



Research Office

210 HULLIHEN HALL
NEWARK, DE 19716-1551
PHONE: 302-831-2136
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RESEARCH AGREEMENT

BETWEEN COMPANY

AND THE UNIVERSITY OF DELAWARE

THIS AGREEMENT between _____, with offices at _____ (hereinafter referred to as COMPANY), and the University of Delaware, with offices at Newark, Delaware 19716 (hereinafter referred to as UNIVERSITY), an educational nonprofit institution chartered under the laws of the State of Delaware.

In consideration of the rights and obligations herein set forth, the parties do hereby agree as follows:

Article 1 - Statement

UNIVERSITY, through its Department of _____, will conduct the research described in Attachment 1, titled "_____." This Agreement provides funds for one (1) year of work as detailed in Attachment 2, titled "Budget." COMPANY will have the right to extend this Agreement for any subsequent years of the research. Funding for subsequent years and any modifications to the research will be agreed to in writing by COMPANY and UNIVERSITY.

Article 2 - Staffing

- A. To carry out the research program, UNIVERSITY will supply and use its own personnel, who will be considered employees of UNIVERSITY. All salary and wage payments to such personnel will be at rates consistent with their UNIVERSITY salaries as determined by UNIVERSITY.
- B. The principal investigator will be Dr. _____ of the Department of _____. If for any reason the principal investigator is unable to continue to serve in this capacity and a successor acceptable to both parties is not available, this Agreement may be terminated by COMPANY as provided herein below.

Article 3 - Term and Termination

- A. This Agreement will become effective _____, 200_, and will remain in force for one (1) year from that date unless terminated earlier as hereinafter provided. During or at the end of that time, it may be extended as mutually agreed upon.

- B. Performance under the Agreement may be terminated by COMPANY upon sixty (60) days written notice. Performance may be terminated by UNIVERSITY if circumstances beyond its control preclude continuation of the research. In the event of a material breach of this Agreement the party not in breach may provide notice thereof to the party in breach. The party in breach shall have sixty (60) days after receiving such notice in which to cure the breach. If the breach is not cured within sixty (60) days, the party not in breach may terminate the Agreement by sending written notice to the party in breach. Termination shall be effective upon receipt of such notice.
- C. Upon termination, UNIVERSITY will be reimbursed for all costs and noncancellable commitments incurred in the conduct of the research program. Such reimbursement will not exceed the total payment for one (1) year specified in Article 4 hereinbelow. If the prior payments made by COMPANY to UNIVERSITY exceed costs and noncancellable commitments incurred by UNIVERSITY before termination, the excess will be refunded to COMPANY.
- D. Obligations of the respective parties under Articles 1, 6, 7, 8, 9, and 10 shall continue beyond the termination of this Agreement insofar as they relate to activities under the Agreement prior to its termination.

Article 4 - Supporting Payments

As payment for the costs incurred hereunder by UNIVERSITY, COMPANY will pay UNIVERSITY a total of _____ dollars (\$) within thirty (30) days of execution of this Agreement. COMPANY will have no obligation to reimburse UNIVERSITY for any costs beyond this amount. All payments shall be made to UNIVERSITY in United States Dollars. For converting payments into United States Dollars COMPANY shall use the average of the closing buying rates of the Morgan Guaranty Trust Company of New York applicable to transactions under exchange regulations for the particular currency on the date payment is due. Invoices shall be sent to .

Article 5 - Facilities

UNIVERSITY will provide office, laboratory space, and ordinary research facilities for this work by the employees at UNIVERSITY.

Article 6 - Equipment

Title to equipment obtained for the purpose of this project will vest in the name of UNIVERSITY.

Article 7 - Reports and Publications

UNIVERSITY will submit to COMPANY written technical progress reports as agreed upon with the principal investigator. Two (2) copies of a written detailed summary report for the research will be submitted to COMPANY within thirty (30) days after the end of the twelfth (12th) month of the research. UNIVERSITY will have the right to publish the results of its research. Title to and the right to determine the disposition of any copyrights or copyrightable material first produced or composed in the performance of this research shall remain with UNIVERSITY. Before submission for publication by UNIVERSITY, COMPANY will have a period of up to sixty (60) days to review the proposed publication for the disclosure of inventions of interest to COMPANY and for any information that is considered proprietary or confidential by COMPANY. If a patentable invention of interest to COMPANY is disclosed, the publication will be delayed to permit the preparation and filing of a United States patent application in a timely manner. Disclosure of proprietary or confidential information of COMPANY will be resolved with the principal investigator before submission to the publisher. In any event, approval to publish will not be unreasonably withheld by COMPANY. Publication may not be delayed more than an additional ninety (90) days to permit the preparation and filing of a patent application.

