**THIS SPONSORED RESEARCH AGREEMENT** (“Agreement”) by and between The Pennsylvania State University, (“Penn State”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (Sponsor”).

1.  **Performance and Reporting.** The period of performance shall be from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as "Period of Performance"). As used herein, "Project" shall mean the research described in Appendix A hereof, under the direction of (hereinafter referred to as "Principal Investigator"). Penn State shall commence the performance of Project on the first day of Period of Performance and shall use reasonable best efforts to perform Project substantially in accordance with the terms and conditions of this Agreement. The Principal Investigator shall furnish Sponsor with reports regarding Project.

**2. Fiscal Considerations.** This is a cost reimbursable agreement. Total cost to Sponsor shall not exceed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_dollars ($\_\_\_\_\_\_\_\_\_). Payments shall be made by Sponsor within 30 days of receipt of monthly invoices (in accordance with invoice instructions). Sponsor shall be responsible for all collection costs associated with non-payment. Penn State may immediately discontinue performance of Project if Sponsor fails to pay any invoice within the time specified above, notwithstanding the notification requirements in Article 11. In the event of early termination of this Agreement pursuant to Article 11 hereof, Sponsor shall pay all reasonable costs incurred and non-cancelable obligations incurred by Penn State as of the date of termination. Invoices shall be sent to the following email address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**3. Equipment.** Penn State shall retain title to any supplies and/or equipment purchased with funds provided by Sponsor under this Agreement.

**4. Publicity.** Neither party to this Agreement will use the name, trademarks, or logos of the other party or its employees, in any publicity, advertising, or news release without the prior written approval of an authorized representative of that party.

**5. Confidentiality.** Proprietary Information shall mean any written information and data marked proprietary or non-written information and data disclosed which is identified at the time of disclosure as proprietary and is reduced to writing and transmitted to the other party within 30 days of such non-written disclosure. Prior to disclosure of Proprietary Information to Penn State by Sponsor, Sponsor shall notify Principal Investigator of its intent to disclose Proprietary Information; and Principal Investigator shall have the right to decline receipt of said information. Said Proprietary Information shall be sent only to Principal Investigator. Each party to this Agreement agrees to treat Proprietary Information received from the other with the same degree of care with which it treats its own Proprietary Information and further agrees not to disclose such Proprietary Information to a third party without prior written consent from the party disclosing Proprietary Information. The foregoing obligations of non-disclosure do not apply to Proprietary Information which is known or available to the public, known to Penn State prior to disclosure, received by Penn State from a third party without obligations of confidentiality, independently developed or obtained by Penn State, or required by law, regulation, or authority of a court to be disclosed. Unless otherwise agreed to in writing, the period of confidentiality shall be 3 years from the date of termination or expiration of this Agreement.

**6. Publication.** Sponsor acknowledges that Penn State, subject to prior review by Sponsor, shall have the right to publish any results of the Project that do not disclose Proprietary Information. Penn State agrees not to publish or otherwise disclose Proprietary Information. Sponsor shall be furnished copies of any proposed publication or presentation at least 30 days before submission of such proposed publication or presentation. During that time, Sponsor shall have the right to review the material for Proprietary Information provided by Sponsor and to assess the patentability of any invention described in the material. If Sponsor decides that a patent application should be filed, the publication or presentation shall be delayed an additional 60 days or until a patent application is filed, whichever is sooner. At Sponsor's request, Proprietary Information provided by Sponsor shall be deleted. Notwithstanding the limitations of Article 4, Penn State reserves the right to identify its sponsors in academic publications. Authorship of any publication resulting from the research shall be determined in accordance with academic standards for authorship in the relevant field of study.

**7. Intellectual Property.** "Intellectual Property" means (i) those inventions conceived and reduced to practice in performance of this Project and any resulting patent application, division, continuation, substitution, reissue, or reexamination and (ii) any copyrights to software or source code created in performance of this Project, upon which a Penn State employee is an inventor or creator, respectively. Penn State will own all Intellectual Property developed hereunder. Penn State will also own all research results. Sponsor will have the irrevocable, worldwide, free, non-exclusive right to use the research results for any purpose.

Penn State hereby grants Sponsor a non-sublicensable, non-exclusive, royalty free license to practice the Intellectual Property solely for its internal research purposes. Penn State also hereby grants Sponsor the first option to negotiate a commercial non-exclusive or exclusive license to Intellectual Property on commercially reasonable terms negotiated in good faith and agreed upon between Penn State and Sponsor (the “Option”). Sponsor has sixty (60) days, from the date of disclosure of the Intellectual Property to Sponsor, to exercise its Option (the “Election Period”). If Sponsor exercises the Option during the Election Period, the Parties shall diligently negotiate the terms of an exclusive commercial license, which shall contain terms under which Sponsor reimburses Penn State for all reasonable third-party costs incurred to secure and maintain the Intellectual Property during the Election Period and period of negotiation and to be incurred during the life of the Intellectual Property’s protection. If the parties do not reach an agreement and finalize an exclusive license agreement within six (6) months from the date of disclosure of the Intellectual Property to Sponsor, Penn State will have no further obligation to the Sponsor and will be free to license Intellectual Property to one or more third parties, provided that Sponsor shall retain its non-exclusive royalty free license as described above for internal research purposes.

For the purposes of clarity, no rights to Penn State background intellectual property (i.e., intellectual property conceived, reduced to practice, authored, created, or developed prior to the effective date or in the performance of activities independent of this Agreement) are granted under the terms of this Agreement. In the event Penn State background intellectual property is required to practice Intellectual Property, Penn State will negotiate an option or license to the extent such rights are available.

