

**WASHINGTON STATE UNIVERSITY  
RESEARCH AGREEMENT  
OGRD # \_\_\_\_\_**

**ARTICLE 1 – PARTIES**

- 1.1 THIS AGREEMENT is made and entered into by and between Washington State University, an institution of higher education and an agency of the state of Washington, hereinafter referred to as “University,” and \_\_\_\_\_, hereinafter referred to as “Sponsor.” In this Agreement, the above entities are jointly referred to as Parties.

**ARTICLE 2 – PURPOSE**

- 2.1 The research program contemplated by this Agreement is of mutual interest and benefit to University and Sponsor.
- 2.2 The performance of such research is consistent, compatible and beneficial to the academic role and mission of University as an institution of higher education.

In consideration of the mutual premises and covenants contained herein, the Parties hereto agree to the following terms and conditions.

**ARTICLE 3 – DEFINITIONS**

- 3.1 “Budget” shall mean the Project Budget contained in *Attachment B–Budget*, which is hereby incorporated by reference.
- 3.2 “Project Director(s)” shall be \_\_\_\_\_.
- 3.3 “Sponsor Liaison” shall be [name], a Sponsor [employee, agent, contractor] designated by Sponsor to be the primary contact with the Project Director.
- 3.4 “Scope of Work” shall mean the research described in *Attachment A–Scope of Work* which is hereby incorporated by reference, and that is under the direction of the Project Director(s).

**ARTICLE 4 – SCOPE OF WORK**

- 4.1 Scope of Work. University agrees to perform the activities entitled “\_\_\_\_\_” as described in *Attachment A–Scope of Work*.
- 4.2 University agrees to use its reasonable best efforts to perform the Scope of Work. Sponsor acknowledges that this Agreement is for the research effort described in *Attachment A–Scope of Work* and that University does not represent or guarantee that the desired research results will be obtained under this Agreement.
- 4.3 Reporting Requirements.
- 4.3.1 Progress Reports. University shall provide written reports on the progress of the research as follows: *[Insert frequency of progress reports, i.e., no progress reports shall be provided, or shall be provided monthly or quarterly or semi-annually]*.
- 4.3.2 Final Report. A final written report shall be furnished at the completion of the Contract Term.

**ARTICLE 5 – CONTRACT TERM**

5.1 This Agreement shall become effective on \_\_\_\_\_ and shall be completed on \_\_\_\_\_ unless a time extension is mutually agreed upon in writing between the Parties in accordance with Article 18–Amendments.

**ARTICLE 6 – PAYMENT TERMS**

6.1 Total Costs. Sponsor agrees to reimburse University for services performed under this Agreement in the amount of \$\_\_\_\_\_ in accordance with the following payment schedule:

[Insert Payment Schedule]

6.2 Project Budget. *Attachment B–Budget* sets forth the Project Budget. Deviations from this Project Budget may be made to and from any expenditure object within the University system as long as such deviation is reasonable and necessary in the pursuit of the Scope of Work. The total amount identified above may not be exceeded without prior written amendment to this Agreement signed by the Parties.

6.3 Invoices. Periodic invoices will be provided, in accordance with 6.1, but not more often than monthly, using the standard University invoice. Payments are due to University within forty-five (45) days from the University invoice date. Checks should be made payable to Washington State University and sent to: Controller’s Office, Attn: Sponsored Projects Finance Office, Washington State University, Pullman, WA 99164-1025.

Invoices should be sent to:

Name/Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Fax: \_\_\_\_\_  
Address: \_\_\_\_\_ E-mail: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_

6.4 The balance of any amounts which remain unpaid more than thirty (30) days after they are due to the University shall accrue interest at the rate of the lesser of one and one-half percent (1.5%) per month or the maximum allowed under applicable law. However, in no event shall this interest provision be construed as a grant of permission for any payment delays.

**ARTICLE 7 – EQUIPMENT**

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

**ARTICLE 8 – KEY PERSONNEL**

8.1 The Project Director may select and supervise other project staff as needed. No other person will be substituted for the Project Director except with Sponsor’s approval. Sponsor may exercise Termination for Convenience provisions of this Agreement if a satisfactory substitute is not identified.

**ARTICLE 9 – CONTROL OF RESEARCH**

9.1 Control of Scope of Work rests entirely with University. However, the Parties agree that University, through its Project Director, shall maintain communication with a designated liaison for Sponsor. University’s Project Director and Sponsor’s Liaison shall mutually define the frequency and nature of these communications.

