

# SPONSORED RESEARCH AGREEMENT

BETWEEN  
BOWLING GREEN STATE UNIVERSITY  
AND

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This Sponsored Research Agreement (“AGREEMENT”) is effective as of the later date of the signatures appearing below (“EFFECTIVE DATE”) and is entered into by and between Bowling Green State University, a state assisted institution of higher education established and existing under the laws of Ohio, dba its Office of Sponsored Programs and Research located at 106 University Hall, Bowling Green, Ohio 43403 (“BGSU”), and \_\_\_\_\_, a corporation formed and existing under the laws of the State of \_\_\_\_\_, whose address is \_\_\_\_\_ (“SPONSOR”). BGSU and the SPONSOR may be collectively referred to herein as the “PARTIES” and each individually as a “PARTY”.

**WHEREAS**, BGSU has valuable experience, skill, and ability in the research described in Exhibit A (“PROJECT”), which is incorporated and made part of this AGREEMENT;

**WHEREAS**, the performance of the PROJECT is of mutual interest and benefit to SPONSOR and BGSU, will further the instructional and research objectives of BGSU in a manner consistent with its status as a non-profit, tax-exempt, public educational institution, and may derive benefits for both SPONSOR and BGSU through inventions, improvements and/or discoveries; and

**WHEREAS**, BGSU will use reasonable efforts to perform the PROJECT.

**NOW THEREFORE**, the PARTIES mutually agree as follows:

- 1. Scope of Work.** BGSU will undertake the PROJECT, as more fully described in Exhibit A. Exhibit A shall set forth all deliverables required pursuant to this PROJECT. It is agreed that Exhibit A will govern the direction of the PROJECT until or unless amended

by authorized representatives of the SPONSOR and BGSU. The PROJECT shall be under the direction of \_\_\_\_\_, as BGSU's principal investigator (PI). In the event of the departure, disability, or death of the PI, BGSU shall have the right to appoint a new PI acceptable to the SPONSOR. SPONSOR'S acceptance of the new PI shall not be unreasonably withheld.

## 2. TERM AND TERMINATION

2.1 **Term.** The PROJECT covered by this AGREEMENT shall start \_\_\_\_\_ and end on \_\_\_\_\_, unless or until extended by mutual agreement of the PARTIES, in writing.

2.2 **Termination.** Either PARTY may terminate this AGREEMENT upon thirty (30) days prior written notice to the other PARTY. If terminated by SPONSOR, BGSU is entitled to full payment for all costs and non-cancelable commitments incurred as of the effective date of the termination. Non-cancelable commitments include all costs associated with a graduate student or research associate appointment within a given academic year.

## 3. COSTS

3.1 **Designation.** This AGREEMENT is designated as: \_\_\_\_\_.

3.2 **Cost-Reimbursable Agreement.** If this AGREEMENT is designated as "Cost-Reimbursable", SPONSOR will reimburse BGSU for the Cost of conducting the PROJECT. The PARTIES estimate that the Cost is sufficient to support the PROJECT, but BGSU may submit to SPONSOR a revised budget requesting additional funds if costs are reasonably projected to exceed the Cost. SPONSOR is not liable for any payment in excess of the Cost except on SPONSOR'S written AGREEMENT.

3.3 **Fixed-Price Agreement.** If this AGREEMENT is designated as "Fixed Price", SPONSOR will pay BGSU \$ \_\_\_\_\_. The PARTIES estimate that the Cost is sufficient to support the PROJECT. BGSU may submit to SPONSOR a revised budget requesting additional funds if SPONSOR requests a change in the

PROJECT scope of work. SPONSOR will not be liable for any payment in excess of the Cost except on SPONSOR'S written AGREEMENT.

#### **4. BUDGET AND PAYMENT**

**4.1. Budget.** The SPONSOR will pay BGSU for all costs of all personnel, materials and supplies, purchased services, and other expenses including overhead necessary for the execution of the PROJECT consistent with the estimated budget in Exhibit B.

**4.2 Schedule/Payment.** SPONSOR will pay BGSU in the amount and manner set forth on the Payment Schedule attached hereto as Exhibit C, which is incorporated and made part of this AGREEMENT.

