

SPONSORED RESEARCH AGREEMENT

This Sponsored Research Agreement (the "Agreement") is made by and between \_\_\_\_\_, a California Corporation, with offices at \_\_\_\_\_, and its affiliates ("Company") and \_\_\_\_\_, with offices at \_\_\_\_\_ ("University").

This Agreement has the following Exhibits, which are incorporated in this Agreement by this reference:

1. Development and License Agreement Terms and Conditions
2. Exhibit A: Research Program
3. Exhibit B: Patents, Copyrights, and Technology Rights

RECITALS

- A. Company desires that University perform certain basic research work hereinafter described for which Company is willing to advance funds as sponsor of such research;
- B. Company desires to obtain certain rights to patents and technology developed during the course of such research; and
- C. University is willing to perform such research and to grant certain rights to such patents and technology;

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, University and Company agree as follows:

1.0 TERM

This Agreement shall be effective as of \_\_\_\_\_ (the "Effective Date") and extend until the earlier of the end of the Research Program as described herein, or \_\_\_\_\_ (the "Term"), unless sooner terminated in accordance with the provisions of Section 11 (Term and Termination).

2.0 RESEARCH PROGRAM

2.1 University will conduct the research program described in Exhibit A ("Research Program") and will furnish the facilities necessary to carry out the Research Program. The Research Program will be under the direction of \_\_\_\_\_ or [his or her] successor as mutually agreed to by the parties (the "Principal Investigator") and will be conducted by the Principal Investigator at the University. If the parties are unable to agree upon a successor, this Agreement may be terminated by either party.

2.2 The Research Program shall be performed from the Effective Date through \_\_\_\_\_. Company shall have the option to extend the Research Program under mutually agreeable terms.

2.3 The Research Program will be conducted on a best efforts basis.

2.4 University will keep accurate financial and scientific records relating to the Research Program and will make such records available to Company or its authorized representative throughout the Term of the Agreement and for a period of two years thereafter during normal business hours and upon reasonable notice.

2.5 Company understands that University may be involved in similar research through other researchers on behalf of itself and others. University shall be free to continue such research provided that it is conducted separately and by different investigators from the Research Program hereinafter defined.

### 3.0 COMPENSATION

3.1 As consideration for the performance by University of its obligations under this Agreement, Company will pay the University an amount equal to its expenditures and reasonable overhead in conducting the Research Program subject to a maximum expenditure limitation of \$\_\_\_\_\_. An initial payment of \$\_\_\_\_\_ shall be made at the time of execution of this Agreement, and subsequent payments shall be made as follows: \_\_\_\_\_

3.2 University shall maintain all Research Program funds in a separate account and shall expend such funds for wages, supplies, equipment, travel, and other operation expenses in connection with the Research Program.

3.4 University shall retain title to all equipment purchased and/or fabricated by it with funds provided by Company under this Agreement.

### 4.0 CONSULTATION AND REPORTS

4.1 Company's designated representative for consultation and communications with the Principal Investigator shall be \_\_\_\_\_ or such other person as Company may from time to time designate in writing to University and the Principal Investigator ("Designated Representative").

4.2 During the Term of the Agreement, Company's representatives may consult informally with University's representatives regarding the project, both personally and by telephone. Access to work performed by University shall be entirely under the control of University personnel but shall be made available to Company on a reasonable basis.

4.3 The Principal Investigator will make up to \_\_\_\_\_ oral reports to Company each year as requested by Company's Designated Representative. At the conclusion of each quarter, the Principal Investigator shall submit to Company a written report summarizing the work. The Principal Investigator shall also submit, to Company, a comprehensive final report within ninety (90) days of termination of the Agreement or completion of the Research Program, which shall contain, but not be limited to, the following information:

4.3.1 A detailed summary of income and expenses of the Research Program for the duration of the Research Program.

4.3.2 A report of the activities undertaken and accomplishments achieved by the University under the Research Program during the Term of the Research Program.

## 5.0 PUBLICITY

University shall not make reference to Company in a press release or any other written statement in connection with work performed under this Agreement, without Company's prior written approval.

## 6.0 PUBLICATION AND ACADEMIC RIGHTS

6.1 University and Principal Investigator have the right to publish or otherwise publicly disclose information gained in the course of this Agreement. In order to avoid loss of patent rights as a result of premature public disclosure of patentable information, University will submit any prepublication materials to Company for review and comment at least sixty (60) days prior to planned submission for publication. Company shall notify University within sixty (60) days of receipt of such materials whether it desires University to file patent applications on any inventions contained in the materials. At Company's request, University will proceed to file a patent application pursuant to the provisions of Exhibit B. Company shall have the right to suggest edits to the materials prior to publication to limit dissemination of information sensitive to Company. If the parties are unable to agree on a final form of the publication, the parties agree that upon Company's request all references to Company or any Company provided information/technology shall be removed from the publication. University shall give Company the option of receiving an acknowledgment in such publication for its sponsorship of the Research Program.

6.2 It is understood that the University investigators may discuss the research being performed under this Agreement with other investigators but shall not reveal information which is Company's Confidential Information under Section 7 (Confidential Information). In the event any joint inventions result, University shall grant to Company the rights outlined in Exhibit B of this Agreement.

## 7.0 CONFIDENTIAL INFORMATION

7.1 The parties may wish, from time to time, in connection with work contemplated under this Agreement, to disclose confidential information to each other ("Confidential Information"). Each party will use reasonable efforts to prevent the disclosure of any of the other party's Confidential Information to third parties for a period of three (3) years from receipt thereof, provided that the recipient's obligation shall not apply to information that:

- 7.1.1 is not disclosed in writing or reduced to writing and so marked with an appropriate confidentiality legend within thirty (30) days of disclosure;
- 7.1.2 is already in the recipient's possession at the time of disclosure thereof;
- 7.1.3 is or later becomes part of the public domain through no fault of the recipient;
- 7.1.4 is received from a third party having no obligations of confidentiality to the disclosing party;
- 7.1.5 is independently developed by the recipient; or

7.1.6 is required by law or regulation to be disclosed.

7.2 In the event that information is required to be disclosed pursuant to subsection 6 (Publication and Academic Rights), the party required to make disclosure shall notify the other to allow that party to assert whatever exclusions or exemptions may be available to it under such law or regulation.

#### 8.0 PATENTS, COPYRIGHTS, AND TECHNOLOGY RIGHTS

As partial consideration for payments made by Company hereunder, Company and University agree to the terms concerning patents, copyrights and technology rights set forth in Exhibit B.

#### 9.0 CONSEQUENTIAL DAMAGES WAIVER

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, OR OTHER DAMAGES SUFFERED BY THE OTHER PARTY OR ANY OTHERS AS A RESULT OF THE RESEARCH PROGRAM. THE PROVISIONS OF THIS CLAUSE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

#### 10.0 INDEPENDENT CONTRACTOR

For the purposes of this Agreement and all services to be provided hereunder, the parties shall be, and shall be deemed to be, independent contractors and not agents or employees of the other party. Neither party shall have authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other party, except as may be expressly provided for herein or authorized in writing.

Contractor shall comply with all applicable environmental federal, state and local laws, regulations and ordinances, including but not limited to the laws and regulations of the United States, relating to this Agreement and the services and/or products provided hereunder. In the event that this Contractor's performance of its obligations under this Agreement requires the delivery to or handling by Company or Company contractors of hazardous materials as specified in the U.S. Department of Transportation, Title 49 or OSHA standards or regulations. Contractor will promptly notify Company and upon request will provide Company and affected Company contractors with material safety data sheets and such other documentation reasonably necessary for compliance with applicable laws and regulations. Notwithstanding the foregoing, Contractor shall be fully responsible under this Agreement for any liability resulting from its actions in supplying or transporting hazardous materials or otherwise failing to comply with environmental laws and regulations.

#### 11.0 TERM AND TERMINATION

11.1 This Agreement may be terminated prior to the expiration of the Term as follows:

11.1.1 For any or no reason, by the written agreement of both parties.

11.1.2 In the event that either party shall be in default of its material obligations under this Agreement and shall fail to remedy such default within sixty (60) days after receipt of written notice thereof, this Agreement shall terminate upon expiration of the sixty (60) day period.

11.2 Termination or cancellation of this Agreement shall not affect the rights and obligations of the parties accrued prior to termination.

11.3 The rights and obligations of the parties upon termination of this Agreement are as follows:

11.3.1 If this Agreement is terminated by University for cause or by mutual agreement of the parties, University's sole and exclusive remedy, upon termination, shall be Company's payment to University for all reasonable expenses incurred or committed to be expended as of the effective termination date.

11.3.2 If the Agreement is terminated by Company for cause, University shall refund within thirty (30) days of the effective date of termination, all payments made by Company less the value of any benefit already received by Company hereunder as determined by the parties in good faith which shall in no event exceed the amount of any costs and expenses incurred through the date of notice of termination is received by University.

11.3.3 Upon termination of this Agreement pursuant to this Section 11 (Term and Termination), University shall submit a final report of all costs and expenses incurred and all funds received under this Agreement. In the event the amount of funds received exceeds the amount of any costs, University shall submit a refund check together with the report.

11.4 In the event of termination by either party, Company's licenses to any Inventions (as defined in Attachment B) conceived prior to the effective time of termination shall continue in full force and effect. In addition, any provisions of this Agreement which by their nature extend beyond termination shall survive such termination.

## 12.0 EXHIBITS

Exhibits A and B are incorporated herein and made a part of this Agreement for all purposes.

## 13.0 GENERAL

13.1 This Agreement may not be assigned by the University without Company's prior written consent. Any prohibited assignment shall be void.

13.2 This Agreement constitutes the entire and only agreement between the parties relating to the Research Program, and all prior negotiations, representations, agreements and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of the parties.

13.3 Any notice required by this Agreement by Sections 8 (Patents, Copyrights, and Technology Rights), 9 (Consequential Damages Waiver), or 11 (Term and Termination) shall be given by prepaid, first class, certified mail, return receipt requested, or by a nationally recognized express delivery service addressed in the case of Company to:

COMPANY ADDRESS CITY, STATE ZIP ATTN: (CONTACT PERSON) FAX: PHONE:

or in the case of University to:

UNIVERSITY ADDRESS CITY, STATE ZIP ATTN: (CONTACT PERSON) FAX: PHONE:

or at such other addresses as may be given from time to time in accordance with the terms of this notice provision.

Notices and other communications regarding the day-to-day administration and operation of this Agreement shall be mailed (or otherwise delivered), and addressed in the case of Company to:

COMPANY ADDRESS CITY, STATE ZIP ATTN: (CONTACT PERSON) FAX: PHONE:

or in the case of University to:

UNIVERSITY ADDRESS CITY, STATE ZIP ATTN: (CONTACT PERSON) FAX: PHONE:

13.4 This Agreement shall be governed by, construed, and enforced in accordance with the internal laws of the State of California.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

COMPANY SYSTEMS, INC.:

UNIVERSITY:

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**RESEARCH PROGRAM**

**EXHIBIT B**  
**PATENTS, COPYRIGHTS, AND TECHNOLOGY RIGHTS**

1. The following terms shall have the indicated meanings when used in this Exhibit:

1.1 "Agreement" shall mean that certain Sponsored Research Agreement to which this Exhibit is attached between Company Systems, Inc. ("Company") and \_\_\_\_\_ ("University").

1.2 "Invention" shall mean any discovery, concept, or idea, whether or not patentable, made by the University and/or the Principal Investigator during the Research Program, and arising from the performance of the Research Program, including but not limited to processes, methods, software, tangible research products, formulas and techniques, improvements thereto, and know-how related thereto.

1.3 "Patent Expenses" shall mean any expenses, including attorney's fees, incurred in searching prior art, obtaining search opinions, preparing applications, filing, prosecuting, enforcing or maintaining a patent or patent application with respect to Patent Rights in any country in which the patent or patent application is filed.

1.4 "Patent Rights" shall mean any patent application or patent covering any Invention made by the University and/or the Principal Investigator during the course of the Research Program and arising from the performance of the Research Program, including any continuation, continuations-in-part, divisional applications, substitutions, extensions or additions thereto, and any corresponding foreign patent applications or patents based on such applications or patents.

