

Note: Only UKRF is authorized to negotiate modifications to this document

AGREEMENT
between

and

THE UNIVERSITY OF KENTUCKY RESEARCH FOUNDATION

THIS AGREEMENT, having an Effective Date of _____ is made by and between _____, a corporation having its principal place of business at _____ (hereinafter referred to as "CONTRACTOR") and the UNIVERSITY OF KENTUCKY RESEARCH FOUNDATION, with offices and place of business at 109 Kinkead Hall, Lexington, KY 40506-0057 (hereinafter referenced to as "FOUNDATION") and

WITNESSETH:

WHEREAS, CONTRACTOR has identified and related specific tasks described under ARTICLE I; and

WHEREAS, FOUNDATION is available and qualified to perform such tasks.

NOW THEREFORE, in consideration of the promises and the mutual covenant's contained herein, the parties agree as follows:

ARTICLE I - Scope of Work

FOUNDATION agrees to USE ITS BEST EFFORTS TO perform the work outlined in (ATTACHMENT 1) or (as described below)

ARTICLE II - Period of Performance

The period of performance shall commence on Effective Date and shall terminate on _____(Date) unless extended by written mutual agreement of parties or is terminated in accordance with the provisions of Article XIV. FOUNDATION shall notify CONTRACTOR, as soon as possible, of any reason that might contribute to the failure to perform within the specified performance period even if such reason is beyond the control and without fault or negligence of the FOUNDATION.

ARTICLE III - Consideration, Records, and Billing Instructions

1. FOUNDATION shall be paid a total amount of \$_____ by CONTRACTOR under this agreement..
2. Payments shall be made to FOUNDATION by CONTRACTOR with the first payment of \$_____ [1/3 of the total] due within thirty days from the signing of this contract. [The final payment may be no more than 10% of the total.] The balance shall be paid in accordance with the following schedule:

Date_____	Amount_____
Date_____	Amount_____
Date_____	Amount (FINAL)_____

Whenever a payment becomes forty-five (45) days past due, FOUNDATION reserves the right to stop work until payment is received. Checks shall be made payable to University of Kentucky Research Foundation and mailed (not over night) to:

University of Kentucky Research Foundation
c/o PNC Bank P.O. Box 931113
Cleveland, OH 44193

ARTICLE IV - Designated Representatives

1. Technical Representative

For CONTRACTOR:
Name _____
Address _____
Telephone _____

For FOUNDATION
Name _____
Address _____
Telephone _____

2. Administrative Representative

For CONTRACTOR:
Name _____
Address _____
Telephone _____

For FOUNDATION
Name _____
University of Kentucky Research Foundation
109 Kinkead Hall
Lexington, KY 40506-0057
Telephone/Email _____

ARTICLE V - Reports

FOUNDATION will submit in a timely manner those reports described in the Scope of Work. Such reports shall be in the format agreed to by the Designated Technical Representative.

ARTICLE VI - Patents and Inventions

1. a) All rights and title to all inventions, improvements and/or discoveries, including software, know-how, patent and other intellectual or industrial property conceived and/or made solely by one or more employees or students of FOUNDATION in the performance of the agreement, shall belong to the FOUNDATION.
- b) All rights and title to all inventions, improvements and/or discoveries, including software, know-how, patent and other intellectual or industrial property conceived and/or made solely by one or more employees or students of CONTRACTOR in the performance of the agreement, shall belong to the CONTRACTOR.
- c) All rights and title to all inventions, improvements and/or discoveries, including software, know-how, patent and other intellectual or industrial property conceived and/or made jointly by one or more employees or students of FOUNDATION and one or more employees of CONTRACTOR in the performance of the agreement, shall belong jointly to the FOUNDATION and CONTRACTOR.
2. FOUNDATION shall promptly notify CONTRACTOR of any inventions, improvements, discoveries, software and the like conceived and/or made during the performance of this agreement (hereafter "Inventions"). Disclosures submitted by FOUNDATION to CONTRACTOR shall be identified as confidential.
3. The filing, prosecution, and maintenance of patent applications and patents covering Inventions shall be carried out by the owner thereof, at the said owner's sole discretion and expense. In the event the owner elects not to apply for any such patents, the other party shall have the option, at its sole expense, to apply for the patents. FOUNDATION and CONTRACTOR will cooperate in the filing, prosecution and maintenance of joint inventions.
4. CONTRACTOR shall have the right to be the first to negotiate terms for a royalty-bearing, exclusive worldwide license to make, sell and use, any discovery, know-how, or patented invention developed in the performance of this agreement. CONTRACTOR and FOUNDATION shall negotiate in good faith the terms of a license at the time of disclosure. In the event that CONTRACTOR and FOUNDATION are unable to agree to terms for such license within 60 days after disclosure of the invention, then FOUNDATION shall be free to negotiate with any third party; provided, however, that FOUNDATION shall not

enter into any agreement with any such third party that is less favorable to FOUNDATION than CONTRACTOR'S last offer until CONTRACTOR has been given a thirty day right-of-first-refusal to agree to the same terms and conditions.

5. CONTRACTOR and FOUNDATION shall retain sole ownership of their respective Background Intellectual Property Rights. Except for any license option expressly granted herein, nothing in this Agreement, or any course of dealing between the parties will be deemed to grant to a party any license whatsoever (whether express, implied, by estoppels or otherwise) in or to any of the other party's Background Intellectual Property Rights.

ARTICLE VII - Copyrights

FOUNDATION may claim the copyright of data first produced in the performance of this contract. FOUNDATION shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the FOUNDATION in the performance of this contract.

