

INDUSTRY SPONSORED RESEARCH AGREEMENT

THIS SPONSORED RESEARCH AGREEMENT made and effective as of the date of last signing (herein the "Effective Date") by and between _____ (herein "Sponsor"), a for-profit corporation, and the **UNIVERSITY OF CINCINNATI**, a state institution of higher education organized under Section 3361 of the Ohio Revised Code, on behalf of the College of _____, Department of _____, having an office at University Hall, Suite 530, 51 Goodman Drive, Cincinnati, Ohio 45221-0222 (herein "UC").

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

NOW, THEREFORE, the parties hereto agree as follows:

1. **STATEMENT OF WORK.** UC agrees to use its reasonable efforts to perform the research program (herein the "Research Program") as set forth in **Exhibit A**.

2. **PRINCIPAL INVESTIGATOR.** _____, Ph.D. will supervise the research. If, for any reason, that person is unable to continue to serve as Principal Investigator, Sponsor and UC shall attempt to find a successor acceptable to both parties. If such a successor is not available, this Agreement shall be terminated as provided in Article 6.

3. **PERIOD OF PERFORMANCE.** The research shall be conducted during the period beginning on the _____ and ending on _____ (herein the "Termination Date") and will be subject to renewal only by mutual agreement of the parties.

4. **REIMBURSEMENT OF COSTS.** In consideration of the foregoing, the Sponsor agrees to support the research set forth in **Exhibit A**, including all direct and indirect costs consistent with UC's policy for the conduct of this research effort, by paying the amounts as specified in the Budget, **Exhibit B** provided that the total of such costs does not exceed \$ _____ U.S. dollars.

5. **PAYMENT.** Payments shall be made to UC by the Sponsor in U.S. dollars, 50% due and payable upon receipt of invoice 30 days after execution of the agreement by both parties and the remainder due upon receipt of invoice after deliverables are met. Payments to UC will be sent to the address indicated on the invoice, or as otherwise specified in **Exhibit C**.

Invoices should be sent to:

Name: _____
Company: _____
Address: _____

Phone: _____
E-mail: _____

6. EARLY TERMINATION.

- A. Should UC breach this Agreement or become unable to perform hereunder, Sponsor shall have the right to terminate this Agreement. Sponsor shall notify UC of its intention to do so, and termination shall become effective sixty (60) days thereafter if UC is unable to cure the breach or rectify the problem.

- B. Failure of Sponsor to pay any amount required hereunder within thirty (30) days after receipt of an invoice from UC shall be cause for UC to terminate this Agreement. UC shall notify Sponsor of its intention to do so, and termination shall become effective sixty (60) days thereafter if Sponsor has not made such payment in full.
- C. Termination under this Article 6 does not relieve Sponsor of the obligation to reimburse all costs and non-cancelable expenses and commitments incurred in the performance of the Research Program prior to termination, such reimbursement not to exceed the total project cost as specified in Exhibit B.
- D. Either party may terminate this Agreement upon thirty (30) days' written notice to the other party.

7. REPORTS AND CONFIDENTIAL INFORMATION

- A. From time to time during the term of this Agreement, UC will provide Sponsor with written summaries of research progress. UC will provide a summary report at completion.
- B. As used herein, "Confidential Information" shall mean information, know-how, samples, drawings or data, technical or non-technical, relating to the Research Program, that originates with either party, is disclosed or provided to the other and is clearly labeled as "Confidential". If disclosed orally, the Confidential Information shall be promptly reduced to written form and labeled as "Confidential". Sponsor and UC each acknowledge that the Confidential Information shall remain the sole and exclusive property of the disclosing party. Neither party shall use any Confidential Information in any manner in competition against, or contrary to the interests of, the other party. The recipient may use the originator's Confidential Information for purposes of this Agreement, but agrees neither to use for any other purpose nor to disclose or provide such Confidential Information to any third party at any time during the term of this Agreement for a period of ten (10) years after the expiration or termination of this Agreement, except as follows:
 - (1) To the extent that such Confidential Information was known to the recipient from sources other than the originator prior to its disclosure hereunder, and this is demonstrably documented in written records made by recipient prior to such disclosure; or
 - (2) To the extent that such Confidential Information in fact is public knowledge prior to or after its disclosure, other than through acts or omissions attributable to the recipient; or
 - (3) To the extent that such Confidential Information was disclosed or provided to the recipient by a third party who did not derive such information from the originator; or
 - (4) The parties acknowledge that UC is a state entity subject to Section 149.43 of the Ohio Revised Code. To the extent disclosure is required by law or judicial process, UC shall notify Sponsor in advance of releasing any Confidential Information. Reasonable efforts shall be made to provide this notice in sufficient time to allow the Sponsor to seek an appropriate protective order or modification of any disclosure.
- C. Each recipient specifically agrees not to export or re-export any information and/or technical

data and/or products in violation of any applicable USA laws and/or regulations.

