

**COOPERATIVE RESEARCH AGREEMENT**

**BETWEEN**

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

**AND**

**COMPANY**

Made by and between THE RESEARCH FOUNDATION OF 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 Program, Stony Brook University, Stony Brook, New York 11794-3362, hereinafter referred to as the "FOUNDATION", acting on behalf of the State University of New York at Stony Brook, hereinafter referred to as the "UNIVERSITY" and Strategic Partnership for Industrial Resurgence, hereinafter referred to "SPIR" and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, with its principal office located at \_\_\_\_\_ hereinafter referred to as the "COMPANY", hereinafter referred to as the "AGREEMENT".

**WITNESSETH:**

**WHEREAS**, SPIR is intended to revitalize and redirect New York State industry by transforming it from a defense-related work force to a knowledge-based economy that continually develops new technologies, and, to achieve that objective seeks to foster the cooperation between UNIVERSITY and industrial research and development efforts, and

**WHEREAS**, COMPANY and FOUNDATION have a mutual interest in promoting research related to \_\_\_\_\_, hereinafter referred to as the "FIELD", and believe that such research will achieve the objectives of SPIR, and

**WHEREAS**, COMPANY and FOUNDATION have agreed to support a research project entitled " \_\_\_\_\_ ", hereinafter referred to as the "PROJECT", which will be carried out by \_\_\_\_\_, hereinafter referred to as the "COMPANY PROJECT DIRECTOR", and \_\_\_\_\_, hereinafter referred to as the "FOUNDATION PROJECT DIRECTOR";

**NOW, THEREFORE** in consideration of the premises and the mutual covenants hereinafter contained, the parties agree as follows:

1. **Scope of Research**

The FOUNDATION and COMPANY will cooperate to conduct and carry out the PROJECT described in the SCOPE OF WORK, Exhibit A, which is attached to and made an integral part of this AGREEMENT.

2. **Financial Considerations**

COMPANY and FOUNDATION agree to provide such financial considerations as are described in Exhibit B. FOUNDATION contributions shall be provided through SPIR or such other cash or in-kind sources as FOUNDATION shall deem appropriate.

3. **Term**

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

4. **Termination**

Either COMPANY or FOUNDATION may terminate this AGREEMENT at any time by giving thirty (30) days written notice of termination to the other contracting party. In the event of termination, COMPANY shall reimburse FOUNDATION for contractual commitments and financial obligations incurred by FOUNDATION in performance of this AGREEMENT prior to such termination, if such financial obligations or contractual commitments cannot be canceled by the FOUNDATION.

5. **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 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.

#### 6. **Publications**

Either party shall have the right to publish the results of any research conducted under this AGREEMENT, consistent with the protection of proprietary information as provided for above, and after providing a copy of the material intended for publication or presentation to the other party for review and comment at least 30 days prior to the date of publication or presentation. Any publication shall acknowledge the support of SPIR and/or COMPANY in accordance with Article 7 below.

#### 7. **Use of Name**

Neither party shall use the name of the other party, its affiliates, associates or employees, in any publication, advertising or sales or promotion materials without the expressed written permission of the party whose name is to be used.

#### 8. **Inventions, Patents, Copyrights and Licenses**

"Invention" as determined by U.S. patent law means any patentable idea, copyright and/or trademark including design, concept, technique, discovery or improvement made, conceived or first actually reduced to practice, in the period of performance of work under this AGREEMENT.

a). COMPANY shall hold title to all inventions (including know-how) developed solely by COMPANY personnel at COMPANY facilities who are legally obligated to assign rights in inventions to COMPANY and who are not otherwise legally obligated to assign rights in inventions to FOUNDATION. Said inventions are hereinafter referred to as "COMPANY inventions."

b). FOUNDATION shall hold title to all inventions (including know-how) developed solely by personnel who are legally obligated to assign rights in inventions to the FOUNDATION. Said inventions are hereinafter referred to as "FOUNDATION inventions."

c). No license or other rights in FOUNDATION inventions are given to or received by COMPANY except as specifically provided for herein.

d). FOUNDATION hereby grants to COMPANY a 90 day option to acquire an exclusive license to FOUNDATION inventions. The 90-day period of the option shall commence on the date of disclosure of FOUNDATION inventions to COMPANY by FOUNDATION. Should COMPANY exercise its option under this paragraph, the parties shall negotiate a mutually acceptable license agreement.

