

**STTR/SBIR PROGRAM**

**SUBAWARD AGREEMENT**

**BETWEEN**

**COMPANY**

**AND**

**THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW YORK**

This Agreement ("AGREEMENT") made by and between (company's name, address, ID number), ("COMPANY") and THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW YORK, a nonprofit, educational corporation organized and existing under the laws of the State of New York, with an office located at Office of Sponsored Programs, W5510 Melville Library, Stony Brook, New York 11794-3362 ("FOUNDATION"), Federal Identification Number 14-1368361, acting on behalf of The State University of New York, Stony Brook University, ("University").

**WITNESSETH:**

**WHEREAS**, \_\_\_\_\_, hereinafter referred to as "SPONSOR", has awarded an SBIR award number \_\_\_\_\_, hereinafter referred to as "Prime Award", to the COMPANY to conduct the SBIR research project entitled \_\_\_\_\_, hereinafter referred to as "PROJECT"; and

**WHEREAS**, the aforesaid Award provides that COMPANY shall subcontract to FOUNDATION a portion of the work and services to be provided in connection with the PRIME; and

**WHEREAS**, COMPANY desires to enter into an agreement with FOUNDATION for the performance of this project, hereinafter referred to as the "AGREEMENT"; and

**WHEREAS**, FOUNDATION has represented to the COMPANY that it is knowledgeable, qualified and expert in skills required for this project and covenants that it is capable of performing the services required under this AGREEMENT and desires the COMPANY to engage its services,

**WHEREAS**, FOUNDATION is a non-profit educational corporation designated by University as University's authorized agent to serve as the fiscal administrator to receive, hold and administer funds and execute research agreements on behalf of University for the conduct of research;

**WHEREAS**, FOUNDATION has in place agreements with University sufficient to meet the obligations under this Agreement with respect to activities conducted pursuant to this Agreement and the Scope of Work (as defined below) at University and to bind University to the terms and conditions of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

**1. Incorporation of Applicable Provisions**

This AGREEMENT sets forth the terms and conditions under which COMPANY and FOUNDATION will engage to accomplish the work set forth by the Prime Award and consists of the following:

The Subaward AGREEMENT  
Exhibit A – Scope of Work and Budget  
Exhibit B – Prime Award

**2. Scope of Work; Status of Parties**

The parties agree to engage in a collaborative research effort as necessary to accomplish the work and services set forth in Exhibit A attached hereto and made a part hereof.

The relationship will be that of principal and independent contractor and not of an employer-employee relationship. This AGREEMENT will not be construed to contain any authority, either express or implied, enabling FOUNDATION to incur any expense or perform any act on behalf of COMPANY without express written consent.

**3. Technical Reporting Requirements**

Written program reports shall be provided by FOUNDATION to COMPANY every \_\_, and a final report shall be submitted by FOUNDATION within forty-five (45) days of the conclusion or early termination of this AGREEMENT.

**4. Key Personnel**

FOUNDATION'S PROJECT DIRECTOR is:  
COMPANY'S Technical Contact is:

The FOUNDATION's PROJECT DIRECTOR and COMPANY's Technical Contact, as identified above, agree to maintain close liaison with each other to ensure a timely, well-integrated project effort and to achieve the performance goals during the term of this AGREEMENT. If for any reason the FOUNDATION's PROJECT DIRECTOR is unable or unwilling to continue the PROJECT and/or the responsibilities required to carry out the performance of their duties under this AGREEMENT, the parties shall negotiate the continuance of the PROJECT and/or this AGREEMENT in good faith. However, if another principal investigator cannot be agreed upon, either party may terminate this AGREEMENT in accordance with Article 4 by giving written notice to the other party of such termination.

## 5. **Term**

This AGREEMENT shall be effective on \_\_\_\_\_ and shall continue through \_\_\_\_\_ unless terminated sooner or extended by mutual written agreement of the parties hereto in accordance with provisions set forth elsewhere in this AGREEMENT.

## 6. **Compensation and Maximum Cost**

(a) COMPANY shall pay the FOUNDATION a fixed price of \$\_\_\_\_\_ for the work performed in accordance with the terms of this AGREEMENT. This sum shall be paid in accordance with the schedule set forth below:

### (SCHEDULE)

The budget for which COMPANY has based this support is detailed in Exhibit A.

(b) It is expressly understood and agreed that the aggregate of all allowable costs under this AGREEMENT shall in no event exceed the maximum cost indicated as such in paragraph 4(a), except upon formal modification of this AGREEMENT as provided herein below.

(c) The FOUNDATION shall retain title to all equipment, material, and supplies purchased and/or fabricated by it or the University with funds provided by COMPANY under this Agreement. Such title shall remain with the FOUNDATION even if said equipment, material, and supplies are located in other than FOUNDATION or University facilities.

(d) An interest penalty of 1.5% per month will be added to the total invoice amount of payment if not received within forty-five (45) days of the invoice date.

## 7. **Protected Information**

(a) The parties acknowledge that they may possess certain proprietary or confidential information which may be utilized in performance of the PROJECT. "PROTECTED INFORMATION" shall mean all such proprietary or confidential information provided by the

disclosing party in writing and marked “confidential” or bearing equivalent legend, or disclosed orally, summarized in writing and marked “confidential” and transmitted to the non-disclosing party within 30 days of oral disclosure. PROTECTED INFORMATION will only be disclosed to the employees, consultants and students (if applicable) who require the same to fulfill the purposes of the research. The receiving party shall protect the disclosing party’s PROTECTED INFORMATION with the same standard of care with which the receiving party treats its own PROTECTED INFORMATION. PROTECTED INFORMATION shall be used by the receiving party only within the scope of this AGREEMENT. Each party shall, for a period of three (3) years after the termination or expiration of this AGREEMENT, maintain the same level of care to prevent the disclosure of a party’s PROTECTED INFORMATION, unless otherwise required by law.

(b) Neither party shall be liable for disclosure or use of the information of the other party if said information was:

1. known by the receiving party at the time it was acquired from the disclosing party;
2. already generally available to the public, or subsequently becomes so available without default of the receiving party;
3. received by a party to this AGREEMENT from a third party who did not acquire it directly or independently from a party to this AGREEMENT in confidence;
4. independently developed by the receiving party without the use or reliance on PROTECTED INFORMATION, or;
5. required to be disclosed by law provided that the disclosing party shall give advance, written notice to the other party of the compelled disclosure.

Other provisions of this AGREEMENT notwithstanding, this Article shall remain in effect for a period of three (3) years from the effective date of this AGREEMENT.

## **8. Publication**

The FOUNDATION shall be to free to publish papers consistent with protection of proprietary information of COMPANY and/or patentable rights which arise from work conducted under this AGREEMENT. No less than thirty (30) days prior to dissemination or publication, FOUNDATION shall provide the COMPANY with a copy of any proposed manuscript or oral presentation for identification and protection of COMPANY’S PROTECTED INFORMATION. If FOUNDATION does not receive a written response from COMPANY within thirty (30) days, FOUNDATION may proceed with publication and/or release of information as proposed. COMPANY may require an additional thirty (30) day delay in publication in order to coordinate the filing of any invention disclosure. In no event shall this delay exceed a total of sixty (60) days without mutual written agreement by both parties.

FOUNDATION and/or FOUNDATION’S PROJECT DIRECTOR are/is responsible for assuring

that an acknowledgment of SPONSOR support is made in any oral media interviews, as well as any publication (including World Wide Web pages) of any material based on or developed under this AGREEMENT, in the following terms: "This material is based upon work supported by the (PRIME SPONSOR NAME) under Grant No. [ ]".

## **9. Intellectual Property**

### **(a) Definitions.**

As used in this AGREEMENT, the following terms will have the meanings set forth below.