## **ARTICLE 10 – CONFIDENTIAL INFORMATION**

- 10.1 "Confidential Information" shall mean information in written, graphic, oral or other tangible form protected by trade secret or other right of non-disclosure, including without limitation algorithms, formulae, techniques, improvements, technical drawings and data, and computer software. Confidential Information shall not include information which (a) was in the receiving party's possession prior to receipt of the disclosed information; (b) is or becomes a matter of public knowledge through no fault of the receiving party; (c) is received from a third party without a duty of confidentiality; (d) is independently developed by the receiving party; (e) is required, upon advice of counsel, to be disclosed under operation of law (f) is reasonably ascertained by University or Sponsor to create a risk to a trial subject or to public health and safety.
- 10.2 It is understood that as an educational institution of the state of Washington, University is subject to Washington State laws and regulations including the Washington Public Disclosure Act, RCW 42.17.250 et seq. (<http://www.leg.wa.gov/wsladm/rcw.htm>). If a Public Disclosure Act request is made to view Sponsor's Confidential Information, and the University's Public Records Officer either determines that no exemption to disclosure applies or is unable to determine whether an exemption to disclosure applies, University will notify Sponsor of the request and the date that such records will be released to the requester unless Sponsor obtains a court order enjoining that disclosure. If Sponsor fails to obtain a court order enjoining disclosure, University will release the requested information on the date specified.
- 10.3 To the extent allowed by law, University and Sponsor agree to use reasonable care to avoid unauthorized disclosure of Confidential Information, including without limitation taking measures to prevent creating a premature bar to a United States or foreign patent application. Each party will limit access to Confidential Information received from another party hereto to those persons having a need to know. Each party shall employ the same reasonable safeguards in receiving, storing, transmitting, and using Confidential Information that prudent organizations normally exercise with respect to their own confidential information of significant value.
- 10.4 Any Confidential Information shall be in written, graphic, or other tangible form or reduced to such form within thirty (30) days of disclosure and shall be clearly identified as confidential at the time of or within thirty (30) days of disclosure. Confidential Information shall not be disclosed by the receiving party to a third party for a period of five (5) years from receipt of such information unless the disclosing and receiving parties agree otherwise and in writing at the time of disclosure. Third parties include all governmental offices unless disclosure is required by law or reasonably ascertained by University or Sponsor to be necessary to public health and safety.
- 10.5 The terms of confidentiality set forth in this Agreement shall not be construed to limit the parties' right to independently develop products without the use of another party's Confidential Information.

## **ARTICLE 11 – PUBLICATION**

- 11.1 University reserves the right to publish or permit to be published by University employees the results of Project research undertaken by University employees. To prevent untimely disclosure or exploitation of Sponsor Confidential Information, University shall provide Sponsor Liaison with a copy of any proposed publication resulting from the Project at least thirty (30) days prior to submission for publication. Sponsor shall have thirty (30) days (the "Pre-publication Review Period") from receipt of the draft to review the proposed publication. If Sponsor determines that Sponsor Confidential Information is included in the proposed publication, University will at Sponsor's request remove such Sponsor Confidential Information prior to submission for publication. If the proposed draft publication contains Sponsor Confidential Information, the Sponsor may request that University's submission of the draft for publication be delayed for up to sixty (60) days beyond the end of the Pre-publication Review Period. If Sponsor seeks to delay publication, Sponsor shall make such request in writing prior to the expiration of the Pre-publication Review Period together with identification of the information or materials of concern and reasons why delay is warranted.

University may delay publication by ninety (90) days to allow University or Sponsor, as the case may be, to seek patent protection.

#### **ARTICLE 12 – PUBLICITY**

- 12.1 Sponsor shall not include the name of Washington State University, Washington State University Research Foundation or any of either entity's Trademarks in any advertising, sales promotion, or other publicity matter without prior written approval of the President of the University or his or her designee.

