**RESEARCH SERVICES AGREEMENT**

# BETWEEN

**THE RESEARCH FOUNDATION**

**FOR THE STATE UNIVERSITY OF NEW YORK
on behalf of UPSTATE MEDICAL UNIVERISTY**

**and**

**«SPONSOR»**

 **This RESEARCH SERVICES AGREEMENT** (“Agreement”) is made as of the «Day» day of «Month», «Year», by and between **THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY FOR THE NEW YORK**, a nonprofit, educational corporation existing under the laws of the State of New York, with an office located at Upstate Medical University, 705 E. Adam Street, Syracuse, NY, 13210] (the “Foundation”) on behalf of **THE STATE UNIVERSITY OF NEW YORK– UPSTATE MEDICAL UNIVERSITY** (“SUNY Upstate”) for its **Proteomics & Mass Spectrometry Core Facility (**both together **“RF SUNY”)**, and **«SPONSOR**, a «Type» existing under the laws of the State of «SponState», with its principal offices located at «SponAdd», (the "Sponsor").

**WITNESSETH:**

 **WHEREAS**, the Upstate Proteomics & Mass Spectrometry Core Facility is able to offer SUNY and external researchers cutting edge technology to support research projects involving proteomics or metabolomics applications;

 **WHEREAS**, Sponsor desires to have work performed related to the investigation, testing, and/or examination of [analysis description]. In the course of undertaking these research services, each party may disclose to the other party certain confidential scientific, technical, and or business information which the disclosing party desires the receiving party to treat as confidential;

 **WHEREAS**, SUNY Upstate has available the personnel and facilities at University needed to perform such work; and

 **WHEREAS,** pursuant to an agreement between Foundation and SUNY that became effective in 1977, Foundation supports SUNY to assist in developing and increasing the facilities of State University of New York to provide more extensive educational opportunities for and service to its students, faculty, staff and alumni, and to the people of the state of New York, by making and encouraging gifts, grants, contributions and donations of real and personal property to or for the benefit of State University of New York, and to finance the conduct of studies and research in any and all fields of the arts and sciences, of benefit to and in keeping with the educational purposes and objects of State University of New York; and

 **WHEREAS**, the Sponsor desires to enter into an agree­ment with Foundation for the conduct of the aforementioned investigation, testing and/or examination work by SUNY Upstate;

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

**1. SCOPE OF WORK**

 The RF SUNY agrees to conduct and carry out the services set forth in Exhibit A (“Work”), which is attached to and made a part of this Agreement.

**2. COMPENSATION**

 Sponsor will pay the Foundation for the Work performed in accordance with the terms set forth in Exhibit B.

**3. PROPRIETARY AND CONFIDENTIAL INFORMATION**

 "Confidential and Proprietary Information" means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, including without limitation documents, prototypes, samples, plant and equipment, research, product plans, products, services, customer lists, software, developments, inventions, processes, designs, drawings, engineering, hardware configuration, marketing materials or finances, which is designated as "Confidential," "Proprietary" or some similar designation. Information communicated orally shall be considered Confidential Information if such information is confirmed in writing as being Confidential Information within 30 days after the initial disclosure. Confidential Information may also include information disclosed to a disclosing party by third parties. Confidential Information shall not, however, include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (iii) is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure; (iv) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; (v) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession; or (vi) is required by law to be disclosed by the receiving party, provided that the receiving party gives the disclosing party prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure.

**4. USE OF NAME**

 Sponsor agrees not to use the name of The Research Foundation for The State University of New York, the State University of New York (SUNY), SUNY Upstate Medical, the State of New York, or the name of any member of the aforementioned institutions in sales promotion or advertising or in any other form of publicity without the express written permission of that organization and, if applicable, the individual whose name is to be used.

**5. INTELLECTUAL PROPERTY**

 (a) “Intellectual Property” or “IP” means Inventions, patents, patent applications, copyrights, trademarks, trade secrets, and related proprietary rights. “Invention” means any invention or discovery that is potentially patentable, and conceived and reduced to practice under this Agreement.

(b) Neither party asserts any claim to the Intellectual Property owned by the other party that was created prior to, or separate from, this Agreement. “Sponsor IP” means the Intellectual Property of Sponsor created prior to, or separate from, this Agreement. “Foundation IP” means the Intellectual Property of Foundation created prior to, or separate from, this Agreement.

(c) Sponsor claims no rights to the Foundation’s testing, evaluation, and investigation methods, techniques, and processes used to perform the Work.

(d) If, during the performance of the Work, a new use or improvement of Sponsor IP is developed by Foundation and such use or improvement is directly related to Sponsor IP, and is not related to Foundation’s testing methods as set forth in 5(c), right and title of such new use or improvement will be exclusively and irrevocably assigned in writing to Sponsor by Foundation. Foundation agrees to promptly disclose to Sponsor the discovery of any new use or improvement of Sponsor IP of which it is aware.

