RESEARCH COLLABORATION AGREEMENT

**Small Business Innovation Research (SBIR)**

**Subcontract**

**THIS AGREEMENT** (“Agreement”) is made and entered into as of the date of last signature below (hereinafter “Effective Date”) by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a *[Limited Liability Company, Corporation]* organized under the laws of the state of \_\_\_\_\_\_\_\_\_\_\_ and having offices at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Sponsor”) and EMORY UNIVERSITY, a Georgia non-profit corporation with offices located at 1599 Clifton Road NE, 4th Floor, Mailstop 1599/001/1AZ, Atlanta, Georgia 30322 ( “Emory”).

## WITNESSETH

WHEREAS, the U.S. National Institutes of Health (“NIH”) awarded to Sponsor an SBIR grant (reference number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ) (“Grant”), referenced and incorporated herein as Appendix A, to fund a proposal entitled, “ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_” (“Project”); and,

WHEREAS, Sponsor wishes to collaborate with Emory on the Project; and,

WHEREAS, Emory wishes to perform part of the Project consistent with the Scope of Work, (“SOW”), referenced and incorporated herein as Appendix B.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein, the Parties hereto agree as follows:

1. **DEFINITIONS**. For the purposes of this Agreement, the following terms shall have the following meaning:
	1. “Contract Period” shall be the term of \_\_\_\_\_\_\_ (\_\_) year from the Effective Date of this Agreement. The Contract Period may be extended by the mutual written consent of the duly authorized representatives of Emory and Sponsor.
	2. “Emory Principal Investigator” shall mean Dr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who, on behalf of Emory, is responsible for the conduct, supervision, and all technical aspects of the Project performed by Emory.
	3. “Emory Project Intellectual Property” shall mean those inventions, improvements or discoveries (whether or not patentable) are (a) conceived or made by one or more employees of Emory during the Contract Period, and (b) results from the performance of the Project under this Agreement.
	4. “Parties” shall mean Sponsor and Emory collectively, and “Party” shall refer to Sponsor or Emory respectively, as so indicated by context.
	5. “Project” shall refer to research activities described under this Agreement, including related terms and conditions described in Appendices A and B of this Agreement.

1. **CONDITIONS**.

This fixed price Agreement is entered into by Sponsor and Emory and subject to the terms and conditions of the Grant.

* 1. It is intended that the applicable terms and conditions of the Grant shall apply to Emory to ensure Emory’s obligations to Sponsor and NIH, and to enable Sponsor to meet its obligations under the Grant. If such terms and conditions of the Grant are determined by the Parties to be inconsistent with the provisions of this Agreement, the Parties will attempt in good faith to resolve any such inconsistencies.
	2. Emory certifies that, at the time of the Effective Date of this Agreement, neither Emory nor Emory Principal Investigator is debarred or suspended by the United States Government.
	3. Emory agrees that, during the Contract Period, the United States Government has the right to inspect and evaluate the Project performed or being performed under this Agreement, and the premises where the Project is being performed, at all reasonable times and in a manner that will not unduly delay the Project. If the United States Government performs inspection or evaluation of the premises of Emory, Emory shall furnish all reasonable facilities and assistance related to this Agreement for such inspections.
	4. Sponsor and Emory acknowledge, as related to the Project and performance under this Agreement, applicable federal, state and local confidentiality laws and regulations (the “Privacy Rules”), including, but not limited to, any applicable requirements of the Federal Food and Drug Administration (“FDA”), privacy and security standards and requirements relating to protected health information (“PHI’) promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) as may be amended during the course of this Agreement. Sponsor, even if not deemed to be a covered entity under HIPAA, agrees that pursuant to this Agreement, shall not disclose confidential and/or PHI unless so required by law and/or applicable regulations.
1. **PERFORMANCE**.

Emory shall commence performance of the Project promptly after the Effective Date and shall perform the Project in accordance with applicable U.S. laws, rules and regulations and the terms and conditions of this Agreement. Sponsor and Emory may, at any time, amend the Project by the mutual written consent of duly authorized representatives of the Parties.

1. **REPORTING**.