#### **ARTICLE 13 – TERMINATION**

- 13.1 Termination for Convenience. This Agreement may be terminated by either party hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred prior to the date of termination. In the event of Termination for Convenience of this Agreement by Sponsor, Sponsor shall pay all reasonable costs and non-cancelable obligations incurred by University as of the date of termination.
- 13.2 Termination for Cause. In the event either party shall commit any material breach of or default in any terms or conditions of this Agreement, and also shall fail to remedy such default or 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 which it may have at law or in equity, terminate this Agreement by sending notice of termination in writing to the other party to that effect. Termination shall be effective as of the day of receipt of such notice.
- 13.3 Termination of this Agreement shall not relieve either party of any obligations incurred prior to the date of termination including, but not limited to, any obligation of the Sponsor to pay the option fee set forth in Article 16.

#### **ARTICLE 14 – DISPUTE RESOLUTION**

- 14.1 Except as otherwise provided in this Agreement, when a dispute arises between the Parties and it cannot be resolved by direct negotiation, any party may request a dispute resolution panel (DRP). A request for a DRP must be in writing, state the disputed issues(s), state the relative positions of the Parties and be sent to all Parties. Parties must provide a response within thirty (30) days unless the Parties mutually agree to an extension of time. Each party shall designate a representative. The representatives shall mutually select an additional member. The DRP shall evaluate the facts, Agreement terms, and applicable statutes and rules and make a determination by majority vote. The decision is binding on the Parties.
- 14.2 Nothing in this Agreement shall be construed to limit the Parties' choice of a mutually acceptable dispute resolution method in addition to the dispute resolution procedure outlined above.

#### **ARTICLE 15 – DISCLAIMER**

UNIVERSITY MAKES NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT.

#### **ARTICLE 16 – INTELLECTUAL PROPERTY**

- 16.1 “Intellectual Property” shall mean Invention, Copyright, Trademark and any Proprietary Information produced under the Scope of Work.
- 16.2 University Intellectual Property. University shall own all rights and title to Intellectual Property created solely by University employees.
- 16.3 Sponsor Intellectual Property. Sponsor shall own all rights and title to Intellectual Property created solely by Sponsor and without use of University resources under this Agreement.
- 16.4 Joint Intellectual Property. University and Sponsor shall jointly own all rights and title to Intellectual Property made jointly by University and Sponsor pursuant to this Agreement.
- 16.5 Consistent with University policy, University may assign Intellectual Property to the Washington State University Research Foundation (“WSURF”). For purposes of this Article, University shall mean either WSU or WSURF for Intellectual Property assigned to it.
- 16.6 “Invention” shall mean certain inventions and/or discoveries conceived and/or reduced to practice in performance of the Scope of Work and resulting patents, divisionals, continuations, or substitutions of such applications, all reissues and foreign counterparts thereof, upon which a University employee or agent is a named inventor.
- 16.7 “Invention Disclosure(s)” shall mean a written disclosure of a potentially patentable Invention(s) provided to the University’s Office of Intellectual Property Administration.
- 16.8 “Copyright” shall mean any work developed under the Scope of Work that is subject to copyright under copyright law.
- 16.9 “Proprietary Information” means all data, sequences, and any other information obtained or developed during the course of the Scope of Work.
- 16.10 “Trademark” shall mean any trade or service marks developed under the Scope of Work whether or not registered under either state or federal trademark law.
- 16.11 University hereby grants to Sponsor a nonexclusive right to use any University Intellectual Property produced under this Scope of Work for its internal non-commercial research purposes and the first right to elect an Option to negotiate an exclusive or non-exclusive license (to the extent allowed under 37 CFR 401.14) to University Intellectual Property and/or University’s ownership interest in Joint Intellectual Property produced under this Scope of Work (Option Rights). University shall notify Sponsor of such Intellectual Property within thirty (30) days of University’s Office of Intellectual Property Administration’s receipt of University Invention Disclosure forms from University inventors. Within sixty (60) days of Sponsor receiving such notification from University, Sponsor shall indicate to the Washington State University Research Foundation (WSURF) in writing its intent to enter into an Option Agreement containing terms similar to the Option Agreement shown at [http://wsurf5.respark.wsu.edu/agmts/agmts\\_opt.htm](http://wsurf5.respark.wsu.edu/agmts/agmts_opt.htm). In consideration of WSURF’s granting Sponsor Option Rights, Sponsor agrees to pay WSURF a non-refundable Option Issue Fee of Seven Thousand Five Hundred U.S. Dollars (US \$7,500) and all Sponsor-authorized patent costs within thirty (30) days of WSURF’s submission of an invoice or invoices to Sponsor. In the event that Sponsor exercises its Option to negotiate a license, the parties shall negotiate the license terms in good faith. The license shall contain terms standard for agreements between universities and industry including, without limitation, clauses providing for payment of license issue fee and maintenance fees; reasonable royalties and/or other compensation to WSURF; reimbursement of WSURF for all past, present, and future expenses incurred in the preparation, filing, prosecution, issuance, and maintenance of Intellectual Property rights; and product liability indemnification and insurance requirements which are acceptable to WSURF. Such terms and conditions shall take into consideration the funding provided by Sponsor hereunder and the commitment that will be made by

Sponsor to develop a commercial product. In the event that WSURF and Sponsor do not execute a written license agreement within one hundred and eighty (180) days following Sponsor's written notice of intent to negotiate a license agreement, WSURF shall be free to negotiate with and to enter into license agreements, including exclusive license agreements, with third parties for the Options Rights.

- 16.12 Invention Disclosures submitted to Sponsor by University are regarded by University as confidential. Sponsor shall not disclose any information contained in Invention Disclosures to any third party without University's prior written permission.
- 16.13 If Sponsor declines to enter into a license with University under this Article, Sponsor agrees for itself, its employees, successors, and assigns to be bound by a secrecy obligation for five (5) years with respect to information contained in the Invention Disclosure.
- 16.14 University hereby grants to Sponsor a royalty-free license to use Copyrights, with the exception of copyrighted software, for its non-commercial use. University hereby grants to Sponsor the right to negotiate a license for commercial use of Copyrights on reasonable terms and conditions, including a reasonable royalty, as the Parties hereto agree in a subsequent writing.
- 16.15 Sponsor understands that University must comply with the provisions of the Bayh-Dole Act.

**ARTICLE 17 – INDEMNITY**

- 17.1 Each party to this Agreement shall be responsible for its own acts and/or omissions and those of its officers, employees and agents. Sponsor shall fully indemnify and hold harmless University against all claims arising out of Sponsor's use, commercialization, or distribution of Intellectual Property or products that result in whole or in part from the Scope of Work.

**ARTICLE 18 – AMENDMENTS**

- 18.1 This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

**ARTICLE 19 – ASSIGNMENT**

- 19.1 The work to be provided under this Agreement, and any claim arising hereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.
- 19.2 Notwithstanding the foregoing, and consistent with University policy, Sponsor agrees that University may assign any Inventions, Copyrights, or Trademarks developed under this Agreement to the Washington State University Research Foundation.

**ARTICLE 20 – NOTICES**

- 20.1 Any notice or communication required or permitted under this Agreement shall be delivered by overnight courier, or by registered or certified mail, 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. Notice given hereunder shall be effective as of the date of receipt of such notice:

**University:**

Name/Title: _____	Phone: _____
Address: _____	Fax: _____
Address: _____	E-mail: _____
City/State/Zip: _____	

**Sponsor:**

Name/Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Fax: \_\_\_\_\_  
Address: \_\_\_\_\_ E-mail: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_

**ARTICLE 21 – GOVERNING LAW**

21.1 This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in the Superior Court of Whitman County.

**ARTICLE 22 – SEVERABILITY**

22.1 If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

**ARTICLE 23 – ORDER OF PRECEDENCE**

23.1 In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable statutes and regulations;
2. Terms and Conditions contained in the basic Agreement;
3. *Attachment A–Scope of Work*;
4. *Attachment B–Budget*;
5. Any other attachments; and
6. Any other provisions incorporated by reference or otherwise into this Agreement.

**ARTICLE 24 – ALL WRITINGS CONTAINED HEREIN**

24.1 This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date set forth herein by their duly authorized representatives.

**WASHINGTON STATE UNIVERSITY**

**SPONSOR**

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

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

**ATTACHMENT A – SCOPE OF WORK**  
**OGRD # \_\_\_\_\_**  
(See Article \_\_)

Description:

**ATTACHMENT B – BUDGET**

**OGRD # \_\_\_\_\_**

(See Articles \_\_\_ and \_\_\_)

Salaries and Wages .....	\$ _____
Fringe Benefits .....	\$ _____
Travel .....	\$ _____
Supplies/Services .....	\$ _____
Equipment .....	\$ _____
Subcontracts .....	\$ _____
Other Direct Costs .....	\$ _____
 Total Direct Costs .....	 \$ _____
 Indirect Costs .....	 \$ _____
[____% MTDC of \$_____]	
 Total Costs .....	 \$ _____