(e) If, during the performance of the Work, a new Invention is developed by Foundation which is not directly and exclusively related to Sponsor IP, Foundation will hold title to such Invention, but hereby grants to Sponsor an option to negotiate a license to commercialize such Invention. Such option must be exercised by Sponsor within ninety (90) days of Foundation’s disclosure of the new use or improvement to the Sponsor. Foundation agrees to promptly disclose to Sponsor the discovery of any new Invention of which it is aware.

(f) Sponsor will own all data generated by Foundation in performance of the Work and any deliverables identified in the Scope of Work (“Deliverables”). Sponsor hereby grants Foundation a nonexclusive license to use all data for noncommercial research and educational purposes subject to the confidentiality restrictions in Article 3 above. Foundation hereby agrees that Sponsor will have the right to use all data and Deliverables produced during the course of this Agreement to secure Sponsor’s intellectual property rights as set forth in this Article 6.

(g) Sponsor hereby agrees that Foundation has the right to utilize all data and Deliverables produced during the course of this Agreement to secure Foundation’s Intellectual Property rights as set forth in Article 5.

 (h) Title to and the right to determine the disposition of any copyrightable material first authored or created in performance under this Agreement, excluding Deliverables, shall remain with Foundation. Notwithstanding the foregoing, Foundation hereby grants to Sponsor an irrevocable royalty-free, non-exclusive right to use and reproduce all such copyrightable material for its own purposes.

**6. MATERIAL**

 (a) The material to be provided by the Sponsor for use under this Agreement is as set forth in Exhibit A, ¶5 (“Material”).

 (b) If the transfer of Material is subject to the terms of a Material Transfer Agreement (“MTA”) between the parties, such MTA will be attached hereto as Exhibit C. If a separate MTA between the parties does not exist, the terms of Exhibit C shall control.

 (c) Unless otherwise specified in an MTA, upon completion of this contract, all unused Material will, at Sponsor’s written request, be destroyed or returned to Sponsor at Sponsor’s expense.

**8. EXPORT CONTROLS**

This Agreement is 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 information 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 any 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 Principal Investigator with export controlled information, Sponsor will inform Foundation’s representative, 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 Principal Investigator, or others at Foundation without the written agreement of Foundation’s Export Control representative as identified in Article 10.

**9. DISCLAIMER OF WARRANTIES**

* 1. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, FOUNDATION MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES RELATED TO INVENTIONS, DATA, OR SERVICES. ALL MATERIALS FOUNDATION PROVIDES UNDER THIS AGREEMENT ARE PROVIDED “AS-IS”.
	2. NO WARRANTY OR REPRESENTATION IS MADE THAT ANYTHING MADE, USED, GENERATED, DEVELOPED, SOLD OR COMMERCIALLY TRANSFERRED UNDER THE TERMS OF THIS AGREEMENT WILL BE FREE FROM INFRINGEMENT OF ANY THIRD PARTY PATENTS OR COPYRIGHTS.
	3. IN NO EVENT WILL FOUNDATION BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM THE USE OF THE INVENTIONS OR DATA, INCLUDING FOR LOST PROFITS, LOST DATA OR DOWNTIME, WHETHER OR NOT FOUNDATION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**10. NOTICES**

 All notices, demands, and other communications hereunder, with the exception of technical information, will be sent by: i) U.S. First Class Mail, return receipt requested, ii) registered or certified mail, return receipt requested, or iii) overnight delivery via the U.S. postal service or commercial carrier with delivery tracking. Said notices will be delivered to the following parties, unless notice of change of name or address is provided in writing.

 If to the SPONSOR:

 «SponNam»

 «Add1»

 «Add2»

 Sponsor Email

 If to the FOUNDATION:

 Name

 Address

 Email

Exchanges of export controlled information as will be delivered to the following, unless otherwise designated in an MTA attached as Exhibit C.

 [campus contact]

 [campus contact title]

 The Research Foundation for The State University of New York

 \_\_\_\_\_\_\_\_\_\_\_\_\_University

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [City], NY [zip code]

 Any notices, demands and other communications delivered personally will be deemed to have been received at the time and date of its confirmed delivery. Any notices, demands and other communications mailed will be deemed to have been received on the date set forth in the delivery notice or return receipt. At the time of mailing the official notice, the sending party will provide a courtesy copy of the notice to the receiving party by email.

**11. INDEPENDENT CONTRACTOR**

Foundation is performing the Work and duties under this Agreement as an independent contractor and not as an employee, agent, partner, or joint venture with Sponsor.