During the Contract Period of this Agreement, representatives of Emory shall be available to meet with representatives of Sponsor at times and places mutually agreed upon to discuss the Project. The Emory Principal Investigator shall submit written reports as specified in the Appendix B.

1. **COSTS and** **PAYMENTS**.
	1. [Payment Terms] [to be inserted]
	2. All payments submitted to Emory under this Agreement shall reference the Emory Principal Investigator, and Emory’s Project ID no.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
	3. Checks will be made payable to Emory University (tax ID: 58-0566256) and forwarded to the following address:

Wells Fargo-Emory University

 P.O. Box 935084

3585 Atlanta Avenue

Hapeville, GA 30354

Phone Number 404-684-4855

* 1. Subject to the terms of the Grant, Emory shall retain title to any equipment purchased with funds provided by Sponsor under this Agreement.
	2. In the event of early termination of this Agreement by Sponsor pursuant to Section 12 below, Sponsor shall pay all remaining Project costs accrued by Emory as of the date of termination, including non-cancelable obligations; however, in no instance shall the total amount paid by Sponsor to Emory exceed the sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_\_\_).
1. **PUBLICITY**.
	1. Sponsor and Emory shall not use, expressly or by implication, any trademark, trade name, abbreviation, or adaptation thereof, or the name of the other Party in any public communication without the express written approval of the Party whose name is to be used; provided, however that the limitations in this Section shall not apply to use by Sponsor or Emory which may be necessary or appropriate in (a) any documents to a federal, state, or local governmental agency, (b) scientific publications, (c) grant applications or (d) institutional reports. Notwithstanding the foregoing, either Party may publish or otherwise publicly disclose the fact that it has a contractual relationship with the other Party; however, specific terms of the Agreement shall not be disclosed unless required by law or mutual consent of the Parties.
	2. Sponsor will not use, nor authorize others to use, the name, symbols, or marks of Emory in any advertising or publicity material or make any form of representation or statement in relation to the Project or Grant which would constitute an express or implied endorsement by Emory of any commercial product or service without prior written approval from Emory.
2. **PUBLICATIONS**.
	1. With the exception of Sponsor’s Confidential Information, Emory and Emory Principal Investigator shall be free to publish in professional and academic journals, and present results related to the performance of this Agreement at symposia, conferences and professional meetings.
	2. At least thirty (30) days prior to submission or presentation, Emory and/or Emory Principal Investigator shall provide to Sponsor, for review and comment, a copy of proposed presentations and publications, including, manuscripts, and abstracts. Upon the written request of the Sponsor, Emory will remove Sponsor’s Confidential Information, as defined below, identified by the Sponsor. Upon the written request of the Sponsor, Emory shall delay publication or presentation for up to sixty (60) additional days for preparation and filing of a patent application.
3. **MUTUAL CONFIDENTIALITY**.
	1. Subject to other written Agreements between the Parties, related to the Project under this Agreement, any written or oral information or data provided by either Party under this Agreement and marked or identified as proprietary or confidential (“Confidential Information”), shall not be disclosed for a period of five (5) years from termination or expiration of this Agreement, unless mutually agreed to in writing by the Parties.
	2. Each Party agrees to use reasonable care, but no less care than it uses to protect its own Confidential Information.
	3. Each Party agrees that it will not use Confidential Information of the other Party, other than for the purposes of this Agreement, or disclose such Confidential Information, to any person, other than to its affiliates, directors, officers, employees, agents or subcontractors, who have a need to know such Confidential Information and who are under an obligation of confidentiality consistent with the terms of this Agreement.
	4. The obligations of this Section shall not apply to:
		1. information that is available in the public domain or that becomes available through no fault of the receiving Party;
		2. information learned by the receiving Party from a third party not subject to a duty of confidentiality to the providing Party;
		3. information that was already known to the receiving Party before receipt from the providing Party, as evidenced by the receiving Party’s prior records;
		4. information that is independently developed by the receiving Party, as evidenced by the receiving Party’s records made in the ordinary course of business;
		5. information that the receiving Party is required to disclose by law, regulation or court order to disclose, provided that the providing Party is given as much prior notice and opportunity to restrict or limit such disclosure as the circumstances permit.

