FRAMEWORK

SPONSORED RESEARCH AGREEMENT

 THIS COLLABORATIVE RESEARCH AGREEMENT (“Agreement”), made on \_\_\_\_ (“Effective Date”), is by and between \_\_\_\_\_\_ with offices at \_\_\_\_\_ (“Company”) and the University of Delaware with offices at Newark Delaware, (“University”), (the University and Company, individually a “Party” and collectively the “Parties”).

WHEREAS, the University is an educational nonprofit institution chartered under the laws

of the State of Delaware that performs academic research; and

WHEREAS, Company has experience in the commercial research, development,

manufacturing, and marketing of products and services [enter the company areas of interest]

WHEREAS, Company and the University are interested in fostering a stable, strategic

relationship as well as conducting collaborative projects in which the Parties will

each contribute resources to conduct each Research Project; and

WHEREAS, Company desires to engage the University to collaboratively perform certain research work and/or analyses or to create or enhance technologies that will assist in Company’s development and commercialization of new products and/or processes; and

WHEREAS, the research projects contemplated by this Agreement are of mutual interest and benefit to University and Company, will further the instructional and research objectives of University in a manner consistent with its status as a non-profit, tax exempt, educational institution, and should derive benefits for both Company and University; and

WHEREAS, Company and the University desire to enter into a Framework Agreement that will provide the terms and conditions for the stated activity that will be performed as individual projects as more fully described in the individual Research Project Statement of Work and Project Agreements;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto agree:

1. **Definitions**

“Affiliate” means any corporation, firm, limited liability company, partnership or other entity that directly or indirectly controls or is controlled by or is under common control with a Party to this Agreement. For the purpose of this definition, control means ownership, directly or through one or more Affiliates, of greater than fifty percent (50%) (or such lesser percentage which is the maximum allowed to be owned by a foreign entity in a particular jurisdiction) or more of the shares of stock entitled to vote for the election of directors, in the case of a corporation, of greater than fifty percent (50%) (or such lesser percentage which is the maximum allowed to be owned by a foreign entity in a particular jurisdiction) or more of the equity interests in the case of any other type of legal entity, status as a general partner in any partnership, or any other arrangement whereby a Party controls or has the right to control the board of directors or equivalent governing body of a corporation or other entity.

“Background Intellectual Property Rights” means any Intellectual Property right of a Party owned or controlled by that Party as of the Effective Date of this Agreement or later owned or controlled outside the scope of this Agreement.

“Background Technology”, means any information, process, trade secret or other non-patented technology of a Party owned or controlled by that Party as of the Effective Date of this Agreement or later owned or controlled outside the scope of this Agreement.

“Confidential Information” is defined (subject to Article 4) to include (1) non-public information transmitted between the Parties pursuant to this Agreement or any relevant Project Agreement; (2) all information, data and results generated under this Agreement or any relevant Project Agreement in performance of a Research Project and including but not limited to any information derived from Materials used under a Research Project “Generated Information”; (3) all non-public Project Intellectual Property and notices thereof; (4) the contents of this Agreement or any Relevant Project Agreement; and (5) all non-public information exchanged between the Parties in anticipation of beginning a Project.

“Materials” is defined as samples of equipment, apparati, chemical substances or biological materials and written information related thereto transmitted by one Party to the other Party and marked to indicate that they are transmitted subject to the confidentiality and limited use provisions of this Agreement or the MTA attached hereto.

“Company Intellectual Property” is defined as Research Project Intellectual Property that was conceived during the term of this Agreement solely by person(s) who at the time of such occurrence had an obligation of assignment thereof to Company or Affiliate thereof.

“Disclosing Party” is defined as a Party who transmits Confidential Information pursuant to this Agreement or any relevant Project Agreement.

“Intellectual Property” is any right that protects any invention, improvement or discovery, whether or not patentable, that is created or discovered during or as a result of a Research Project and will include, but is not limited to, patent rights, plant variety protection certificates, patent applications, copyrights, trademarks, and trade secrets.

“Joint Intellectual Property” is defined as Research Project Intellectual Property that was conceived, created or discovered as a result of a Research Project under this Agreement or any relevant Project Agreement, jointly by persons, one or more of whom at the time of such occurrence had an obligation of assignment thereof to Company, and one or more of whom at the time of such occurrence had an obligation of assignment thereof to University.

“Principal Investigators” are the individuals named by the University and Company, respectively, to conduct a specific Research Project.

“­Project Agreement(s)” shall mean an agreement(s) defining the rights and obligations of the parties with respect to a specific Research Project essentially in the form as attached here to as Appendix A.

“Project Intellectual Property” is defined as Intellectual Property conceived and first reduced to practice during the term of this Agreement or any relevant Project Agreement in connection with work conducted on a Research Project, and excludes any Background Intellectual Property Rights or Background Technology. If first reduction to practice is constructive, by filing a patent application, such constructive reduction to practice may occur after expiration of this Agreement and the Project Intellectual Property still qualifies as Project Intellectual Property within the scope of this definition.