UNIVERSITY grants to COMPANY the right to republish on its own behalf any technical information from the research program that UNIVERSITY has first caused to be published.

Article 8 - Patents and Licensing

- A. Within thirty (30) days of receipt by UNIVERSITY's Office of Economic Innovation & Partnerships of an invention disclosure pertaining to inventions made during the conduct of this research by UNIVERSITY employees, UNIVERSITY will inform COMPANY of any potentially patentable inventions arising out of research performed under this Agreement. Title to any invention or discovery conceived or reduced to practice solely by UNIVERSITY personnel in the performance of this research shall remain with UNIVERSITY provided, however, that UNIVERSITY shall grant to COMPANY an option for a royalty-bearing, worldwide, exclusive or nonexclusive license limited to the field of research set forth in Attachment 1 to be exercised and the license to be negotiated in good faith within three (3) months of disclosure of each respective invention to make, have made, use, sell, and import the products based on such invention or discovery for the term of any patent thereon. The royalty rate shall take into consideration the intellectual contribution of each party to the conception and reduction to practice (not to include product development efforts and costs) of invention(s) created and licensed under this Agreement, the proprietary position provided, and the profit potential where payments shall be based on the net sales of product. Inventions conceived or reduced to practice hereunder by UNIVERSITY personnel jointly with employees of COMPANY shall be jointly owned.
- B. If COMPANY considers any of the information and ideas arising out of the research program to warrant patent protection thereon, UNIVERSITY will upon written request by COMPANY procure and maintain such patent protection in the U.S. and in such foreign countries as COMPANY may designate. COMPANY shall provide UNIVERSITY with a written response within thirty (30) days of COMPANY's receipt of the invention disclosure. COMPANY will reimburse UNIVERSITY for its out-of-pocket expenses associated with the procurement and maintenance of such patent rights. While

UNIVERSITY shall be responsible for making decisions regarding the scope and content of applications to be filed and prosecution thereof, COMPANY shall be provided with a copy of each draft of each patent application hereinunder, copies of all documents filed, and copies of all correspondence relating to the prosecution and maintenance of such patent rights.

- C. COMPANY agrees to and does hereby grant a nonexclusive, noncommercial, nontransferable, royalty-free license for the practice by UNIVERSITY in UNIVERSITY's continuing teaching and research efforts of any invention covered by claims of any patent arising from the research at UNIVERSITY and licensed exclusively or assigned to COMPANY.

Article 9 - Confidentiality

UNIVERSITY does not accept obligations of confidentiality on behalf of its employees. If COMPANY and the principal investigator agree that confidential or proprietary information of COMPANY is necessary for the research, the information should be submitted to the principal investigator in writing and clearly marked as such. COMPANY at its discretion may require that the principal investigator enter into a confidentiality agreement that is acceptable to COMPANY and not in conflict with UNIVERSITY policy.

Article 10 - Advertising

The name of either party to the Agreement will not be used by the other in any advertising, publicity or news media related to the research program without the prior written consent of the other party. However, the University may publish information on this Agreement in its internal publications.

Article 11 - Notices

All notices, requests, or demands to be given by either party to the other under the provisions of this Agreement will be forwarded by certified mail properly addressed to the respective parties as follows:

UNIVERSITY: Charles Riordan, Ph.D.
Deputy Provost for Research & Scholarship
124 Hullihen Hall
University of Delaware Newark, DE 19716
riordan@udel.edu
Phone No. (302) 831-4007
Fax No. (302) 831-2828

COMPANY:

or at such other address or addresses as either party may from time to time designate by written notice as its address or addresses for this purpose.

Article 12 – Alternate Dispute resolution

In the event of any controversy or claim arising out of or relating to any provision of this Agreement or the breach thereof, the parties shall try to settle those conflicts amicably between themselves. Within five business days of receiving written notice from a party that a dispute exists, the parties shall meet and negotiate in good faith for a period not to exceed one business day to resolve such dispute. If good faith negotiation between the representatives does not result in resolution, each party shall nominate one representative having a position not less than vice president or his/her designee, to participate in additional good faith negotiations (“High Level Negotiations”) within ten business days after the first negotiation. If within thirty (30) days of the start of such High-Level Negotiations there is no resolution of the dispute, the parties shall each submit a written statement within five (5) business days to a third party mediator utilizing the services of the Delaware Chancery Court for voluntary mediation of technology licensing and contract issues. The parties and the mediator shall meet within five (5) business days of the written submission for a non-binding mediation session. The cost of mediation shall be shared equally by the parties.

Should the parties not resolve their issues by mediation within one hundred twenty (120) days of initiation of the mediation process, the dispute shall be subject to arbitration. All disputes arising in connection with this Agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the said Rules. All documents and correspondence in relation to those disputes shall be drafted in English and the arbitration shall be conducted in English. The arbitrators to be appointed shall have a good working knowledge of the English language. The place of arbitration shall be Philadelphia, Pennsylvania, USA. The arbitration award shall be final, binding and not subject to appeal and shall be enforceable in any court of competent jurisdiction. The party in whose favor the arbitration award is rendered shall be entitled to recover the cost and expenses of the arbitration panel. However, the parties own internal management time and costs (including the costs of the in-house counsel) and the costs of outside lawyers shall be borne by each party.

Article 13 - Governing Law and Adjudication

This Agreement will be governed by and construed in accordance with the laws of the State of Delaware. Any issue of validity of a patent related to an invention made under this Agreement and

licensed to the COMPANY shall be subject to the alternate dispute resolution procedures of Article 12, above, with attorney's fees awarded to the prevailing party.

Article 14 - Technical and Administrative Contacts

Technical:

Dr.
Department of
University of Delaware
Newark, DE 19716
Phone No. (302) 831-

Administrative:

Ms.
Contract and Grant Administrator
Research & Graduate Studies
University of Delaware
Newark, DE 19716
Phone No. (302) 831-2136
Fax No. (302) 831-2828

Article 15 - Insurance/Indemnification

UNIVERSITY and COMPANY are separate and independent entities, and neither is the agent of the other. UNIVERSITY and COMPANY hereby each agree to indemnify and hold the other party and their personnel free and harmless from any and all loss, cost, damage, claim, action, or liability on account of the death of or injury to any person or persons or damage to or destruction of any property resulting from or growing out of any alleged negligence on the part of the indemnifying party or their personnel in the implementation of this Agreement. Each party further warrants that it will maintain in effect for the duration of this Agreement comprehensive general liability insurance and/or equivalent self-insured retentions with approval by University, including the foregoing contractual liability, with a combined single limit of at least \$5,000,000 per occurrence.

Article 16 - Warranty

UNIVERSITY makes no representations, extends no warranties, express or implied, and assumes no responsibilities whatsoever with respect to the performance, marketability, or fitness for a particular purpose of processes or products produced using the research information and know-how to COMPANY, its sublicensees, its vendees, or other transferees. Further, UNIVERSITY makes no representations, extends no warranties, and assumes no responsibilities that the manufacture, use, or sale of products based in whole or in part on information developed by the research will not infringe the claims of any patents not provided for in this Agreement and assigned to UNIVERSITY.

Article 17 – Assignability

This Agreement is personal to the parties and shall not be assignable or otherwise transferable in whole or in part, voluntarily, involuntarily or by operation of law including any merger or consolidation, substantial change in ownership or control of a party’s business, or any other means, without the prior written approval of the other party.

Article 18 - Interpretation

The parties acknowledge that each party has reviewed and revised, and has been given the opportunity to have counsel review and revise, this agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this agreement or any amendments or exhibits thereto.

Article 19 - Entire Agreement

This Agreement and Attachments as identified herein are incorporated by reference and represent the entire Agreement between the parties. No modification or assignment of this Agreement will be effective unless written and signed by authorized representatives of both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day, month, and year first above written.

UNIVERSITY OF DELAWARE

COMPANY

By _____
Name: Dr. Charles Riordan

By _____

Title Deputy Provost for Research & Scholarship

Title _____

Date _____

Date _____

By _____

Title Principal Investigator

Date _____