1. **INTELLECTUAL PROPERTY AND OWNERSHIP**

a) Ownership, inventorship, and reporting shall be determined in accordance with United States patent law, including applicable provisions of the NIH Grant Policy Statement and U.S. Bayh-Dole Act, codified in [35 U.S.C.](http://en.wikipedia.org/wiki/Title_35_of_the_United_States_Code) [§200](http://www.law.cornell.edu/uscode/35/200.html)-212, and implemented by 37 [C.F.R.](http://en.wikipedia.org/wiki/Code_of_Federal_Regulations) 401.

b) All Intellectual Property rights (including patents, trademarks, service marks, copyrights, drug registrations and applications for all of the foregoing) which were owned by or licensed to Sponsor, including without limit, Raw Data (collectively, “Sponsor Intellectual Property”) prior to the Effective Date shall remain the property of Sponsor or its licensor, as the case may be. Emory shall not acquire any right, title or interest in any Sponsor Intellectual Property as a result of the performance of the Project, except that it may use Sponsor Intellectual Property solely for the performance of the Project in accordance with this Agreement.

c) All Intellectual Property rights (including patents, trademarks, service marks, copyrights and applications for all of the foregoing) which were owned by or licensed to Emory (collectively, "Emory Intellectual Property") prior to the Effective Date (whether or not used by Emory to make and/or develop any Project Intellectual Property, project data or results hereunder) shall remain the property of Emory or Emory's licensor (including the United States government), as the case may be. Sponsor shall not acquire any right, title or interest in any Emory Intellectual Property as a result of Emory's performance of the Project under this Agreement.

1. **GRANT OF RIGHTS**

Subject to applicable provisions of 37 C.F.R 401, all rights to Emory Project Intellectual Property granted to Sponsor pursuant to this Agreement shall be governed by the *[Allocation of Rights, License]* Agreement, referenced and incorporated herein as Appendix C.

1. **DATA OWNERSHIP**.

Subject to the provisions of the Agreement, and applicable laws governing data resulting from research sponsored by the United States Government, Emory shall retain ownership of all data, reports, research notebooks, and information which are created or developed solely by Emory as a result of performing the Project.

1. **TERM AND TERMINATION**.
	1. This Agreement shall become effective upon the Effective Date and shall continue until the end of the Contract Period, unless sooner terminated in accordance with the provisions of this Section.
	2. If either Party breaches or defaults on any term or condition of this Agreement, and fails to remedy or cure said breach or default within thirty (30) days advance written notice from the non-breaching/non-defaulting Party, the non-breaching/non-defaulting Party may, at its option, and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending written notice of termination to the breaching Party, and such termination shall be effective as of the date of receipt of said notice.
	3. Termination by Sponsor.
		1. Sponsor may terminate this Agreement should the NIH terminate the Grant with Sponsor provided that Sponsor shall provide written notice to Emory with a copy of the NIH’s notice of termination.
	4. Termination of this Agreement shall not affect the rights and obligations of the Parties that accrued prior to the effective date of termination. The provisions of Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16 and 18, and shall survive the expiration or earlier termination of this Agreement.
2. **INDEPENDENT CONTRACTOR**.

In the performance of all services under this Agreement:

* 1. Emory shall perform the Project as an independent contractor, and nothing contained in this Agreement shall be construed to create or imply a joint venture, partnership, principal-agent or employment relationship between the Parties or between Sponsor and any Emory employees assigned to perform work on the Project.
	2. Neither Party shall take any action or permit any action to be taken on its behalf which purports to be done in the name of or on behalf of the other Party and shall not have power or authority to bind the other Party or to assume or create any obligation or responsibility express or implied on the other Party's behalf or in its name, nor shall either Party represent to any one that it has such power or authority.
1. **GOVERNING LAW**.

 This Agreement shall be governed and construed in accordance with the laws of the State of Georgia without regard to conflict of laws provisions.

1. **EXCLUSION OF WARRANTIES**.