1. Incidental Use of SUNY Resources. "Incidental Use of SUNY Resources" means the use of SUNY or FOUNDATION resources and facilities such as meeting rooms, office space, office supplies, photocopiers, telephones, fax machines, and other standard office equipment, personal-type computers, commercially-available software installed on such computers, and computer and communications networks, including internet access and data storage, that is occasional and/or non-essential to the creation of Intellectual Property.
2. Invention(s). "Invention(s)" means any invention or discovery that is potentially patentable, and conceived and reduced to practice under this AGREEMENT. "COMPANY Invention" means an Invention that is invented solely by COMPANY personnel with no more than Incidental Use of SUNY Resources. "Foundation Invention" means an Invention that is invented solely by FOUNDATION or University personnel; "Joint Invention" means an Invention that is invented jointly by COMPANY and FOUNDATION personnel, or (ii) invented by COMPANY personnel with more than Incidental Use of SUNY Resources.
3. Intellectual Property. "Intellectual Property" or "IP" means all proprietary rights in Inventions, patent applications, patents, copyrightable works, mask works, trademarks, trade secrets, and any information embodying proprietary data, such as technical data and computer software.
4. Background Intellectual Property. "Background Intellectual Property" or "BIP" means the Intellectual Property of a party that was created prior to the effective date of this AGREEMENT and is used in the PROJECT. "COMPANY BIP" means the Background Intellectual Property of COMPANY, if any, as identified in Exhibit A hereto. "Foundation BIP" means the Background Intellectual Property of FOUNDATION known to the PROJECT DIRECTOR.
5. Other Intellectual Property. "Other Intellectual Property" means any IP created or owned by either party that is neither Background IP nor an Invention.
6. Project Reports. "Project Reports" means the written reports prepared by

FOUNDATION and delivered to COMPANY during the PROJECT, as set forth in Exhibit A.

7. Research Results. "Research Results" means all data, findings, know-how, methods, techniques, intangible results, tangible materials, software, prototypes, and work product that result from the performance of the PROJECT pursuant to this AGREEMENT. For purposes of clarity, Research Results does not include Project Reports.

(b) IP Rights and Obligations of COMPANY.

1. Ownership of IP. COMPANY will own all COMPANY\_BIP, COMPANY Inventions, COMPANY's Other Intellectual Property, and copyright in the Project Reports. COMPANY will jointly own, together with Foundation, all Joint Inventions.

2. Invention Disclosures. COMPANY will notify Foundation in writing within thirty (30) days of receipt of an Invention disclosure covering a COMPANY Invention or Joint Invention. All Invention disclosures exchanged under this Agreement will be kept confidential by the parties.

3. COMPANY Inventions. COMPANY will control and bear the expense of the preparation, filing, prosecution, and maintenance of all United States and foreign patent applications claiming COMPANY Inventions.

4. Joint Inventions. COMPANY will control and bear the expense of the preparation, filing, prosecution, and maintenance of all United States and foreign patent applications claiming Joint Inventions, with Foundation's cooperation and assistance. Notwithstanding the foregoing, for any Joint Invention, if COMPANY does not wish to file a patent application, continue prosecution of a pending patent application, or maintain a patent through its full term, COMPANY will notify FOUNDATION in writing no less than ninety (90) days in advance of the relevant patent deadline and FOUNDATION shall have the option, but not the obligation, to take over control of the prosecution and maintenance of the patent or application, and COMPANY will assign the entirety of its right in the patent or application to FOUNDATION.

5. Trade Secrets. COMPANY will not disclose any COMPANY trade secret(s) except on a limited, need to know basis as strictly necessary for FOUNDATION's performance of the PROJECT under this AGREEMENT. Prior to disclosing any trade secret(s), COMPANY and Foundation will mutually agree on a set of procedures to govern such disclosure and protect the trade secret(s). Such procedures must be documented in writing as an addendum to this AGREEMENT signed by the Authorized Official for each party.

6. Third Party Rights. COMPANY will disclose to FOUNDATION any third party rights, known to COMPANY's official signing this AGREEMENT, including federal, private or individual claims that impact the ownership of IP arising from or used as background for performance of the PROJECT under this AGREEMENT.

7. Research Licenses. COMPANY grants to FOUNDATION a non-exclusive, non-commercial research license: i) to use COMPANY BIP and COMPANY Invention(s) in the performance of the PROJECT, and ii) to use the Project Reports. COMPANY grants no other license under this AGREEMENT. COMPANY is granted by FOUNDATION a non-exclusive, non-commercial research license to use Foundation BIP, Foundation Invention(s), and the Research Results in the performance of the PROJECT.

8. Option for Commercial License. In the event that COMPANY wishes to obtain a commercial license to the Research Results and/or any of Foundation's IP rights related to the PROJECT, it will notify FOUNDATION in writing. Upon receiving such notification, FOUNDATION will grant to COMPANY a ninety (90) day option period ("Option Period"), beginning of the date of the notification, to negotiate for a royalty-bearing commercial license, the terms of which must be mutually agreeable to the parties. The Option Period may be set for a period of other than 90 days upon mutual written agreement of the parties.

c) IP Rights and Obligations of FOUNDATION.

1. Ownership of IP. FOUNDATION will own all Foundation BIP, Foundation Inventions, Foundation's Other Intellectual Property, and the Research Results. FOUNDATION will jointly own, together with COMPANY, all Joint Inventions.
2. Invention Disclosures. FOUNDATION will notify COMPANY in writing within thirty (30) days of receipt by its technology transfer or equivalent office of an Invention disclosure covering a Foundation Invention or Joint Invention. All Invention disclosures exchanged under this AGREEMENT will be kept confidential by the parties.
3. Foundation Inventions. FOUNDATION will control and bear the expense of the preparation, filing, prosecution, and maintenance of all United States and foreign patent applications claiming Foundation Inventions.
4. Joint Inventions. FOUNDATION will cooperate with and assist COMPANY in the prosecution and maintenance of patent applications and patents claiming Joint Inventions, as set forth in section 9(b)(4).
5. Third Party Rights. FOUNDATION will disclose to COMPANY any third party rights, known to FOUNDATION's official signing this Agreement, including federal, private, or individual claims that impact the ownership of IP arising from or used as background for performance of the PROJECT under this AGREEMENT.
6. Research Licenses. FOUNDATION is granted by COMPANY, and grants to COMPANY, the non-commercial research licenses as set forth in section 9(b)(7).
7. Option for Commercial License. In the event that COMPANY notifies FOUNDATION that it wishes to obtain a commercial license as set forth in section 9(b)(8), FOUNDATION will negotiate the terms of such license in good faith with COMPANY during the Option Period.

8. No other licenses. Except as expressly set forth herein, FOUNDATION grants no other licenses under this AGREEMENT.

#### **10. Warranties**

**FOUNDATION MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION THE CONDITION OR PERFORMANCE OF THE RESEARCH, RESEARCH RESULTS, DELIVERABLES, WORK PRODUCT, OR ANY INVENTIONS, INTELLECTUAL PROPERTY, PRODUCTS OR SERVICES, WHETHER TANGIBLE OR INTANGIBLE, CONCEIVED, DISCOVERED, REDUCED TO PRACTICE, OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THE RESEARCH, RESEARCH RESULTS, DELIVERABLES, WORK PRODUCT, INVENTIONS, INTELLECTUAL PROPERTY, PRODUCT OR SERVICE. FOUNDATION WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES SUFFERED BY THE COMPANY OR ANY OTHER PARTIES RESULTING FROM THE USE OR MISUSE OF THE RESEARCH, RESEARCH RESULTS, DELIVERABLES, WORK PRODUCT, INVENTIONS, INTELLECTUAL PROPERTY, OR ANY PRODUCT OR SERVICE DERIVED THEREFROM.**

