Industry-Sponsored Project Agreement\*

Fixed Price Agreement | MU Project ID \_\_\_\_\_\_\_\_

**THIS AGREEMENT,** effective this day of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by and between The Curators of the University of Missouri, a public corporation having a principal place of business at 115 Business Loop 70W, 501 Mizzou North, Columbia, Missouri 65211-0001 with the Office of Sponsored Programs Administration, (hereinafter referred to as "University") and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, having a principal place of business at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as "Company").

1. **Project**. University will perform the activities described in the Scope of Work contained in Appendix A of this Agreement (“Project”), under the direction of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as “Principal Investigator”). Period of performance shall be from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Term”).
2. **Payment Terms**. Company will pay University the fixed price in accordance with the payment terms listed in Appendix B of this Agreement. **Company will not use any federal funds to pay for this Project.**
3. **Project IP**. Project deliverable(s) shall be the property of the Company. Company shall own copyrightable works of a technical nature (including any copyrightable software, reports, and data) and inventions that are created during and solely as a result of the research and investigation under the Project, including any patents and copyrights therein (“Project IP”). University shall have an irrevocable, perpetual, nonexclusive royalty-free right to make and use all such Project IP for non-commercial research, teaching, educational, or academic purposes, and to grant the same to other non-profit, academic, educational, or governmental institutions. Further, nothing in this Agreement shall be construed as granting any rights to Company in any “future” or “related” copyrightable works or inventions which are conceived, reduced to practice, authored or otherwise created after or outside of the Project or any “background” intellectual property that may be needed to practice the Project IP. Company shall notify the University in writing, at the address listed above, prior to the filing of any patents or copyrights and shall provide University with a reasonable time period in which to review and comment on any draft patent applications or other submissions to the applicable patent offices(s) directed to the Project IP. The University will reasonably cooperate with the Company, at the Company’s sole expense, if any patents are filed by the Company directed to the Project IP.
4. **Publication**. Company recognizes that under University policy, the methods and results of Project must be publishable, and that the researchers shall own all scholarly and pedagogical works. All researchers engaged in Project shall be permitted to present at symposia, national, or regional professional meetings, and to publish in journals, theses or dissertations, or otherwise of their own choosing, methods and results of Project, provided, however, that Company shall have been furnished a copy of any proposed publication or presentation at least thirty (30) days in advance of the submission of such proposed publication or presentation to a journal, editor, or other third party. Company shall have fifteen (15) days, after receipt of the copy to object to such proposed presentation or proposed publication if there is patentable subject matter which Company intends to file a patent application thereon. In the event that Company makes such objection, the researcher(s) shall refrain from making such publication or presentation for a maximum of six (6) months from date of receipt of such objection in order for Company to file patent application(s) with the applicable patent office(s) directed to the patentable subject matter contained in the proposed publication or presentation.
5. **Confidential Information**. During the Term of this Agreement and for a period of one (1) year thereafter, the University and Company shall use reasonable efforts protect the confidentiality of proprietary information provided to it by the other party and identified in writing as confidential and proprietary. This obligation of confidentiality shall not apply to information which (a) is or becomes known publicly through no fault of the other party; (b) is obtained or learned by the receiving party from a third party entitled to disclose it; (c) is already known to the receiving party at the time of disclosure, as shown by the receiving party’s prior written records; or (d) is developed by the receiving party independent of any disclosure made hereunder. This obligation of confidentiality does not apply when such disclosure of information is required by law.
6. **University Status**. University shall be deemed to be and shall be an independent contractor and, as such, University shall not be entitled to any benefits applicable to employees of Company.
7. **Publicity**. Either party may identify the parties to this Agreement, title of the Project, and price. Company will not use the name of University, nor of any member of University’s Project staff, in any publicity, advertising, or news release without the prior written approval of the President of the University. University will not use the name of Company, nor any employee of Company, in any publicity without the prior written approval of Company.
8. **Export Controls**. University and Company are subject to applicable U.S. export laws and regulations. Company shall identify any export controlled information or materials as such prior to providing such information or materials to University.
9. **Disputes**. The parties will mutually agree on dispute resolution procedures. The Agreement will be governed by the laws of the State of Missouri, without regard to conflict of laws.

\*Applicable for research or service activities funded entirely by a for-profit entity, with no federal or federal flow-through fund involvement, when the Company requires rights in data to the exclusion of the University and/or claims ownership rights to intellectual property that may be developed by the University under the project.