**Except as expressly provided herein, Emory makes no warranties, express or implied, as to any matter whatsoever, including, without limitation, with respect to the project data or Emory Project Intellectual Property, whether tangible, conceived, discovered, or developed under this Agreement; or the merchantability, or fitness for a particular purpose of the project data or any such Emory Project Intellectual Property.**

1. **LIMITATION OF LIABILITY AND INDEMNIFICATION**.
	1. Neither party shall be liable for any direct, consequential, or other damages suffered by the other party, any affiliate, licensee, or any third party resulting from the other party’s, any affiliate’s, licensee’s or any third party’s use of the project data or any project intellectual property, whether tangible, conceived, discovered or developed under this agreement.
	2. Sponsor shall defend, indemnify and hold harmless Emory, and its respective trustees, officers, directors, students, employees, and agents (“Emory Indemnitees”) from and against any and all third-party claims, lawsuits and demands and the associated liabilities, damages, costs and expenses (including reasonable attorney fees) (each, a “Claim” and collectively, “Claims”) arising out of or relating to (i) the participation in and/or performance of the Project by Emory, (ii) the use by Sponsor of the results or data generated in the performance of the Project, (iv) any negligent act or omission, or willful misconduct, on the part of any Sponsor Indemnitees (as defined below), or (v) any material breach of this Agreement by any Sponsor Indemnitee; provided, however, that Sponsor’s indemnification obligations shall not extend to an Emory Indemnitee for that portion of any Claim attributable to (i) the negligence or willful misconduct of any Emory Indemnitees in their performance of the Project under this Agreement, or (ii) any material breach of this Agreement by any Emory Indemnitee.
	3. Emory shall defend, indemnify and hold harmless Sponsor, its agents, employees, officers, affiliates and assigns (“Sponsor Indemnitees”) from and against any and all third-party Claims to the extent arising out of or relating to (i) the negligence or willful misconduct of any Emory Indemnitees in their performance of the Project under this Agreement, or (ii) any material breach of this Agreement by any Emory Indemnitee; provided, however, that the indemnification obligations of Emory shall not extend to a Sponsor Indemnitee for that portion of any Claim attributable (i) any negligent act or omission, or willful misconduct on the part of any Sponsor Indemnitee, or (iii) any material breach of this Agreement by any Sponsor Indemnitee.
2. **MISCELLANEOUS**.
	1. No amendment, alteration, or modification of this Agreement or any Appendices attached hereto shall be valid unless executed in writing by authorized signatories of both Parties.
	2. If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. To the extent legally permissible, any invalid, illegal or unenforceable provision of this Agreement shall be replaced by a valid provision which shall implement the original intent of the invalid, illegal or unenforceable provision.
	3. This Agreement and the Appendices thereto, represent the entire agreement of the Parties with respect to the subject matter hereof and it expressly supersedes all previous written and oral communications between the Parties with respect to such subject matter.
	4. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors, assigns, legal representative and heirs. This Agreement may not be assigned by either Party (whether voluntarily, by operation of law or otherwise) without the prior written consent of the other Party.
	5. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
3. **NOTICES**.

Notices, invoices, communications, and payments hereunder shall be deemed made upon receipt, if sent by registered or certified mail, postage prepaid, or recognized courier service and addressed to the Party to receive such notice, invoice, or communication at the address given below, or such other address as may hereafter be designated by notice in writing:

|  |  |  |
| --- | --- | --- |
| If to Sponsor:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | If to Emory:Attn: Director Industry ContractingOffice of Technology TransferEmory University1599 Clifton Road, NEMailstop 1599/001/1AZAtlanta, GA 30322Phone: (404) 727-2211 |
|  |  |  |

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date of last signature below.

|  |  |  |
| --- | --- | --- |
| EMORY UNIVERSITYBy: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | *[Sponsor]*By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |  |
| I have read and understand the terms and conditions contained herein.By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Emory Principal Investigator  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |  |

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APPENDIX “A”

### Notice of Grant Award

APPENDIX “B”

Scope of Work

APPENDIX “C”

Licensing Agreement