D. Each recipient will retain control of Confidential samples received hereunder and will not provide them to parties who are not bound by this Agreement.

8. PUBLICATIONS. UC reserves the right to publish the results of its research performed hereunder. Before publishing, however, UC agrees to submit copies of any manuscript proposed for publication to Sponsor at least thirty (30) days in advance of the presentation or publication date, and if Sponsor does not ask to defer publication within thirty (30) days after receipt of the manuscript so that patent applications may be filed, UC may proceed with publication. In the event Sponsor asks to defer publication, UC shall not publish or otherwise disclose to any third party any of the information contained in the manuscript until such time as a patent application has been filed or the expiration of sixty (60) days after the date of submission of the manuscript to Sponsor, whichever occurs first.

9. INTELLECTUAL PROPERTY.

A. Subject to Section 3345.14 of the Ohio Revised Code, title to any discovery or invention conceived or first reduced to practice in the performance of the research program, herein "Project Invention," shall be assigned to UC if all of the inventors are UC employees; shall be assigned jointly to Sponsor and UC if the inventors include employees of both parties; and shall be assigned to Sponsor if all the inventors are employees of Sponsor.

B. Sponsor shall be entitled to a royalty-free non-exclusive license to UC Project Inventions or UC rights in Joint Project Inventions, without the right to sublicense, provided Sponsor is not in material breach of this agreement.

C. If Sponsor asks UC to file patent applications on a Project Invention, Sponsor agrees to pay the costs of filing, prosecution and maintenance of the resulting patent application(s) and patents maturing therefrom. Sponsor shall notify UC of those foreign countries in which it desires, in sufficient time for UC to satisfy the patent law requirements of that country. If UC asks Sponsor to pay for the filing, prosecution or maintenance of a patent application or patent on a UC Project Invention, and Sponsor refuses, Sponsor's option and license rights with respect to such patent application or patent shall terminate immediately.

D. In consideration for research support and patent expenses received hereunder, UC grants to Sponsor an option (herein "the Option") to acquire an exclusive license to any UC Project Invention, including any patent applications and patents resulting therefrom, according to the terms and conditions set forth herein.

(1) The Option will expire on the Termination Date of this Agreement.

(2) Sponsor may exercise the Option by written notice to UC at any time prior to its expiration declaring Sponsor's intent to negotiate a license agreement with UC (herein the "License Agreement"). The parties shall begin to negotiate in good faith toward execution of the License Agreement under commercially reasonable terms within sixty (60) days after receipt by UC of written notification by Sponsor.

(3) Sponsor agrees promptly to notify UC in writing at any time during the Option Period if Sponsor determines not to exercise the Option, and further agrees to provide UC in reasonable detail in writing the basis for such determination. The Option shall expire immediately on such notification.

- E. Title to any copyrights or copyrightable material first produced in the performance of the Research Program shall remain with UC. UC shall grant to the Sponsor an irrevocable, royalty-free, non-transferable, non-exclusive right and license to use and reproduce all such copyrightable materials, including computer software and its documentation specified to be developed and delivered under the Statement of Work. UC further grants to Sponsor an option to negotiate an exclusive, subject to third party rights, if any, royalty-bearing license to use, reproduce, display, distribute, and perform such computer software and its documentation for commercial purposes, such option to expire on the Termination Date. Computer software for which a patent application is filed shall be subject to paragraphs A-D above.
 - F. All licenses granted pursuant to this Article 9 become effective as of the date the parties sign a subsequent license agreement.
10. **USE OF NAMES.** Neither party will use the name of the other in any advertising or other form of publicity without the written permission of the other.
 11. **ANIMAL AND HUMAN STUDIES.** Any use of live, vertebrate animals in the performance of research hereunder shall comply with all applicable laws and government regulations.
 12. **INDEMNIFICATION.** Sponsor agrees to indemnify, defend and hold harmless the University of Cincinnati, its Board of Trustees, and any of its trustees, directors, affiliates, officers, employees, physicians or agents, including Principal Investigator and sub-investigators, from and against any and all damages, liabilities, costs and expenses (including reasonable attorneys' fees) that they may suffer as a result of claims, demands, costs or judgements against them arising out of activities carried out pursuant to this Agreement arising from or caused by the negligent or intentional acts or omissions of Sponsor or Sponsor's officers, employees, contractors or agents in the performance of this Agreement.
 13. **NOTICES.** Any notices required to be given or which shall be given under this Agreement shall be in writing delivered by first class mail (air mail if not domestic) addressed to the parties as follows:

UNIVERSITY OF CINCINNATI
SPONSOR

David S. Gearing, Director
Sponsored Research Services
University Hall, Suite 530
51 Goodman Drive
University of Cincinnati
P.O. Box 210222
Cincinnati, Ohio 45221-0222

Phone: (513) 556-4358
Fax: (513) 556-4346
E-mail: gearridd@uc.edu

Phone: _____
Fax: _____
E-mail: _____

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 its above address, they shall be deemed to have been given or made as of the date so mailed, otherwise as of the date received.