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1. **Termination**. Either party may terminate the Project upon thirty (30) days prior written notice to the other. Project results to the date of termination shall be provided to Company. All reasonable costs and non-cancelable obligation incurred by University up to the time of said termination shall be reimbursed by Company. University shall return any prepayment by Company in excess of such reimbursable amounts. At the request of Company, all unused Company provided materials at the time of termination shall either be destroyed by University or returned to Company.
2. **Disclaimer of Warranties / Indemnity.** THE PROJECT DELIVERABLES, PROJECT RESULTS, AND PROJECT IP ARE DELIVERED “AS IS” IN EVERY RESPECT. UNIVERSITY, ITS CURRENT AND FORMER CURATORS, OFFICERS, EMPLOYEES, AND AFFILIATES MAKE NO REPRESENTATIONS AND EXTEND NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF COMMERCIAL UTILITY, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, THE SCOPE, VALIDITY OR ENFORCEABILITY OF THE PROJECT IP, WHETHER ISSUED, REGISTERED OR PENDING, OR THAT THE DESIGN, DEVELOPMENT, REPRODUCTION, MODIFICATION, OFFER FOR SALE, RENTING, LEASE, LENDING, LICENSE, PERFORMANCE, DISPLAY, MANUFACTURE, USE, IMPORTATION, SHIPPING, ADVERTISEMENT, LABELING, PROMOTION, MARKETING, DISTRIBUTION, PUBLIC DISPLAY, PUBLIC PERFORMANCE, SALE, OR PRACTICE THE PROJECT DELIVERABLES, PROJECT RESULTS, OR PROJECT IP WILL NOT INFRINGE OR MISAPPROPRIATE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER RIGHTS OF ANY THIRD PARTY. Company shall at all times during the term of this Agreement and thereafter, indemnify, defend and hold University, its current and former Curators, officers, employees and affiliates, harmless from any claim, proceeding, suit, demand, expense, loss, penalty, judgment, or liability of any kind whatsoever, including costs, expenses and reasonable attorneys’ fees, resulting from, related to, arising out of, or in connection with (A) the sale, renting, lease, lending, license, performance, display, manufacture, use importation, shipping, advertisement, labeling, promotion, marketing, distribution, public display, public performance, or marking of the Project deliverables, Project results, or Project IP, including but not limited to (i) any infringement or misappropriation of a patent, copyright, trade secret or other intellectual property or proprietary right of any third party or (ii) any product liability claims, such as those involving the death of or injury to any person or persons or damage to property; (B) any breach of any obligation, covenant, representation, or warranty by Company hereunder; (C) a breach or violation of applicable law by Company; or (D) the exercise of Company’s rights under this Agreement.
3. **Damages.** WITH RESPECT TO THE PROJECT RESULTS, PROJECT DELIVERABLES, AND/OR PROJECT IP, IN NO EVENT SHALL UNIVERSITY ITS CURRENT FORMER CURATORS, OFFICERS, EMPLOYEES, AND AFFILIATES BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE OR OTHERWISE, AND INCLUDING ECONOMIC DAMAGE OR INJURY TO PROPERTY AND LOST PROFITS, ATTORNEYS' AND EXPERTS' FEES, REGARDLESS OF WHETHER UNIVERSITY MAY BE ADVISED, MAY HAVE OTHER REASON TO KNOW, OR IN FACT SHALL KNOW OF THE POSSIBILITY.
4. **Miscellaneous**. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument. In performing their respective duties under this Agreement, the Parties are acting as independent contractors and not as partners, joint venturers or agents. No Party has the right, power or authority to represent, act for or enter into agreements binding upon any other Party or the Party’s property unless the other Party has granted its prior written consent. This Agreement contains the entire and only agreement between University and Company with respect to the Project and supersedes or cancels all previous negotiations, agreements, commitments and writings between the parties on the Project, excluding any nondisclosure agreements relating to the Project as attached. This Agreement may only be amended in writing signed by the duly authorized representatives of each of the parties. By signing the Agreement, Company acknowledges that this Agreement supersedes and replaces any terms and conditions of any Purchase Order or other financial document(s) used to make payment(s).

IN WITNESS WHEREOF, the parties below duly agree to the terms and conditions, and contents of attachment(s) contained herein.

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| **THE CURATORS OF THE UNIVERSITY OF MISSOURI** | **COMPANY** |
| Signature:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Signature:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| MU PROJECT ID \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |
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| Robert W. Schwartz, Ph.D., Interim Vice President for  Academic Affairs, Research and Economic Development | Date |

**APPENDIX A**

**SCOPE OF WORK**

## Description of the Project:

## Materials and Equipment to be used in the Project:

\*Unless otherwise noted, all equipment and materials shall be the property of University.

## Services to be provided during the Project:

## Personnel involved in the Project:

## Deliverables:

**APPENDIX B**

**PAYMENT TERMS**

**PRICE:**

□ Monthly

□ Quarterly

Payment is due within 30 days of receipt of invoice.

**CONTACTS:**

|  |  |  |
| --- | --- | --- |
|  | **University** | **Company** |
| Contractual | The Curators of the University of Missouri  Office of Sponsored Programs Administration  115 Business Loop 70W  501 Mizzou North  Columbia, MO 65211-0001  http://research.missouri.edu/ospa/  Phone: (573) 882-7560  Fax: (573) 884-4078  Email: grantsdc@missouri.edu | Name:  Title:  Address:  Phone:  Fax:  Email: |
| Billing | Checks payable to: The Curators of the University of Missouri  Checks mailed to: University of Missouri AR  PO Box 807012  Kansas City, MO 64180-7012  http://research.missouri.edu/ospa/  Phone: (573) 882-7560  Fax: (573) 884-4078  Email: grantsdc@missouri.edu | Name:  Title:  Address:  Phone:  Fax:  Email: |
| Technical | Name:  Title:  Address:  Phone:  Fax:  Email: | Name:  Title:  Address:  Phone:  Fax:  Email: |