**8. Indemnity.** Neither party shall be liable for any claims, liabilities, damages, losses, costs or fees (including counsel fees) arising from personal injury, bodily injury (including death), or property damage caused by the negligent acts or omissions of the other party. Except as provided above, Sponsor shall fully indemnify, defend, and hold harmless Penn State against any and all claims, liabilities, damages, losses, costs, and fees (including counsel fees) arising out of Sponsor'suse, commercialization, or distribution of, or other exercise of rights granted hereunder to, any materials, products, research results or Intellectual Property which result in whole or in part from the research performed pursuant to this Agreement. Sponsor will indemnify, defend, and hold Penn State harmless against any and all claims, liabilities, damage, losses, costs, and fees (including counsel fees) arising from third party claims that performance of the Project hereunder infringes third party intellectual property rights. Penn State has no knowledge of any such claims. In the event any project or portion thereof funded under this agreement requires the use of human research subjects, the then current IRB project terms, which are available online at <http://www.research.psu.edu/osp/negotiate-agreements/industry-other/t-csra>, shall apply and be incorporated herein by reference.

**9. DISCLAIMER OF WARRANTIES.** PENN STATE MAKES NO REPRESENTATIONS AND DISCLAIMS ANY AND ALL WARRANTIES BOTH EXPRESS AND IMPLIED WITH RESPECT TO THE PROJECT PERFORMED HEREUNDER AND ANY DELIVERABLES, RESULTS, OR INTELLECTUAL PROPERTY RESULTING THEREFROM, INCLUDING BUT NOT LIMITED TO MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, VALIDITY OF ANY INTELLECTUAL PROPERTY RIGHTS OR CLAIMS, NON-INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS, UTILITY, OR ANY PARTICULAR OUTCOME.

## 10. Notices. Notices, invoices, communications, and payments delivered hereunder shall be deemed made as of the day of receipt of notice.

**All notices to Penn State: All notices to Sponsor:**

The Pennsylvania State University Company Name

Office of Sponsored Programs Attn:

200 Innovation Boulevard, Suite 110 Street Address

University Park, PA 16802-7000 City, State, Zip

osp@psu.edu Email

**11. Termination.** Either party may terminate this Agreement upon 60 days prior written notice to the other. In the event that either party hereto shall commit any material breach of or default in any terms or conditions of this Agreement, and also shall fail to reasonably remedy such default or breach within 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 such effect. Termination shall be effective as of the day of the receipt of such notice. Termination of this Agreement by either party for any reason shall not affect the rights and obligations of the parties accrued prior to the effective date of termination of this Agreement, except insofar as Sponsor's breach of contract for failure to make payments under Article 2 shall cause Sponsor to forfeit its rights under Article 7.

**12. Dispute Resolution.** Any and all claims, disputes or controversies arising under, out of, or in connection with this Agreement, which the parties hereto shall be unable to resolve within 60 days, shall be mediated in good faith. In the event mediation is unsuccessful, the parties shall have the right to pursue any other remedies legally available to resolve such dispute in either the Courts of the Common Pleas of Centre County of Pennsylvania or in the United States District Court for the Middle District of Pennsylvania, to whose jurisdiction for such purposes Penn State and Sponsor each hereby irrevocably consents and submits. Notwithstanding the foregoing, nothing in this clause shall be construed to waive any rights or timely performance of any obligations existing under this Agreement.

**13. Governing Law.** Both parties agree to comply with all applicable federal, state, and local laws and regulations in the performance of this Project, as well as any requirements under any applicable protocol or statement of work. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania.

**14. Disclosure of Controlled Content.** Both parties are subject to applicable U.S. export laws and regulations and shall use their reasonable best efforts to comply with any and all reporting or licensing requirements contained therein. Prior to delivery to Penn State of any export-controlled information, materials, technology, or know-how (collectively “Controlled Content”), unless and solely to the extent that such Controlled Content is appropriately designated as EAR99, Sponsor shall notify Penn State’s Office of Sponsored Programs (OSP), to inform of the Sponsor’s intention to disclose or deliver the Controlled Content. At such time, Penn State’s OSP shall have a reasonable period, not to exceed 10 business days, to evaluate the request for disclosure or delivery of the Controlled Content. Penn State’s OSP shall have, in its sole discretion, the right to accept or decline receipt of such Controlled Content. Upon receipt of written notification from Penn State of its acceptance of delivery of the identified Controlled Content, in a manner consistent with this provision, Sponsor may disclose and/or deliver the Controlled Content only to the attention of the named Principal Investigator as identified in Article 1.

**15. Independent Contractor.** In the performance of project, the parties agree that Penn State shall be an independent contractor. Neither party hereto 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 party shall be bound by the acts or conduct of the other.

**16. Non-assignability.** The rights and obligations of the parties under this Agreement shall not be assignable without written permission of the other party.

**17. Survival.**The rights and obligations of Articles 3-9, 12-14, and 16-17 of this Agreement shall survive termination.

**18. Entire Agreement.** This Agreement contains the entire and only agreement between the parties respecting the subject matter hereof and supersedes or cancels all previous negotiations, agreements, commitments and writings between the parties on the subject of this Agreement. Should processing of this Agreement require issuance of a purchase order or other contractual document, all terms and conditions of said document are hereby deleted in entirety. This Agreement may not be amended in any manner except by an instrument in writing signed by the duly authorized representatives of each of the parties hereto.

**By an Authorized Official of Penn State By an Authorized Official of Sponsor**

Name: Name:

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: