

The University of Louisville Research Foundation, Inc.

Service Agreement

(for use with government flowthrough funds)

This Agreement, entered into and made effective as of the last date of signature below ("Effective Date"), between the University of Louisville Research Foundation, Inc. (hereafter "ULRF") a Kentucky non-profit corporation having an office at 300 East Market Street, Suite 300, Louisville, Kentucky 40202-1959, as the agent of the University of Louisville (hereinafter "UofL") for receiving grants and research agreements from external funding sources and which owns and controls intellectual property on behalf of UofL, and Company (hereafter "COMPANY") having an office at Company Address, witnesseth that:

WHEREAS, this Agreement is a subaward resulting from Award Number <insert government prime award number> (hereinafter "Prime Award") which is a __grant __ contract [mark one] issued to COMPANY from <insert AGENCY NAME> (hereinafter, "Government Funding Agency"); and

WHEREAS, each party desires to enter into this Agreement for the benefits reasonably expected to be gained therefrom;

The parties hereto mutually agree as follows:

1. ULRF shall provide the services described in the Statement of Work attached hereto as Appendix A (the "SERVICES") under the supervision of Faculty Member of UofL's Department of Department (the "INVESTIGATOR") during the period from Start Date to End Date (the "CONTRACT PERIOD"); provided, all approvals required by UofL, law and/or regulation have been obtained (e.g. Institutional Animal Care and Use Committee ("IACUC") approval for use of live vertebrate animals in the SERVICES). The start date of the CONTRACT PERIOD shall not be earlier than that of the Prime Award, and the end date of the CONTRACT PERIOD shall not extend beyond that of the Prime Award.
2. COMPANY agrees to pay ULRF an amount not to exceed Amount for SERVICES rendered under the Statement of Work. ULRF will invoice COMPANY monthly. Any additional SERVICES and/or expenses other than those included here or in Appendix A that are requested by COMPANY to be incurred shall be subject to an amendment to this Agreement and shall be charged in addition to the above amount. Amount for SERVICES shall include the applicable Facilities and Administrative Costs ("indirect" or "overhead" costs) in effect at time the SERVICES are performed. COMPANY shall make payments by way of check made payable to "University of Louisville Research Foundation, Inc", shall reference ULRF i.d.Tracking No, and shall be addressed as follows:

University of Louisville
Sponsored Programs Financial Administration
300 East Market Street, Suite 300
Louisville, KY 40202-1959
Attn: Billing Specialist

3. ULRF reserves the right to suspend work on the SERVICES or to terminate this Agreement by delivering notice of same to COMPANY if COMPANY fails to pay an invoice within thirty (30) days after the date of invoice. In the event of early termination of this Agreement by COMPANY or due to a breach of this Agreement by COMPANY, COMPANY shall pay ULRF for all work done on the SERVICES to date, including any work in progress as at the receipt of the notice of such termination.

4. In providing the SERVICES, ULRF may utilize techniques, processes and/or tools which are proprietary to ULRF. Notwithstanding anything else in this Agreement, ULRF retains all right and title to same and any improvements and/or modifications thereto.
5. COMPANY may provide ULRF with access to existing intellectual property which is proprietary to COMPANY (hereinafter "COMPANY INTELLECTUAL PROPERTY"). All rights and title to COMPANY INTELLECTUAL PROPERTY shall belong to COMPANY. COMPANY ___ will ___ will not provide COMPANY INTELLECTUAL PROPERTY. If 'will', attach list of COMPANY INTELLECTUAL PROPERTY as Appendix B.
6. Analytical and test results from the work performed under this Agreement shall be delivered by ULRF to COMPANY and become the property of COMPANY, however, ULRF shall have the right to retain and use copies of said results for academic and research purposes in accordance with UofL policy.
7. To enable performance of the SERVICES, COMPANY may need to disclose to ULRF certain business and/or technical information related to the SERVICES which is owned or otherwise controlled by the COMPANY and which the COMPANY considers to be proprietary and confidential (hereinafter "CONFIDENTIAL INFORMATION"). ULRF shall use reasonable efforts to protect CONFIDENTIAL INFORMATION disclosed by COMPANY to ULRF. This obligation of confidentiality shall survive the termination of this Agreement and continue to be binding on the ULRF for a period of three (3) years following the date of such disclosure. In order to constitute CONFIDENTIAL INFORMATION for the purposes of this Agreement, COMPANY must clearly identify such information in writing at the time of disclosure as being confidential, or if the disclosure takes place orally, COMPANY must summarize the disclosed information in writing and identify it as being confidential within ten (10) days of the initial oral disclosure. Any obligation to maintain the confidentiality of CONFIDENTIAL INFORMATION will not apply to information that:
 - a) was possessed by ULRF on a non-confidential basis prior to its receipt from COMPANY;
 - b) is or becomes available in the public domain by public, use, general knowledge or the like, other than through a breach of this Agreement;
 - c) is obtained by ULRF from a third party with a valid right to disclose it, provided that said third party is not under a confidentiality obligation to COMPANY;
 - d) is required by operation of law, regulation, Attorney General decisions that carry the force of law, or court order to be disclosed;
 - e) is independently developed by employees, agents or consultants of ULRF who had no knowledge of or access to the CONFIDENTIAL INFORMATION; or
 - f) is explicitly approved for release by written authorization of COMPANY.

Except as otherwise provided herein, upon termination of this Agreement or at the written request of COMPANY, whichever occurs earlier, ULRF will use reasonable efforts to destroy or return all of the CONFIDENTIAL INFORMATION, including copies thereof. The parties acknowledge that CONFIDENTIAL INFORMATION communicated and/or stored in electronic form may be routinely backed up such that return or destruction is not practical and/or feasible, in which case ULRF will use reasonable efforts to keep such back-up copies secure until the back-up media is recycled or destroyed. ULRF may retain one (1) archival copy of the CONFIDENTIAL INFORMATION received hereunder for the purpose of ULRF's monitoring its obligations under this Agreement. All copies of CONFIDENTIAL INFORMATION which are retained by ULRF as permitted under this Section 7 shall continue to be protected in accordance with this Section 7.

8. Notwithstanding anything to the contrary in this Agreement, ULRF may disclose the identity of COMPANY and the Government Funding Agency, the title of the SERVICES, the name of the INVESTIGATOR, the CONTRACT PERIOD, and the amount being paid by COMPANY for the SERVICES. Except as provided by the foregoing, neither party may use the name of the other party

nor of any of their trustees, officers, employees, agents or students, in any advertising or publicity without the prior written consent of the other party.

9. This Agreement shall be deemed to have come into force upon the beginning of the CONTRACT PERIOD and shall continue in effect for the full duration of the CONTRACT PERIOD unless sooner terminated in accordance with the provisions of this Article. Either party may terminate this Agreement upon thirty (30) days prior written notice to the other.
10. Termination of this Agreement by either party for any reason shall not affect the rights and obligations of the parties accrued prior to termination hereof. The provisions of Articles 3, 4, 5, 6, 7, 8, 11 and 12 shall survive such termination.
11. ULRF makes no warranties, express or implied, as to any matter whatsoever, including without limitation, warranties with respect to the conduct, completion, success or particular results of the SERVICES, or the condition, ownership, merchantability, or fitness for a particular purpose of the SERVICES or any results thereof. COMPANY hereby indemnifies, holds harmless and defends ULRF, UofL, the INVESTIGATOR, and any of ULRF or UofL's faculty, students, employees, trustees, officers, affiliates or agents and their respective successors, heirs or assigns, including the INVESTIGATOR (collectively the "INDEMNITEES") against any and all liability damage, loss, or expense incurred by or imposed upon the INDEMNITEES or any one of them in connection with any claims, suits, actions, demands or judgements arising out of the receipt or use by COMPANY of any data or other results arising from the SERVICES or arising out of the use by ULRF of the COMPANY INTELLECTUAL PROPERTY.
12. COMPANY hereby assumes any risks of personal injury and property damage attributable to the negligent acts or omissions of COMPANY and any officers, employees and agents thereof.
13. Notices, invoices, communications and payments hereunder shall be deemed made if given in writing and addressed to the party to receive such notice, invoice, communication or payment at the address given below, or such other address as may hereafter be designated by notice in writing. Notices shall be delivered by certified or registered first class mail (airmail if not domestic) or by commercial courier service, and shall be deemed to have been given or made (a) when delivered personally; (b) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (c) three (3) days after deposit with a commercial overnight carrier with confirmed verification of receipt. All communications will be sent to the addresses set forth below or to such other address as may be designated by a party by giving written notice to the other party pursuant to this Section.:

(a) in the case of ULRF:

Assistant Director, Office of Industry Engagement
University of Louisville Research Foundation, Inc.
300 East Market, Suite 300
Louisville, KY 40202-1959

With a copy to the INVESTIGATOR at:

(b) and, in the case of COMPANY:

14. In the event any part, section, clause, paragraph or subparagraph of this Agreement shall be held to be indefinite, invalid, illegal or otherwise voidable or unenforceable, the entire Agreement shall not fail on account thereof, and the balance of the Agreement shall continue in full force and effect.
15. A waiver by either party of a breach or violation of any provision of this Agreement will not constitute or be construed as a waiver of any subsequent breach or violation of that provision or as a waiver of any breach or violation of any other provision of this Agreement.
16. No exercise of a specific right or remedy by any party precludes it from or prejudices it in exercising another remedy or maintaining an action to which it may otherwise be entitled either at law or in equity.
17. For the purposes of this Agreement, the parties shall be independent contractors. Nothing contained herein shall be deemed or construed to create between the parties hereto a partnership or joint venture or the relationship of agent and principal.
18. This agreement shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky without giving effect to conflict of laws provisions.
19. The attachments to this Agreement together with the terms and conditions contained in this Agreement constitute the entire understanding between the parties and all prior negotiations, representations, agreements and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of the parties. The attachments will be binding upon the parties hereto except to the extent they may conflict with the terms and conditions contained within this Agreement, in which case the terms and conditions of this Agreement will govern.
20. Prior to disclosure by COMPANY to ULRF hereunder of any export controlled information and/or technology, including but not limited to export controlled Confidential Information, devices, software, chemical compounds or biological materials (hereinafter collectively "Controlled Information/Technology"), COMPANY shall so inform ULRF and its INVESTIGATOR and shall provide the citation(s) of the U.S. export control law(s) or regulation(s) applicable to each item (or group of items) of Controlled Item/Technology. ULRF shall have the option to decline acceptance of such Controlled Item/Technology, and if the parties cannot mutually agree to modify the statement of work set forth in Appendix A to accomplish the SERVICES without requiring ULRF's access to such Controlled Item/Technology, either party may terminate this Agreement immediately by providing written notice to the other in accordance with Section 13 or the parties may agree to amend the Agreement (and its associated budget) accordingly as needed to address these additional requirements.
21. This Agreement may be executed in counterparts, each of which shall be deemed an original instrument, and all of which shall constitute a single agreement. The parties may execute this Agreement by facsimile, scanned Portable Document Format ("PDF") or other electronically transmitted signature, and such facsimile, scanned PDF or other electronically transmitted document, including the signatures thereon, shall be treated in all respects as an original instrument bearing an original signature.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by those duly authorized officers this day and year first above written.

Signed for and on behalf of
THE UNIVERSITY OF LOUISVILLE
RESEARCH FOUNDATION, INC.

Signed for and on behalf of
Company.

by its duly authorized representative:

by its duly authorized representative:

Authorized Signature

Authorized Signature

Authorized Signatory's Printed Name

Authorized Signatory's Printed Name

Title

Title

Date

Date

INVESTIGATOR, while not a party to this Agreement, by his/her signature acknowledges that he/she:
(1) has read and agrees to abide by the terms and conditions that apply to the INVESTIGATOR,
(2) agrees to communicate the terms and conditions of this Agreement to and use reasonable efforts to ensure compliance with its applicable obligations by all UofL personnel who are performing SERVICES under his/her supervision or direction,
(3) agrees to conduct/perform the SERVICES as described in this Agreement and in Appendix A,
(4) has no consulting agreements with COMPANY, and
(5) if applicable, will see that the SERVICES are performed in accordance with a UofL-approved management plan.¹

INVESTIGATOR's Signature

INVESTIGATOR's Name (printed or typed)

Date

¹ "**Management Plan**" means a written plan for the management, reduction or elimination of a potential financial conflict of interest relating to research. It relies upon, and is therefore limited by, good faith disclosures about significant financial interests made, and other information provided by, a covered individual to the University.

APPENDIX A

DESCRIPTION OF SERVICES/STATEMENT OF WORK

**APPENDIX B
COMPANY INTELLECTUAL PROPERTY**

**List of COMPANY INTELLECTUAL PROPERTY provided in conjunction with this Agreement
(include if applicable)**