

SUBCONTRACT BETWEEN
THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW YORK
AND
SPONSOR

This Agreement ["Agreement"] made by and between THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW YORK, a nonprofit, educational corporation organized and existing under the laws of the State of New York, with its office located at Office of Sponsored Programs, W5510 Melville Library, Stony Brook, New York 11794-3362 at Stony Brook University, hereinafter referred to as "Foundation," and _____, a _____ existing under the laws of the State of _____, with its principal offices located at _____ hereinafter referred to as "Sponsor".

WITNESSETH:

WHEREAS, Sponsor has an award ("Prime Award") from _____, hereinafter referred to as "Prime Sponsor" to carry out a project entitled _____, hereinafter referred to as "Project"; and

WHEREAS, the aforesaid award provides that Sponsor shall subcontract to Foundation a portion of the work and services to be provided in connection with the award; and

WHEREAS, Sponsor desires and the Foundation represents that it is competent and willing to perform services in connection with the Project.

THEREFORE, it is agreed by the parties as follows:

1. Scope of Work and Cooperation

a) Foundation agrees to perform and complete in a competent manner all of the work and services detailed in the scope of work, budget, and payment schedule, if applicable, attached as **Exhibit A** to enable the Sponsor to meet the requirements of the Project.

b) Foundation agrees to maintain close liaison with the Sponsor to ensure a well-integrated project effort and to achieve the performance goals during this Agreement. In addition, Foundation will provide formal technical reports as specified herein.

2. Key Personnel

Sponsor's Principal Investigator is _____.

Foundation's Principal Investigator is _____.

If Foundation's Principal Investigator (PI) plans to or becomes aware that s/he will: 1) devote substantially more or less effort than the Scope of Work prescribes; 2) sever his/her legal relationship with the Foundation; 3) be absent for a continuous period of three months or more, or; 4) otherwise relinquish active direction of the Project the Sponsor must be informed in writing of the same. Any such changes shall be subject to the written approval of the Sponsor. The parties shall mutually agree to any revisions to this Agreement required to address such changes.

3. Term

The term of this Agreement shall be from _____ to _____ unless extended or terminated as provided hereunder.

4. Termination

Either party shall have the right to terminate this Agreement with thirty (30) days written notice to the other party. In the event that Prime Sponsor terminates Prime Award, Sponsor shall terminate this Agreement in accordance with the terms of the Prime Award. Upon termination, Foundation shall be reimbursed for allowable costs and non-cancelable obligations incurred prior to the date of termination and shall furnish all necessary data and final reports, in accordance with Exhibit A, on the research completed or in progress through the date of termination.

5. Compensation and Maximum Cost

a) In full and complete consideration of Foundation's performance, the Sponsor shall reimburse Foundation for allowable costs incurred in accordance with the terms of this Agreement, up to **\$XXX,XXX U.S. Dollars**. In no event shall the aggregate of all allowable expenditures exceed the maximum cost, except upon formal modification of this Agreement as provided herein. Exhibit F "Foundation's Budget" is hereby made part of this Agreement.

b) Foundation certifies that, if applicable, the facilities and administrative rate and fringe benefit rate applied to the allowable costs are current and in effect during the term specified herein. Foundation shall inform Sponsor of any subsequent changes to the rates.

6. Payment

Sponsor shall reimburse Foundation not more often than monthly for allowable costs. All invoices shall be submitted using Foundation's standard invoice, but at a minimum shall include current and cumulative costs (including cost sharing), Agreement number, and certification as to truth and accuracy of invoice. *Invoices that do not reference Agreement Number may be returned to Subcontractor.* Invoices and questions concerning invoice receipt or payments should be directed to the appropriate party's Financial Contact as shown in Exhibit D. All payments shall be considered provisional and subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of an adverse audit finding against Foundation. Sponsor reserves the right to reject an invoice.

7. Reports

Foundation acknowledges that timely, completed technical and/or narrative reports are required in order for Sponsor to meet its obligations with the Sponsor. Foundation agrees to provide technical and/or other narrative progress reports as required below:

| <u>Report Type</u> | <u>Due Date(s)</u> |
|---------------------------|---------------------------|
| Periodic/Other Technical: | XX/XX/XX |
| Annual Technical: | XX/XX/XX |
| Final Technical: | XX/XX/XX |
| Other: | XX/XX/XX |

Foundation further agrees to provide any additional progress reports as may reasonably be requested by the Sponsor. Sponsor reserves the right to withhold payment to Foundation pending receipt of any required technical reports.

8. Inventions and Licenses

Notwithstanding the Sponsor's rights and policies pertaining to intellectual property, inventions and licenses as specifically provided for under the Prime Award, the following claims and rights to intellectual property and inventions shall be accorded as follows:

a) Foundation shall hold title to all inventions (including know-how), which are discovered during the conduct of work set forth in Exhibit A under this Agreement. Said inventions are hereinafter referred to as "Foundation inventions."

b) Inventions made solely by Sponsor or Sponsor personnel shall belong to Sponsor. Said inventions are hereinafter referred to as "Sponsor Inventions."

c) If both Sponsor and Foundation personnel develop an invention under this Agreement, the Sponsor and Foundation shall hold joint title to said invention. Said inventions are hereinafter referred to as "Joint Inventions."

d) No license or other rights in Sponsor Inventions, Foundation Inventions or Joint Inventions are given to or received by the parties except that each party shall have the right to use the other parties inventions for the purposes of carrying out the Project and/or as specifically provided for herein.

9. **Protected Information**

a) The parties acknowledge that they may possess certain proprietary or confidential information which may be utilized in performance of the Project. "Protected Information" shall mean all such proprietary or confidential information provided by the disclosing party in writing and marked "confidential" or if disclosed orally summarized in writing and marked "confidential" and transmitted to the non-disclosing party within thirty (30) days of oral disclosure.

b) Protected Information will only be disclosed to the employees, consultants, students or agents (if applicable) who require the same to fulfill the purposes of the research or a need to know and who have read and are obligated to be bound by this clause. The receiving party shall protect the disclosing party's Protected Information with the same standard of care with which the receiving party treats its own Protected Information. Protected Information shall be used by the receiving party only within the scope of this Agreement.

c) Each party shall, for a period of three (3) years after the termination or expiration of this Agreement, maintain the same level of care to prevent the disclosure of a party's Protected Information, unless otherwise required by law. Upon expiration of the three (3) year period, or upon the request of the disclosing party, whichever is first, the receiving party will destroy all copies of such Protected Information and so certify the same in writing within thirty (30) days. Only one extant copy of such information shall be kept by the receiving party for archival or purposes of audit.

d) Neither party shall be liable for disclosure or use of the information of the other party if said information was:

- 1) known by the receiving party at the time it was acquired from the disclosing party;
- 2) already generally available to the public, or subsequently becomes so available without default of the receiving party;
- 3) received by a party to this Agreement from a third party who did not acquire it directly or independently from a party to this Agreement in confidence;
- 4) independently developed by the receiving party without the use or reliance on Protected Information, or;

- 5) required to be disclosed by applicable law, court order or regulations of any applicable governmental agency provided that the disclosing party shall give advance, written notice to the other party of the compelled disclosure.

10. Export Controls

a) This Agreement shall be 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 technology, information or materials 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.

b) Sponsor confirms that the confidential 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's Principal Investigator with export controlled information, Sponsor will inform Foundation's Export Controls Administrator 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 or the State University of New York without the written agreement of Foundation's Export Controls Administrator. If the U.S. Government imposes a fine or penalty upon Foundation due to Sponsor's failure to notify the Foundation as described above, Sponsor will indemnify and hold Foundation harmless from any resulting fines and penalties from such omission.

11. Publication

Foundation may publish any information, oral or written, concerning the results or conclusions made pursuant to the performance of this Agreement as follows:

No less than thirty (30) days prior to publication, Foundation shall provide the Sponsor with a copy of any proposed manuscript for scientific review, written comment, and/or identification and protection of Sponsor or Prime Sponsor confidential or proprietary information. If Foundation does not receive a written response from Sponsor within thirty (30) days, the Foundation may proceed with publication and/or release of information as proposed. Moreover, in order to protect patentable material, Sponsor may require an additional sixty (60) day delay in publication in order to coordinate the filing of any invention disclosures. In no event shall this delay exceed sixty (60) days without mutual written agreement by both parties.

12. Data and Copyrights

Data Rights: Subject to the terms of this Agreement as well as any applicable federal, state or local laws and/or Sponsor regulations, Foundation shall have the right to use, release to others, reproduce, distribute or publish any data first produced or specifically used by Foundation in performance of this Agreement for non-commercial purposes.

Copyrights: Foundation grants to Sponsor an irrevocable, royalty-free, non-transferable, non-exclusive right and license to use, reproduce, make derivative works, display, and perform publicly any copyrights or copyrighted material (including any computer software and its documentation and/or databases) first developed and delivered under this Agreement to the extent required to meet Sponsor obligations to the Prime Sponsor under the Prime Award and for non-commercial, educational purposes.

13. Obligations and Assurances of Foundation

The parties agree to comply with all federal, New York State, and other applicable laws and regulations in performing the obligations under this Agreement. This includes, without limitation, the Sponsor policies and the express terms of Sponsor's agreement with Prime Sponsor, attached as **Exhibit C**, which are incorporated by reference as a material part of this Agreement even if not specifically identified in this document.

By signing this Agreement, Foundation certifies that: (1) Neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from any covered transaction by any federal agency (45 CFR Part 76 and Executive Order 12549) (**Debarment and Suspension**); (2) It is in compliance with the requirements of 45 CFR Part 76, Subpart F (**Drug Free Workplace**); (3) It is in compliance with the requirements of 31 USC § 1352 (**Lobbying**); (4) It is in compliance with the requirements of 42 CFR Part 93 (**Misconduct in Science**); (5) It is in compliance with Title VI of the Civil Rights Acts of 1964, the Age Discrimination Act of 1975, Executive Order 11246 and Section 504 of the Rehabilitation Act of 1973 as amended, and certifies that it has valid Assurances of Compliance on file with DHHS (**Civil Rights and Equal Employment Opportunity**). In the event that the award from Prime Sponsor is a Federal contract and this Agreement equals to or exceeds \$10,000, the Agreement is subject to the following clause (check if applicable). The parties shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), 60-741.5(a) and 60-4.3(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that the Contractor takes affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

14.1 Human Subjects (check if applicable) If human subjects are used in the conduct of the work supported by this Agreement, Foundation shall comply with DHHS policies and regulations on the protection of human subjects (Code of Federal Regulations, 45 CFR Part 46, Subpart A, "Protection of Human Subjects," and specifically Section 46.107, "Special Assurances"). In addition to assuring that the initial requirements for protection of human subjects are met, Foundation agrees to assure continued monitoring and compliance with these requirements during the course of the project. Foundation agrees to send copies of their IRB approval and "Informed Consent" form before the Agreement will be executed to Sponsor.

14.2 Laboratory Animals (check if applicable) If Foundation uses warm blooded animals in its performance of this work, it shall comply with the applicable portions of the Animal Welfare Act (P.L. 89- 544 as amended by P.L. 91-579 and P.L. 94-279) and will follow the guidelines prescribed in DHHS Publication No. 85-23 entitled "Guide for the Care and Use of Laboratory Animals," or such other guidelines as are required. Foundation agrees to send copies of their IACUC approval before the Agreement will be executed to Sponsor.

14.3 Conflict of Interest (check applicable box)

Foundation is enrolled in the FDP Institutional Clearinghouse of FCOI Compliant institutions http://sites.nationalacademies.org/PGA/fdp/PGA_070596

Foundation represents and certifies that it has an active and enforced conflict of interest policy that is consistent with the provision of 42 CFR Part 50, Subpart F "Responsibility of Applicants for Promoting Objectivity in Research" and 45 CFR Part 94 "Responsible Prospective Contractors." Foundation further represents that its signature to this Agreement provides written assurance to Sponsor that Foundation has taken reasonable steps to ensure that any person working for Foundation who is responsible for the design, conduct or reporting of research funded under this Agreement is in compliance with the conflicts of interest policy. At least 30 days prior to the

expenditure of any funds awarded for the Project, or within 30 days after Foundation subsequently identifies any such conflicting interest, Foundation shall report to Sponsor the existence of any conflicting interest (but not the nature of the interest or other details) found by Foundation and assure Sponsor that the interest has been managed, reduced or eliminated in accordance with 42 CFR Part 50 Subpart F and 45 CFR Part 94. Foundation further agrees to furnish a copy of its conflict of interest policy to Sponsor within 30 days of Sponsor's written request.

Foundation does not have an active and/or enforced conflict of interest policy and agrees to adopt University's policy <http://www.stonybrook.edu/research/orc/coi.shtml>.

14.4 E-Verify (check if applicable) Federal contracts to Sponsor in excess of \$100,000 and subcontracts in excess of \$3,000 are subject to the requirements of E-Verify. If this Agreement meets this threshold, it is subject to one of the following federal clauses: FAR 22.1800, FAR 52.222-54, 48 CFR 2,22,52 and 8 CFR 274a.

14.5 FFATA (check if applicable). This Agreement is subject to Federal Funding Accountability and Transparency Act (**FFATA**). Please complete **Exhibit E**.

15. A133 and General Audit Requirements

Foundation assures Sponsor that it complies with A-133 and that it will notify Sponsor of completion of required audits and of any adverse findings which impact this Agreement. For a period of 3 years after date of receipt of final payment, Sponsor, Prime Sponsor or an authorized representative shall have the right to audit, at its own expense, all financial books, accounts, and records of funds received and costs and commitments incurred under this Agreement. If any audit reveals a material discrepancy or error in reporting, Foundation will reimburse Sponsor upon request for the costs and expenses associated with such audit.

16. Liability; Indemnification

Both parties agree, to the fullest extent permitted by law, to indemnify, hold harmless and defend the indemnified parties and its directors, officers, employees, consultants, agents and representatives against all claims, including claims of third parties, causes of action, damages, losses or expenses, including without limitation attorneys' fees, arising out of or resulting from this Agreement or any action arising hereunder; provided, the indemnified party's actions are not based upon negligence or willful misconduct.

17. Insurance

Foundation represents that it carries sufficient insurance coverage to comply with the requirements of federal, state and local laws as well as its obligations under this Agreement.

18. Notices

All notices shall be sent by U.S. First Class Mail or via overnight delivery to the addresses listed below. Notice will be deemed acceptable if sent via electronic mail (e-mail) if followed by formal written notice in accordance with this Section.

Said notices shall be delivered to the appropriate financial, administrative and/or technical party(ies) as identified in **Exhibit D**, unless notice of change of address is provided in writing to the other.

19. Dispute Resolution

Sponsor and Foundation shall attempt to resolve any dispute as follows:

a) In good faith by direct, confidential and informal negotiations. Unless otherwise directed by Sponsor pursuant to termination procedures provided herein and to the fullest extent possible, Foundation shall proceed with the performance of its obligations under this Agreement.

b) If the parties are unable to resolve the dispute informally, they may consent to mediation upon mutual agreement.

c) Notwithstanding the above, either party may pursue litigation in any court of competent jurisdiction in New York State.

20. Assignment and Subcontracting

Foundation shall not assign, transfer, or convey this Agreement or any part hereof, or any interest herein, nor shall the Foundation subcontract for the performance of any of its obligations hereunder, without the prior written consent of the Sponsor. Any such subcontracts and all other arrangements made by Foundation in connection with its performance hereunder, shall be made subject to, and consistent with this Agreement and Sponsor's agreement with the Prime Sponsor.

21. Status of Parties

a) The relationship of the parties shall be that of principal and independent contractor and not of an employer-employee relationship.

b) This Agreement shall not be construed to contain any authority, either express or implied, enabling the Foundation to incur any expense or perform any act on behalf of Sponsor without express written consent.

22. Modifications

This Agreement may not be changed, amended, modified or extended unless in writing and duly signed by the parties hereto.

23. Binding Effect

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

24. Governing Law

This Agreement shall be construed according to the laws of the State of New York, without regard to conflict of law provisions, and shall be deemed to have been executed in the State of New York. Any litigation shall be brought to an appropriate court within the State of New York.

25. Severability

In the event any provisions of this Agreement are determined to be invalid or unenforceable under any controlling body of law, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions hereof.

26. Use of Name

The parties agree not to use the name, any logotypes or symbols of the other party in any advertising, sales promotion, or other publicity matter without the prior written approval of the other party. However, this provision is not intended to restrict either party from disclosing the existence

and nature of this Agreement, or from including its existence in the routine reporting of the party's activities.

27. Order of Precedence

Any inconsistencies in this Agreement shall be resolved by giving precedence in the following order:

- a. This Agreement;
- b. Prime Award Terms and Conditions;
- c. Exhibit A;
- d. Exhibit F, Foundation's Budget;
- e. Other documents, exhibits, and attachments

28. Entire Agreement

This Agreement represents the entire agreement and understanding of the parties hereto. No prior writings, conversations, or representations of any nature shall be deemed to vary the provisions of this Agreement.

29. Order of Precedence

In the event of a conflict between this Agreement and Exhibit A, this Agreement shall take precedence and control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year last written below. By executing this Agreement, Foundation provides any assurances and/or certifications of compliance required herein.

THE RESEARCH FOUNDATION FOR THE
STATE UNIVERSITY OF NEW YORK

SPONSOR

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

Exhibit A

[SCOPE OF WORK]

****IF APPLICABLE****
EXHIBIT
FFATA Reporting Requirements

Definition. “Reporting” includes FFATA Data Elements

Amendment for Updated Reporting Requirements. A unilateral amendment may be issued to update reporting requirements in response to any additional requirements or guidance from the OMB or Sponsor including, but not limited to, the definition of terms and data elements, and specific instructions for reporting and report formats.

For more information on FFATA please visit www.fsrs.gov and http://sites.nationalacademies.org/PGA/fdp/PGA_055832

Data to be Reported Prior to Execution of Agreement (A-D, below)

A. Contractor Information

Contractor must submit the following information to comply with FFATA requirements. Please complete all fields below:

| | |
|-------------------------|--|
| Contractor Legal Name: | |
| TIN: | |
| DUNS Number: | |
| Congressional District: | |

B. Subaward Project Description

Contractor must provide a *thorough* description of the overall purpose and expected outcomes, OR results of the Agreement, including significant deliverables and, if appropriate, associated units of measure, this should describe the Agreement requirements (4000 character limit).

| | |
|---------------------|--|
| Project Description | |
|---------------------|--|

| | |
|--|--|
| | |
|--|--|

C. Performance Site

Contractor must identify the physical location of the Primary Place of Performance of the Subaward

| | |
|--|--|
| Place of Performance Street Address 1 | |
| Place of Performance Street Address 2 | |
| Place of Performance City | |
| Place of Performance State (two character code) | |
| Place of Performance Zip (zip code+ four) | |
| Place of Performance Congressional District (two digit code) | |
| Place of Performance Country | |

D. Most Highly Compensated Executives

Definition. “Executive” means the five most highly compensated officers, managing partners, or any other employees in management positions.

Contractor shall provide the names and total compensation of the five most highly compensated executives of the Contractor entity if the following items (1) and (2) apply. If either item (1) or (2) does not apply, the Contractor’s report shall include a statement certifying this.

If these items do apply, but there is no change in the most highly compensated individuals or their total compensation, the Contractor’s report shall include a statement certifying this.

- (1) The Contractor in its preceding fiscal year received—
- (a) 80 percent or more of its annual gross revenues in Federal awards; and
 - (b) \$25,000,000 or more in annual gross revenues from Federal awards; and
- (2) The public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 [26 USC § 6104].

“Total compensation” means the cash and non-cash dollar value earned by the executive during the Contractor’s past fiscal year of the following (for more information see 17 CFR 229.402(c) (2)):

- (i). Salary and bonus.
- (ii). Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R.
- (iii). Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- (iv). Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- (v). Above-market earnings on deferred compensation which are not tax qualified.
- (vi). Other compensation. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

HIGHLY COMPENSATED EXECUTIVES

| | |
|--|--|
| Exempt from reporting compensation (Check one) | <input type="checkbox"/> Yes <input type="checkbox"/> No |
|--|--|

If not exempt per FFATA, complete the following:

| | |
|--------------------------|--|
| Executive 1 Name | |
| Executive 1 Compensation | |
| Executive 2 Name | |
| Executive 2 Compensation | |
| Executive 3 Name | |
| Executive 3 Compensation | |
| Executive 4 Name | |
| Executive 4 Compensation | |
| Executive 5 Name | |
| Executive 5 Compensation | |