

**DRAFT**

UNIVERSITY OF VERMONT AND STATE AGRICULTURAL COLLEGE

AND

<<<Company Name>>

**RESEARCH AGREEMENT**

This Research Agreement (the "Agreement") is by and between the University of Vermont and State Agricultural College, a Vermont not-for-profit corporation and institution of higher education with offices at 85 South Prospect Street, 340 Waterman Building, Burlington, VT 05405 ("UVM"), and <<Company Name>>, a <<>> corporation having a place of business at <<Company Address>> ("Sponsor.")

**Whereas**, the research program contemplated by this Agreement is of mutual interest and benefit to UVM and Sponsor and will further the instructional and research objectives of UVM in a manner consistent with its status as a non-profit, tax-exempt, educational institution;

**Now, therefore**, the parties hereto agree as follows:

- 1. Statement of Work.** UVM agrees to use its best efforts to perform the research program as set forth in Attachment I ("Research Program").
- 2. Principal Investigator.** The research program will be supervised by \_\_\_\_\_ who will be designated as the "Principal Investigator" at UVM. In the event that the Principal Investigator leaves or is reassigned to another program, UVM shall notify Sponsor in writing. Any individual appointed to replace Principal Investigator must have the written approval of Sponsor.
- 3. Period of Performance.** This Agreement shall be effective for <<the period>> commencing \_\_\_\_\_ (the "Starting Date") through \_\_\_\_\_ (the "Completion Date"). The Completion Date may be extended by mutual written agreement by authorized representatives of the parties.
- 4. Direction of Research.** Direction of the Research Program will rest with UVM. It is agreed that Sponsor, through <<Sponsor Contact>>, a Sponsor employee designated to be the primary contact with the Principal Investigator ("Sponsor Liaison"), will have opportunities to advise UVM and Principal Investigator regarding the Research Program.
- 5. Reports.** UVM, through its Principal Investigator, shall make progress reports, either orally or in written form, to Sponsor on an annual basis. Final results of the Research Program will be delivered in the form of a written report within ninety (90) days of the Completion Date.
- 6. Financial Conditions.** Sponsor will provide funding in the amount of <<>>dollars (US\$<<>>). Payment of <<>>dollars (US\$<<>>) is due upon execution of this Agreement. Thereafter, payment of <<>>

dollars (US\$<<>>) is due at the beginning of each calendar quarter beginning three (3) months after the Effective Date.

OR

In consideration of the foregoing, Sponsor will reimburse UVM for all direct and indirect costs incurred in the performance of the Research, which shall not exceed the total estimated project cost of <<>> (US\$<<>>) without written authorization from the Sponsor. Sponsor will make actual payments to UVM upon receipt of monthly invoices. A final financial accounting of all costs incurred and all funds received by UVM shall be submitted to Sponsor within ninety (90) days of the close of the Completion Date.

**7. Publication.** UVM shall be free to disclose and publish the results of the Research Program after providing Sponsor with a thirty (30) day period to review each publication to identify any patentable subject matter and to identify any inadvertent disclosure of the Sponsor's proprietary information. If necessary to permit the preparation and filing of a patent application, the Principal Investigator and UVM may agree to an additional review period not to exceed sixty (60) additional days.

**8. Patents and Inventions.**

a. Definition of Invention. For purposes of this agreement, "Invention" shall mean any discoveries, inventions, know-how, modifications, improvements, or other rights (whether or not protectable under state, federal, or foreign intellectual property laws) that are conceived, made or reduced to practice by the parties in the performance of the Research Program.

b. Title to Inventions. Title to any Invention conceived, made or first reduced to practice by UVM personnel shall remain with UVM ("UVM Inventions"). Title to any invention conceived by both Sponsor and UVM personnel shall be jointly owned ("Joint Invention.") Title to any Invention conceived, made or first reduced to practice by Sponsor personnel shall remain with Sponsor.

c. Disclosure and Filing of Inventions. Sponsor shall be notified of any UVM or Joint Invention promptly after the Principal Investigator discloses such to UVM. UVM (i) may file a patent application at its own discretion or (ii) shall do so at the request of Sponsor and at the Sponsor's expense.

d. Licensing Options.

(i) Sponsor shall have a royalty-free, non-exclusive license to use UVM Inventions for research and development purposes.

(ii) Sponsor shall have an option to negotiate a royalty-bearing, sublicenseable, exclusive license to any UVM Invention or UVM's interest in any Joint Invention (the "Option"). Sponsor shall have ninety (90) days after Sponsor's receipt of UVM's written disclosure of such UVM or Joint Invention to elect this Option. If Sponsor does elect to exercise the Option, UVM and Sponsor shall negotiate in good faith a license agreement containing commercially reasonable terms and conditions. If Sponsor does not elect

this Option or if UVM and Sponsor are unable to reach agreement within six (6) months after Sponsor has exercised the Option, this Option shall terminate and each party shall have the right to exploit their interest in any Joint Inventions without account to the other party.

**9. Confidential Information.** During the term of this agreement, the parties may disclose certain proprietary information (“Confidential Information”) to each other. All such Confidential Information shall be clearly designated as “CONFIDENTIAL” at the time of disclosure. The recipient party agrees that during the term of this Agreement and for a period of three (3) years thereafter, the recipient party will not use or disclose the Confidential Information to any third party without the prior written consent of the disclosing party. Notwithstanding the above, the recipient party shall have no obligation with respect to any Confidential Information that:

- a. is or later becomes generally available to the public by use, publication or the like, through no fault of the recipient party;
- b. is obtained from a third party with the legal right to disclose same to the recipient party;
- c. the recipient party already possessed such information prior to disclosure by the disclosing party, as shown by written records;
- d. is independently developed by the recipient party
- e. is required by law or regulation to be disclosed.

If the Confidential Information is required to be disclosed pursuant to subsection 9.e, the party required to make that disclosure shall notify the other to allow that party to assert whatever exclusions or exemptions maybe available to it.

**10. Use of Data.** Subject to the terms of Section 8 above, each party may retain and use data resulting from this Research Program for its own purposes.

**11. Equipment.** UVM shall retain title to any equipment purchased with the funds provided under this Agreement.

**12. Indemnification.** Sponsor agrees to indemnify and hold UVM harmless from liability of any nature or kind including defense costs or expenses, from, or on account of, any and all suits or damages, of any kind, resulting from injuries or damages sustained by any person or persons or property by virtue of Sponsor’s negligence or performance of this contract unless such liability results solely from UVM’s performance of this contract or its negligence.

**13. Insurance.** Each party agrees to maintain commercial general liability insurance in an amount not less than \$1,000,000 per occurrence, combined single limit, for third party bodily injury and property damage liability, including products, completed operations and contractual liability.

**14. No Representations and Warranties.** UVM makes no representations or warranties of any kind, express or implied, concerning the research or any intellectual property rights, including, without limitation, warranties of merchantability, validity of any intellectual property rights or claims, whether issued or pending, or the absence of latent or other defects, whether or not discoverable. Specifically, and not to limit the foregoing, UVM makes no warranty or representation (i) regarding the validity or scope of the Research Program or any intellectual property rights optioned or granted hereunder and (ii) that the exploitation of the Research Program or any intellectual property rights will not infringe any patents or other intellectual property rights of UVM or of a third party.

**15. Compliance with Laws.** UVM and Sponsor agree to comply with all federal, state and local laws, executive orders, rules, regulations and ordinances which may be applicable to such party's performance of its obligations under this agreement. UVM's obligations to transfer technology to Sponsor, provide technical information and reports to Sponsor, and otherwise perform under this Agreement are contingent upon compliance with applicable United States export control laws and regulations. The transfer of certain technical data and commodities may require a license from a cognizant agency of the United States Government or written assurances by Sponsor that Sponsor shall not export technical data, computer software or certain commodities to specified foreign countries without prior approval of an appropriate agency of the United States Government. UVM does not represent that a license shall not be required, nor that, if required, it shall be issued. In addition, Sponsor certifies that no information or materials that it discloses or transfers to UVM are controlled by US export control laws. If Sponsor wishes to disclose information or materials controlled by US export control laws, Sponsor shall notify UVM prior to disclosure and shall not disclose or transfer said information or materials until Sponsor receives notice from UVM that it intends to accept said information or materials.

**16. Termination.** This Agreement may be terminated by either party upon thirty (30) days written notice to the other party. In the event of termination by either party, Sponsor shall reimburse UVM for all unreimbursed expenses and non-cancellable encumbrances reasonably or necessarily made prior to the effective date of termination, such reimbursement, in combination with prior payments, not to exceed the total specified in Section 6 above. Conversely, UVM shall refund any amount paid by Sponsor in excess of all expenses and non-cancellable encumbrances reasonably or necessarily made prior to the effective date of termination. In the event of termination, UVM shall provide Sponsor with copies of work in progress under the agreement.

**17. General.**

a. Notices. Any notices required to be given or which shall be given under this Agreement shall be in writing and be addressed to the parties as shown below. Notices shall be delivered by certified or registered first class mail (air mail if not domestic) or by commercial courier service and shall be deemed to have been given or made as of the date received.

If to UVM:  
Program Director, Pre-Award Services  
Office of Sponsored Programs  
University of Vermont  
231 Rowell Building  
106 Carrigan Drive  
Burlington, VT 05405  
Tel: 802-656-4067  
Fax: 802-656-3190

If to Sponsor:  
**PLEASE ADVISE**

Inquiries relating to billing and payment under this Agreement shall be addressed to the parties as shown below.

If to UVM:  
Marcy Whittle, Director  
University of Vermont  
Grant Contract Administration Services  
85 South Prospect Street  
223 Waterman Building  
Burlington, VT 05405

If to Sponsor:  
**PLEASE ADVISE**

b. Independent Contractors. For the purposes of this Agreement and all services to be provided hereunder, the parties shall be and shall be deemed to be independent contractors and not agents or employees of the other party. Neither party shall have the authority to make any statements, representations or commitments of any kind or to take action which shall be binding on the other party, except as may be expressly provided for herein or authorized in writing.

c. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors to substantially the entire business and assets of the respective parties hereto. This Agreement shall not be assignable by either party without the written consent of the other party; any attempted assignment is void.

d. Create Act. No party shall invoke the CREATE ACT without written consent of the other party.

e. Governing Law. This Agreement shall be governed in all respects by the laws of the State of Vermont without regard to its conflict of laws principles, and Sponsor and University agree to submit to the jurisdiction of the courts of the State of Vermont.

f. 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 of destruction, in whole or in part, or machinery