**5. Disclaimer of Warranty.** In view of the experimental nature of this basic research PROJECT, BGSU makes no other warranty or guarantee of any kind in connection with the deliverables provided by BGSU under this AGREEMENT, *and BGSU disclaims any and all warranties, whether express or implied, including those of merchantability and fitness for a particular purpose, with respect to any information, design, specification, prototype or any other item furnished to SPONSOR, or to others at SPONSOR'S request, in connection with this AGREEMENT or the subject thereof.*

**6. Equipment.** BGSU owns or shall own all equipment purchased or fabricated to perform the PROJECT.

#### **7. INVENTIONS, INTELLECTUAL PROPERTY AND PATENT RIGHTS**

**7.1** It is recognized and understood that inventions and technologies owned by BGSU or SPONSOR and existing at the date when this AGREEMENT becomes effective are the separate property of BGSU or SPONSOR, respectively, and are not affected by this AGREEMENT, and none of the PARTIES shall have any claims or rights in such separate inventions or technologies of the other PARTY'S.

**7.2** All inventions, discoveries, improvements, know-how, processes, procedures,

compositions, devices, methods, formulas, protocols, techniques, software, designs, mask works, drawings or data, whether or not patentable (“INVENTION(S)”) developed under this AGREEMENT solely by one or more employees of SPONSOR shall be owned by SPONSOR (“SPONSOR INVENTIONS”).

- 7.3** All other INVENTIONS developed under this AGREEMENT solely by the PI or other BGSU employees shall be owned by BGSU (“BGSU INVENTIONS”).
- 7.4** All INVENTIONS developed by one or more employees of both SPONSOR and BGSU under this AGREEMENT shall be owned jointly by SPONSOR and BGSU (“JOINT INVENTIONS”).
- 7.5** In consideration for funding the PROJECT, BGSU shall grant SPONSOR a non-exclusive, royalty free license without the right to sublicense to make or use BGSU INVENTIONS for internal research purposes. BGSU shall also grant to SPONSOR a first option to obtain an exclusive, royalty bearing, worldwide license, including the right to sublicense, to make, have made, use, and sell products incorporating any BGSU INVENTIONS or BGSU’S rights to JOINT INVENTIONS. SPONSOR’S option may be exercised at any time during a period of ninety (90) days after written notification by BGSU to SPONSOR of each BGSU INVENTION or JOINT INVENTION. Upon SPONSOR’S exercise of its option with regard to particular BGSU INVENTIONS or JOINT INVENTIONS, BGSU and SPONSOR will negotiate in good faith in an attempt to reach a license agreement satisfactory to both PARTIES, the negotiation period not to exceed six (6) months. Upon the expiration of the unexercised option or the six (6) month negotiation period, BGSU shall have no further obligation to SPONSOR under this AGREEMENT with regard to specific BGSU INVENTIONS or JOINT INVENTIONS under consideration.
- 7.6** PI shall keep accurate scientific records relative to the PROJECT and shall promptly report any BGSU INVENTION(S) or JOINT INVENTION(S) developed in the course of the PROJECT to BGSU in writing. Upon receipt of such report, BGSU shall promptly notify SPONSOR of such BGSU INVENTION(S) or JOINT INVENTION(S) reported to BGSU by PI.

- (a) **Patents.** BGSU shall cause patent applications to be filed and prosecuted in its name and at SPONSOR'S request and expense on BGSU INVENTION(S) or JOINT INVENTION(S) conceived and reduced to practice in the course of the PROJECT. BGSU shall promptly notify SPONSOR and provide it a copy of any such patent applications.
- (1) From the date of notification, SPONSOR shall have thirty (30) days to agree to support the filing and prosecution of patent applications on BGSU INVENTION(S) or JOINT INVENTION(S), sixty (60) days thereafter to exercise its option for a license, and six (6) months after its option is exercised to negotiate the terms of a license agreement with BGSU. BGSU and SPONSOR agree to negotiate these license terms in good faith. During this period BGSU shall not offer a commercial license to any other party.
- (2) In the event SPONSOR does not agree to support the filing and prosecution of patent applications on BGSU INVENTION(S) or JOINT INVENTION(S) within thirty (30) days after notification, BGSU may file patent applications at its own expense and SPONSOR shall have no further rights in that patent application.
- (b) **Software.** Copyright and all other rights in any software created by PI or employees of BGSU in the course of the PROJECT in BGSU INVENTION(S) and JOINT INVENTION(S) shall be owned by BGSU. Upon receipt of a copy of such software, SPONSOR shall have ninety (90) days to exercise its option, and six (6) months after its option is exercised to negotiate the terms of a license agreement. BGSU and SPONSOR agree to negotiate these license terms in good faith. During this period BGSU shall not offer a commercial license to any other party. In the event that SPONSOR does not exercise its option within ninety (90) days of receipt of such software, or negotiate the terms of a license agreement within six (6) months of exercising its option, SPONSOR shall have no further rights in that software.
- (c) **License Terms.** Any license granted shall be subject to BGSU's policy in regard to patents and copyrights and BGSU's agreements with other sponsors of research and shall provide:
- (1) for SPONSOR (and its sub-licensees, if any) to exert its best efforts to introduce products utilizing the licensed technology into public use as rapidly as practicable;