14. **ASSIGNMENT.** This Agreement shall be binding upon and shall inure to the benefit of the parties

hereto and the successors to substantially the entire business and assets of the respective parties hereto. This Agreement shall not be assignable by either party without the prior written consent of the other party.

15. **GOVERNING LAW.** The validity and interpretation of this Agreement and the legal relation of the parties to it shall be governed by the laws of the State of Ohio and the United States.
16. **GOVERNING LANGUAGE.** In the event that a translation of this agreement is prepared and signed by the parties for the convenience of the sponsor, this English language version shall be the official version and shall govern if there is a conflict between the two.
17. **EXPORT CONTROLS.** It is understood that UC 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 the Sponsor that the Sponsor will not re-export data or commodities to certain foreign countries without prior approval of the cognizant government agency. While UC agrees to cooperate in securing any license which the cognizant agency deems necessary in connection with this Agreement, UC cannot guarantee that such licenses will be granted.
18. **FORCE MAJEURE.** UC shall not be responsible to the Sponsor for failure to perform any of the obligations imposed by this agreement, provided such failure shall be 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 UC.
19. **WARRANTY DISCLAIMER.** Nothing in this Agreement shall be construed as:
 - A. A warranty or representation by UC as to the validity or scope of any patent.
 - B. A warranty or representation that anything made, used, sold or otherwise disposed of under any license that may be granted upon exercise of the Option is or will be free from infringement of patents, copyrights and trademarks of third parties;
 - C. An obligation to bring or prosecute actions or suits against third parties for infringement;
 - D. Conferring rights to use in advertising, publicity or otherwise any trademark or the name of UC; or
 - E. Granting by implication, estoppel or otherwise any licenses under patents of UC other than patent(s) identified herein, regardless whether such other patents are dominant or subordinate to any such patent(s).

Except as expressly set forth in this Agreement, **UC MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT ANY ACTIVITY PERFORMED OR DELIVERABLE PROVIDED HEREUNDER SHALL BE FREE OF**

INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS OR OTHER RIGHTS.

- 20. **ENTIRE AGREEMENT.** Unless otherwise specified, this Agreement embodies the entire understanding between UC and the Sponsor for this project, and any prior or contemporaneous representations, either oral or written, are hereby superseded. No amendments or changes to this Agreement, including without limitation, changes in the statement of work, total cost, and period of performance, shall be effective unless made in writing and signed by authorized representatives of the parties.
- 21. **NO WAIVER.** The failure of a party to exercise any right or to demand the performance by the other party of duties required under this Agreement shall not constitute a waiver of any rights or obligations provided for herein.
- 22. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all counterparts put together shall constitute one and the same agreement.

By signature below of duplicate originals, Sponsor and UC hereby agree to this Sponsored Research Agreement as of the Effective Date.

UNIVERSITY OF CINCINNATI

SPONSOR

By _____

By _____

Name _____

Name _____

Title
Sponsored Research Services

Title _____

Date _____

Date _____

Tax ID No. 31-6000989

Tax ID No.: _____

DUNS No. 04106-4767

DUNS No.: _____

Exhibit A
Research Program

Exhibit B
Budget

Exhibit C

Payments to the University of Cincinnati

Advances / Prepayments / Payments without invoices (no invoice number)

- ❖ Checks without an invoice should be sent to:

For Clinical Trials	Non-Clinical Trials
University of Cincinnati College / Department _____ Cincinnati, Ohio _____ Attn: _____ RE: (company, trial title, UC PI)	University of Cincinnati SRS Accounting 51 Goodman Drive, Suite 530 P.O. Box 210222 Cincinnati, Ohio 45221-0222 Attn: Kathleen Weber Kathy.weber@uc.edu RE: (company, project title, UC PI) _____

- ❖ ACH/EFT Payments (without an invoice number):

Account Name: University of Cincinnati
Account #: **4260609865**
ABA routing number: 041000124 (Domestic Transfers)
SWIFT/BIC: PNCCUS33 (International Transfers)

Payments based on an Invoice (will have an invoice number)

- Checks with the invoice number should be sent to:

University of Cincinnati
SRS Accounting
P.O. Box 932641
Cleveland, OH 44193

- ACH/EFT Payments (with an invoice number):

Account Name: University of Cincinnati
Account #: **4260606859**
ABA routing number: 041000124 (Domestic Transfers)
SWIFT/BIC: PNCCUS33 (International Transfers)