“Publication” means the disclosure in written, oral, visual or any other form of any information either developed under this Agreement or provided by one Party to the other under this Agreement to any Third Party.

“Receiving Party” is defined as a Party who receives Confidential Information pursuant to this Agreement.

"Research Project" shall include, and be limited to, the research project to be conducted by the Principal Investigator as described in the Work Plan and attached hereto as Appendix A; which shall be updated as appropriate, and as mutually agreed by the Parties.

“Third Party” means any other party excluding Company and its Affiliates and the University.

“University Intellectual Property” is defined as Project Intellectual Property that was conceived during the term of this Agreement or any relevant Project Agreement solely by person(s) who at the time of such occurrence had an obligation of assignment thereof to the University.

"Valid Claim"shall mean either (a) a claim of an issued patent that has not been held unenforceable or invalid by an agency or a court of competent jurisdiction in any unappealable or unappealed decision or (b) a claim of a pending patent application that has not been abandoned or finally rejected without the possibility of appeal or refiling.

“Work Plan” means the statement of work attached to the Project Agreement Template (Appendix A).

**2. Research Project.**

2.1 Research Project. The Parties contemplate that multiple Research Projects will be undertaken by the Parties under the present Agreement. Each Research Project will be guided by the signatories or their designees for each Research Project, and each Research Project will be carried out under the terms of a separate Project Agreement. The signatories or their designees will review the Research Project, make administrative decisions and provide guidance on Intellectual Property and program development.

Matters outside the scope of the Research Project and internal to each Party are not under the purview of the terms of the Research Projects. Such matters include but are not limited to determination of internal personnel policies and programs, budgeting, finance, commercial and marketing strategies, and business decisions.

2.2 Work Plan. The Parties will each undertake each Research Project as more fully set forth in the relevant Work Plan incorporated into the applicable Project Agreement Template (Appendix A).

2.3 Principal Investigators. The University's activities under each Research Project will be under the direct supervision of Principal Investigators selected by each Party and listed in the Project Agreement. The Principal Investigators will carry on and supervise the day to day activities of the Research Project and will report on progress according to the schedule in the Work Plan.

2.4 Changes to University Principal Investigator. If the University’s Principal Investigator associated with a specific Research Project terminates his/her employment with the University, substantially changes his/her field of interest or becomes unavailable for any reason to carry out his/her duties hereunder, Company may terminate any applicable Project Agreement by giving the University thirty (30) days' advance written notice of Company's intention to terminate. Upon termination, University will be reimbursed for costs already accrued and non-cancelable commitments incurred in the conduct of the research program before written notice of termination. If prior payments made by Company to University exceed costs accrued and non-cancelable commitments incurred by University before written notice of termination, the excess will be refunded to Company.

2.5 Facilities and Staffing. Each Party will provide facilities and staffing as required to conduct and satisfy its obligations under this Agreement. The 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. The University will provide office, laboratory space, and ordinary research facilities for the employees at the University to satisfy its obligations under this Agreement.

2.6 Use of Materials for the Research Project. During the course of any Research Project the Parties may wish to transfer Materials from one Party to another. All such transfers will be facilitated under the terms of a Material Transfer Agreement (MTA) in substantially the same form as that attached hereto as Appendix B.

2.7 Intellectual Property. The Company and the University will develop an Intellectual Property (IP) Plan for each Research Project.

2.8 Term. The term of each individual Research Project will be specified in the applicable Project Agreement.

2.9 Diligence Although the University will use reasonable endeavors to carry out the Research Project in accordance with terms and conditions of the applicable Project Agreement, the University does not undertake that any research will lead to any particular result, nor does it guarantee a successful outcome to the Research Project.

**3. Payments**

3.1 Payment. Each Project Agreement shall specify a budget for the applicable Research Project with a detailed description of payments and payment schedules.

3.2 Invoices. The University will provide Company with an invoice for each scheduled payment as defined in the applicable Project Agreement. The University is responsible for all taxes and other financial obligations related to any Research Program. An invoice must be submitted by the University in duplicate, reference this Agreement, and include a detailed description of the goods, services, expenses and budget items to which it relates. The relevant Project Agreement will identify a Company representative to whom a University of Delaware invoice must be sent. Upon receipt of a complete invoice, Company will provide the University with payment within sixty (60) days. Invoices will be paid against the account having the following information:

|  |
| --- |
| **Account Name:** University of Delaware |
| **Account Number:**1034-8250 |
| **Bank Name:** M & T Bank |
| **Address:** Cashiers Office, Office of Sponsored Programs 30 Lovett Ave., 116 Student Services Building, Newark, DE 19716 |
| **Payment Reference:** Please make checks payable to University of Delaware and include invoice number on the payment. |

3.3 Records. University shall maintain complete and accurate accounting records, in a form and in accordance with standard accounting practices, to substantiate charges hereunder. Company shall have access to such records for purpose of audit and verification at reasonable times and during normal business hours during the term of this Agreement and for a period of three (3) years after completion of a Research Project.