- (2) for a royalty that is usual and customary in the trade;
- (3) for termination in the event SPONSOR has not introduced licensed products into public use, or is not actively seeking to do so, within a time period acceptable to BGSU;
- (4) for indemnity and insurance terms acceptable to BGSU;
- (5) in the case of exclusive licenses, for BGSU to retain a non-exclusive license, with the right to grant sub-licenses, for research purposes only; and
- (6) that the rights of the United States of America as set forth under Public Laws 96-517 and 98-620 are specifically reserved.

8. **Export Control.** SPONSOR shall not disclose or provide to BGSU or any employee or agent of BGSU any information subject to the licensing provisions of International Traffic In Arms Regulations (ITAR) under 22 CFR §§ 120-130, and Export Administration Regulations (EAR) under 15 CFR §§ 730- 774, without limitation, without the prior written notice to and advance approval by BGSU.

9. **Confidential Information.** BGSU and the PI shall not disclose or use for any purpose other than performance of the PROJECT, any and all trade secrets, privileged records or other confidential or proprietary information (collectively "INFORMATION") disclosed to BGSU by SPONSOR pursuant to this AGREEMENT. Such INFORMATION shall be disclosed to BGSU in writing and clearly marked as confidential, or if disclosed orally or in other than documentary form shall be reduced to writing and marked appropriately thirty (30) days thereafter. INFORMATION which is not in oral or written form, such as, but not limited to data tapes, shall be designated in writing as confidential within thirty (30) days after disclosure. The obligation of non-disclosure shall not apply to the following:

- (a) INFORMATION at or after such time that it is or becomes publicly available through no fault of BGSU;
- (b) INFORMATION that is already independently known to BGSU as shown by its

prior written records, provided that BGSU so advises the SPONSOR promptly upon BGSU'S discovery that the INFORMATION is already independently known to BGSU;

- (c) INFORMATION at or after such time that it is disclosed to BGSU on a non-confidential basis by a third party with the legal right to do so; or
- (d) INFORMATION independently developed by BGSU personnel not involved in the PROJECT and not privy to the INFORMATION.

In the event BGSU finds it necessary to disclose INFORMATION to a proper legal or regulatory authority for any purpose, BGSU shall first notify the SPONSOR and BGSU and SPONSOR shall agree to a mutually satisfactory way to disclose such INFORMATION as necessary for this limited purpose. The obligations of BGSU under this Article 9 shall survive and continue for three (3) years after termination of this AGREEMENT.

- 10. **Technical Reports.** The PI shall make a brief written report quarterly, if requested by SPONSOR. Within sixty (60) days after the expiration of this AGREEMENT the PI shall submit a comprehensive final report to SPONSOR.
- 11. **Publicity and Use of Name.** Neither PARTY shall use, directly or by implication, the name of the other PARTY or of any member of the staffs thereof, or of any investigator or research personnel in any advertising or promotional material without the prior written approval of the other, except that SPONSOR shall have the right to identify BGSU and to disclose the terms of this AGREEMENT in any prospectus, offering memorandum, or other document or filing required by applicable securities laws or other applicable law or regulation. SPONSOR may, and BGSU shall, however, acknowledge SPONSOR'S support for the investigations being pursued under this AGREEMENT. In any such statements, the relationship of the PARTIES shall be accurately and appropriately described.
- 12. **Publication.** BGSU reserves the right to publish the results of this PROJECT. Before submission for publication, however, BGSU shall notify SPONSOR of its intention to

publish, and shall submit the manuscript to SPONSOR for review and comment. SPONSOR shall have thirty (30) days from receipt of the manuscript to present any written comments to BGSU. SPONSOR'S comments shall be given due consideration by BGSU. The publication of the results may be delayed at SPONSOR'S written request for a period not to exceed ninety (90) days if it contains a disclosure of an invention(s) on which either PARTY desires to file a United States or foreign patent. It is understood that in no case can this provision for delay of publication cause a delay in the normal academic progress of a graduate student of BGSU with respect to preparation and submission of a graduate thesis or dissertation.

