a third party with authorization to make such disclosure; (4) is released with Sponsor's written consent; or (5) is required to be released by law or court order.

**ARTICLE 16 - NOTICES**

16.1 Notices hereunder shall be deemed made if given by registered or certified envelope, postage prepaid, and addressed to the party to receive such notice at the address given below, or such other address as may hereafter be designated by notice in writing:

If to Sponsor: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to University: Elaine L. Brock, Associate Director  
University of Michigan  
Division of Research Development and Administration  
3003 S. State St., Room 1072  
Ann Arbor, MI 48109-1274

**AGREED TO:**

SPONSOR

THE REGENTS OF THE  
UNIVERSITY OF MICHIGAN

By \_\_\_\_\_ By \_\_\_\_\_  
Typed Name \_\_\_\_\_ Typed Name Peter J. Gerand  
Title \_\_\_\_\_ Title Manager, Office of Contract Admin.