**4. Confidentiality**

4.1 Obligation of Confidentiality. If an applicable Non-Disclosure Agreement (NDA) exists, then the terms of the applicable NDA establish the responsibilities of the parties and control in the event there are inconsistencies with language in this section. The language below reflects typical university practice and applies if there is not a separate Confidentiality Agreement.

The Parties will hold all Confidential Information in confidence; will not disclose any Confidential Information to any Third Party; and will use the Confidential Information solely for the Research Project. The Parties will only disclose such Confidential Information to individuals within Receiving Party’s organization that are directly involved with the Research Project on a need-to-know basis and who are under an obligation of confidentiality similar to the one herein. Further, Company may disclose Confidential Information to Affiliates who are under an obligation of confidentiality similar to the one herein. Each Party receiving a disclosure of Confidential Information from the other Party, will exercise due care to prevent its unauthorized disclosure. Unless otherwise specified, Confidential Information will not include information that:

 a. is or becomes generally known or available to the public without breach of this Agreement;

 b. is known to the Receiving Party at the time of disclosure, as shown by the prior written records of the receiving Party;

 c. is developed by the Receiving Party independently of knowledge or information obtained from the disclosing Party;

1. is disclosed to the Receiving Party in good faith by a Third Party who has an independent right to such materials or information;
2. is released by the Receiving Party with the prior written approval of the Disclosing Party; or

 f. is required to be disclosed by law or regulation; provided that the Receiving Party will immediately inform the Disclosing Party and cooperate with the Disclosing

 Party, at the Disclosing Party’s expense, in interposing an objection to such
 requirement in accordance with Article 4.4 below.

4.2 Exceptions: Information disclosed hereunder shall not be deemed to be within the foregoing exceptions merely because such information is embraced by more general knowledge in the public domain or in the Receiving Party’s possession. In addition, no combination of features shall be deemed to be within the foregoing exceptions merely because individual features are in the public domain or in the Receiving Party’s possession, unless the combination itself and its principle of operations are in the public domain or in the Receiving Party’s possession.

4.3 Documentation. To be protected as Confidential Information, information transmitted by a Disclosing Party must be disclosed in writing or other tangible form and clearly identified at the time of disclosure as the Confidential Information of the Disclosing Party, except that any information initially disclosed in non‑tangible, oral or visual form and identified in writing by the Disclosing Party as confidential within thirty (30) days of disclosure shall also be deemed Confidential Information hereunder. The foregoing not withstand Confidential Information shall also include any information disclosed hereunder in any form that would reasonably understood to be confidential and proprietary to the other Party.

4.4 Permitted Disclosures of Confidential Information. Should either Party be required by judicial or other governmental authority to disclose the other Party’s Confidential Information, the Disclosing Party shall immediately inform and cooperate with the Receiving Party in responding to such requirement in a manner that maintains the confidentiality of the Receiving Party’s Confidential Information to the maximum extent possible. Notwithstanding the provisions of paragraph 4.1 hereof, the Parties shall have the right to disclose Confidential Information to a patent office in support of the filing of a patent application with the prior written approval of the Disclosing Party, such approval not to be unreasonably withheld. Additionally, Company shall have the right to disclose Confidential Information to (1) regulatory authorities in support of requests for marketing authorizations or label language, (2) potential and actual collaborators, (3) potential and actual licensees/assignees, and (4) potential and actual customers so long as such disclosure is under obligations of confidentiality at least as stringent as those herein.

4.5 Ownership of Confidential Information. Unless otherwise specified in writing, all Confidential Information is and remains the Disclosing Party’s property. Generated Information shall be owned as provided in paragraph 6.2(b) and may be published subject to review by Company as provided in paragraph 5.1. Upon request of the Disclosing Party, the Receiving Party will return or destroy all Confidential Information received from the Disclosing Party, except that one (1) copy, of the Confidential Information may be retained by the Receiving Party’s counsel solely to monitor its obligations under this Agreement.

4.6 Expiration of Confidentiality. The obligation to maintain the Disclosing Party’s Confidential Information in confidence shall cease five (5) years after the termination or expiration of this Agreement except that the obligation of Confidentiality with respect to Generated Information (as defined above) shall cease after Company has had the opportunity to review such information as provided in Article 5.

