

SPONSORED RESEARCH AGREEMENT  
 -- INVENTIONS AND MATERIALS --  
 (ver. 2/8/96)

This Agreement is between the University of Massachusetts ("Institution"), a public institution of higher education of the Commonwealth of Massachusetts, as represented by Amherst campus and **[name of sponsor]** ("Sponsor"), **[corporate identity of sponsor -- e.g., a Delaware corporation]**.

The parties to this Agreement desire to engage in a research program of mutual interest and benefit. Sponsor is willing to fund the research program in exchange for access to the results of the research and an option to license any inventions that may arise in the performance of the research. Institution is willing to perform the research, which will further the educational and research objectives of Institution and provides a service to the community that is consistent with its status as public land-grant university.

Institution and Sponsor hereby agree as follows:

1. Performance of Research Project.

1.1. Performance of Research Project. Institution shall use reasonable efforts to complete the research project described on Exhibit A (the "Research Project"); however, Institution makes no warranties regarding the completion of the Research Project or the achievement of any particular results.

1.2. Principal Investigator. The Research Project will be directed and supervised by **[name of PI]** (the "Principal Investigator"), who shall have primary responsibility for the performance of the Research Project. If **[name of PI]** ceases to serve as Principal Investigator for any reason, Institution will promptly notify Sponsor, and Institution and Sponsor shall use good faith efforts to identify a mutually acceptable replacement within sixty (60) days. If a suitable replacement Principal Investigator cannot be identified within the sixty-day period, Sponsor shall have right to terminate this Agreement as provided in Section 6.2.

1.3. Technical Representative. Sponsor shall designate one of its employees as its principal technical representative (the "Technical Representative") for consultation and communications with Institution and the Principal Investigator. Sponsor may change its Technical Representative at any time upon thirty (30) days written notice to Institution.

2. Funding of Research Project.

2.1. Payments. Sponsor shall pay all direct costs and indirect costs of the Research Project, not to exceed the total estimated cost of **[number]** dollars (\$#) without written authorization from Sponsor. Sponsor shall make advance quarterly payments to Institution in the following amounts on the following dates:

**[list dates and payment amounts]**

Payments should be made in the name of "University of Massachusetts" and sent to Controller's Office, 408 Goodell Bldg., University of Massachusetts, Amherst, MA 01003.

2.2. Use of Funds. Institution shall monitor expenditures, in accordance with its institutional policies, to ensure that the funds provided by Sponsor are spent in connection with the performance of the Research Project.

2.3. Ownership of Equipment. Upon termination or expiration of this Agreement, Institution shall retain title to all equipment purchased or fabricated by Institution with funds provided by Sponsor.

### 3. Confidential Information and Proprietary Tangible Research Materials.

Neither party will disclose to the other party any confidential information or proprietary tangible research materials, except for invention disclosures furnished to Sponsor by Institution as required under this Agreement. If either party desires to disclose any confidential information or proprietary tangible research materials to the other party in the course of the Research Project, such disclosure shall be made under the terms of a separate confidential disclosure agreement or materials transfer agreement.

### 4. Intellectual Property.

#### 4.1. Definitions.

(a) "Materials" means any tangible biological, chemical, or physical materials that are discovered or developed in the performance of the Research Project. In the case of biological materials, the term "Materials" shall also include tangible materials that are routinely produced through use of the original materials, including, for example, any progeny derived from a cell line, monoclonal antibodies produced by hybridoma cells, DNA or RNA replicated from isolated DNA or RNA, recombinant proteins produced through use of isolated DNA or RNA, and recombinant proteins isolated from a cell extract or supernatant by non-proprietary affinity purification methods.

(b) "Research Results" means all data, test results, laboratory notes, techniques, know-how, and any other research results that are obtained in the performance of the Research Project. The term "Research Results" shall not include any Materials, patentable inventions, copyrighted or copyrightable works, trademarks or service marks, or other intellectual property based on the Research Results. As a matter of policy, Institution ordinarily will not assert trade secret protection for Research Results.

(c) "Inventions" means any potentially patentable inventions based on the Research Results which are (i) conceived during the term of this Agreement by employees of Institution or Sponsor, or both, and (ii) reduced to practice either during the term of this Agreement or within a period of six (6) months after its conclusion.

(d) "Patent Rights" means all United States and foreign patent applications claiming an Invention, including any divisional, continuation, continuation-in-part (to the extent that the claims are directed to an Invention), and foreign equivalents thereof, as well as any patents issued thereon or reissues or reexaminations thereof.

4.2. Ownership of Patent Rights and Materials. Institution shall have sole ownership of all Patent Rights and commercial rights in Materials not specifically claimed in the Patent Rights.

4.3. Notice of Inventions. The Principal Investigator shall promptly disclose to Institution the conception or reduction to practice of any Invention, and Institution shall furnish Sponsor with a copy of

the invention disclosure. Sponsor agrees to maintain all such invention disclosures in strict confidence until the invention is publicly disclosed.