**13. Indemnification.** SPONSOR will indemnify, defend, and hold harmless BGSU, The Board of Trustees of BGSU, their respective trustees, officers, directors, employees, agents, subcontractors, and students (“INDEMNITEES”) from any liability, damage, loss, or expense (including reasonable attorneys’ fees and expenses of litigation) incurred by or imposed upon the INDEMNITEES or any one of them in connection with any claims, suits, actions, demands, or judgments arising out of or connected with this AGREEMENT or the research done under this AGREEMENT, except to the extent that the liability is due to the gross negligence and willful misconduct of BGSU. BGSU will promptly notify SPONSOR of any claim and will cooperate with SPONSOR in the defense of the claim. SPONSOR will, at its own expense, assume the costs of litigation and of legal counsel provided by the Ohio Attorney General, or any Special Counsel designated by the Ohio Attorney General, to defend against any claim with respect to which SPONSOR has agreed to indemnify BGSU. This indemnity will not be deemed excess coverage to any insurance or self-insurance BGSU may have covering a claim. SPONSOR’S indemnity will not be limited by the amount of SPONSOR’S insurance.

**14. Notices.** Any notices required to be given or which shall be given under this AGREEMENT shall be in writing and delivered by first-class mail or facsimile transmission addressed to the PARTIES as follows:

For The SPONSOR:

Contractual Matters

Technical Matters

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SPONSORED RESEARCH AGREEMENT  
BGSU AND \_\_\_\_\_

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For BGSU:

Contractual Matters

Technical Matters

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**15. GENERAL PROVISIONS**

- 15.1 Laws and Regulations.** This AGREEMENT is subject to all local, state and federal laws and regulations. This AGREEMENT is governed by the laws of the State of Ohio. Any legal action involving this AGREEMENT or the PROJECT will be adjudicated in a court of competent jurisdiction in the State of Ohio, without regard to its conflict of laws doctrine.
- 15.2 Assignment.** This AGREEMENT shall be binding upon and inure to the benefit of the PARTIES hereto and their successors and assigns. This AGREEMENT shall not be assignable by either PARTY without the prior written consent of the other PARTY.
- 15.3 Severability.** If any provision of this AGREEMENT becomes or is declared illegal, invalid, or unenforceable, the provision will be divisible from this AGREEMENT and deemed to be deleted from this AGREEMENT. If the deletion substantially alters the basis of this AGREEMENT, the PARTIES will negotiate in good faith to amend the provisions of this AGREEMENT to give effect to the original intent of the PARTIES.
- 15.4 Independent Contractors.** BGSU and SPONSOR are independent contractors and neither is an agent, joint venturer, or partner of the other.
- 15.5 Prevailing Terms.** In the event of any inconsistency between the terms of this AGREEMENT and the documents referenced or incorporated into this AGREEMENT, the terms of this AGREEMENT shall prevail.

- 15.6 Entire Agreement.** This AGREEMENT represents the entire agreement and understanding between the PARTIES with respect to its subject matter. It supersedes all prior or contemporaneous discussions, representations, or agreements, whether written or oral, of the PARTIES regarding this subject matter.
- 15.7 Waiver.** The waiver by either PARTY of a breach of any provision of this AGREEMENT shall not operate as or be considered a waiver by that PARTY of any subsequent breaches.
- 15.8 Amendments or Changes.** Amendments or changes to this AGREEMENT must be in writing and signed by the PARTIES' authorized representatives.
- 15.9 Cross Default.** In the event that SPONSOR is a party to any other agreement with BGSU, a default by SPONSOR of this AGREEMENT or any other agreement with BGSU shall be deemed a default under all other agreements with BGSU.
- 15.10 Captions.** The captions or headings in this AGREEMENT are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections hereof.
- 15.11 Force Majeure.** Neither PARTY shall be responsible to the other 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 its reasonable control.
- 15.12 Survivorship.** The provisions of Paragraphs 2, 5, 7, 11, 13, 15.1, and 15.12 shall survive any expiration or earlier termination of this AGREEMENT.

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**IN WITNESS WHEREOF**, the PARTIES hereto have caused this AGREEMENT to be duly executed, in duplicate originals, as of the date indicated below, under their respective signatures.

**BGSU**

**SPONSOR**

By \_\_\_\_\_

By \_\_\_\_\_

Typed Name \_\_\_\_\_

Typed Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**I have read this AGREEMENT and understand my obligations hereunder:**

By: \_\_\_\_\_

Title: Principal Investigator

**Exhibit A**  
**Scope of Work**

**Exhibit B**  
**Budget**

**Exhibit C**  
**Payment Schedule**