**5. Reports and Publication**

5.1 Publication and Review. The Parties agree not to disclose in a Publication the other Party's Confidential Information. The University, inclusive of University graduate and post doctoral students engaged in the Research Project shall be permitted to present at symposia, national or regional professional meetings and to publish in journals, or otherwise of his/her or their own choosing, accounts of the Generated Information provided that Company shall be furnished copies or description of any disclosure or presentation for a Publication at least sixty (60) days prior to submission or presentation for the presence of Company Confidential Information or patentable subject matter. If Company determines that a patent application should be filed, the Publication shall be delayed up to a total of ninety (90) days or until a patent application has been filed whichever is sooner. At Company’s request, any Company Confidential Information will be deleted from the disclosure. The terms of this paragraph shall survive expiration or termination of this Agreement.

5.2 Limitations on Publications. The limitations on publication as identified in 5.1 above, shall not limit the discussion of pertinent portions of the project work with co-workers on University's campus in performing the work on the Research Project who have complied with the requirements of Article 4 above, nor shall they prohibit graduate student(s) from presenting theses or dissertations in fulfillment of requirements for advanced degrees, except that no Company Confidential Information shall be included in such theses or dissertations without the express written permission of Company and any such theses or dissertations shall be subject to the requirements of prior review and the time periods set forth in paragraph 5.1.

**6. Intellectual Property - Ownership.**

6.1 Disclosures. Each party will promptly communicate to the other any Project Intellectual Property developed or discovered by it under this Agreement or any Research Project hereunder and shall provide an enabling disclosure of the same. The disclosures will be treated by both Parties as Confidential Information.

6.2 Ownership and Inventorship. Intellectual Property ownership will be specified in each Research Project, which controls in the event there are inconsistencies with language in this section. The language below reflects the typical university position and is applicable if IP ownership is not specified for each Research Project.

1. The entire right, title and interest to any Project Intellectual Property, will be determined in accordance with United States law, and shall vest with the Party or Parties that first create, conceive, or discover said Intellectual Property.
2. The entire right, title and interest to any Generated Information developed under this Agreement shall vest with the Party or Parties that created said Generated Information.
3. Any Materials and/or Confidential Information supplied by a Party will remain the property of the Disclosing Party. The Receiving Party shall not supply or transfer any Materials received from the other Party to any Third Party, except as permitted under this Agreement or the MTA.
4. Inventorship with respect to Project Intellectual Property, Company Intellectual Property, University Intellectual Property and Joint Intellectual Property will be determined according to the laws of the United States. It is agreed that any disputes in inventorship will be determined by a patent attorney mutually agreed upon by Company and the University, and shall be determined according to 35 USC § 101 et seq. as of the date of this Agreement
5. Each Party will continue to hold all right, title and interest in and to all of their own Background Technology and Background Intellectual Property Rights. Except as expressly provided herein, nothing in this Agreement will be construed as a grant from one Party to the other Party under any of the Background Technology, Background Intellectual Property Rights or Project Intellectual Property or other Intellectual Property, of any right or license (implied or otherwise) therein.

**7. Patents**

7.1 Patent Prosecution and Expenses. 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. Title to any invention or discovery conceived or reduced to practice solely by Company personnel in the performance of this research shall remain with Company. Inventions conceived or reduced to practice hereunder by University personnel jointly with employees of Company shall be jointly owned.

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.

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.

7.2 Cooperation. Each Party shall cooperate with the other Party in completing any patent applications to secure patent rights for inventions in which the other Party has an ownership interest, and in perfecting the other Party’s legal right, title and interest thereto. A communication or notice under this Agreement related to Intellectual Property shall be deemed sufficient if conveyed in writing to an appointed member of the other Party.

7.3 Government Rights. For any Intellectual Property covered under this Agreement which is made in part using funds or resources obtained from the U.S. Government, the U.S. shall retain certain rights as set forth in the Bayh-Dole Act, 35 U.S.C. §§200 et seq.

# **8. Representations and Warranties**

8.1 Representations and Warranties of University. The University represents and warrants to Company that, to the best of its knowledge:

a. University has the right to provide its Confidential Information, Materials and/or Intellectual Property to a Research Project as required herein;

1. University has the right to grant the licenses and options and assign title as described herein;
2. University’s Principal Investigator and all other employees, including but not limited to agents, postdoctoral scientists, or graduate students, working on a Research Project are under an obligation to assign their rights in all Intellectual Property developed by them to the University. Undergraduate students shall not participate in a Research Project unless the University secures an obligation to assign their rights in all Intellectual Property developed by them to the University. As employer of the legal inventor(s), the University will secure assignment for University Intellectual Property and Joint Intellectual Property;
3. Research team members at the University who participate in a Research Project under a Project Agreement will not undertake any work sponsored or funded by any other commercial entity during the term of such Research Project if such work would conflict with the terms of this Agreement or the Research Project as defined under the relevant Project Agreement.
4. University will abide by the export control laws of the United States.

8.2 Representations and Warranties of Company. Company represents and warrants that to the best of its knowledge:

a. Company has the right to provide its Confidential Information, Materials and/or Intellectual Property to a Research Project as required herein; and

b. all Company employees working on the Research Project are under an obligation to assign their rights in Company Intellectual Property and Joint Intellectual Property to Company. As employer of the legal inventor(s), Company will secure assignment for all such Intellectual Property.

c. Company will abide by the export control laws of the United States.