#### 4.4. Responsibility for Patent Rights.

(a) Primary Responsibility with Institution. Institution shall have primary responsibility for the preparation, filing, prosecution, and maintenance of all Patent Rights, using patent counsel reasonably acceptable to Sponsor. Institution shall consult with Sponsor as to the preparation, filing, prosecution, and maintenance of the Patent Rights reasonably prior to any deadline or action with the U.S. Patent & Trademark Office or any foreign patent office and shall furnish Sponsor with copies of all relevant documents reasonably in advance of such consultation. Sponsor shall reimburse Institution for all reasonable patent-related expenses incurred by Institution pursuant to this Subsection within thirty (30) days after Institution invoices Sponsor. Sponsor may elect, upon sixty (60) days written notice to Institution, to cease payment of the expenses associated with obtaining or maintaining patent protection for one or more Patent Rights in one or more countries. In such event, Sponsor shall lose all rights under this Agreement with respect to such Patent Rights in such countries.

(b) Secondary Responsibility with Sponsor. In the event that Institution desires to abandon any patent or patent application within the Patent Rights, or if Institution declines to assume responsibility for obtaining patent protection for any Invention, Institution shall provide Sponsor with reasonable prior written notice of such intended abandonment or decline of responsibility, and Sponsor shall have the right, at its expense, to prepare, file, prosecute, and maintain the relevant Patent Rights.

4.5. Option for Exclusive License. Institution hereby grants Sponsor a first option to obtain a worldwide, royalty-bearing, exclusive license (with the right to sublicense) under any Patent Rights (the "Option Right"). Sponsor may exercise the Option Right with respect to a particular Patent Right by written notice to Institution which is received by Institution not later than sixty (60) days after the disclosure to Sponsor of the relevant Invention (the "Option Period"). If Sponsor elects not to exercise the Option Right, or fails to exercise the Option Right during the Option Period, Institution shall be free to license its commercial rights under the relevant Patent Right to any third party. If Sponsor does elect to exercise the Option Right, Institution and Sponsor shall negotiate in good faith a license agreement containing commercially reasonable terms and conditions. If Institution and Sponsor are unable to reach agreement within six (6) months after Sponsor exercised the Option Right (the "Negotiation Period"), Institution may offer its commercial rights in the relevant Patent Right to any third parties; provided, however, that for a period of one (1) year after the Negotiation Period expires, Institution may only offer such rights to third parties on terms and conditions that are not more favorable than the last offer made by Institution to Sponsor, unless Institution first provides Sponsor with written notice of the more favorable offer and Sponsor either (i) declines in writing to accept the offer or (ii) fails to respond to the offer within thirty (30) days after receiving such notice.

4.6. License of Materials. If Sponsor desires to obtain a license under the commercial rights of Institution in any Project Materials, Institution agrees to discuss the possibility of granting such a license, provided that such commercial rights are available for licensing when Sponsor makes its request.

4.7. Copyrightable Works. Institution or its employees shall have sole ownership of any copyrighted or copyrightable works (including reports and publications) that are created by Institution employees in the performance of the Research Project. Institution and the Principal Investigator hereby grant Sponsor an irrevocable, royalty-free, nontransferable, non-exclusive right to copy and distribute

any research reports furnished to Sponsor under this Agreement.

## 5. Publication Rights.

Institution and its employees will be free to publicly disclose (through journals, lectures, or otherwise) the Research Results, provided that the Principal Investigator shall have furnished Sponsor with a copy of the proposed disclosure at least thirty (30) days before actual disclosure. The parties expressly agree that research grant proposals submitted to federal, state, or local agencies or non-profit organizations shall not be subject to review under this Article. At the request of Sponsor, the Principal Investigator may agree to further delay public disclosure for an additional period not to exceed sixty (60) days in order to permit the preparation and filing of a U.S. patent application to preserve rights in an Invention.

## 6. Term and Termination.

6.1. Term. This Agreement shall commence on the date last written below and shall remain in effect for a period of [number (#) {months} {years}], unless earlier terminated in accordance with the provisions of this Agreement.

6.2. Loss of Principal Investigator. If the Principal Investigator leaves Institution or otherwise terminates his involvement in the Research Project, and if Institution and Sponsor fail to identify a mutually acceptable substitute as provided in Section 1.2., Sponsor may terminate this Agreement upon sixty (60) days prior written notice to Institution.

6.3. Termination for Default. In the event that either party commits a material breach of its obligations under this Agreement and fails to cure that breach within sixty (60) days after receiving written notice thereof, the other party may terminate this Agreement immediately upon written notice to the party in breach. If the alleged breach involves nonpayment of any amounts due Institution under this Agreement, Sponsor shall have only one opportunity to cure a material breach for which it receives notice as described above; any subsequent material breach by Sponsor will entitle Institution to terminate this Agreement immediately upon written notice to Sponsor, without the sixty-day cure period.

