

SPONSORED RESEARCH AGREEMENT

This Agreement is made by and between Northwestern University, an Illinois corporation having its business address at 633 Clark Street, Evanston, Illinois, 60208-1110 (hereinafter “Northwestern”) and _____, having its business address at _____ (hereinafter “Sponsor”).

The purpose of this Agreement is to promote the increase of useful knowledge through research relating to [short description of project / statement of work].

[Include the following paragraph for federal flow-through subcontracts]

The United States _____ Office (hereinafter “Prime Sponsor”) has awarded to Sponsor under the [STTR/SBIR] Program, Contract No. _____ entitled “_____” Topic No. _____” (hereinafter “Prime Award”). _____ has proposed this research project, as outlined and detailed in Prime Award, in collaboration with Northwestern, which is attached hereto as Appendix D. Sponsor desires to have Northwestern conduct work in connection with this research project. Any approvals or communication necessary under this Agreement shall be directed to Sponsor for transmittal to the aforementioned Prime Sponsor. Supplemental Federal Acquisition Regulation clauses shall be attached hereto as Appendix C.

WHEREAS, the research program contemplated by this Agreement is of mutual interest and benefit to Northwestern and Sponsor and will further Northwestern’s instructional and research objectives in a manner consistent with its status as a non-profit, tax-exempt, educational institution;

NOW, THEREFORE, the parties hereto agree as follows:

1.0 RESEARCH PROJECT

1.1. Northwestern agrees to undertake reasonable efforts to perform the research project entitled “[**]” (hereinafter “Project”) specifically described in the attached Statement of Work (Appendix A) which by reference is incorporated into this Agreement, and such other work, if any, as may be mutually agreed upon in an executed amendment to this Agreement.

1.2. The Project shall be carried out under the direction of Professor _____ (hereinafter “Principal Investigator”) while employed by Northwestern, and by others as assigned by the Principal Investigator (the Principal Investigator and such others collectively referred to hereinafter as “Personnel”).

1.3. If, for any reason, the Principal Investigator cannot conduct or complete the Project, Northwestern will appoint a successor, subject to the written approval of Sponsor, which approval shall not unreasonably be withheld or delayed. If a replacement acceptable to Northwestern and Sponsor is not available, this Agreement shall be terminated as provided in Section 9 herein.

2.0 TERM

This Agreement shall begin _____ 2016 and end _____, 20__, (“Term”), unless completed earlier or terminated in accordance with Section 9 or extended upon written agreement by the parties.

3.0 FACILITIES

Northwestern agrees to furnish such laboratory facilities and equipment as it shall determine necessary for the Project. Equipment provided by Sponsor for Northwestern's use in the Project shall be subject to Northwestern's approval. All right and title in and to any equipment purchased or manufactured by Northwestern in the performance of the Project shall vest exclusively in Northwestern.

4.0 PAYMENT

[Insert as appropriate]

4.1. **Cost-Reimbursable Agreement.** Sponsor will reimburse Northwestern for the cost of conducting the Project. The parties estimate that the total cost to Sponsor to complete the specified Project will be \$_____.

Allowable costs eligible for reimbursement to Northwestern for performance of the Project under this Agreement shall be determined in accordance with: (1) the terms of this Agreement; and (2) the budget attached hereto and incorporated herein as Appendix B.

Sponsor shall reimburse Northwestern's invoices on a basis no more frequently than monthly for allowable costs. Unexpended balances remaining at the end of any funding period may be carried forward into subsequent budget periods. Adjustments across budget categories, not to exceed 25% of the total costs awarded, shall be at the discretion of the Principal Investigator.

At the end of the Project, if there is a balance owed to Sponsor of \$100 or less, Northwestern may keep the balance. Any amounts over \$100 will be returned to Sponsor unless the parties agree otherwise.

4.2. **Fixed-Price Agreement.** Sponsor will pay Northwestern the price for performing the Project of \$_____. The parties estimate that this price is sufficient to support the Project. Northwestern may submit to Sponsor a revised Budget requesting additional funds if Sponsor requests a change in the scope of work of the Project. Sponsor will not be liable for any payment in excess of the Budget except in the case of Sponsor's written agreement, nor will Sponsor be entitled to any reversion of project funding as it relates to any residual balance at the completion of the Project.

Payment shall be made by Sponsor according to the following schedule:

- a. [\$_____] / [$\geq 50\%$ of the total fixed price] upon execution of the Agreement by the Parties;
- b. [\$_____] / [$\geq 40\%$ of the total fixed price] upon [fixed date or completion of milestone]; and
- c. The remaining balance of the fixed price to be paid upon submission of the final report.

4.3. **Payment.** Payments shall be made by check or wire transfer and directed to the following:

Northwestern University
Attn: Peg Morrisroe, ASRSP
633 Clark Street

5.0 REPORTS AND INSPECTIONS

5.1. The Principal Investigator shall furnish Sponsor with written reports on the progress of the Project on such dates as are mutually agreed upon and a final report on the entire Project within ninety (90) days after termination of this Agreement, unless specified otherwise in the Statement of Work.

5.2. In the event representatives of Sponsor wish to inspect a Project site during the Project, Northwestern agrees to allow such inspections at mutually agreeable times, during normal business hours, and if requested, to reasonably assist the inspectors and representatives in their activities.

6.0 CONFIDENTIALITY

6.1. Confidential Information refers to any confidential or proprietary information which is transferred from one party to the other under this Agreement, providing the information is transferred in writing and marked as Confidential, or to information which is initially disclosed orally, or in any other non-written form, is identified as confidential at time of disclosure and then summarized in writing and confirmed by the disclosing party as Confidential within thirty (30) days of the initial disclosure.

6.2. Confidential Information shall not include information which (a) is known or open to the public or otherwise in the public domain at the time of disclosure; (b) becomes part of the public domain after disclosure by any means except through breach of this Agreement by the recipient; (c) is already known to the recipient at the time of disclosure; (d) is obtained by the recipient from a third party who has a lawful right to disclose it; (e) is independently developed by recipient without use of disclosing party's Confidential Information as evidenced by recipient's written records; (f) is disclosed by a third party not under any known obligation of confidentiality; or (g) is required to be disclosed by law or statutory regulation or pursuant to a court order.

6.3. The data, methods and results of the research generated under this Project shall not be considered Confidential and may be used and published by Northwestern pursuant to the terms of Sections 7.0 and 11.0.

6.4. The parties agree that for a period of two (2) years from the expiration, or early termination date, of this Agreement they will neither disclose to any third party nor use for any purpose other than the purposes of this Agreement any Confidential Information of the other party unless the disclosing party has given its express written consent. Additionally, each party agrees only to disclose the other party's Confidential Information to those employees, students, affiliates, and/or agents, as necessary to facilitate the performance of obligations under this Agreement.

6.5. The receiving party acknowledges that the disclosing party's Confidential Information is owned solely by the disclosing party and that the unauthorized disclosure of such information shall entitle the disclosing party to seek injunctive relief as well as any and all other rights and remedies available at law or in equity for such breach. The receiving party may retain copies of all Confidential Information for recordkeeping and regulatory purposes and shall undertake reasonable efforts to maintain their confidentiality.

7.0 PUBLICATION

7.1. Sponsor recognizes that under Northwestern policy, the Project data, methods and results are not Confidential Information. Northwestern and its employees shall have the right, at their discretion, to release, present, or publish any data, writings, or material reflecting the methods and results of the Project or to use such in any way for its educational and research purposes.

7.2. Prior to submission for publication or public presentation of a manuscript or abstract describing the results of the Project, the publishing party will send a copy of the proposed manuscript or abstract to the non-publishing party. Within twenty (20) days of receipt of the manuscript, the non-publishing party shall identify, in writing, for the publishing party specific information in the manuscript that is either potentially patentable or constitutes that party's Confidential Information. Such delay shall not, however, be imposed on the filing of any student thesis or dissertation.

7.3. Upon receipt of the non-publishing party's written notice the publishing party will redact any identified Confidential Information from the manuscript to be submitted or published. If the non-publishing party has identified potentially patentable information, the publishing party will delay submission or publication for a maximum of an additional sixty (60) days in order to protect the potential patentability of any invention described therein. If the non-publishing party has not identified any potentially patentable information, the publishing party may submit or publish the redacted manuscript without further delay.

7.4. If the 20-day review period expires without written notice from the non-publishing party, the publishing party shall be free to submit such manuscript for publication and to publish the disclosed research results in any manner consistent with professional standards.

8.0 INTELLECTUAL PROPERTY AND LICENSING

8.1. For purposes of this Agreement, "Inventions" means potentially patentable inventions and discoveries first conceived and actually reduced to practice solely in performance of the Project. Northwestern shall own all right, title and interest in and to any Inventions made solely by Personnel and other Northwestern employees, agents, and/or students ("Northwestern Inventions"). Sponsor shall own all right, title and interest in and to any Inventions made solely by Sponsor employees ("Sponsor Inventions"). The Parties shall jointly own all right, title and interest in and to any Inventions made by a combination of one or more employees, agents, and/or students from both Northwestern and Sponsor ("Joint Inventions"). Unless otherwise agreed by the parties in writing, this Agreement does not affect ownership of or rights to any Inventions or other intellectual property developed by Northwestern or by Sponsor prior to, or outside the scope of, the Project.

8.2. Northwestern agrees to notify Sponsor of any Northwestern Invention hereunder within thirty (30) days after an invention disclosure. Sponsor shall treat all Northwestern invention disclosures as Confidential Information subject to the provisions of Section 6. Each party will promptly notify the other of any Joint Invention.

8.3. Sponsor shall indicate to Northwestern in writing, within sixty (60) days of Sponsor's receipt of a notification of invention from Northwestern, whether it wishes for Northwestern to file a patent application in the United States on the Northwestern Invention, or Joint Invention, or to register copyrightable material pertaining to such invention (excluding works authored by Northwestern employees under Section 8 herein). In addition, if Sponsor chooses to seek patent protection for a

Northwestern Invention or Joint Invention in any foreign countries, Sponsor shall so notify Northwestern in writing at least sixty (60) days prior to the applicable filing deadline(s). In the absence of such notification by Sponsor, no foreign patent protection need be secured by Northwestern.

8.4. If Sponsor requests that Northwestern file one or more patent applications or register copyrightable material as set forth in Section 8.3, Sponsor will reimburse Northwestern for all documented expenses incurred to secure and maintain the applications and/or registrations within thirty (30) days of receipt of an invoice. Northwestern will keep Sponsor promptly informed regarding the status of any patent application(s) or registration(s) filed at Sponsor's request and expense and will give Sponsor reasonable opportunity to comment. Sponsor shall bear any maintenance costs for all such issued patents and copyright registrations, if applicable. If Sponsor chooses to directly file at its expense, rather than request Northwestern to file, any applications for Northwestern Inventions or Joint Inventions or registrations for copyrightable material under this Section, Sponsor shall notify Northwestern's administrative contact in Section 14 prior to such filing. If Sponsor does not request that Northwestern file a patent application within a given territory within the 60-day period specified in Section 8.3, Northwestern has the right, but not the obligation, to file such an application at its sole expense and for its sole benefit.

8.5. To the extent Northwestern has the legal right to do so, Northwestern hereby grants to Sponsor (a) a non-exclusive, non-transferable, non-sublicensable, royalty-free license to practice Northwestern Inventions for non-commercial purposes during the Term and (b) an option to negotiate a limited exclusive, royalty-bearing commercial license under reasonable terms, for the right to make, use and sell, have made and have used, Northwestern Inventions or Joint Inventions claimed in patent applications or issued patent(s) filed at Sponsor's election and expense as set forth in Section 8.3. Such option shall be in effect and exercisable for six (6) months after Sponsor receives Northwestern's notification of Invention disclosure. If Sponsor does not exercise its option in writing within six (6) months from the date it receives notification of Invention disclosure from Northwestern, or if Northwestern and Sponsor do not reach an agreement on a royalty-bearing commercial license within six (6) months following the date of notice of election, Northwestern retains the right to license the Invention or Northwestern's rights in a Joint Invention to third parties without further obligation to Sponsor.

8.6. In consideration of Sponsor's support of the Project, and to the extent that Northwestern has the right to grant such a license, Northwestern shall grant to Sponsor a non-transferable, non-exclusive, irrevocable, worldwide, royalty-free license to use, reproduce, publish, or re-publish, or otherwise disseminate any copyrightable materials that are developed from work supported by Sponsor under this Agreement and assigned to Northwestern, for non-commercial purposes. Notwithstanding the foregoing, under Northwestern policy, scholarly works (e.g., academic articles or publications) resulting from the Project are not subject to the terms of this Section 8.6 and Northwestern Principal Investigators shall own and maintain copyright in such scholarly works.

8.7. Northwestern shall retain the right to utilize for non-commercial research and/or educational purposes any patent rights and/or copyrights licensed to Sponsor as a result of this Agreement.

8.8. Each party shall have a non-exclusive right to sublicense Joint Inventions subject to the other party's written approval, which approval shall not be withheld unreasonably.

8.9. Any inspection or monitoring activities conducted by the Sponsor shall not give rise to a presumption of joint ownership with respect to any inventions developed during the project absent specific documentation regarding joint contributions.

8.10. To the extent that visiting Personnel perform work within the scope of the Project while at the other party's facilities, the parties may negotiate, but are not so required by this Agreement, a separate agreement denoting each party's rights to Inventions developed by such Personnel within such scope.

8.11. Sponsor is hereby informed that the United States government, as a matter of statutory rights under the Bayh-Dole Act (35 U.S.C. Section 200 et seq.), may hold a non-exclusive license and certain other rights under 35 U.S.C. 200-212 to patents on inventions made as a consequence of research conducted by Northwestern where funding for such research includes funds supplied by the United States government. In the event the United States government has such rights or in the future is found to have such rights with respect to any or all Northwestern Inventions or Joint Inventions, any license contemplated under this Agreement, or ultimately executed, even if termed an "exclusive license," shall be understood to be subject to such rights of the United States government.

9.0 TERMINATION

9.1. Either party may terminate this Agreement prior to the end of the Term set forth in Section 2 hereof or any agreed upon extension of said Term, by giving sixty (60) days written notice to the other.

9.2. Upon early termination of this Agreement, Sponsor shall pay all costs accrued by Northwestern as of the date of termination, including non-cancelable obligations for the Term of this Agreement, and obligations for all Personnel appointed before the effective date of termination and appointed specifically to work on the Project.

10.0 INDEMNIFICATION, LIMITATION OF LIABILITY, AND NEGATION OF WARRANTY

10.1. Sponsor agrees to indemnify, hold harmless and defend Northwestern and its officers, employees, affiliates, and agents against any and all claims, suits, losses, damages, costs, fees, and expenses resulting from or arising out of (a) either party's performance of this Agreement, except to the extent caused by Northwestern's gross negligence or willful misconduct; (b) Sponsor's use of the research data and/or results of the Project; or (c) Sponsor's use, manufacture, or sale of products or inventions made by use of the results of the Project.

10.2. Northwestern makes no representation other than those specified in this Agreement. Northwestern makes no express or implied warranties including implied warranties of merchantability or fitness for any particular purpose of data or technical information derived from this research project or of any tangible or intangible property or property right.

10.3. Except for confidentiality and indemnification obligations set forth herein, to the maximum extent permitted by law, in no event will either party be responsible for any incidental, consequential, indirect, special, punitive, or exemplary damages of any kind, lost goodwill, lost profits, lost business or other indirect economic damages, whether such claim is based on contract, negligence, tort (including strict liability) or other legal theory, regardless of whether such party was advised or had

reason to know of the possibility of such damages in advance. Additionally, Northwestern's total liability under this Agreement shall not be in excess of the total amount of commitment paid by Sponsor to Northwestern under Section 4.

11.0 PUBLICITY

11.1. Sponsor shall not use the name of Northwestern, nor any Northwestern faculty member, employee, or student, or any trademark, service mark, trade name, or symbol of Northwestern, in any promotional statement, product, advertising, or news release, unless Sponsor has received Northwestern's prior written consent. Permission may be withheld at Northwestern's sole discretion.

11.2. Sponsor agrees that Northwestern and its Personnel may disclose the Project title and duration, name of Sponsor, and total amount awarded to Northwestern hereunder, for institutional reporting purposes (including publicly accessible websites, such as NU Scholars, which is viewable at <http://scholars.northwestern.edu>), mandatory conflict of interest disclosures, and as required by applicable law or for federal and other funding applications.

12.0 FORCE MAJEURE

Neither party will be responsible for any failure to perform due to unforeseen circumstances or to causes beyond the party's reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, shortages of transportation, facilities, fuel, energy, labor or materials, or changes in applicable laws or regulations affecting this Agreement.

13.0 EXPORT CONTROL REGULATIONS

13.1. Northwestern is committed to the principle of "Openness in Research" which precludes acceptance of any research that imposes access, dissemination, or participation restrictions on the conduct, products, or results of its research. Northwestern performs only unclassified, non-secret research, openly conducted. Thus, it conforms with both 15 CFR 734.3(b); 734.8 (EAR) and 22 CFR 120.11(8) (ITAR) requirements for public domain "fundamental research" excluded from those regulations (the "Fundamental Research Exclusion" or "FRE").

13.2. Sponsor acknowledges that the export and/or re-export of certain technology, technical data and information, software, materials, equipment and other commodities may be subject to export control laws, rules, and regulations of the United States (hereinafter "Export Controlled Information") and that such laws, rules, and regulations could preclude or delay communications between the parties of research results from this Project. Northwestern's obligations hereunder are contingent on compliance with such applicable laws, rules, and regulations.

13.3. In the event that Export Controlled Information is required to conduct research under this Project, Sponsor will so inform Northwestern in writing, directed to both the Administrative Officer and the Director of Export Controls listed in Section 14, prior to any such disclosure, and shall not forward or provide any export controlled information to Northwestern without the express written permission of Northwestern. The burden shall be on Sponsor to (a) identify the nature of the export controlled item, including, e.g., the appropriate Export Classification Control Number or the item's inclusion on the United States Munitions List; (b) prevent such export controlled information from being improperly disclosed or exported; (c) to obtain the appropriate license or approval from the relevant federal agency;

and/or (d) to invoke an available exception, exemption, or exclusion. Northwestern shall have the right to terminate the Agreement under Section 9, if the disclosure of export controlled information under license or otherwise, would jeopardize Northwestern's ability to invoke the fundamental research exclusion with regard to the conduct or reporting of its research. In any event, if necessary for the continuation of the research under this Project, upon written notification and subsequent approval, the parties will cooperate to ensure that an appropriate plan is put in place to handle the transfer of any export controlled information. At any time, Northwestern may either refuse receipt of any controlled information or it may terminate the Agreement if necessary to protect the Fundamental Research Exclusion.

14.0 NOTICES

Notices, invoices, payments and other communications hereunder shall be deemed to have been made when delivered, sent by fax or courier, or when mailed first class, postage prepaid, and addressed to the party at the address given below, or such other address as may hereafter be designated by notice in writing:

SPONSOR:

NORTHWESTERN UNIVERSITY:

If administrative:

Andrea Zakrzewski
Interim Director, Evanston Campus
Office for Sponsored Research
Northwestern University
1801 Maple Ave., Suite 2410
Evanston, IL 60201
Phone (847) 491-3003

If technical:

Professor _____
_____ School of _____
Dept. of _____
_____ Ave
Room _____
Evanston, IL _____

If related to export controls:

Lane Campbell
Director, Office for Export Controls Compliance
Northwestern University
Rebecca Crown Center, North Tower 2nd Floor
Evanston, IL 60208
Phone (847) 467-4063

15.0 MISCELLANEOUS

15.1. Northwestern and Sponsor agree that the Personnel are acting as agents of Northwestern and not as agents or employees of Sponsor with respect to their work on this Project.

15.2. This Agreement may not be assigned by either party without the other party's prior written consent. This Agreement, and all rights and obligations hereunder, shall be binding upon the respective parties and their respective permitted heirs, successors, licensees, and assignees as permitted herein.

15.3. This Agreement may be executed in counterparts, each of which shall be deemed an original, but each of which shall constitute one and the same instrument. Facsimiles or scanned copies of signatures or electronic images of signatures shall be considered original signatures unless prohibited by applicable law.

15.4. No provision of this Agreement, whether express or implied, shall be construed as establishing, constituting, giving effect to or otherwise recognizing any partnership, joint venture, pooling arrangement, or formal business organization of any kind. No party to this Agreement shall have the authority to represent or bind the other party, or to take binding action or make any statements, representations, or commitments of any kind on behalf of the other party, except as may be expressly provided for herein or authorized in writing by the parties.

15.5. If any provision contained in this Agreement is held invalid, unenforceable, or contrary to law, then the validity of the remaining provisions of this Agreement shall remain in full force. In such instance, the parties shall use their reasonable best efforts to replace the invalid provision(s) with legally valid provisions as similar in terms to such provision as is possible. The provisions of Sections 5, 6, 7, 8, 10, 11, and 13 shall survive the expiration or termination of this Agreement.

15.6. This Agreement shall be governed by and construed according to the internal laws of the State of Illinois without reference to its rules concerning choice of law or conflict of laws. In the event of a dispute arising under this agreement, the parties will seek to settle matters amicably between themselves. In the event such a resolution cannot be reached, the parties consent to dispute resolution procedures including, but not limited to, mediation and/or arbitration in accordance with the American Arbitration Association.

15.7. This Agreement represents the entire agreement of the parties with respect to its subject matter and supersedes any prior or contemporaneous agreements, to the extent inconsistent with the terms or conditions herein, relating to the subject matter as between the parties. In the event of an inconsistency or conflict, the terms of this Agreement as printed in full herein shall take precedence over those in any attachments or exhibits to the Agreement, whether or not incorporated by reference. Any amendments must be in writing and signed by both parties. Use of any purchase orders to facilitate issuance of payments under the Project shall be in accordance with the terms of this Agreement, and any terms or conditions contained within such purchase order shall not apply and are hereby disclaimed.

15.8. The headings in this Agreement are solely for convenience of reference and shall not affect interpretation.

The parties hereto have caused this Agreement to be executed by duly authorized representatives effective as of the later date indicated below:

SPONSOR

NORTHWESTERN UNIVERSITY

By: _____

By: _____

Andrea Zakrzewski

Title: _____

Title: Interim Director, Evanston Campus

Office for Sponsored Research

Date: _____

Date: _____

APPENDIX A
STATEMENT OF WORK

APPENDIX B
BUDGET