**9. Disclaimer**

Except as specifically set forth in Paragraphs 9.1 and 9.2 hereof, the Parties make no express or implied warranty as to any matter whatsoever, including the conditions of the CONFIDENTIAL INFORMATION, MATERIALS AND/OR INTELLECTUAL PROPERTY SUPPLIED FOR A RESEARCH PROJECT. Neither Party will be liable for any use of the CONFIDENTIAL INFORMATION, MATERIALS AND/OR INTELLECTUAL PROPERTY SUPPLIED FOR A RESEARCH PROJECT, or for any loss, claim, damage, or liability, of any kind or nature, which may arise from or in connection with this Agreement or from the use, handling, or storage of the CONFIDENTIAL INFORMATION, MATERIALS AND/OR INTELLECTUAL PROPERTY SUPPLIED FOR A RESEARCH PROJECT.

**10. Indemnification / Insurance / Liability**

10.1 Each Party will indemnify, defend and hold the other Party harmless from and against:

(a) any liens, fines or civil penalties;

(b) loss of or damage to the other Party’s property; and

(c) costs (including legal expenses and attorney’s fees) and liability arising from claims or suits by Third Parties (including either Party’s employees, agents or other representatives but excluding third party claims of infringement of patent or other proprietary rights) based on death, personal injury, loss of or damage to property or damage to the environment;

resulting from actions of the indemnifying party under this Agreement or Research Project, but only to the extent that (a), (b), and/or (c) does not result from or is not caused by an indemnified Party’s negligence, willful misconduct, bad faith or breach of contract in relation to this Agreement or the Research Project.

10.2 Each Party 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 the University, with a combined single limit of at least $5,000,000 per occurrence.

10.3 Neither Party shall be liable to the other under this Agreement for indirect, consequential, special, or punitive damages, including loss of profits, except that this limitation shall not apply to any breach of the obligations of Confidentiality or for either Party’s willful misconduct or fraudulent actions.

**11. Independent Contractor**

11.1 For purposes of this Agreement and in connection with any activity of the University hereunder, the University will at all times be an independent contractor and not an employee or agent of Company. The University's activities in connection with a Research Project will be conducted by the University at its own risk. The University will have full authority and responsibility for each Research Project. Individuals working with the University’s Principal Investigator and for the University under a Research Project will be employees, agents or students of the University and will not be employees of Company.

**12. Term, Termination, and Survival**

12.1 Expiration. The term of this Agreement is five (5) years from the Effective Date and renewable upon mutual agreement.

12.2 Termination of Agreement.

12.2.1 Either Party will have the right to terminate any Research Project, Project Agreement and/or this Agreement with or without cause upon thirty (30) days written notice to the other Party. Termination will be effective as of the day of receipt of such notice.

12.2.2 In the event of a material breach of this Agreement or a Project 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 this Agreement or the applicable Project Agreement by sending written notice to the Party in breach. Termination shall be effective upon receipt of such notice. Termination of the Agreement does not terminate the licenses granted to Company hereunder or under any Research Project or Project Agreement.

12.3 Effect of Termination or Expiration.

1. Immediately at termination or expiration of this Agreement or any relevant Project Agreement, or otherwise upon notice from a Party, the other Party will cease use of and make no further use of the Confidential Information and Materials of the Party providing notice. Such Confidential Information and Materials shall be returned or, if requested, destroyed with such destruction confirmed in writing.
2. Upon termination by Company, for any cause other than breach by the University, Company will only pay outstanding and reasonable non-cancelable costs incurred by the University as of the date of notice of termination under Article 13.2.1.

12.4 Survival. All agreements, covenants, indemnities, obligations, rights, licenses, options, representations, and warranties set forth in this Agreement or accrued prior to termination or expiration of this Agreement will survive the execution, delivery, termination, or expiration of this Agreement and remain in full effect. Specifically, Articles 4, 6, 8, 9, 10, 11, 12, 14, and 15.7 survive termination or expiration of this Agreement.

**13. Resolutions of Disputes.**

13.1 The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between senior individuals who have the authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Either Party may give the other Party written notice of a dispute not resolved in the normal course of business. If the matter has not been resolved by these persons within sixty (60) days of a disputing Party’s notice, the dispute shall be referred to a more senior individual of the Parties with the decision-making authority for resolution. If the dispute is not resolved within forty-five (45) days from the referral to a more senior individual either Party may initiate arbitration as provided herein.

13.2 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.

**14. Miscellaneous**

14.1 Notices. Any formal notices, request, delivery, approval or consent required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given when it is received, whether delivered in person, transmitted by facsimile or email with contemporaneous confirmation, or delivery by registered letter (or its equivalent) or delivery by certified overnight courier service, to the Party to which it is directed at its address shown below or such other address as such Party shall have last given by notice to the other Parties.

