**PLYMOUTH STATE UNIVERSITY**

**SPONSORED RESEARCH AGREEMENT**

**Sponsor ID No: this is the proposal #**

**SPONSORED RESEARCH AGREEMENT** (the “Agreement”) between the Plymouth State University, hereinafter referred to as “PSU”, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter referred to as “Sponsor”.

This Agreement becomes effective as of the date of the last Authorized Representative’s signature, the “Effective Date”.

The sponsored research program contemplated by this Agreement is of mutual interest and benefit to PSU and to the Sponsor, and will further the instructional and research objectives of PSU in a manner consistent with its status as a non-profit, tax-exempt, educational institution.

**THEREFORE,** the parties hereto agree as follows:

**1. STATEMENT OF WORK.** PSU agrees to use reasonable efforts to perform the research program as described in Exhibit A (the “Research”) to this Agreement.

**2. PRINCIPAL INVESTIGATOR.**  The Research will be supervised by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the “Principal Investigator.” If the Principal Investigator ceases to be associated with PSU or otherwise becomes unavailable to direct the Research, PSU will be entitled to replace the Principal Investigator with a qualified researcher acceptable to Sponsor.

**3. PERIOD OF PERFORMANCE.** The Research shall be conducted during the period \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Starting Date”) through \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Completion Date”). The Completion Date will be subject to extension only by mutual written agreement of both parties’ authorized representatives.

**4. TOTAL COSTS.** The cost for performance of the Research is estimated at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Such amount shall be net of any tax or other assessment that might be levied against PSU for performing the Project. All such additional costs will be paid by the sponsor.

**5. PAYMENT.**

* 1. **Cost-Reimbursable Agreement.** Sponsor will reimburse PSU for the cost of conducting the Research. The parties estimate that the total cost to Sponsor to complete the specified Research will be $\_\_\_\_\_\_\_\_\_\_\_\_\_\_.   
       
     Allowable costs eligible for reimbursement to PSU for performance of the Research 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 Exhibit A.   
       
     Sponsor shall reimburse PSUs invoices on a basis no more frequently than monthly for allowable costs.

At the end of the Research, if there is a balance owed to Sponsor of $500 or less, PSU may keep the balance. Any amounts over $500 will be returned to Sponsor unless the parties agree otherwise.

* 1. **Fixed-Price Agreement**. Sponsor will pay PSU the price for performing the Research of $\_\_\_\_\_\_\_\_. The parties estimate that this price is sufficient to support the Research. PSU may submit to Sponsor a revised Budget requesting additional funds if Sponsor requests a change in the scope of work of the Research. 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 Research.   
       
     Payment shall be made by Sponsor according to the following schedule:

1. [$\_\_\_\_] / [≥50% of the total fixed price] upon execution of the Agreement by the Parties;
2. [$\_\_\_\_] / [[≥40% of the total fixed price] upon [fixed date or completion of milestone]; and
3. The remaining balance of the fixed price to be paid upon submission of the Research final report.

**5.3 Payment Type**. All money payments under this Agreement will be made by Sponsor in United States dollars payable by check or wire transfer to ***The Plymouth State University*** (Taxpayer Identification No. 02-6000937) and delivered as follows:

Office of Sponsored Programs

Plymouth State University

17 High Street, MSC #17

Plymouth, NH 03266-1595

**6. TERMINATION.**  Either party may terminate this Agreement for any reason upon sixty (60) days’ prior written notice to the other party. Termination of this Agreement by either party shall not affect the rights and obligations of the parties accrued prior to the effective date of the termination, and in the event of a termination by Sponsor for any reason, Sponsor will pay PSU for (i) any work performed by PSU up to the effective date of termination and (ii) any non-cancelable expenses incurred by PSU in preparation for the Research prior to the receipt by PSU of Sponsor’s notice of termination.

**7. EXPENDABLES AND EQUIPMENT.** PSU will own all expendables and equipment purchased or fabricated to perform the Research.

**8. PUBLICATIONS AND REPORTS.** The Principal Investigator will submit a final report to Sponsor within ninety (90) days of the Completion Date. The report will summarize the Research accomplishments and significant research findings.

Sponsor shall have the right to use results of Research disclosed to Sponsor in records and reports for any reasonable purpose. Sponsor shall need to obtain a license to use Research results from PSU if such use would infringe any copyright or any claim of a patent application or issued patent owned by PSU.

PSU and the Principal Investigator hereby grant Sponsor a royalty-free, nontransferable, non-exclusive right to copy, reproduce and distribute any Research reports furnished to Sponsor under this Agreement. Sponsor may not charge fees for said Research reports, use said Research reports for advertising or promotional activities, or alter or modify said Research reports without the prior written permission of PSU.

PSU will be free to publish the results of the Research after providing the Sponsor with a thirty (30) day period in which to review each publication to identify patentable subject matter and to identify any inadvertent disclosure of the Sponsor's proprietary information. If necessary to permit the preparation and filing of U.S. patent applications, PSU may agree to an additional review period not to exceed sixty (60) days.

**9. confidential information.** If, in the performance of the Research, the Principal Investigator and members of the PSU research team require and accept access to the Sponsor’s “Confidential Information” (as defined in Exhibit B to this Agreement), the rights and obligations of the Parties with respect to such information shall be governed by the terms and conditions set forth in Exhibit B.

**10. INDEMNIFICATION.** Sponsor shall indemnify, defend, and hold harmless the University and its trustees, officers, faculty, students, employees, and agents (the "Indemnitees"), against any liability, damage, loss, or expense (including reasonable attorneys fees) incurred by or imposed on any of the Indemnitees in connection with any claims, suits, actions, demands, or judgments arising out of any theory of liability relating to this Agreement or concerning any product, process, or service that is made, used, or sold pursuant to any right or license granted under this Agreement. However, indemnification does not apply to any liability, damage, loss, or expense to the extent directly attributable to (i) the negligence or intentional misconduct of the Indemnitees or (ii) the settlement of a claim, suit, action, or demand by Indemnitees without the prior written approval of Sponsor.

**11. INSURANCE**

1. **PSU Coverage**. PSU will maintain workers’ compensation insurance or other coverage on its employees as required by New Hampshire law, and will self-insure or maintain insurance covering its liability under this Agreement.
2. **Sponsor Coverage.** Sponsor agrees to maintain during the term of this Agreement comprehensive general liability {and professional} insurance coverage with limits of not less than $1 million per occurrence and $3 million annual aggregate (or an equivalent program of self-insurance satisfactory to PSU). Upon PSU’s request, Sponsor will provide PSU proof of insurance or loss coverage required under the terms of this Agreement. In addition, Sponsor agrees to notify PSU in writing in the event of a material modification or change in such coverage.

**12. INTELLECTUAL AND OTHER PROPERTY**

**12.1** Each Party shall retain ownership of intellectual property rights existing as of the Starting Date, or developed or acquired independently of the Research, and nothing in the Agreement shall assign any ownership to the other Party with respect to such intellectual property rights.

**12.2** Technology that is jointly developed by PSU and COMPANY will be jointly owned (“Joint Technology”). COMPANY owns all interests, including all patents, copyrights, and other intellectual property rights, in and to all technology developed under this Agreement by COMPANY using COMPANY facilities (“COMPANY Technology”). PSU owns the entire right, title, and interest, including all patents, copyrights, and other intellectual property rights, in and to all technology developed under this Agreement using PSU facilities and by PSU Personnel including, but not limited to, all faculty, staff, student employees, and affiliates (“PSU Technology”).

**12.3** PSU will provide Sponsor with a complete, written, confidential disclosure of any PSU Technology after the disclosure is received by PSU.

**12.4** PSU may file patent applications at its own discretion and expense, or at the request of Sponsor at Sponsor’s expense.

**12.5** Sponsor is granted a royalty-free, non-transferable, non-exclusive right and license to use, reproduce, make derivative works, display, distribute and perform all such works only for internal research purposes for any copyrighted or copyrightable works, including informational databases, specified to be delivered to Sponsor as part of the Research.

**12.6** PSU represents that all of its employees and consultants who participate in the Research program will be obligated to assign to PSU all their rights in PSU Technology and Joint Technology.

**13. USE OF NAMES.** Neither party will use the name of the other, or that of any of its trustees, officers, faculty, students, employees or agents, or any trademark owned by the other in any advertising or other form of publicity without the written permission of the other party’s authorized representative.

**14. REPRESENTATIONS AND WARRANTIES.** PSU MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING THE RESEARCH OR ANY INTELLECTUAL PROPERTY RIGHTS, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, VALIDITY OF ANY INTELLECTUAL PROPERTY RIGHTS OR CLAIMS, WHETHER ISSUED OR PENDING, AND THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE.

**15. NOTICES AND INQUIRIES.** All notices, demands, requests or other communications required to be given or sent by a party under this Agreement will be in writing and will be delivered by at least one of the following methods: (i) in person, (ii) mailed by first-class mail, postage prepaid, (iii) transmitted by facsimile, or (iv) transmitted by electronic mail (email) addressed as set forth below, providing a party may designate a change of address at any time by notice in writing to the other party. All notices, demands, requests, or communications that are mailed by first class mail will be deemed received five (5) business days after deposit in the U.S. mail, postage prepaid, and all notices transmitted by facsimile or by email will be deemed received upon written confirmation by the receiving party of successful facsimile or email transmission.

**PSU SPONSOR**

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| --- | --- |
| Heather A. Arnold  Office of Sponsored Programs  Plymouth State Univeristy  17 High St, MSC 17  Plymouth, NH 03264-1595  603-535-3233  haarnold@plymouth.edu | (name)  (address)  (phone)  (fax)  (email) |

**16. ASSIGNMENT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors to substantially the entire business and assets of the respective parties hereto. This Agreement shall not be assignable by either party without the prior written consent of the other party; any attempted assignment is void.