1.5 "Technology Rights" shall mean University rights under state and federal laws, including the laws of copyright, trade secret, and unfair competition, in unpatented inventions, know-how, software and other technology developed by the University and/or the Principal Investigator during the Research Program and arising from the performance of the Research Program.

1.6 Capitalized terms used in this Agreement that are not defined herein shall have the meanings ascribed to such terms in the Agreement.

2. Any Patent Rights and Technology Rights, including inventions or copyrightable works made during the course of the Research Program solely by either party shall be solely owned by the inventing party. Any Patent Rights and Technology Rights, including inventions or copyrightable works made during the course of the Research Program jointly by University and Company personnel shall be jointly owned, without any accounting obligation. Rights arise during the Research Program if they are either conceived or reduced to practice during the Research Program.

3. At Company's request, University shall prepare and file appropriate United States and foreign patent applications for Inventions. University will provide Company, on a confidential basis, a copy of any such application filed and any documents received or filed during prosecution thereof and will provide Company the opportunity to comment thereon. On any application on which an employee of Company is named as a co-inventor, Company will cooperate in obtaining execution of any necessary documents by its employees.



4. University hereby grants to Company a perpetual, irrevocable, royalty-free, transferable, non-exclusive license, with the right to sublicense and authorize the granting of sublicenses, to make, have made, reproduce, have reproduced, use and sell any product incorporating any Invention or any copyrighted materials created by University during the performance of the Research Program.

5. In addition to the license granted in Section 4 above, University grants to Company an option to negotiate a worldwide, royalty-bearing exclusive license under Patent Rights and Technology Rights to practice any Invention and use any technology made in the course of the Research Program. Such option shall be exercisable in the following manner: Whenever University, in its good faith judgment, believes that it has a commercially exploitable item within Patent Rights and Technology Rights ("Item"), it shall present the Item to Company on a confidential basis. Within thirty (30) days after such presentation, Company shall notify University in writing if it wishes to exercise its option for that Item, and a license agreement shall be negotiated in good faith for a period not to exceed one hundred eighty (180) days from the date that Company exercises its option, or such period of time as the parties shall mutually agree. In the event that Company and University fail to enter into an agreement during that period of time, then the rights to such inventions and technology shall be disposed of in accordance with University's policies and consistent with the license granted to Company in Section 4 above. Until any such Item, such as an invention disclosure, patent, patent application, or identifiable piece of unpatented technology, has been presented as set forth above, University shall not offer rights to the Item to any third party.

6. In the event Company elects to exercise its option as to any Item, in accordance with the procedures detailed above, it shall be obligated to pay all Patent Expenses for such Item, which shall be credited towards any royalty payable to University. This shall include but not be limited to the cost of any prior activities investigating patentability of the Item before exercise of the option, such as search and opinion patentability that may have been performed by University pursuant to its arrival at a judgment of commercially exploitable status. It is contemplated that, in the majority of instances, Company will be asked to determine whether it will exercise its option prior to the filing of the first patent application.

7. Company may exercise its option on Patent Rights and Technology Rights by informing the University and System as provided for in the Agreement at Section 13.3 of the identity of the Item within Patent Rights and Technology Rights.

8. Any exclusive license to Patent Rights and Technology Rights granted to Company, as provided herein, shall include at least the following terms and conditions:

- (a) a reasonable and customary running royalty on net revenues from licensed products;
- (b) the right of Company to grant sublicenses;
- (c) a commitment by Company and any sublicensee to develop and commercialize the licensed invention and technology;
- (d) a term that does not exceed any limits imposed by law; and

(e) retention by the University of the complete royalty-free right to use any Patent Rights and Technology Rights, including any licensed Invention, technology, or software for teaching, research, or other educational or academic purposes.

9. Subject to confidential treatment by Company of University confidential information that may be disclosed thereunder, University grants Company a fully paid-up, nonexclusive license under its copyrights to make a reasonable number of copies for its internal needs, and to make derivative works, from any written report prepared and delivered to Company in accordance with this Agreement.

***ACCEPTED AND AGREED:***

COMPANY SYSTEMS, INC.:

UNIVERSITY:

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_