**12. WAIVERS**

 No waiver of any term, provision or condition of this Agreement whether by conduct or otherwise in any one or more instance will be deemed to be or construed as a further or continuing waiver of any such term, provision or condition or of any other term, provision or condition of this Agree­ment.

**13. INTEGRATION**

 This Agreement represents and embodies all the agreements and negotiations between the parties hereto and no oral agreements or correspondence prior to the date of execution of this Agreement will be held to vary the provisions hereof.

**14. MODIFICATIONS AND CHANGES**

 This Agreement may be changed, amended, modified, extended or terminated by mutual consent provided that such consent will be in writing and executed by the parties hereto prior to the time such change will take effect.

**15. INDEMNIFICATION**

 Sponsor agrees to indemnify and hold harmless the Foundation, the State University of New York, and the State of New York against any and all claims, damage and expenses of whatsoever nature arising from, growing out of or related to the negligence or intentional wrongdoing of Sponsor.

**16. TERM**

 The term of this Agreement will be from «StartDate» until «TermDate», unless terminated sooner or extended by mutual agreement of the parties hereto expressed in writing in the manner provided in this Agreement.

**17. TERMINATION**

 Either party may terminate this Agreement by giving thirty (30) days written notice to the other party when, in its sole discretion, it determines that just cause for termination exists, or that termination is in its best interests. In the event of termination, Sponsor will reimburse Foundation for the Work performed up the date of termination and for contractual commitments and financial obligations incurred by Foundation in performance of this Agreement, if such financial obligations or contractual commitments cannot be cancelled by Foundation.

 Termination or expiration of this Agreement for any reason will not affect any rights or obligations which have accrued prior thereto, or any such rights or obligations which are meant to survive termination of the Agreement.

**18. SITUS**

 Regardless of the place of physical execution, this Agree­ment will be construed according to the laws of the State of New York and any litigation related to this Agreement will be brought in a court within the State of New York.

**19. COUNTERPARTS AND ELECTRONIC SIGNATURES**

 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement may be executed and delivered by facsimile, email, or other electronic transmission by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile, email, or other electronic means as if the original had been received, and the parties may execute the Agreement using electronic or digital signatures.

**20. ORDER OF PRECEDENCE**

 In the event of any inconsistency between Articles 1 through 19 of this Agreement, and the attached exhibits, the inconsistency should be resolved by giving precedence to Articles 1 through 19.

 **IN WITNESS WHEREOF**, this Agreement has been duly executed by the parties hereto as of the date hereinabove first written.

**THE RESEARCH FOUNDATION FOR THE**

 **STATE UNIVERSITY OF NEW YORK**

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 «RFName» Date

 «RFTitle»

**«SponName»**

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Date

Title:

**EXHIBIT A**

**SCOPE OF WORK**

1. Statement of Work to be performed and objectives:

2. Start Date:

3. Completion Date:

4. Location where the Work will be performed:

5. Material to be provided by Sponsor:

6. Scope of testing to be conducted:

7. Sponsor Background Intellectual Property (if any):

8. Deliverables: [include any written reports that Sponsor will own]

**EXHIBIT B**

**PAYMENT TERMS**

1. Payment by Sponsor will be: (check which applies)

 \_\_\_\_ Fixed Amount of $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 With payments due on the following schedule:

[Payment schedule]

 \_\_\_\_ Cost Reimbursable in an amount not to exceed $ \_\_\_\_\_\_\_\_\_\_\_\_.

 Allowable costs to be invoiced monthly.

2. Payments will be made payable to "The Research Foundation for The State University of New York" and sent to the address below.

 [University Address]

 Wire transfers may be directed as follows:

 [Wire Transfer information]

3. In the event that the Work is performed on a cost reimbursement basis, Foundation will submit monthly invoices of allowable costs incurred by FOUNDATION. Payment will be due promptly upon receipt of each monthly invoice.

4. An interest penalty of 1.5% per month will be added to the total amount of payments due but not received within forty-five (45) days of the invoice date or due date.

**EXHIBIT C**

**MATERIAL TRANSFER AGREEMENT (if applicable; otherwise delete)**

**Principal Investigator (“PI”) Acknowledgement**

**\*RFSUNY Internal Use Only\***

To be signed in duplicate; retain one fully-signed original for PI’s records and one for the administrative office of record.

Principal Investigator:

Project:

Agreement: [if identical to Project, indicate SAME]

Sponsor:

 I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, acknowledge that I have reviewed the terms and conditions of Agreement, discussed them with sponsored program or technology commercialization staff, and I understand my obligations thereunder. As the Principal Investigator responsible for conducting the study, I will ensure that any project staff or students that are or may be assigned to the Project are also aware of the key terms of the Agreement.

Date:

Signature:

Title: