

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into this _____ day of DATE, by and between the University and XXXX individually and on behalf of YYYY a Corporation established and existing under the laws of the State, having a business address at _____ (hereinafter "YYYY")

SUBJECT

The purpose of this Memorandum of Understanding ("MOU") is to establish a means of managing conflict(s) of interest associated with Agreement(s) for research and development relating to technology AAAA, entered into between YYYY and the University.

IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:

1. Definitions

1. "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, trust or other legal entity.
2. "Conflict of interest" means any situation in which (i) it reasonably appears that a significant financial interest could affect the design, conduct, or reporting of activities funded or proposed for funding by a sponsor, or (ii) the personal interest of an employee or his or her family may prevent or appear to prevent the employee from making an unbiased decision with respect to the employee's employment with the institution (including, without limitation, situations when the employee or a member of his or her family has a significant financial interest in a business which competes or may compete with the University for sponsored activities).
3. "Consulting" means any professional activity related to the person's field or discipline, where a fee-for-service or equivalent relationship with a third party exists. Consulting includes organizing or operating any educational program outside the University.
4. "Staff Member" means employees, independent contractors, subcontractors, consultants and student assistants of the University who shall perform the Research Project.
5. "Investigator" means the principal investigator, co-principal investigators, and any other person at the institution who is responsible for the design, conduct, or reporting of research or educational activities funded or proposed for funding by a sponsor.
6. "Responsible representative of the institution" means: School Chair, Department Chair or

Laboratory Director for faculty; Dean or Vice President for School Chair or Laboratory Director;

Provost for Dean or Vice President; President for Provost and other direct reports; Appropriate Vice President, Dean, Department, Chair or Director for staff, or Vice Provost for Continuing Education when faculty are involved in the organization or operation of non-institute continuing education programs.

7. "Significant financial interest" means anything of monetary value, including, but not limited to, salary or other payments for services (e.g., consulting fees or honoraria); equity interests (e.g., stocks, stock options or other ownership interests); and intellectual property rights (e.g., patents, trademarks, copyrights and royalties from such rights). The term does not include: salary, royalties or other remuneration from the institution, or any ownership interests in the institution, if the institution is an applicant under the Small Business Innovation Research Program or Small Business Technology Transfer Program; income from seminars, lectures, or teaching engagements sponsored by public or nonprofit entities; income from service on advisory committees or review panels for public or nonprofit entities; or an equity interest that, when aggregated for the investigator and the investigator's spouse and dependent children, meets both of the following tests: does not exceed \$10,000 in value as determined through reference to public prices or other reasonable measures of fair market value, and does not represent more than 5% ownership in any single entity, or salary, royalties or other payments that, when aggregated for the investigator and the investigator's spouse and dependent children, are not expected to exceed \$10,000 during the next twelve-month period.

8. "Substantial interest" means the direct or indirect ownership of more than 25 percent of the assets or stock of any business.

9. "Transact business" or "transact any business" means to sell or lease any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative and means to purchase surplus real or personal property on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative.

2. Conflict of Interest

YYYY is a corporation established and existing under the laws of the State, and is wholly owned by XXXX. YYYYY was established by XXXX as a "start-up" company for the purposes of commercializing Invention Disclosure No. ____ entitled "AAAA" pursuant to the terms of License Agreement dated ("License"). YYYYY wishes to enter into a sponsored research agreement with University for research services to be performed at University by University staff members to further develop AAAA. XXXX is a member of the University faculty. Because XXXX is the sole owner/officer of YYYYY and a current University faculty member, there is an inherent conflict of interest.

This MOU recognizes this conflict of interest and describes a plan for managing and supervising all research and financial interactions between YYYY, University, XXXX and other researchers performing work under agreements between University and YYYY.

3. Research Projects

University and YYYY believe it to be mutually beneficial to develop a relationship for continued development of AAAA that is the product of University research and is licensed by YYYY pursuant to the License (hereinafter the "Research Contract"). University and YYYY have entered/will enter a Cost Reimbursement Research Contract for the research/development of BBBB (the "Research Project"). Except as specified herein, the terms and conditions of such Cost Reimbursement Research Contract shall govern the Research Project. A copy of the Research Contract is attached hereto as Exhibit __.

4. Intellectual Property

In order to perform the scope of work outlined in the Research Contract, University Staff Members/Investigator and YYYY researchers must collaborate in a meaningful manner. New and derivative intellectual property may arise from performance of the Research Project. For the purposes of this MOU the following definitions relating to intellectual property shall apply:

"Derivative Intellectual Property" shall mean, individually and collectively all inventions or discoveries, works, material or data which constitute an improvement to the Licensed Technology.

"Licensed Technology" shall mean Invention entitled AAAA, the subject of University Invention Disclosure Number _____, licensed to YYYY by that license agreement dated MMDDYY.

"Project Intellectual Property" shall mean individually and collectively all inventions, improvements or discoveries, all computer software, works materials and data which are conceived or made in the course of performance of a Research Project .

"Background Technology" shall mean individually and collectively all inventions, improvements, discoveries, software, works, material, and data which are conceived by one of more Staff Members, prior to or independent of the Research Project, whether or not subject to protection under patent, trademark, trade secret, unfair competition or copyright law.

[need to know what the license agreement says about improvements to the licensed technology to be sure that University does not have some rights even if outside scope of research agreement.]

YYYY agrees to identify any Background Technology prior to the start of the Research Project. In the event XXXX contributes to the development of such intellectual property, upon request, XXXX shall produce evidence that such intellectual property was developed outside the scope of his duties at the University. Each party shall own its own Background Technology.

Project Intellectual Property developed in the course of performance of the Research Project by one or more Staff Members, shall be owned by the University. The University shall grant to YYYY a right of first refusal to license on an exclusive basis provided that University shall have the right to practice the Project Intellectual Property for research and educational purposes, with the right to sublicense, any Project Intellectual Property. Any such license shall be negotiated in good faith by the University and YYYY . The period of YYYY's right of first refusal shall commence upon the date of the Research Contract and terminate six (6) months after termination of the Research Project.

Discoveries made during the performance of the Research Project that are Derivative works of the Licensed Technology shall be governed by the terms of Article # of the License Agreement.

Project Intellectual Property developed in the course of performance of the Research Project jointly by one or more Staff Members and one or more employees of YYYY, shall be jointly owned. The University shall grant to YYYY a right of first refusal to license on an exclusive basis provided that University shall have the right to practice the Project Intellectual Property for research and educational purposes, with right of sublicense, its interest in jointly owned Project Intellectual Property. Any such license shall be negotiated in good faith by the University and YYYY. The period of YYYY right of first refusal shall commence upon the date of the Research Contract and terminate six (6) months after termination of the Research Project

5. Design, Conduct and Reporting of Research

Research Project(s) shall not be supervised by an individual who is both a Staff Member and an employee of YYYY.

The Principal Investigator on any Research Project(s) shall be made a party to this MOU.

XXXX will not have any supervisory authority over nor serve in any decision-making capacity regarding compensation, promotion, or continued employment over the Principal Investigator or any other Staff Member performing work on the Research Project(s).

All proposals for tasks to be performed under any new or existing Research Contract(s) between YYYY and University will be reviewed for conflict of interest prior to submission by a Responsible Representative of GIT. Conflicts of interest shall be managed by disclosure and review by a committee consisting of the Investigator's School Chair, Dean and the Provost. Written management plans shall be submitted and approved

by the Associate Vice Provost for Research and will become part of the Research Contract file.

XXXX, ZZZZ, and any other Investigator/Staff Member, who from time to time may become a party to this MOU, acknowledge and agree that the Principal Investigator named on the Research Contract shall have exclusive control over the design, conduct and reporting of research performed under the Research Contract. The named Principal Investigator shall also have exclusive control and responsibility for expenditures which in all cases shall conform to the processes and procedures for the management of sponsored research funds at University as defined by the University's Policies and Procedures Manual. for Administration of Externally Funded Grants and Contracts.

6. Publication

There shall be no restriction, limitation or delay on publication or dissemination of the results of research performed under the Research Contract. However, the parties agree that delays in publication may be of mutual benefit to the parties, such as delays necessary for filing protection of intellectual property. Such delay in publication will be in the sole discretion of the University but shall not be unreasonably denied.

7. Use of University Facilities/Resources

Any use of University facilities or resources by YYYY or YYYY employees shall be in accordance with the University Facilities Use Policy. YYYY agrees to pay reasonable cost for such facilities or resources, such cost to be calculated in accordance with the policies and procedures of University.

XXXX acknowledges and agrees that facilities including office space, long-distance telephone services, laboratories, and such support services as photocopying and computer use will not be used to benefit YYYY without compensation to University for such use.

8. Donations

YYYY may make periodic gifts or donations to the University Foundation, Inc. Such funds may be used to support research activities generally but may not be used to support research activities performed pursuant to Research Contract(s) entered into between YYYY and GTRC.

Such funds will be under the control of a Responsible Representative of the Institution. Such funds will not be under the control of XXXX, Principal Investigator/Staff Members.

Such funds may be used to support Graduate Research Assistants provided that University policies and procedures are strictly adhered to and provided that neither XXXX nor any YYYY employee shall have supervisory authority over such Assistant.

9. University Faculty Consulting

University Faculty and Staff, other than Principal Investigators on YYYY projects, may provide consulting services to YYYY in accordance with the policies and procedures outlined in the University Faculty Handbook. XXXX and/or such Faculty member agree to secure approval from the _____ prior to entering into consulting agreements with YYYY.

10. Students

XXXX will not engage any student for whom he serves or may serve as advisor or instructor for research projects sponsored by, under the direction of, or otherwise funded by YYYY . Students in classes taught by XXXX, ZZZZ or other Investigator(s) shall not be co-op students, interns, or perform projects related to the course at YYYY during the course.

11. Prior Approval, Inclusion of Documents

Conflict of interest disclosures shall be submitted to Vice Provost for Research prior to any Research Contracts, Consulting Agreements or other research activities with YYYY. The Investigator shall also submit a proposed conflict management plan for approval. Such disclosure form and management plan shall become a part of the permanent contract or license file.

Agreed and Accepted

This _____ day of _____, 1998

YYYYY

By:

XXXX (individually)

University

By:

Sponsored Programs Office

By:

Principal Investigator