

SPONSORED SERVICE AGREEMENT

Between

CASE WESTERN RESERVE UNIVERSITY

And

This Agreement (the “Agreement”), effective as of the __th day of _____, 20__ , is between _____, a corporation domiciled in the State of _____ having a principal place of business at _____ (the “Company”), and Case Western Reserve University, an Ohio nonprofit corporation having its principal office at 10900 Euclid Avenue, Cleveland, Ohio (the “University”).

The University makes its capabilities available to commercial entities for service projects that complement and do not conflict with the University’s educational activities. In this spirit, the University is prepared to undertake on behalf of the Company a project to be directed by _____ (the “Project Director”). To accomplish this, the University and the Company have agreed as follows.

ARTICLE I: RESEARCH

- 1.1 **Staff and Facilities.** The University will provide staff and facilities to conduct the service project described in Appendix I (“Sponsored Project”). The University will arrange for the Project Director to direct the performance of the Sponsored Project. Should the Project Director become unable to continue supervising the Sponsored Project, the University will so inform the Company and the parties will attempt to identify a replacement reasonably acceptable to both. If they are unable to reach agreement, either party may terminate this Agreement upon written notice to the other.
- 1.2 **Expenditure of Payments.** The University will use reasonable efforts to ensure that the Company’s payments to the University are expended in accordance with Appendix II (“Budget”). Any amounts remaining after completion of the Sponsored Project may be expended at the discretion of the Project Director.
- 1.3 **Accounting.** At the written request of the Company and not more frequently than annually, the University will provide the Company with an itemized accounting of expenditures for the Sponsored Project. The University will use reasonable efforts to ensure that the accounting is correct and complete.
- 1.4 **Reports.** The University will use reasonable efforts to cause the Project Director to provide the Company with written reports of the progress of the Sponsored Project, in

such detail as the Company may reasonably request, with each accounting of expenditures.

1.5 **Site Visitations.** Upon reasonable notice, representatives of the Company may visit the University for purposes of meeting and talking with personnel engaged in the Sponsored Project and reviewing records of the Sponsored Project.

1.6 **Remedies.** The sole remedy for breach of any of the sections of this Article will be termination of the Company's obligation to make further payments to the University.

1.7 **Period of Performance.** The work to be performed under this agreement shall commence on approximately the ___th day of _____, 200__ and shall continue until approximately the ___th day of _____, 200__.

ARTICLE II: PAYMENT

The Company will pay the University the sum of dollars (\$) in accordance with the Schedule set forth in Appendix III ("Schedule of Payment").

ARTICLE III: PUBLICATION AND CONFIDENTIALITY

3.1 **Confidentiality.** The University and the Company agree to advise their respective employees that it is necessary to hold in confidence all technical information and know-how (collectively "Knowledge") received from the other party in connection with the Sponsored Project for a period of three (3) years from the date of written disclosure. All Knowledge deemed confidential will be marked "Confidential" by the disclosing party. Oral disclosures will not be considered confidential unless so designated at the time of disclosure and confirmed in writing within thirty (30) days thereafter. The University and the Company will use reasonable efforts to prevent disclosure of such Knowledge during the three (3) year period, except for disclosures by publications as provided in Section 5.2 below. Knowledge that becomes the subject matter of a license will be governed by the terms of the license agreement. This Section will not apply, however, to Knowledge which:

- A. is now in or will enter the public domain as the result of its disclosure in a publication, the issuance of a patent, or otherwise without the legal fault of the receiving party;
- B. the receiving party can prove was in its possession in written form at the time of the disclosure by the other party;
- C. comes into the hands of the receiving party by means of a third party who is entitled to make such disclosure and who has no obligation of confidentiality toward the disclosing party; or
- D. must be disclosed pursuant to a court order or as otherwise required by law.

3.2 Publication. The University will advise the Project Director that if the Project Director proposes to publish any results or conclusions from the Sponsored Project, he or she must allow the Company to review any proposed publication thirty (30) days prior to submitting it for publication. If within said period, the Company identifies proprietary information of Company which it desires to protect and notifies the University in writing that it wishes publication of identified portions to be delayed, the University will use its best efforts to cause publication to be delayed for up to an additional sixty (60) days in order that a patent application may be prepared and filed. If, within the thirty (30) day review period, Company identifies Knowledge disclosed by Company and marked Confidential, University will delete such Knowledge from any publication proposed during the confidentiality period.

ARTICLE IV: COMPANY INFORMATION

Upon completion of the Sponsored Project, any and all materials, devices, samples, software and documentation provided to the University by the Company will be returned to the Company, unless the parties otherwise agree.

ARTICLE V: DISCLAIMER OF WARRANTIES

THE INFORMATION, MATERIALS AND SERVICES PROVIDED BY THE UNIVERSITY UNDER THIS AGREEMENT ARE FURNISHED WITHOUT WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE VI: INDEMNIFICATION

The Company will defend, indemnify and hold the University harmless from any claim, suit, loss, cost, damage, liability or expense arising out of the Company's use of any information or results from the Sponsored Project. Such defense will be conducted by attorneys reasonably acceptable to both parties. This obligation shall survive termination of the Agreement.

ARTICLE VII: BREACH AND TERMINATION

7.1 Term. This Agreement will terminate upon completion of the Sponsored Project. However, either party may terminate the Agreement for any reason with 30 day written notice. In the event of such early termination, Company will reimburse the University for all expenses incurred up to the date of termination including all non-cancelable obligations.

7.2 Disposal of Funds. In the event of termination of this Agreement prior to completion of the Sponsored Project, the University will return any funds received pursuant to Article II to the Company, except for funds that (i) have been expended or (ii) that will be

required to fulfill commitments made by the University in connection with the Sponsored Project.

7.3 **Force Majeure.** Each of the parties will be excused from performance of this Agreement only to the extent that performance is prevented by conditions beyond the reasonable control of the party affected. The parties will, however, use their best efforts to avoid or cure such conditions. The party claiming such conditions as an excuse for delaying performance will give prompt written notice of the conditions, and its intent to delay performance, to the other party and will resume its performance as soon as performance is possible.

7.4 **Breach.** If either party at any time commits any material breach of the Agreement, and fails to remedy it within thirty (30) days after receiving written notice of the breach, the aggrieved party, at its option, may cancel this Agreement by notifying the other in writing. This remedy is in addition to any other remedies to which it may be entitled. Any failure to cancel this Agreement for any breach will not constitute a waiver by the aggrieved party of its rights to cancel this Agreement for any other breach whether of similar or dissimilar nature. Except in the case of an intentional breach, the University’s liability will be limited to the amount of actual direct damages or the amount the company paid to the University under Article II, whichever is less.

ARTICLE VII: USE OF NAME

The Company will not use the name of the University, related schools or departments in any publication or marketing materials without the prior written consent of the University.

ARTICLE IX: NOTICES

All notices to the University under this Agreement will be in writing and sent by facsimile or by U.S. Mail to the addresses below:

If to the University:
Assoc. Vice President for Research
Case Western Reserve University
10900 Euclid Avenue
Cleveland, Ohio 44106-7015

If to the Company:

ARTICLE X: MISCELLANEOUS

10.1 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

10.2 **Headings.** The captions or headings in this Agreement do not form part of the Agreement, but are included solely for convenience.

10.3 Waiver, Amendment. No waiver, amendment or modification of this Agreement will be effective unless in writing and signed by both parties.

10.4 Assignment. Neither party may assign this Agreement or any of its obligations hereunder without the prior written consent of the other party; however, this Agreement will be binding on any successors or permitted assigns of either party.

10.5 Entire Agreement. This Agreement embodies the entire agreement of the parties. It supersedes all prior written and verbal agreements between the parties with respect to the subject matter.

10.6 Severability. If any term or condition of this Agreement is contrary to applicable law, such term or condition will not apply and will not invalidate any other part of this Agreement. However, if its deletion materially and adversely changes the position of either of the parties, the affected party may terminate the Agreement by giving thirty (30) days written notice.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the first date indicated above.

CASE WESTERN RESERVE UNIVERSITY

COMPANY

By: _____

By: _____

Associate Vice President for Research

Title:

Date: _____

Date: _____

I, the undersigned Project Director, have read and understood this Agreement and agree to comply with its terms.

Signature: _____

Name: _____

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