6.4. Force Majeure. Neither party will be responsible for delays resulting from causes beyond the reasonable control of such party, including without limitation fire, explosion, flood, war, strike, or riot, provided that the nonperforming party uses commercially reasonable efforts to avoid or remove such causes of nonperformance and continues performance under this Agreement with reasonable dispatch whenever such causes are removed.

6.5. Effect of Termination. The following provisions shall survive the expiration or termination of this Agreement: Article 5 and Sections 6.5., 7.1., 7.2., 7.5., 7.7., and 7.8. In addition, the provisions of Article 4 shall survive termination of this Agreement, as necessary to effectuate the rights of Sponsor, unless Institution has terminated this Agreement because of a material breach by Sponsor. Upon termination of this Agreement, Sponsor shall pay Institution the entire amount of any uncancellable financial commitments incurred by Institution in relation to the performance of the Research Project, not to exceed the total estimated project cost previously agreed upon by the parties.

## 7. Miscellaneous.

7.1. Indemnification. Sponsor shall indemnify, defend, and hold harmless Institution and its trustees, officers, faculty, students, employees, and agents and their respective successors, heirs and assigns (the "Indemnitees"), against any liability, damage, loss, or expense (including reasonable attorneys fees and expenses of litigation) incurred by or imposed upon any of the Indemnitees in connection with any claims, suits, actions, demands or judgments arising out of any theory of liability (including without limitation actions in the form of tort, warranty, or strict liability and regardless of whether such action has any factual basis) relating to this Agreement or concerning any product, process, or service that is made, used, or sold pursuant to any right or license granted under this Agreement; provided, however, that such indemnification shall not apply to any liability, damage, loss, or expense to the extent directly attributable to (i) the negligent activities or intentional misconduct of the Indemnitees or (ii) the settlement of a claim, suit, action, or demand by Indemnitees without the prior written approval of Sponsor.

7.2. Publicity Restrictions. Sponsor shall not use the name of Institution or any of its trustees, officers, faculty, students, employees, or agents, or any adaptation of such names, or any terms of this Agreement in any promotional material or other public announcement or disclosure without the prior written consent of Institution.

7.3. Warranty Disclaimer. Institution makes no express warranties and disclaims any implied warranties as to any matter relating to this Agreement, including without limitation the performance or results of the Research Project; the availability of legal protection for any Research Results, Materials, Inventions, copyrightable works, or any other work product of the Research Project; or the validity or enforceability of any Patent Right that may be obtained pursuant to this Agreement. **THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE FOR ANY MATERIALS OR RESEARCH RESULTS, OR THAT THE USE OF MATERIALS OR RESEARCH RESULTS WILL NOT INFRINGE ANY PATENT RIGHTS OR OTHER PROPRIETARY RIGHTS OF A THIRD PARTY.**

7.4. Research Partially Funded by Grants. To the extent that any Invention has been partially funded by the federal government, this Agreement and the grant of any rights in such Invention is subject to and governed by federal law as set forth in 35 U.S.C. §§ 201-211, and the regulations promulgated thereunder, as amended, or any successor statutes or regulations. To the extent that any Invention has been partially funded by a non-profit organization or state or local agency, this Agreement and the grant of any rights in such Invention is subject to and governed by the terms and conditions of the applicable research grant.

7.5. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party.

7.6. Governing Law and Forum. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts irrespective of any conflicts of law principles. Each party agrees that any legal action arising out of or in connection with this Agreement shall be brought in, as appropriate, the Massachusetts Superior Court in Suffolk County or the United States District Court for the Eastern District of Massachusetts.

7.7. Notice. Any notices required or permitted under this Agreement shall be in writing, shall specifically refer to this Agreement, and shall be sent by hand, recognized national overnight courier, confirmed facsimile transmission, confirmed electronic mail, or registered or certified mail, postage prepaid, return receipt requested, to the following addresses or facsimile numbers of the parties:

If to Institution:

If to Sponsor:

Director  
Grant & Contract Administration  
ResearchAdministration Building  
70 Butterfield Terrace  
University of Massachusetts  
Amherst, MA 01003

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All notices under this Agreement shall be deemed effective upon receipt. A party may change its contact information immediately upon written notice to the other party in the manner provided in this Section.

7.8. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements or understandings between the parties relating to its subject matter.

AGREED AND ACCEPTED:

UNIVERSITY OF MASSACHUSETTS  
AT AMHERST

SPONSOR

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

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

I hereby acknowledge and agree to the terms of this Agreement, and I reaffirm that I will assign to Institution all of my right, title, and interest in any Inventions and Project Materials.

\_\_\_\_\_  
Principal Investigator

## EXHIBIT A

### Description of Research Project

#### 1. Research Goals

**[general description of research]**  
**[specific goals]**

#### 2. Budget

**[list budget items as necessary]**  
**[apply overhead rate]**  
**[total direct and indirect costs]**