ARTICLE VIII - Proprietary or Confidential Information

Should proprietary or confidential information be exchanged under this agreement, each party agrees, absent any special provisions to the contrary, to:

1. use its best efforts to receive and maintain in confidence any and all confidential or proprietary information delivered by one party hereto to the other party;
2. use confidential information solely for the purpose or purposes for which it was disclosed and for no other purpose whatsoever;
3. as a receiving party, to disclose confidential information to its employees, officers, agents, and representatives only on a need to know basis;
4. identify in writing all confidential or proprietary information as such at the time of disclosure;
5. not release confidential or proprietary information to any third parties; and
6. to dispose of or return proprietary or confidential information to the disclosing party when requested or upon expiration or termination of this contract. The period of protection of confidential information shall be 3 years from the effective date of this contract.

Confidential information does not include any information which:

1. is already in the public domain or which becomes available to the public through no breach of confidentiality by the recipient;
2. was lawfully in recipient's possession on a non-confidential basis prior to receipt from the discloser;
3. is received by recipient independently on a non-confidential basis from a third party free to lawfully disclose such information to the recipient; or
4. is independently developed by recipient without use of the discloser's confidential information;

The release of confidential information by the receiving party to satisfy the requirements of federal, state or local laws shall not be a breach of this agreement.

ARTICLE IX - Publication

Subject to limitations of ARTICLE VIII, FOUNDATION shall have the right to publish any information or material resulting from the conduct of the Scope of Work. FOUNDATION shall furnish the CONTRACTOR with a copy of any proposed publication 30 days in advance of the proposed publication date. CONTRACTOR may request FOUNDATION to delay publication for a maximum of an additional 60 days in order to pursue a patent on any Invention described in the manuscript. No delay, however, will be imposed on the filing of any student thesis or dissertation.

ARTICLE X - Changes and Modifications

Any changes to this contract must be made in writing and must be executed by both parties to indicate acceptance of the modification. Any change that might impact cost, price, or delivery must be agreed to in writing prior to initiation of any work associated with the proposed change.

ARTICLE XI- Assignment and Subcontracts

Neither performance nor payment involving the whole or any part of research effort described under Article I may be assigned, subcontracted, transferred, or otherwise given or imposed on any other party by FOUNDATION without the prior written consent of the CONTRACTOR.

ARTICLE XII - Mutual Responsibilities

1. Each party will comply with all applicable governmental laws, ordinances, rules and regulations in the performance of this contract.
2. Without affecting or limiting any other provisions of this contract, it is agreed each party's obligation under Article VIII may survive the expiration of this contract.
3. Each party to this contract is an independent contractor with each party solely responsible for its own business expenses and employees including but not limited to salaries, benefits, insurances, withholding, worker compensation and taxes. Employees of either party shall not be deemed agents, employees or representatives of the other party.
4. In the execution to this contract, the person whose signatures are set forth are duly authorized to execute the contract and bind the parties.

ARTICLE XIII - Use of Names

CONTRACTOR shall not use the name of FOUNDATION or the University of Kentucky in any news release, advertising or other publication without express written permission.

ARTICLE XIV - Termination

Either party may terminate this contract at any time if:

1. The other party materially breaches the terms of this contract; provided that the non-breaching party shall have given the breaching party written notice of such breach and the breaching party shall have failed to cure the same within (30) days after receipt of such notice.
2. There is the loss or departure of key personnel that would jeopardize both the quality and time of performance or would make performance impractical with respect to budget contemplated for this contract, and a mutually acceptable replacement cannot be found.
3. Performance of any part of this contract by a party is prevented or delayed by reason of Force Majeure and cannot be overcome by reasonable diligence to satisfaction of either party; or
4. The other party ceases, discontinues or indefinitely suspends its business activities related to the services to be provided under this contract, or the other party voluntarily or involuntarily files for bankruptcy.

In the event of termination, immediate written notice by email, fax, or hard copy shall be given by the party requesting termination to both the technical and administrative contacts of the other party, which should specify both reason and the effective date of termination.

In addition, either party may terminate this contract for any reason with 60 days written notice by email, fax, or hard copy to both the technical and administrative contacts of the other party.

Upon any termination except for breach of contract, FOUNDATION shall deliver to CONTRACTOR in the state they exist as of the date of termination all work product, materials, including confidential information and property belonging to CONTRACTOR. CONTRACTOR shall within (30) days after termination, pay FOUNDATION all payments due as of the effective date of termination.

ARTICLE XV - Applicable Law

This contract shall be governed by the laws of the State of Kentucky.

ARTICLE XVI – Export Controls

It is understood that FOUNDATION 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 CONTRACTOR that the CONTRACTOR will not re-export data or commodities to certain foreign countries without prior approval of the cognizant government agency. While

FOUNDATION agrees to cooperate in securing any license which the cognizant agency deems necessary in connection with this Agreement, FOUNDATION cannot guarantee that such licenses will be granted.

It is the normal operational policy of the FOUNDATION that its work and the results of its research undertakings are exempt from compliance with US governmental export regulations under the Fundamental Research Exemption. Should the CONTRACTOR provide or transmit under this agreement any technology or data that is subject to governmental export regulatory compliance and does not qualify as exempt under the Fundamental Research Exemption, FOUNDATION reserves the right to refuse acceptance of such material or data and/or to terminate this agreement. Such refusal or termination shall not be considered a breach of contract obligations.

ARTICLE XVII - Entire Agreement

This contract is intended by the parties as a final written expression of their agreement and supersedes and replaces any prior oral or written agreement. Any terms or conditions inconsistent with or in addition to terms and conditions herein contained shall be void and of no effect unless specifically agreed to in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused their authorized officials to execute this Agreement as of the date(s) set forth below:

CONTRACTOR

FOUNDATION

Typed Name and Title:

Deborah K. Davis, Associate Director

Date

Date

J:/OSPA/OSPARead/ModelCompany/
Revision 1/21/2009