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*]**, with an office located at the State University of New York at 450 Clarkson Avenue, Brooklyn, New York 11203, hereinafter referred to as "Foundation" and _____ an Independent Contractor, 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 _____ 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 ten (10) days written notice; provided, however, that Contractor will have not more than thirty (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 this Agreement prior to termination, provided termination is not a consequence of Contractor’s breach, default, or failure to perform pursuant to this Agreement.

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:	_____
450 Clarkson Avenue	_____
MSC 62	_____
Brooklyn, New York 11203	_____
_____	_____
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. 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.

12. <u>Export Controls</u> ☐ Not Applicable

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) IC 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 IC intends to provide Foundation's Project Director with export controlled information, IC will inform Foundation's Administrative

Contact in writing thirty (30) days prior to the release of export controlled technology or technical data. IC agrees not to provide any export controlled information to Foundation's Project Director, or others at Foundation or the State University of New York without the written agreement of Foundation's Administrative Contact. If the U.S. Government imposes a fine or penalty upon Foundation due to IC's failure to notify the Foundation as described above, IC will indemnify and hold Foundation harmless from any resulting fines and penalties from such omission.

13. 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.

14. 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

15. 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);

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.

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 insured's 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.

16. <u>Modification</u>

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

17. <u>Governing Law</u>

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.

18. <u>Survival</u>

In the event of termination of this Agreement for any reason, the following sections shall survive termination: 5, 6, 7, 8, 10, 11, 12, 13, 14, and 17.

19. <u>Entire Agreement</u>

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.

20. <u>Order of Precedence</u>

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 THE STATE UNIVERSITY OF NEW YORK	**INDEPENDENT CONTRACTOR**
Signature _____	Signature _____
Name_____	Name_____
Title_____	Title_____
Date_____	Date_____

Exhibit A

[SCOPE OF WORK]

EXHIBIT X
October 2007

Regulatory Framework
Office of Management and Budget (OMB) Circular No. A-110 *2 CFR 215* *Section .40-.48* *Revised 69 FR 25970, May 10, 2004*
Patent and Trademark Amendment of 1980 (Commonly known as Bayh-Dole Act) *35 USC Chapter 18* *37 CFR 401*
A21 Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, *Revised 69 FR 25970, May 10, 2004*
A133 Audits of States, Local Governments, and Non-Profit Organizations, *Revised 69FR 25970, June 27, 2003*

Antidiscrimination
Civil Rights Act of 1964 *42 USC 2000d-d-7* *42 USC 3601, as amended*
Americans with Disabilities Act *47 USC 225, as amended*
Equal Employment Opportunity *Executive Order 11246, as amended*
Vietnam Era Veterans Readjustment Assistance Act of 1972 *38 USC 4212, as amended* *41 CFR 60-250*
Small Business Act of 1958 *15 USC 6311-657, as amended* *13 CFR 125.4*

Specific Administrative Requirements
Buy American Act *41 USC 10a, 106, as amended*
International Air Transportation Fair Competitive Practices Act of 1974 (Commonly know as Fly America Act) *49 UCS 40118, as amended*

Privacy
Health Insurance Portability and Accountability Act of 1996 (HIPAA) *45 CFR 160-164*

Fraud, Waste, & Abuse
Debarment and Suspension *Executive Orders 12549 and 12689*
Procurement Integrity *41 USC 423, as amended*
Covenant Against Contingent Fees *10 USC 2306(b), as amended* *41 USC 254(a), as amended*
Conflict of Interest NSF Financial Disclosure Policy *60 FR 35820, 07/11/95* PHS Objectivity in Research *42 CFR 50, Subpart F and 45 CFR 94*

Protection of Living Things
Animal Welfare Act *7 USC 2131 et seq.* *9 CFR Subchapter A*
Public Health Service Act (For Human Research Protections) *45 CFR 46.101-.409* *NIH Guide, Notice OD-00-039*
Research Involving Recombinant DNA Molecules *43 FR 60108, 12/11/78*

Environmental Protection
Clean Air Act *42 USC 7401-7661, as amended* *5 CFR 1*
Federal Water Pollution Control Amendments of 1972 (Commonly known as Clean Water Act) *33 USC 1251-1376* *40 CFR Subchapter D*

Data & Dissemination
Export Administration Act of 1979 *50 USC app. 2401-2420, as amended* Export Administration Regulations (EAR) *15 CFR 730-774*
Arms Export Control Act *22 USC 2778* International Traffic in Arms Regulations (ITAR) *22 CFR 120-130*
Antiterrorism and Effective Death Penalty Act of 1995 (Commonly known as Anti-Terrorism Act) *18 USC 2332d, Section 321*
Terrorism Sanctions Regulations Office of Foreign Assets Control (OFAC) *31 CFR 595*

Employee Requirements
Occupational Safety and Health Act of 1970 *42 USC 3142*
Davis-Bacon Act *40 USC 276a-1 to 267a-7, as amended*
Contract Work Hours and Safety Standards Act *40 USC 3701-3708*
Byrd Amendment Concerning Lobbying *31 USC 1352*
Family and Medical Leave Act of 1993 (FMLA) *29 USC 2654*
Fair Labor Standards Act of 1938 (FLSA) *29 USC 201, et seq.*
Copeland (Anti-Kickback) Act *40 USC 3145* *29 CFR 3*

Safety & Security
Select Agents *DHHS & CDC – 42 CFR 73* *USDA & APHIS – 9 CFR 121*