

FACILITIES USE AGREEMENT
BETWEEN
THE RESEARCH FOUNDATION OF STATE UNIVERSITY OF NEW YORK
and
[NAME OF COMPANY]

FACILITIES USE AGREEMENT, hereinafter " Agreement," made this ____ day of _____, 20XX, by and between **THE RESEARCH FOUNDATION OF STATE UNIVERSITY OF NEW YORK**, a nonprofit, educational corporation existing under the laws of the State of New York, with its principal offices located at 35 State Street, Albany, New York 12207-2826 by and on behalf of the University at Buffalo, Capen Hall, Amherst New York 14260, hereinafter referred to individually and collectively as "SUNY" or "University," and **[NAME OF COMPANY]**, a Corporation existing under the laws of the State of **[FILL IN NAME OF STATE]**, with its principal offices located at **[COMPLETE STREET NAME, CITY, STATE, ZIP CODE]**, hereinafter referred to as "Company".

WHEREAS, Company desires to use and occupy University facilities and equipment to **[FILL IN PURPOSE OF COMPANY]**, hereinafter referred to as the "Field," in pursuit of Company's objectives; and

WHEREAS, University wishes to promote and foster University-Industry cooperation in the Field; and

WHEREAS, University wishes to make available to its faculty and students additional education and research opportunities through interaction with scientists from industry; and

WHEREAS, University has available certain research facilities and equipment, hereinafter referred to as "Facilities," which could enhance the ability of Company to conduct research in the Field, in pursuit of Company objectives that will directly benefit UB and the economic development of New York State; and

WHEREAS, by the terms of the agreement which was entered into between The State University of New York and the Foundation on June 1, 1977, The State University of New York delegated to the Foundation authority to administer funds and to utilize University Facilities in connection with the conduct of research and research-related programs; and

WHEREAS, the parties desire to enter into an agreement whereby Foundation will make Facilities available to Company pursuant to the above referenced policies.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained herein, it is mutually agreed by and between the respective parties as follows:

1. A. Recitals. The Recitals are incorporated into the operative part of the contract and made a material part hereof.

B. Facilities. Subject to the terms and conditions hereinafter provided, Company shall be permitted shared access to the Facilities itemized in **Exhibit B and accompanied by Exhibit B-1 which designates occupied space in drawing format**, attached hereto and made a part hereof. All changes to **Exhibit B** must be revised in writing and executed by duly authorized officer(s) and company. Upon a change to **Exhibit B** the title will reflect the revision (ie. "**Exhibit B[]** "). Foundation shall permit the Company to have access to and use all shared [refreshment stations and all shared conference rooms] located in the Facilities at no additional cost to the Company; [provided Foundation shall not be responsible for refreshment supply or supply replenishment].

2. Use. Company shall use the Facilities to conduct research and development in the Field in pursuit of Company's objectives and to advance Company's commercialization efforts that will directly benefit the economic development of New York State. The Company shall use and occupy the Facilities solely for the purpose stated in this Section 2. The Facilities shall be used for no other purpose.

3. Term. This Agreement shall be effective on [CPG TO INSERT DATE] ("Commencement Date") and shall continue for [] year(s) ("Term"), unless terminated earlier by either party or extended, in writing, signed by both parties, in accordance with the terms of this Agreement. Provided that Company is not in default in connection with this Agreement, Company shall have the option to renew this Agreement for [] year(s) with such renewal Term commencing the day after the expiration of the initial Term. All of the terms and conditions of the Agreement shall apply during the renewal Term, except that the fee during such renewal Term shall be determined in accordance with Section 5A hereof. In all other respects the terms, conditions and fees of this Agreement shall remain in full force and effect. The option shall be exercised by written notice given to Foundation not less than ninety (90) days prior to the expiration of the initial Term. If notice is not given in the manner provided herein within the time specified, this option shall expire.

4. Foundation's Services: Foundation shall provide the services described below to the Company. The fees for such services shall be specified in **Exhibit B**.