#### **11. Termination**

- a) Either COMPANY or FOUNDATION may terminate this AGREEMENT at any time by giving thirty (30) days written notice of termination to the other party. The thirty (30) day notice period will commence on the date of receipt of the written notice by the receiving party.
- b) In the event that either party commits any breach or default in any terms or conditions of this AGREEMENT, and also fails to cure such breach or default within thirty (30) days after receipt of written notice thereof, the non-breaching party may, at its option and in addition to any other remedies which it may have in law or equity, terminate this AGREEMENT by sending a notice of termination in writing to the other party to such effect. Termination shall be effective as of the date of receipt of such notice by the receiving party.
- c) FOUNDATION may, at its option, terminate this AGREEMENT effective immediately upon notice to the other party if: i) COMPANY has been declared insolvent, ceases or threatens to cease to carry on its business, or an administrator or receiver has been appointed over all or part of its assets; or ii) COMPANY fails to comply with any payment obligation provided in Article 5 of this AGREEMENT.
- d) Upon notification that this AGREEMENT has been terminated as provided above, Foundation will immediately stop all work under this Agreement. COMPANY agrees to pay all costs and expenses for non-cancellable commitments incurred by FOUNDATION in performance of the PROJECT prior to termination. Non-cancellable commitments will include but not be limited to salary, benefits, and tuition costs for graduate research assistants employed on the PROJECT through the end of the University's semester during which notice of termination is received.



e) Any notice of termination shall be delivered to the non-terminating Party's administrative contact with a copy to the technical contact as identified in the Notices section of this AGREEMENT.

## **12. Indemnification**

COMPANY will indemnify, defend and hold harmless Foundation, its officers, agents, students and employees (the "Indemnified Parties") against any liability, damage, loss, or expense (including reasonable attorneys' fees and expenses of litigation) incurred by or imposed upon the Indemnified Parties or any one of them in connection with any third party claims, suits, actions, demands, or judgments arising out of (i) use or misuse of the Research Results, Project Reports, technology or Intellectual Property provided to COMPANY in connection with this Agreement, included under section 7 herein, or (ii) arising out of any other activities to be carried out by or on behalf of COMPANY pursuant to this Agreement, except to the extent that the actions or claims are based upon the Foundation's gross negligence or willful misconduct.

## **13. Assignment and Subcontracting**

FOUNDATION shall not assign, transfer, or convey this agreement or any part hereof, or any interest herein, nor shall the FOUNDATION subcontract for the performance of any of its obligations hereunder, without the prior written consent of the COMPANY. Any such subcontracts and all other arrangements made by FOUNDATION in connection with its performance hereunder, including FOUNDATION's arrangements with its agents and employees, shall be made subject to, and consistent with the conditions, and limitations of this agreement and COMPANY's agreement with the SPONSOR.

## **14. Export Controls**

This AGREEMENT shall be subject to all applicable government export and import laws and regulations. The parties agree to comply and reasonably assist the other party, upon request by that party, in complying with all applicable government export and import laws and regulations. The parties acknowledge that they may not directly or indirectly export, re-export, distribute or transfer any technology, information or materials of any value to any nation, individual or entity that is prohibited or restricted by the International Traffic in Arms Regulation (ITAR), the Export Administration Regulations (EAR), the Office of Foreign Assets Controls (OFAC), the United States Department of State's State Sponsors of Terrorism, or by any other United States government agency without first obtaining the appropriate license.

COMPANY confirms that any INFORMATION it discloses does not contain export controlled technology or technical data identified on any US export control list, including but not limited to the Commerce Control List (CCL) at 15 CFR 774 and the US Munitions List (USML) at 22 CFR 121. In the event COMPANY intends to provide FOUNDATION PROJECT DIRECTOR with export controlled information, COMPANY will inform FOUNDATION'S Export Controls

Administrator, as identified in Article 17, in writing thirty (30) days prior to the release of export controlled technology or technical data. COMPANY agrees not to provide any export controlled information to FOUNDATION'S PROJECT DIRECTOR, or others at FOUNDATION without the written agreement of FOUNDATION'S Export Controls Administrator.

#### **15. Modifications**

This AGREEMENT may be changed, amended, modified or extended only by a writing duly executed by the respective parties hereto.

#### **16. Compliance with Laws and Regulations: General Obligations**

(a) In the performance of the work authorized pursuant to this AGREEMENT, FOUNDATION agrees to comply with all applicable laws and regulations, as well as policies of the COMPANY applicable to FOUNDATION's performance hereunder, and the express terms of COMPANY's agreement with the SPONSOR, which shall be deemed to be inserted herein, and this AGREEMENT shall be read and enforced between the parties as though all such provisions were included verbatim herein.

(b) This AGREEMENT is subject to the requirements of Executive Order 11246 and 11375 and the rules and regulations of the Secretary of Labor (41 CFR Chapter 60) in promoting equal employment opportunities.

(c) FOUNDATION hereby certifies that it does not and will not maintain any facilities it provides for its employees in a segregated manner, or permit its employees to perform their services at any location under its control where segregated facilities are maintained; and it will obtain a similar certification, prior to award of any nonexempt subcontract approved hereunder.

(d) During the performance of this AGREEMENT, FOUNDATION agrees to comply with all applicable provisions of Section 503, Title V of the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as the same may be from time to time amended, together with all applicable regulations thereunder.

(e) During the performance of this AGREEMENT, the FOUNDATION agrees to comply with all applicable provisions of Sections 503 and 504 of the Rehabilitation Act of 1973 (Public Law 93-516) as the same may be from time to time amended, together with all applicable regulations thereunder.

(f) Conflict of Interest 42 CFR Part 50.604 requires that institutions conducting PHS-funded research "Maintain an up-to-date, written, enforced policy on financial conflicts of interest." Further, "If the Institution carries out the PHS-funded research through a subrecipient (e.g.,

subcontractors or consortium members), the Institution (awardee Institution) must take reasonable steps to ensure that any subrecipient Investigator complies with this subpart by incorporating as part of a written agreement with the subrecipient terms that establish whether the financial conflicts of interest policy of the awardee Institution or that of the subrecipient will apply to the subrecipient's Investigators." Foundation hereby certifies that it has an existing financial conflict of interest policy that complies with 42 CFR Part 50. PHS policy explicitly exempts SBIR/STTR Phase 1 awards. For awards other than SBIR/STTR Phase 1 awards, Foundation shall report any financial conflict of interest to COMPANY's Designated Administrative Representative. Any financial conflicts of interest identified shall subsequently be reported to the prime PHS funding agency. Such report shall be made before expenditure of funds authorized in this Subrecipient Agreement and within 45 days of any subsequently identified financial conflict of interest.

#### **17. Binding Effect**

This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

#### **18. Governing Law**

Regardless of the place of physical execution or performance this AGREEMENT shall be construed according to the laws of the State of New York and shall be deemed to have been executed in the State of New York. Any litigation will be brought to an appropriate court within the State of New York.

#### **19. Notices**

All notices, demands, and other communications hereunder, with the exception of technical information, shall be delivered personally to the party to which it is addressed, or mailed to such party by registered or certified mail, return receipt requested, with postage thereon fully prepaid.

Said notices shall be delivered to the appropriate financial, administrative and/or technical party(ies) as identified below, unless notice of change of address is provided in writing to the other.

Technical Representative

For COMPANY:

Name

Address

Telephone

For FOUNDATION

Name:

Address:

Telephone

Administrative Representative

For COMPANY:

Name

Address

Telephone

Email:

For FOUNDATION

Name:

Office of Sponsored Programs

Stony Brook, NY 11794-3362

Telephone: 631-632-4402

Email: osp\_contracts@stonybrook.edu

Exchanges of export controlled information as per Article 14 shall be delivered to:

Susan Gasparo  
Assistant Director for Research Compliance  
Export Compliance Officer  
Office of Research Compliance  
W5530 Frank Melville Jr. Memorial Library  
Stony Brook, New York 11794-3368  
Phone: [631-632-1954](tel:631-632-1954)  
Email: susan.gasparo@stonybrook.edu

Any notices, demands, and other communications delivered personally will be deemed to have been received at the time of its confirmed delivery. Any notices, demands, and other communications so mailed shall be deemed to have been received by the addressee seven (7) days after the time and date of its being so mailed. At the time of mailing the official notice, the sending Party will provide a courtesy copy of the notice to the receiving Party by email.

## **20. Severability**

The provisions of this AGREEMENT are separable, and in the event any provisions of this agreement are determined to be invalid or unenforceable under any controlling board of law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

## **21. Use of Name**

COMPANY and FOUNDATION agree not to use each other's names, or the names of any staff members or employees thereof, in advertising, sales promotion work, or in any other form of publicity except with the written permission of, and to the extent approved by the party whose name is to be used. However, this provision is not intended to restrict either party from disclosing the existence and nature of this Agreement, or from including its existence in the routine reporting of the party's activities.

**22 Insurance**

Foundation will, at its own expense, maintain insurance of the types and in the amounts specified below.

- a) Workers' Compensation (including occupational disease) and Employer's Liability: Statutory New York State Limits. Employers' Liability minimum limit of \$1,000,000;
- b) Disability Benefit Insurance as mandated by State law;
- c) Commercial General Liability: Bodily injury, Personal Injury, and Property Damage with minimum limit of \$2,000,000 per occurrence and \$5,000,000 aggregate. Limit may be provided through a combination of primary and umbrella/excess liability policies;
- d) Auto Liability (if applicable): \$2,000,000 combined single limit Bodily Injury/Property Damage per each accident (including owned, hired, leased and non-owned autos);

This insurance will be written by a company licensed to do business in New York State with a minimum A.M. best rating of A-IX. COMPANY waives all rights of subrogation to the extent damages are covered by the above described policies.

**23 Dispute Resolution**

Company and Foundation will attempt to resolve any dispute as follows:

- a) In good faith by direct, confidential and informal negotiations.
- b) If the parties are unable to resolve the dispute informally, they may consent to mediation upon mutual agreement.
- c) Notwithstanding the above, either party may pursue litigation in any court of competent jurisdiction in the State of New York.

**24. Entire Agreement**

This AGREEMENT represents and embodies all the agreements and negotiations between the parties hereto and no prior or contemporaneous, oral, or written agreements or correspondence prior to the date of execution of this agreement shall be held to vary the provisions hereof.

**IN WITNESS WHEREOF**, this AGREEMENT has been duly executed by the parties hereto as of the date hereinabove first written.

**THE RESEARCH FOUNDATION FOR THE  
STATE UNIVERSITY OF NEW YORK**

**COMPANY**

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

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

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

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

**Exhibit A – SCOPE OF WORK AND BUDGET**

1. Statement of Project Objectives:
2. Project Start Date:
3. Project Completion Date:
4. Location where the work will be performed:
5. Scope of Research to be Conducted by SBU PI:
6. Sponsor Background Intellectual Property (if known):
7. SBU Background Intellectual Property (if any):
8. Milestones and Schedule:

Milestone	Due Date

9. Project Reports and Deliverables.

The following written project reports and/or deliverables will be submitted to Sponsor during the Project:

**Disclaimer: This Scope of Work is a research project. The performance objectives provided above are merely targets and not a promise to provide deliverables that can perform at the specifications provided above.**

**10. BUDGET:**