**INDEPENDENT CONTRACTOR AGREEMENT BETWEEN**

**THE RESEARCH FOUNDATION FOR**

**THE STATE UNIVERSITY OF NEW YORK**

***AND***

**[INDEPENDENT CONTRACTOR]**

**RF Award #\_\_\_\_\_\_\_\_\_\_\_\_ Project #\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **CFDA # \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 This Agreement [“Agreement”] made by and between THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW YORK, a private, non-profit educational corporation organized and existing under the laws of the State of New York, with its principal offices located at 35 State Street, Albany, New York 12207-2826 **[*Note: Decentralized locations should substitute “office” for “principal offices” and use their local address*]**, hereinafter referred to as “Foundation”, acting on behalf of the State University of New York at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, existing under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,with its principal offices located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_hereinafter referred to as [“Contractor” or “IC”].

 **WITNESSETH:**

 **WHEREAS,** Foundation has an award from \_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Sponsor] to carry out a Project entitled \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; [Project]; and

 **WHEREAS,** Foundation desires and the IC 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**

 a) Contractor 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 Foundation to meet the requirements of the Project.

**2.** **Compensation & Certifications**

 a) In full and complete consideration of Contractor's performance, the Foundation shall reimburse Contractor for allowable costs incurred and/or payments earned in accordance with the terms of this Agreement, up to $XX,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.

 b) Contractor certifies that: 1) the services performed under this Agreement are separate and distinct from any other services provided to the Foundation; 2) it has not and will not receive payment for services provided to the Foundation under this Agreement from any other sources, and; 3) services will be performed without reliance upon the State University of New York or the Foundation for training, workspace, staff, supplies, or equipment.

**3. Term**

The term of this Agreement shall be from \_\_\_\_\_\_\_\_\_\_\_\_to \_\_\_\_\_\_\_\_\_\_\_unless extended or terminated as provided hereunder.

**4. Termination**

a) This Agreement may be terminated by either party, with or without cause by giving thirty (30) days written notice to the other party. The thirty (30) days written notice period shall commence on the date contained within the written notice to the affected party.

b) Foundation may suspend this Agreement for cause upon 10 days written notice; provided, however, that Contractor will have not more than 30 days from the date of such notice to remedy or cure any default or breach upon initial notice from Foundation. Foundation may withhold payments to Contractor for the purpose of set-off until such time as the exact amount of damages may be determined.

c) If the Contractor shall fail to fulfill in a proper manner its obligations under this Agreement or violates any of the provisions of this Agreement, Foundation shall have the right to terminate this agreement in whole or in part, by sending written Notice of Termination to the Contractor which shall take effect thirty (30) days from the date contained in the written notice.

d) Upon notification that this Agreement has been terminated or suspended as provided above, the Contractor shall immediately stop all work under this Agreement on the date and to the extent specified in the Notice of Termination. Foundation agrees to compensate the Contractor for all work performed pursuant to the Agreement prior to termination.

 **5.** **Notices**

 All notices under this Agreement 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.

To Foundation: To Independent Contractor:

­­The Research Foundation for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The State University of New York \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

E-mail: E-mail:

Telephone: Telephone:

Fax: Fax:

Attention: Attention:

**6.** **Rights in Work Product**

 a) Material or work produced under this Agreement shall be considered “work for hire,” and owned exclusively by Foundation. IC shall not claim or assert any interest, proprietary or otherwise, in any materials or work required to be produced or delivered under this Agreement. IC assigns all rights, title, and interest to such materials and work to Foundation. IC will cooperate and take all necessary action to facilitate such assignment to Foundation.

 b) IC warrants that any material produced pursuant to this Agreement shall be original except for such portion from copyrighted works that: (i) may be included with the copyright owner’s permission; (ii) contain no libelous or unlawful statements or materials; and (iii) will not infringe upon any copyright, trademark, patent, statutory or other proprietary rights of others.

 c) IC will not publish, permit to be published, or distribute for public use, any information, oral or written, concerning the results or conclusions made or work done pursuant to this Agreement without the prior written consent of the Foundation.

 d) IC will retain ownership of intellectual property that has been independently developed by IC without Foundation financial support. With respect to this IC-owned intellectual property required to be delivered under the scope of work, IC grants to Foundation a royalty-free, nonexclusive irrevocable license to use such intellectual property in accordance with the Foundation’s obligations to Sponsor.

**7**. **Assignment**

 IC shall not assign, transfer, contract or otherwise dispose of IC's rights or duties hereunder, in whole or in part, to any other person, firm or corporation without the express written consent of the Foundation. Any such assignment if granted shall be made subject to and consistent with this agreement and Foundation’s agreement with the sponsor.

**8**. **Status of Parties**

 a) The relationship of the parties shall be that of principal and independent contractor and not of an employer-employee relationship. IC hereby warrants that it is: (i) in compliance with all tax filings and similar requirements imposed on it; and (ii) solely responsible for paying income taxes, FICA taxes, and other taxes and assessments which arise from receipt of payments under this Agreement.

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

**9. Ethical Conduct**

The Foundation strives to maintain the highest ethical standards in all of its operations. All parties acting pursuant to this Agreement will establish standards, policies and procedures of ethical conduct that address, but are not limited to, the areas of conflict of interest, misconduct in science, fraud, abuse and waste.

 **10.**  **Compliance with Laws and Regulations**

 a) 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 Foundation’s agreement with Sponsor, are incorporated by reference herein as a material part of this Agreement even if not specifically set forth in this document.

 b) IC and Foundation also agree to comply with the Foundation’s Purchase Order requirements, as applicable, listed on Exhibit “X” hereto, which is attached and incorporated as a material part of this Agreement.

**11. Proprietary or Confidential Information**

a) Each party shall protect the other party’s proprietary or confidential information (“Protected Information”) with the same care with which it treats its own Protected Information, provided that such information is in writing and is marked as “proprietary” or “confidential”. Protected Information disclosed orally shall be summarized in writing and marked “proprietary” or “confidential” within thirty (30) days of oral disclosure. Each party shall, for a period of three (3) years after the termination of this Agreement, take reasonable steps to prevent the disclosure of a party’s Protected Information, unless otherwise required by law. In the event that a party must disclose Protected Information as required by law, the disclosing party shall give advance, reasonable notice to the other party of the compelled disclosure.

 b) Protected Information shall not include information that: 1) was already in the possession of a party at the time it was acquired from the disclosing party; 2) is already generally available to the public, or subsequently becomes so available without default of the receiving party; 3) is 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, or; 4) is developed by a party independently from the Protected Information disclosed.

**12.** **Liability; Indemnification**

 IC agrees, to the fullest extent permitted by law, to indemnify, hold harmless and defend the Foundation and its directors, officers, employees, consultants, agents and representatives against all claims, causes of action, damages, losses or expenses, including without limitation attorneys’ fees, arising out of or resulting from the IC’s performance or failure to perform under this Agreement provided such claims are not based upon the negligence or willful misconduct of Foundation.

**13.** **Records**

Contractor shall maintain appropriate and complete accounts, records, documents, and other evidence showing and supporting all costs incurred under this agreement. Contractor will insure that appropriate internal controls are in place and properly functioning for the accounts, records and other evidence showing and supporting all costs incurred under this agreement. All accounts and records relating to this agreement shall be subject to inspection by Foundation or its duly authorized representative(s). All accounts and records shall be preserved by the Contractor for a period of six (6) years after final settlement of this agreement. At any time, the Foundation may have vouchers and statements of costs audited by Foundation or Sponsor, or other parties authorized to audit Foundation activities and any payment may be reduced for overpayments or increased for underpayments based on such audit. The system of accounts employed by the Contractor shall be in accordance with the accounting principles required under Foundation's agreement with the Sponsor

**14. Insurance**

Contractor shall, at its own expense, maintain insurance of the types and in the amounts specified below.

1. Workers’ Compensation (including occupational disease) and Employer’s Liability: Statutory New York State Limits. Employers’ Liability minimum limit of $1,000,000;
2. Disability Benefit Insurance as mandated by State law;
3. Commercial General Liability: Bodily injury, Personal Injury, and Property Damage with minimum limit of $2,000,000 per occurrence and $5,000,000 aggregate. Limit may be provided through a combination of primary and umbrella/excess liability policies;
4. Auto Liability (if applicable): $2,000,000 combined single limit Bodily Injury/Property Damage per each accident (including owned, hired, leased and non-owned autos); and
5. Professional Liability (medical care, if applicable): Limits of liability greater than $1,000,000 each claim and $3,000,000 aggregate.

 This insurance shall be written by a company licensed to do business in New York State with a minimum A.M. Best rating of A-IX. Evidence of such insurance as specified above shall be provided to the Foundation at the Foundation’s request.

Contractor shall notify Foundation by registered mail thirty (30) days prior to termination or material change of any policy.

If Contractor fails to maintain Insurance, Contractor shall promptly notify Foundation and Foundation reserves the right to issue a stop-work order until Contractor is in compliance with the above requirements.

Foundation and Sponsor shall be named as primary and non-contributory additional insureds and Contractor shall provide evidence of such in the form of Certificates of Insurance upon request. If self-insured, these certificates should note any self-insured/deductible amounts for each policy.

Contractor waives all rights of subrogation to the extent damages are covered by the above described policies.

**15.** **Modification**

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

**16.** **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.

**17**. **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.

**18.** **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, IC provides any assurances and/or certifications of compliance required herein.

**THE RESEARCH FOUNDATION FOR [INDEPENDENT CONTRACTOR]**

**THE STATE UNIVERSITY OF NEW YORK**

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Exhibit A

**[SCOPE OF WORK]**