**17. GOVERNING LAW.** The validity and interpretation of this Agreement and the legal relationship of the parties to it shall be governed by the laws of the State of New Hampshire and the applicable United States Federal law.

**18. FORCE MAJEURE.** Neither party shall be responsible to the other for failure to perform any of the obligations imposed by this Agreement, provided such failure shall be occasioned by fire, flood, explosion, lightning, windstorm, earthquake, subsidence of soil, failure or destruction, in whole or in part, of machinery or equipment, or failure of supply of materials, discontinuity in the supply of power, governmental interference, civil commotion, riot, war, strikes, labor disturbance, transportation difficulties, labor shortage, or any cause beyond its reasonable control.

**19. EXPORT CONTROLS.** It is understood that PSU is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities, and that its obligations hereunder are contingent on compliance with applicable U.S. export laws and regulations. The transfer of certain technical data and commodities may require a license from the United States Government and/or written assurances by the Sponsor that the Sponsor will not re-export data or commodities to certain foreign countries without the authority of an applicable export license or applicable license exemption. While PSU agrees to cooperate in securing export licenses which Sponsor may need to exploit the Research, PSU cannot guarantee that such licenses will be granted.

Should Sponsor disclose proprietary information to PSU, in accordance with Attachment B, Sponsor shall ensure that no commodities, software or technology that are subject to control under the International Traffic in Arms Regulations or which are classified by the Commerce Control List as having a classification other than EAR99 will be supplied by Sponsor to PSU without prior notice to, and approval from, PSU. Should the status of any such items change after being supplied to PSU, Sponsor shall notify PSU immediately and Sponsor shall be responsible for obtaining any necessary license

**20. ENTIRE AGREEMENT.** Unless otherwise specified, this Agreement and its Exhibits embody the entire understanding between PSU and the Sponsor for the Research, and any prior or contemporaneous representations, either oral or written, are hereby superseded. No amendments or changes to this Agreement, including without limitation, changes in the statement of work, total estimated cost and period of performance, shall be effective unless made in writing and signed by authorized representatives of the parties.

**IN WITNESS WHEREOF,** the Sponsor and PSU, intending to be legally bound, have executed this Agreement as of the Effective Date by their respective duly authorized representatives.

**PSU COMPANY**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Name:

Title: Principal Investigator Title:

Date: Date:

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Heather A. Arnold

Title: Grants Administrator & Compliance Officer

Date:

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Ann K. McClellan

Title: Provost

Date:

Exhibit A: Research Description

*Statement of Work*

*Budget*

$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT B**

**SPONSOR CONFIDENTIAL INFORMATION**

A. As used in this Agreement, the term "Confidential Information" means confidential and proprietary information disclosed to PSU by the Sponsor that:

(i) prior to disclosure, is marked with a legend indicating its confidential status; or

(ii) is disclosed orally or visually, if the Sponsor identifies such information as confidential at the time of disclosure and, within 30 days of such disclosure, delivers to PSU’s Principal Investigator a notice summarizing the confidential information disclosed.

B. PSU agrees that it shall:

(i) maintain all Confidential Information in strict confidence, except that PSU may disclose or permit the disclosure of any Confidential Information to its directors, officers, employees, consultants, and advisors who are obligated to maintain the confidential nature of such Confidential Information and who need to know such Confidential Information for the purposes of this Agreement; and

(ii) use all Confidential Information solely for the purposes of the Research.

C. PSU shall be deemed to have discharged its obligations hereunder provided PSU has exercised the foregoing degree of care and provided further that PSU shall immediately, upon discovery of any disclosure not authorized hereunder, notify the Sponsor and take reasonable steps to prevent any further disclosure or unauthorized use.

When the Confidentail Information is no longer required for the purposes of this Agreement, PSU shall return the Confidentail Information or dispose of it as directed by the Sponsor --except that PSU may retain one copy of the Confidential Information solely for the purpose of monitoring its obligations under this Agreement. PSU's obligations of confidentiality with respect to Confidentail Information provided under this Agreement will expire three (3) years after the Effective Date of this Agreement.

D. It is agreed by the Sponsor and PSU that the above obligations regarding Confidential Information shall not apply to information that:

(i) was in the public domain prior to the time of its disclosure under this Agreement;

(ii) entered the public domain after the time of its disclosure under this Agreement through means other than an unauthorized disclosure resulting from an act or omission by PSU;

(iii) was independently developed or discovered by PSU without use of the Confidential Information;

(iv) is or was disclosed to PSU at any time, whether prior to or after the time of its disclosure under this Agreement, by a third party having no fiduciary relationship with the Sponsor and having no obligation of confidentiality with respect to such Confidential Information; or

(v) is required to be disclosed to comply with applicable laws or regulations, or with a court or administrative order, provided that the Sponsor receives prior written notice of such disclosure.