A. In the same manner SUNY provides to the Foundation, Foundation shall arrange for University to supply all ordinary and necessary heat, water, air conditioning, electricity, elevator service, cleaning and janitorial services along with basic office maintenance and security as is necessary for the comfortable and safe use and occupancy of the Facilities. In the event that Company desires services in excess of that which the Foundation has agreed to

provide, and the Foundation consents to the furnishing of such additional service, Company shall be charged therefore at the University-established third-party rates.

B. Foundation will arrange for University to supply electrical service to the Company to adequately support the Facilities provided on **Exhibit B** attached hereto. In the event that the Company desires electrical installations in excess of that which the Foundation has provided for in the Company's assigned space such as 220V service, additional plugs or switches, etc, and the Foundation consents to the furnishing of such service, the Company shall be charged therefor at Foundation's actual cost.

C. The Company is expected to review and to adhere to all guidelines and requirements so noted in **Exhibit C: Environmental Health and Safety Guidelines**.

D. The Company may use the telecommunications/IT support provided by the University to other occupants of the Facilities. Use of same is suggested but not mandated. Refer to **Exhibit D: IT Support Services** for additional information and explanation of fees.

E. The Company is expected to review and to adhere to all requirements so noted in **Exhibit E: Child Protection Policy**.

F. The Company may be entitled to certain rights and privileges and subject to certain expectations on the part of building specific management staff as noted in **Exhibit F: Building Specific Memorandum** based on the location of assigned space. The Company shall be entitled to use the receptionist provided by the Foundation or University for the Facilities for reasonable day-to-day reception services required by the Company's operations, including, without limitation, answering telephones, taking telephone messages, transferring calls and announcing the Company's visitors, and general mail services provided by the University to other occupants of the Facilities. Neither Foundation nor the University will be held responsible for above as noted in Section 7 below.

5. Fees.

A. Company shall pay a fee to Foundation as itemized in **Exhibit B** during the initial Term of this Agreement in consideration of its use of the Facilities. As stated in **Exhibit B**, in addition, other fees (e.g. for general institutional services and all computer and computer-related services provided to Company by University or Foundation) must be paid for when billed. During the Term of an Agreement, fees may be modified, in Foundation's sole discretion, based on the annual fee established by University at Buffalo, and an assessment of the services and other valuable considerations afforded University by Company.

All fee payments shall be made payable to:

Research Foundation of State University of New York
Reference account [#54233-1-1087860]

All fee payments shall be mailed directly to:
Financial Services
418 Crofts Hall
Buffalo, New York 14260

WITH EXCEPTION TO TELEPHONE AND DATA SUPPORT SERVICE FEES, IF APPLICABLE, AGREED TO IN EXHIBIT D WHICH SHALL BE BILLED DIRECTLY BY THE UNIVERSITY'S CIO ADMINISTRATIVE OPERATIONS OFFICE AND ANY BUILDING SPECIFIC FEES FOR SERVICES AS NOTED IN EXHIBIT F WHICH SHALL BE BILLED DIRECTLY BY THE BUILDING MANAGER ON A QUARTERLY BASIS.

B. In the event that the Commencement Date is other than on the first of the month, then the fees for the balance of the month shall be pro-rated accordingly, and the full monthly fee shall commence on the first day of the following month.

C. If, at the expiration of the Term of this Agreement and any renewal thereof, the Company continues to occupy the Facilities without having executed a new Agreement with Foundation, such holding over shall not constitute a renewal or extension of this Agreement. Foundation may, at its option, elect to treat the Company as one who has not vacated at the end of the Term and thereupon shall be entitled to all the remedies against the Company provided by law in that situation or, in Foundation's sole discretion, Foundation may treat such holding over as a month-to-month Agreement terminable by the Foundation upon thirty (30) days' written notice. All of the terms and conditions of this Agreement shall apply to the month-to-month Agreement except that the fixed minimum Agreement fee to be paid by the Company to the Foundation shall be 150% of the amount set forth in this Agreement.

6. Care and Maintenance. Company shall take proper care of the Facilities made available for use and shall preserve the Facilities in good order and condition during the time the Facilities are in Company's custody and control. Company shall maintain the Facilities in a good, clean, and safe condition and shall surrender the same at termination hereof, in as good a condition as received, normal wear and tear excepted.

7. No Tenancy. The parties agree and acknowledge that the Company is not a tenant, and that the parties' relationship is not a landlord-tenant relationship. Accordingly, Company shall have no right to make any claim upon Foundation or the University for abatement of the fee, constructive eviction, rescission, or other claims to which a tenant would be entitled. Foundation and the University shall be exempt from all liability (except, with respect to Foundation only, for injuries to the Company's person or property which are due to the negligence of Foundation, its agents, servants, or employees, in the management of the Facilities or the real property of which the Facilities are a part) for or on account of any annoyance, inconvenience, interference with business, or other damage, caused by: (i) any interruption, malfunction or curtailment of the operation of any elevator service, heating plant, sprinkler system, gas, water, sewer or steam supply, plumbing, machinery, electric equipment or other appurtenances, facilities, equipment

and conveniences in the building, whether such interruption, malfunction or curtailment be due to breakdowns, or repairs, or strikes, or inability to obtain electricity, fuel or water due to any such cause or any other cause beyond the Foundation's control; (ii) any work or repair, alteration or replacement done by or on behalf of Foundation or the Company, pursuant to the provisions of this Agreement; (iii) any water, rain, snow, steam, gas, electricity or other element, which may enter, flow from or into the Facilities or any part of the building, or any noise or vibration audible in, or transmitted to the Facilities; (iv) any vermin; (v) any falling paint, plaster or cement; (vi) any interference with light or with other easements or incorporeal hereditaments; (vii) any latent defect or deterioration in the building or the appurtenances thereof, whether or not Foundation shall have been notified of any condition allegedly causing same; (viii) any zoning ordinance or other acts of governmental or public authority now or hereafter in force; and (ix) any act or omission of any other occupant of the building or other person temporarily therein. Company will not hold Foundation or University liable for any loss or theft of, or damage to, any property in the Facilities done or caused by any employee, servant, agent or invitee of Foundation or University who is invited into the Facilities by the Company, or acting on behalf of the Company as noted in Section 4C, nor for the loss, damage or theft of any property stored or left in the basement or in any other part of the building, which is not enclosed within the Facilities, or of any property left with any employee of Foundation, notwithstanding such theft, loss or damage may occur through carelessness or negligence of Foundation's employees; and the Company agrees that any employee in entering the Facilities at the invitation of the Company or accepting custody of property shall be then deemed an agent of the Company or other person at whose instance she/he may be acting, and not an agent of Foundation. Employees of the Foundation or of SUNY are not permitted to receive or accept packages or property for account of the Company. Storerooms or storage space for personal property (if provided) are provided gratuitously by Foundation, and the use of same shall be at the Company's sole risk and the Company will not hold Foundation or SUNY liable for any loss of or damage to person or property therein or thereby. Nothing in this Agreement shall impose any obligation upon Foundation with respect to any real property other than the building, whether said other real property be owned by the Foundation or University or otherwise, or shall in any way limit the University's right to build upon or otherwise use said other real property in such manner as the University may see fit. Foundation shall have no liability by reason of Foundation's failure to enforce the provisions of the Agreement to any other Company or against such other Company.

8. Signs. Company shall have the right to identify its operations with appropriate signage located at the Facilities upon the prior consent of Foundation, which consent shall not be unreasonably withheld. All such signage shall be consistent in size and style with that of other occupants and will be mutually agreed to by both parties.

9. Utilities. All applications and connections for necessary utility services at the Facilities shall be made in the name of the University only, and the University shall be solely liable to utility providers for utility charges as they become due, including those for sewer, water, gas, electricity, and telephone services.

10. Entry and Inspection. Company shall permit Foundation or the Foundation's agents, and University or University's agents, to enter upon the Facilities at reasonable times upon reasonable prior notice, for the purposes of inspecting the same, and will permit the Foundation at any time within sixty (60) days prior to the expiration of this Agreement to permit persons desiring to occupy the same, and accompanied by an agent or employee of the Foundation, to inspect the Facilities thereafter. In case of emergencies, such as water leakage, electrical, broken glass, and other similar urgencies, Foundation reserves the right for Foundation and University to enter the Facilities.

11. Intellectual Property. In the event an invention, whether or not patentable, is developed in connection with Company's use of the Facilities, disposition of the invention shall be determined as follows:

(i) If the invention is developed solely by employees of Company, the invention will be owned by Company;

(ii) If the invention is developed by individuals who are solely employees of Company, in accordance with a Company only designed protocol, with assistance by faculty, staff and/or students of University or staff of the Foundation limited to the operation of the Facilities, the invention will be owned by Company; provided, however, Foundation or University shall own inventions by Foundation or University personnel;

(iii) In all cases where faculty, staff and/or students of University, or staff of Foundation solely participate in the research program which leads to an invention, the invention shall be owned by the Foundation or the University; and

(iv) If the invention is jointly conceived or first reduced to practice, in whole or in part, by faculty, staff, and/or students of University, or staff of Foundation, together with individuals who are solely employees of Company, the invention will be jointly owned by Foundation or University and Company.

12. University's Facilities. Company agrees that this Agreement shall in no way diminish the statutory authorization of University to possession, pursuant to State Education Law and other applicable law, of Facilities to which this Agreement relates; nor shall the dominion and control by University over said Facilities be in any way diminished.

13. Company Modifications to Facilities. Company specifically agrees to pay all costs related to the modification of the Facilities that Company requests, and Foundation (with consent of University) has approved in advance, in writing.

14. Compatibility with University Operations. The activities of Company shall not infringe upon, delay, or conflict with, the normal operations of Foundation or University, and in particular, shall not interfere with use of the Facilities in connection with the University's primary academic mission. To the extent applicable, all operations of Company will be in

accordance with the Facilities use guidelines of University, and the Foundation. Company specifically agrees that this Agreement shall be void and of no further force and effect upon any use of Facilities to which this Agreement relates which is inconsistent with State law or which in any way conflicts with the purposes or objectives of University. If in the judgment of Foundation, in consultation with the University, any activity of Company or its personnel or clients is deemed incompatible with the purpose of this Agreement or the best interests of the Foundation, or University, then the Foundation may immediately terminate this Agreement without liability of any kind, and Company and its personnel shall promptly vacate the Facilities. Following exercise of its rights under this paragraph, Foundation will use its best efforts (with the assistance of Company if necessary) to terminate any ongoing experiments in a manner that will best preserve previously generated experimental results.

15. Use of Names. Company agrees not to use the names or logos of University at Buffalo, The State University of New York, the State of New York, or Foundation, or any staff members or employees thereof, in advertising, sales promotion work, or in any other form of publicity except with the written permission of, and to the extent approved, in writing, by, University at Buffalo, The State University of New York, the State of New York, or the Foundation as the case may be.

16. Indemnification. Company assumes all risks incidental to its use of the Facilities and shall be solely responsible for any and all accidents and injuries to persons (including death) and property damage arising out of or in connection with such activities caused by the actions of Company, its officers, employees, agents, or assigns, and hereby covenants and agrees to indemnify and hold harmless the Foundation, the State of New York, University, and their respective officers, employees, agents and assigns, from and against any and all liabilities, penalties, claims, suits, actions, damages, expenses (including attorneys' and counsel fees), judgments, and costs of every nature and description arising out of or relating to the use of the Facilities. Company further agrees, upon request, to assume the defense and to defend, at its own cost and expense, any action brought at any time against the Foundation, the State of New York, and University with respect to such claims, suits, and losses.