e). COMPANY agrees to reimburse FOUNDATION for all direct costs of patenting new technology developed under this AGREEMENT if COMPANY acquires rights in said technology.

f). If both COMPANY and FOUNDATION personnel with the legal obligation to assign rights in inventions to their individual employers develop a joint invention under this AGREEMENT, the COMPANY and FOUNDATION shall hold joint title to said invention. COMPANY shall be entitled to exercise the option and licensing rights set forth above with respect to FOUNDATION'S interest in said joint invention. COMPANY and FOUNDATION shall share equally all reasonable direct costs of patenting new technology developed under this AGREEMENT pursuant to this paragraph.

#### 9. **Assignment**

Neither party may assign or otherwise transfer this AGREEMENT and the rights acquired hereunder without the written consent of the other party; this consent shall not be unreasonably withheld. However, COMPANY may assign or transfer its interest in this AGREEMENT as long as such assignment or transfer is accompanied by a sale or other transfer of COMPANY'S entire business or other business to which this AGREEMENT relates. A party desiring to assign or transfer this AGREEMENT shall give the other party thirty (30) days prior notice of such assignment or transfer. If no reasonable objections are raised, then the assignment or transfer shall be deemed to have been approved. However, an assignment or transfer shall not be deemed to be approved unless the party to which this AGREEMENT is assigned agrees in writing to be bound by the terms and conditions of this AGREEMENT.

#### 10. **Notice**

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 in Exhibit C, unless notice of change of address is provided in writing to the other.

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

Ivar Strand  
Assistant Vice-President for Sponsored Programs  
Office of Sponsored Programs  
The Research Foundation of State University of New York  
Stony Brook University  
Stony Brook, New York 11794-3362

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.

11. **Governing Law**

This AGREEMENT shall be construed, governed, interpreted, and applied in accordance with the laws of the State of New York, U.S.A., except that questions affecting the construction and effect of any patent shall be determined by the law of the country in which the patent was granted.

12. **Modifications**

The parties hereto acknowledge that this instrument sets forth the entire agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

13. **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.

SPONSOR confirms that the PROTECTED 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 SPONSOR intends to provide FOUNDATION PROJECT DIRECTOR with export controlled information, SPONSOR will inform FOUNDATION'S Assistant Vice-President for Sponsored Programs, as identified in Article 10, in writing thirty (30) days prior to the release of export controlled technology or technical data. SPONSOR agrees not to provide any export controlled information to FOUNDATION'S PROJECT DIRECTOR, or others at FOUNDATION or the UNIVERSITY without the written agreement of FOUNDATION'S Assistant Vice-President for Sponsored Programs.

14. **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 body of law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

15. **Indemnification**

a). COMPANY agrees to indemnify and hold harmless FOUNDATION, its officers, agents and employees from any liability, loss or damage they may suffer as a result of claims, demands, costs or judgments against them arising out of the activities to be carried out pursuant to the obligations of this RESEARCH AGREEMENT, including but not limited to the use by SPONSOR of the results obtained from the activities performed by FOUNDATION under this AGREEMENT; provided, however, that the following is excluded from COMPANY'S obligation to indemnify and hold harmless:

1. The negligent failure of FOUNDATION to substantially comply with any applicable governmental requirements; or
2. The negligence or willful malfeasance of any officer, agent or employee of FOUNDATION.

b). Both parties agree that upon receipt of a notice of claim or action arising out of the Scope of Work, the party receiving such notice will notify the other party promptly. COMPANY agrees, at its own expense, to provide attorneys to defend against any actions brought or filed against FOUNDATION, its officers, agents and/or employees with respect to the subject of the indemnity contained herein, whether such claims or actions are rightfully brought or filed.

16. **Order of Precedence**

In the event of any inconsistency between clauses 1-16 of this AGREEMENT, and the attached Exhibit A, the inconsistency should be resolved by giving precedence to clauses 1-16.

**IN WITNESS WHEREOF**, the parties hereto have caused this AGREEMENT to be executed by their duly authorized representatives, all intending to be legally bound hereby.

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

**COMPANY**

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

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

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

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