 If to Company:

 INSERT

 If to the University:

 Dr. Charles Riordan

 Vice President for Research, Scholarship & Innovation

University of Delaware

 ­­­­­­­­124 Hullihen Hall

 Newark, DE 19716

14.2 Publicity. Neither Party will use the name or trademarks of the other Party in any advertising, publicity, news release, product labeling, or for any commercial purpose without the prior written consent of the other Party. Additionally, the name of either party to the Agreement will not be used by the other in any advertising, publicity or news media related to a Research Program without the prior written consent of the other Party, except that Company shall be able to use the name of the University in Security and Exchange Commission and regulatory filings without such permission.

14.3 Assigns and Successors. 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, except Company may, without such consent, assign this Agreement to an Affiliate or any purchaser of all or substantially all of the assets in the line of business to which this Agreement pertains. Upon assignment, the rights and obligations under this Agreement will be binding upon and inure to the benefit of said purchaser or successor in interest.

14.4 Severability. If any provision hereof should be held invalid, illegal or unenforceable in any respect in any jurisdiction, then, to the fullest extent permitted by law: (i) all other provisions hereof will remain in full force and effect in such jurisdiction and will be liberally construed in order to carry out the intentions of the Parties hereto as nearly as may be possible; and (ii) such invalidity, illegality or unenforceability will not affect the validity, legality or enforceability of such provision in any other jurisdiction. To the extent permitted by applicable law, the Parties hereby waive any provision of law that would render any provision hereof prohibited or unenforceable in any respect.

14.5 No Implied Waivers; Rights Cumulative. No waiver, modification or amendment of any provision of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer of each Party. The failure of either Party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition

14.6 Amendments. No amendment, modification, waiver, termination or discharge of any provision of this Agreement, nor consent to any departure by either Party therefrom, will in any event be effective unless the same will be in writing specifically identifying this Agreement and the provision intended to be amended, modified, waived, terminated or discharged and signed by the both Parties.

14.7 Governing Law. This Agreement is acknowledged to have been made and will be construed in accordance with the laws of the State of Delaware (without reference to its choice of law rules) and the courts of Delaware will have exclusive jurisdiction over all legal matters and proceedings hereunder.

14.8 Counterparts. This Agreement may be executed in counterparts, or facsimile versions, each of which shall be deemed to be an original, and both of which together shall be deemed to be one and the same agreement.

14.9 Entire Agreement. This Agreement constitutes, on and as of the Effective Date, the entire agreement and understanding of the Parties with respect to the matters contained herein.

IN WITNESS WHEREOF**,** the Parties have caused this Agreement to be executed by their respective authorized representatives.

**COMPANY**

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

NAME:

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

**UNIVERSITY**

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

NAME: Dr. Charles Riordan

 Vice President for Research, Scholarship & Innovation

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

**APPENDIX A**

**TEMPLATE PROJECT AGREEMENT**

**PARTIES:** Company and University, collectively the “Parties” and individually a “Party”.

**CONTEXT:** This (“Agreement”) is made under the terms of the Framework Sponsored Research Agreement (“SRA”), executed by the Parties \_\_\_\_\_\_\_\_\_\_, and relates to the general area of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**EFFECTIVE DATE:** The Effective Date of this Agreement is \_\_\_\_\_\_\_\_\_\_\_

**DEFINITIONS:** All definitions used in the SRA are hereby incorporated into this Agreement and have the same meaning.

**PRINCIPAL INVESTIGATORS:** Each Party will appoint a Principal Investigator for this Research Project. At the time of the execution of this Agreement the Company Principal Investigator is Dr. \_\_\_\_\_\_\_\_\_\_\_\_\_ and the University Principal Investigator is Dr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The Principal Investigators will be responsible for the day to day operations of the Research Project and for the administration of this Agreement.

**TERM AND TERMINATION:** The term of this Agreement is \_\_\_\_\_\_\_\_\_ years from the Effective Date. This Project Agreement shall terminate prior to the date of termination on the occurrence of any of the following events:

a) Delivery of written notice of termination by one party to the other at least thirty (30) days in advance of termination for no cause:

b) termination or expiration of the SRA; or

c) material breach of this Project Agreement or the SRA which is not cured within sixty (60) days of the receipt of notice by the breaching Party.

In the event of early termination by Company under (a) above for no cause, Company shall provide the University Principal Investigator with close-out funding, not to exceed\_\_\_\_\_\_\_\_\_\_.

**PROJECT:** The research activities encompassed by this Agreement form the basis of a Research Project as defined in the SRA. The scope, technical milestones, and commercial significance of the project are detailed in the Work Plan attached hereto as Attachment 1 and made a part of this Project Agreement.

**OPTIONAL: MILESTONE(S):** A Milestone means a technical or research goal agreed to by the parties that defines the viability of any product or process that arises from the Research Project governed by this Agreement. Achievement of the milestones will be seen as indicative of substantial research success. For the purposes of this Agreement the agreed to Milestone(s) are as follows:

Milestone 1:

Projected Date of Completion:

Milestone 2:

Projected Date of Completion:

**BUDGET AND COSTS:** The projected costs for this Research Project for the current year are $\_\_\_\_\_\_\_\_. The budget may be amended from time to time but only in writing and with the approval of both Parties.

**MATERIALS:** Rights to Materials will be governed by the terms of the SRA and will be transferred under the terms of a separate Materials Transfer Agreement, as attached to the SRA Appendix B. Samples and Materials used under this Agreement shall be free of any encumbrances by any third party.

**INVENTIONS AND DISCOVERIES:** Inventions and discoveries arising under this Agreement will be reported promptly to the Principal Investigators for the Research Project. It shall be the responsibility of the Principal Investigators to disclose any such inventions to the Office of Research Services at the University and the CRD Intellectual Property Management Group (Company) in accordance with the terms of the SRA at the following addresses:

For the University:

|  |  |
| --- | --- |
| Name: |  |
| Title: |  |
| Organization: |  |
| Address: |  |
| Telephone: |  |
| Email: |   |

For the Company:

|  |
| --- |
| Name: |
| Title: |
| Organization: |
| Address: |
| Telephone: |
| Email: |

**RIGHTS AND OBLIGATIONS:** Unless otherwise specified herein, all rights and obligations arising under this Agreement shall be governed by the SRA and include but are not limited to; obligations of Confidentiality (SRA, Article 4),Reports and Publications (SRA, Article 5); Intellectual Property (SRA, Article 6); and Patents (SRA, Article 7).

**CONFLICTS:** Unless otherwise specified herein the terms of this Agreement are subject to and will be controlled by the terms of the SRA in all respects.

SPECIAL REQUIREMENTS/TERMS:

**APPROVAL:** This Agreement is approved and executed as evidenced by the signatures below:

**University of Delaware Company**

Name: Name:

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

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

**ATTACHMENT A TO PROJECT AGREEMENT**

**Work Plan**

**Project Title**

|  |
| --- |
| [*full title*] [*short name*] |

**Principal Investigators** *(please provide full names, departments, telephone and email addresses)*

|  |  |
| --- | --- |
| University Principal Investigator: |  |
| Other University Key Personnel |  |
| Company Principal Investigator: |  |
| Other Company Key Personnel |  |

**Start Date, Duration and Location**

|  |
| --- |
| Start Date: Duration in months:  |

**Company and/or University Background, equipment or materials contributed to the Project**

|  |
| --- |
|  |

**Statement of Work for the Research Project**

This Statement of Work (SoW) defines the work to be carried out by the University for Company. The work consists of:

|  |
| --- |
| [*Abstract*] |

|  |
| --- |
| [*Work Packages*] |

**Reporting Schedule**

|  |
| --- |
|  |

**Milestones and/or Deliverables**

|  |
| --- |
|  |

**Budget and Payment Schedule**

|  |
| --- |
|  |

**Invoicing**

|  |
| --- |
| [Company Address and contact information for invoices] |

Research **Project Review and Technical Coordination Meetings**

|  |
| --- |
| [Meeting schedule for coordination of SOW between Company and the University] |

**Anticipated** Research **Project Results**

|  |
| --- |
|  |

**Listing of any relevant patents, patent publications or other references**

|  |
| --- |
|  |

**APPENDIX B**

**MATERIALS TRANSFER AGREEMENT**

THIS MATERIALS TRANSFER AGREEMENT (“Agreement”), made on \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 (“Effective Date”), is by and between Company with offices at \_\_\_\_ (“Company”) and the University of Delaware with offices at Newark Delaware, (“University”), (the University and Company, individually a “Party” and collectively the “Parties”).

RECITALS:

WHEREAS : PROVIDER has developed certain proprietary materials and information relevant to the Research Project to be performed under the terms of the Framework Sponsored Research Agreement (“SRA”) between the Parties, Effective\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and appended hereto; and

WHEREAS: PROVIDER desires to transfer said materials to RECIPIENT for use in the Research Project, and

WHEREAS: RECIPIENT desires to receive said proprietary materials,

NOW THEREFOR: COMPANY and University agree to the terms of transfer as follows:

DEFINITIONS:

 PROVIDER: [University ] or [Company]

Provider's Scientist:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 RECIPIENT: [University ] or [Company]

 Recipient's Scientist:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 MATERIAL: PROVIDER shall provide the proprietary MATERIAL as defined in Appendix 1 attached to this Agreement and fully incorporated herein. From time to time over the course of this agreement materials may be added to Appendix 1. It is agreed that all MATERIALS listed on Appendix 1 at the termination of this Agreement are subject to all terms recited herein, and that addition of materials constitutes a valid modification of the agreement in writing.