17. Destruction of Facilities. In the event of partial destruction of the Facilities during the Term hereof, from any cause, Foundation, in its sole discretion, shall decide whether to repair same. Provided that such repairs, if undertaken, can be made within sixty (60) days under existing governmental laws and regulations, such partial destruction shall not terminate this Agreement, except that Company shall be entitled to a proportionate reduction of fees while such repairs are being made. Based upon the extent to which making the repairs cannot be accomplished within sixty (60) days, Foundation, at its option, may make the same within a reasonable time, this Agreement continuing in effect, with the fees proportionately abated as aforesaid, and in the event that Foundation shall not elect to make such repairs which cannot be accomplished within sixty (60) days, this Agreement may be terminated at the option of either party. In the event that the building in which the Facilities may be situated is destroyed to an extent of not less than one-third of the replacement cost, Foundation may elect to terminate this Agreement whether the Facilities be injured or not. A total destruction of the building in which

the Facilities are situated shall terminate this Agreement.

18. Remedies On Default.

A. If Company defaults in payment of fees or defaults in the performance of any of the other covenants or conditions hereof, Foundation may give the Company notice of such default and if the Company does not cure any such default within thirty (30) days, after the giving of such notice (or if such default is of such nature that it cannot be completely cured within such period, or if the Company does not commence such curing within such thirty (30) days and thereafter proceeds with reasonable diligence and in good faith to cure such default), then Foundation may terminate this Agreement on not less than thirty (30) day notice to the Company. On the date specified in such notice the Term of this Agreement shall terminate, and the Company shall then quit and surrender the Facilities to Foundation, but the Company shall remain liable as hereinafter provided. If this Agreement shall have been so terminated by Foundation, Foundation may at any time thereafter resume possession of the Facilities by any lawful means and remove the Company or other occupants and their effects. No failure to enforce any Term shall be deemed a waiver.

B. Notwithstanding the foregoing provision, it is agreed that if the Company or its guarantor (if any) shall be adjudicated a bankrupt, or a receiver is appointed for the business and property of the Company or its guarantor (if any), or if the Company or its guarantor (if any) shall make an assignment for the benefit of creditors, then at the option of Foundation, this Agreement may be cancelled upon written notice by Foundation to the Company, but Foundation shall not be required to give the notice as required herein.

C. Upon the termination of this Agreement either at the option of Foundation as aforesaid, or at the expiration by lapse of time of the Term hereof, the Company will at once surrender possession of the Facilities to Foundation and remove all effects therefrom and if such possession be not immediately surrendered, the University shall forthwith re-enter the Facilities and repossess itself thereof as in its former estate and remove all persons and effects therefrom, using such force as may be necessary, without being deemed guilty of any trespass or forcible entry.

D. If Company shall not remove all effects from the Facilities as above provided, Foundation may, at its option, remove any or all of said effects in any manner that Foundation shall choose and store the same without liability for loss thereof, and the Company will pay Foundation, on demand, any and all expenses incurred in such removal and also storage of said effects for any length of time during which the same shall be in Foundation's possession or in storage, or Foundation may at its option, without notice, sell any or all of said effects in such manner and for such price as Foundation may deem best and apply the proceeds of such sale upon any amounts due under this Cooperative Agreement from the Company to Foundation, including the expenses of removal and sale.

E. In the event of a default, Foundation, at its option, may declare the entire fee for the balance of the Term, including the guaranteed minimum monthly fee herein provided for, plus the highest average monthly percentage fee earned during any prior Agreement year, immediately due and payable at once.

F. Any and all rights and remedies which Foundation may have under this Agreement, and any exhibit hereto attached and made a part hereof, and at law or in equity, shall be cumulative and shall not be deemed inconsistent with each other, and any two or more or all of such rights and remedies may be exercised at the same time. In the event of default by Company, Foundation shall have the option to terminate, without additional notice, any Agreement between Foundation or any of its affiliates and the Company.

G. (1) If Company shall default in the full and due performance of any covenant of this Agreement, Foundation shall have the right, upon five (5) days' notice to the Company (unless a shorter period of notice or provision for the performance of such work without notice is elsewhere herein established), to perform the same for the account of Company, and in such event all workers employed by the Foundation and University shall be deemed the agents of the Company, and any reasonable payment made, and expense incurred, by the Foundation and University in this connection, shall forthwith become due and payable by the Company to Foundation. If Foundation is compelled to incur any expenses, including reasonable attorneys' fees in instituting, prosecuting or defending any action or proceeding instituted by reason of any default of the Company hereunder, the sum or sums so paid by Foundation with all interest, costs and damages, shall be deemed immediately due to Foundation upon demand. Any and all sums payable by Company to Foundation shall bear interest at the rate of six per centum (6%) per annum from the due date to the date of actual payment, and any and all such sums (except the fee hereinabove expressly reserved) shall be deemed to be additional fee for the period prior to such due date, and Foundation shall have the same remedies for default in the payment of such additional fees as for default in the payment of the fees expressly reserved.

(2) In the event that under the provisions of this Agreement Foundation shall have the privilege of performing any covenant in respect of which Company may be in default and of recovering the expenses so involved from the Company as additional fees or otherwise, such remedy shall not be the exclusive remedy of Foundation but the Foundation may, at its option, treat such default as a breach of substantial obligation of this Agreement and shall have all the other remedies in respect thereof provided in this or any other Article of this Agreement.

19. Covenant Against Withholding Fees. Notwithstanding any other provisions contained in this Agreement or any extensions, modifications or renewals thereof, it is understood and agreed that in the event of default in performance of any agreement, condition, or other provisions to be performed by Foundation, or if for any other reason the Company might be entitled to any reimbursement from Foundation, in no event shall the Company deduct or withhold any such amount from fee payments due Foundation pursuant to the fee provision of this Agreement.

20. Company's Insurance. Company shall, during the Term, provide and keep in force public liability insurance, written by insurance companies approved by Foundation, covering the Company, with coverage limits of at least \$1 million per claim and \$2 million in the aggregate, for total claims arising from any one casualty. Copies of the certificates or insurance naming the Foundation and the University as additional insureds, shall be presented to the UB [Center of Excellence in Bioinformatics and Life Sciences, Attention Director], upon the signing of this Agreement or before occupying the Facilities. Company shall furnish Foundation within five (5) days after the commencement of the Term hereof, with a certificate of such insurance, which certificate shall provide, that in the event of any change or cancellation of the policy, advance notice thereof will be given to Foundation and University. Upon failure at any time on the part of the Company to obtain or keep in force the insurance required by this paragraph, or to pay the premiums thereof, in addition to the rights and remedies otherwise provided in this Agreement, Foundation shall be at liberty from time to time, and as often as such failure shall occur, to pay the premiums therefore and any and all sums so paid for insurance by Foundation shall be and become, and are hereby declared to be, additional fees under this Agreement due and payable on the next day that fees are due and payable.

21. Successors and Assigns. This Agreement is binding upon and inures to the benefit of the parties' successors and assigns.

22. Subordination. This Agreement is and shall be subordinated to all existing and future liens and encumbrances against Foundation's and University's property.

23. Parking. No parking is provided to Company under this Agreement.

24. Governing Law. Foundation and Company agree that this Agreement shall be interpreted according to, and governed by, the laws of the State of New York. Any claim, dispute, or cause of action shall be brought before a court of competent jurisdiction in Erie County, New York.

25. Captions. Captions in this Agreement are solely for convenience of reference and shall not in any way limit or amplify the terms and provisions thereof.

26. Real Estate Broker. The parties acknowledge that no broker was involved in connection with this transaction and the Company hereby indemnifies and holds Foundation harmless in connection with any claims by any real estate brokers.

27. Policies; Ordinances; Statutes. Company shall comply with all Foundation and University regulations, guidelines, and policies. The Company shall comply with all statutes, laws, rules, orders, regulations, ordinances, and requirements of all municipal, state, and federal authorities now in-force, or which may hereafter be in force, occasioned by or affecting Company's use of the Facilities. Company shall obtain and keep in force, at its sole cost and expense, any permits or licenses which may be required for the conduct of Company's operations. Company shall comply with all applicable health, safety and environmental

regulations including but not limited to standards and regulations of the US Occupational Safety and Health Administration (OSHA), the US Environmental Protection Agency (EPA), the NYS Department of Environmental Conservation (DEC), NYS Department of Health (DOH), NYS Department of Labor (DOL), and the NYS Fire Code.

28. Hazardous Materials. Refer to **Exhibit C: Environmental Health and Safety Guidelines** for information regarding the University's policies and procedures associated with hazardous materials.

29. Rights on Cancellation or Termination. Company specifically agrees that if this Agreement is cancelled or terminated for any reason, Company shall have no claim against the Foundation, the State of New York, University, nor their respective officers or employees, and further that the Foundation, the State of New York, University, and their respective officers, employees, agents and assigns shall be relieved from any and all liability.

30. Termination. Either Company or Foundation may terminate this Agreement by providing the other party with a formal written termination notice thirty (30) days prior to such termination. Company will be responsible for any payments which may have accrued prior to such termination.

31. Notices. All notices, demands and other communications hereunder, except exchanges of technical information shall be delivered personally to the party hereto to which it is addressed, or mailed to such party, by registered or certified mail, return receipt requested, with postage thereon fully prepaid, or by commercial overnight delivery service, at the following addresses, unless otherwise subsequently modified by change of address in writing:

If to Company:

CONTACT NAME [TO BE INSERTED BY CPG]
COMPANY NAME
STREET ADDRESS
CITY, STATE ZIP CODE

If to Foundation:

Director of Contracts
Procurement Services
224 Crofts Hall
Buffalo, New York 14260

Copy to:

UB Center of Excellence in Bioinformatics and Life Sciences

Attn: Director of Resource Management

701 Ellicott Street

Buffalo, New York 14203

Any notices, demands and other communications delivered personally shall be deemed to have been received by addressee at the time and date of its delivery. Any notices, demands and other communications so mailed shall be deemed to have been received by the addressee seven (7) days after the time and date of its being so mailed.

32. Entire Agreement. This Agreement, including any Exhibits, constitutes the entire agreement between the parties hereto and all previous and simultaneous communications between the parties, whether written or oral, with reference to the subject matter of this Agreement are hereby superseded.

33. Employment of University Students. To the extent employment of a University student is not prohibited by any Company student affiliation agreement with University, Company may provide employment opportunities by hiring University students during the academic year.

34. Assignment. Company shall not mortgage, assign, transfer or convey this Agreement, or any interest herein, without the prior written consent of the Foundation, which consent shall not be unreasonably withheld. Any such assignment or permission to use the Facilities without consent shall be void and, at the option of Foundation, Foundation may terminate this Agreement. Consent by Foundation to any assignment shall not be deemed consent to further or additional assignments, nor shall any consent release the Company (or its guarantor, if any) from liability for performance of all terms and conditions of this Agreement. In each case prior written consent of Foundation must be obtained.

35. Amendments. This Agreement may be changed, amended, modified or extended only by a written agreement duly executed by the parties hereto.

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

This Agreement is hereby executed by duly authorized officers and company.

CONTRACT NUMBER

**THE RESEARCH FOUNDATION OF
STATE UNIVERSITY OF NEW YORK**

[COMPANY NAME]

By: _____

By: _____

Name: _____

Name: _____

Lonny Porter

Title: Director of Contracts, Procurement Services

Title: _____

Date: _____

Date: _____

SAMPLE

ACKNOWLEDGEMENT

STATE OF NEW YORK }
COUNTY OF } SS:

On this _____ day of _____, 20__ before me personally came _____, to me known, who being duly sworn, did depose and say that he/she resides in _____; that he/she is the _____, of the _____, the corporation described in and which executed the foregoing instrument; he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal, that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public

OR

STATE OF _____)
COUNTY OF _____) SS.:

On this _____ day of _____, 20__ before me personally came _____, to me known, who being duly sworn, did depose and say that he/she resides in _____; that he/she is the _____, of the _____, the corporation described in and which executed the foregoing instrument; he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal, that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public