 MODIFICATIONS: substances created by RECIPIENT which contain/incorporate the MATERIAL.

TERMS AND CONDITIONS OF THIS AGREEMENT

1. The MATERIAL is the property of PROVIDER and is to be used by RECIPIENT solely for the RESEARCH PROJECT at RECIPIENT's institution only and only under the direction of the Recipient's Scientist. The MATERIAL will not be used in human subjects or in clinical trials involving human subjects without the written permission of PROVIDER. Except as required by the relevant Work Plan or Research Project, RECIPIENT shall not reverse engineer, disassemble or decompile and MATERIAL received hereunder.

2. The Recipient's Scientist agrees not to transfer the MATERIAL or MODIFICATIONS to anyone who does not work under his or her direct supervision at RECIPIENT's institution without the prior written consent of PROVIDER. Recipient's Scientist shall refer any request for the MATERIAL to PROVIDER.

3. (a) Except as expressly provided in this Agreement or the SRA, no rights are provided to RECIPIENT under any patents, patent applications, trade secrets or other proprietary rights of PROVIDER. In particular, no rights are provided to use the MATERIAL or MODIFICATIONS and any related patents of PROVIDER for non-research and revenue generating and commercial purposes, such as sale of the MATERIAL or MODIFICATIONS, use in manufacturing, provision of a service to a Third Party in exchange for consideration, or use in research or consulting for a Third Party for-profit entity under which that entity obtains rights to research results.

 (b) If RECIPIENT desires to use the MATERIAL or MODIFICATIONS for such non-research and revenue generating commercial purposes, RECIPIENT agrees, in advance of such use, to negotiate in good faith with PROVIDER to establish the terms of a commercial license as provided in the SRA.

 (c) If the research involving the MATERIAL results in an invention or a MODIFICATION, then inventorship, ownership and rights to use such invention or MODIFICATION shall be determined according to the provisions set forth in the SRA.

4. The provision of the MATERIAL to RECIPIENT shall not alter any preexisting right to the MATERIAL.

5. Any MATERIAL delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties. PROVIDER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS.

6. RECIPIENT assumes all liability for damages which may arise from its use, storage or disposal of the MATERIAL. PROVIDER will not be liable to RECIPIENT for any loss, claim or demand made by RECIPIENT, or made against RECIPIENT by any other party, due to or arising from the use of the MATERIAL by RECIPIENT except to the extent caused by the gross negligence or willful misconduct of PROVIDER.

7. This Agreement shall not be interpreted to prevent or delay publication of research resulting from the use of the MATERIAL or MODIFICATION. Any publication of or reference to the MATERIAL or MODIFICATIONS shall be in accordance with the provisions of Article 5 of the SRA.

8. RECIPIENT agrees to use the MATERIAL in compliance with all applicable statutes and regulations.

9. (a) This Agreement will terminate on the earliest of the following dates:

 (1) on completion of the Research Project or Project Agreement with the MATERIAL, or

 (2) on thirty (30) days written notice by either party to the other. Paragraphs 5 and 6 shall survive termination.

 (b) Unless otherwise agreed to in writing by the Parties, on termination of this Agreement under 9 (a)(1), or (2), above, RECIPIENT will discontinue its use of the MATERIAL and will, upon direction of PROVIDER, return or destroy any remaining MATERIAL. RECIPIENT will also either destroy or return MODIFICATIONS to PROVIDER.

10. The MATERIAL is provided without a fee.

11. This Agreement is acknowledged to have been made and shall be construed in accordance with the laws of the State of Delaware in the United States of America without giving effect to that state’s conflicts of laws principals.

12. The provisions of this Agreement are severable and in the event any provisions of this Agreement are determined to be held invalid or unenforceable under any controlling body of law, such invalidity or unenforceability shall not in any way affect the validity and enforceability of the remaining provisions hereon. Where any terms in this agreement conflict with the terms of the SRA, the terms of the SRA shall control. This Agreement incorporates the SRA.

13. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter of this Agreement, and no amendment, modification, or alteration of any of the terms or provisions of this Agreement shall be valid unless in writing and signed by the Parties thereto.

IN WITNESS WHEREOF, The Parties, by their duly authorized representatives, have executed this Agreement on the dates indicated.

**PROVIDER:**

(Signature of Authorized Representative)

Title \_\_\_\_\_\_\_\_\_\_\_\_

Date \_\_\_\_\_\_\_\_\_\_\_\_

**ACCEPTED:**

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Recipient Scientist)

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address

**RECIPIENT**

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature of Authorized Representative)

Title \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPENDIX 1**

***PROVIDER MATERIALS***

|  |  |  |  |
| --- | --- | --- | --- |
| ***Material Description*** | ***Date of Transfer*** | ***Sent by (Signature)*** | ***Received By (Signature)*** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |