SPONSORED RESEARCH AGREEMENT

This Agreement is made and entered into, effective as of ________, 2014, (“Effective Date”) by and between: The Washington University, a corporation established by special act of the Missouri General Assembly approved February 22, 1853 and acts amendatory thereto, having its principal offices at One Brookings Drive, St. Louis, Missouri 63130 (hereinafter referred to as "WU"); and ____________________, a corporation organized and existing under the laws of the State of ______________________, having its principal offices at ______________________ (hereinafter referred to as "CORPORATION") each a “Party” or collectively the “Parties” of this Agreement.

WHEREAS, WU has expertise in ___________________ and is interested in conducting additional research utilizing this expertise in furtherance of its charitable purposes; and

WHEREAS, CORPORATION is interested in having this research conducted at WU;

NOW, THEREFORE, in consideration of the premises, covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

As used herein, the following terms shall have the following meanings:

1.1 “Affiliate” means any entity which (a) controls at least a fifty percent (50%) interest of one of the Parties; (b) is at least fifty percent (50%) owned by one of the Parties; or (c) is under common control of a third entity which owns at least a fifty percent (50%) interest in one of the Parties.

1.2 “Corporation Project Inventions” means Project Inventions owned solely by CORPORATION.

1.3 “Joint Project Inventions” means Project Inventions owned jointly by CORPORATION and WU.

1.4 “Project” means the research project described in the Statement of Work.

1.5 “Project Inventions” means the ideas, improvement or other inventions conceived or otherwise created during the Term and in the performance of the Project as well as all patents, patent applications and other forms of intellectual property which claim or otherwise cover such ideas, improvements and inventions.
1.6 “Project Participants” means the WU Principal Investigator and those WU employees working under the direction of the WU Principal Investigator in connection with the Project during the Term.

1.7 “Statement of Work” means the description of the research provided in Attachment A, which is incorporated herein by reference as if restated here in full.

1.8 “Technical Material” means those data, results and reports generated as a result of the Project, but does not include any Project Inventions.

1.9 “Term” means ________ from the Effective Date of this Agreement.

1.10 “WU Deliverables” means Technical Materials, Project Inventions, and WU Confidential Information.

1.11 “WU Principal Investigator” means the WU personnel under whose direction the Project will be conducted, namely, Dr. __________, Professor of ____________, in the Department of _________ at Washington University.

1.12 “WU Project Inventions” means Project Inventions owned solely by WU.

2. PROJECT WORK

2.1 The Parties shall perform the Project in accordance with the Statement of Work. WU Principal Investigator will not materially deviate from the Statement of Work without prior written approval from the CORPORATION.

2.2 In the event that the WU Principal Investigator becomes unable or unwilling to continue the Project, or leaves the employ of WU, WU or CORPORATION each have the option to terminate the Project unless a mutually acceptable substitute can be found within a sixty (60) day period following notice to CORPORATION of the inability of the WU Principal Investigator to continue the Project.

3. REPORTS

Unless provided otherwise in the Statement of Work, the WU Principal Investigator shall issue a detailed report summarizing the results of the Project, including Project Inventions, if any, to the CORPORATION within sixty (60) days after completing the Project and interim reports will be issued to CORPORATION each six (6) month period after the Effective Date, until conclusion of the Term.

4. TECHNICAL MATERIAL
All Technical Material conceived and reduced to practice arising out of the performance of the Project shall be jointly owned by the Parties.

5. INTELLECTUAL PROPERTY

5.1 Ownership of Project Inventions, if any, shall be determined according to inventorship, which shall be determined according to U.S. law. Each Party shall retain its rights to practice its undivided, one-half interest in any Joint Project Inventions or jointly owned Technical Materials without the consent of and without accounting to the other.

5.2 Subject to any rights the U.S. Government may have as a result of funding aspects of the Project, WU grants to CORPORATION: (a) a non-exclusive, worldwide, royalty-free license to make, use, have made, and import WU Project Inventions for CORPORATION’s research purposes only (“Purpose”), and (b) an exclusive option (the “Option”) to obtain an exclusive, worldwide license, with the right to grant sublicenses, to make, use, sell, have made, have sold, offer to sell, and import under WU’s rights in WU Project Inventions and Joint Project Inventions on terms to be negotiated in good faith between the Parties. For the avoidance of doubt, the Purpose does not include the use of the WU Project Inventions in the making, using or selling of any product offered for commercial sale or the performance of any service offered for commercial sale or use involving human subjects in a clinical trial. CORPORATION may exercise the Option by sending written notice to WU at any time within ninety (90) days following the receipt of a written disclosure from WU describing in detail such WU Project Invention (the “Option Period”). If, at the end of the Option Period, CORPORATION has not exercised the Option, or in the event the Parties fail to reach a mutually acceptable licensing arrangement within six (6) months after the Option Period, WU shall be entitled to negotiate with a third party for a license to WU’s rights in WU Project Inventions and/or Joint Inventions.

5.3 Any patent applications necessary to protect the proprietary positions of the Parties in any of the WU Project Inventions and Joint Project Inventions will be prepared and filed by WU jointly in CORPORATION's and WU's names, if a Joint Project Invention, and solely in WU’s name if a WU Project Invention with expenses paid by CORPORATION during the Option Period or until such time as CORPORATION notifies WU in writing that it is waiving the Option. During the Option Period and subject to any rights the U.S. Government may have as a result of funding aspects of the Project, if WU elects not to file or maintain an application or patent arising from any WU Project Invention or Joint Project Invention, WU shall promptly notify CORPORATION, and CORPORATION shall have the right to file or maintain the applications or patents, at CORPORATION's expense.

5.4 CORPORATION hereby grants to WU and WU hereby acknowledges and accepts a fully paid-up, irrevocable, non-exclusive license to use CORPORATION Project Inventions for WU’s research, education and collaboration purposes only.
6. CONFIDENTIALITY

6.1 The Parties acknowledge that, prior to and during the Term of this Agreement, the Parties may disclose to one another scientific, technical, trade secret, business, or other information which is treated by the disclosing Party as confidential (hereinafter referred to as “Confidential Information”). Confidential Information shall specifically exclude Technical Materials. Both Parties agree that in order to ensure that each Party understands which information is deemed to be confidential, all Confidential Information relating to the Project will be in written form and clearly marked as “Confidential,” and if the Confidential Information is initially disclosed in oral or some other non-written form, it will be confirmed and summarized in writing and clearly marked as “Confidential” within thirty (30) days of disclosure. The receiving Party shall hold such Confidential Information in confidence and shall treat such information in the same manner as it treats its own confidential information but not less than with a reasonable degree of care. In recognition that WU is a non-commercial, academic institution, CORPORATION agrees to limit to the extent possible the delivery of CORPORATION Confidential Information to WU. WU retains the right to refuse to accept any such information or data from CORPORATION which it does not consider to be essential to the completion of the Project or which it believes to be improperly designated, for any reason, but such refusal shall not eliminate the obligation of the individual making such a determination from treating such information as confidential hereunder where such information has been read by such individual. The Confidential Information provided to the receiving Party will remain the property of the disclosing Party, and will be disclosed only to those persons necessary for the performance of this Agreement. No indirect or consequential damages or damages based on loss of profits or market share are contemplated or recoverable for breach of confidentiality.

6.2 The obligation of the receiving Party to maintain confidentiality under this Agreement will survive its expiration or termination and will endure for three (3) years from the date of disclosure.

6.3 Confidential Information shall not include information that:

(i) is already known to the receiving Party prior to the effective date, as evidenced by the receiving Party’s records;

(ii) becomes publicly known without the wrongful act or breach of this Agreement by the receiving Party;

(iii) has been or is disclosed to the receiving Party by a third party who was not, or is not, under any obligation of confidence or secrecy to the disclosing Party at the time said third party discloses to the receiving Party, or has the legal right to do so;
(iv) is developed independently by employees of the receiving Party who had no access to or knowledge of the Confidential Information, as evidenced by the receiving Party’s records;

(v) is approved for release by written authorization of the disclosing Party;

(vi) is required to be disclosed by law or governmental regulation or to any governmental entity with jurisdiction, provided the receiving Party promptly notifies the disclosing Party as soon as reasonably practical or possible of receipt of the request, and takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure if requested by the disclosing Party, at the disclosing Party’s sole cost and expense.

7. PUBLICATIONS

7.1 CORPORATION acknowledges that the WU Principal Investigator and other Project Participants have the right and academic duty to publish the Technical Materials and agrees that the WU Principal Investigator and Project Participants will be permitted to present at symposia or professional meetings and to publish in books, journals, and other media of their choosing, any and all Technical Materials. The WU Principal Investigator and other Project Participants will at all time have the first opportunity to publish or present the Technical Materials.

7.2 CORPORATION will be furnished a copy of any proposed publication or a summary of a presentation containing Technical Materials in advance of submission in the case of publication and rendering in the case of presentation. CORPORATION will have thirty (30) days after receipt to review the copy or summary for specific matter which is CORPORATION Confidential Information and provide WU with a written request for removal or revision. If such a request is received within the thirty days, the Parties will have an additional thirty (30) days (a total of sixty (60) days) to agree upon removal or revisions to protect the CORPORATION Confidential Information. Upon completion of this publication process or, if applicable, confidentiality is specifically waived under Article 6, WU shall proceed with publication. CORPORATION shall not encumber publication by WU other than to remove CORPORATION Confidential Information.

7.3 All papers and presentations reporting Technical Material will contain a dignified statement in a form that is customary and appropriate in scholarly journals or presentations for acknowledging that support for such research was provided by CORPORATION.

7.4 CORPORATION will not have an opportunity to change, alter or redact the contents of any student thesis, dissertation, or presentation thereof.
8. ACCOUNTING AND PAYMENT

8.1 CORPORATION will pay WU a total of $_________ US (inclusive of all and any taxes). Such amount shall be paid on a fixed-price basis and CORPORATION agrees that WU will retain residual funds, if any, upon completion of the Project. These payments shall be made as set out below:

8.1.1 Within thirty (30) days of the Effective Date, CORPORATION will pay to WU the sum of $_________US.

8.1.2 CORPORATION will pay to WU the balance of the payments ($_________US) within fifteen (15) days of receiving the detailed report as referenced to in Article 3, provided that the Agreement remains in force at such date.

8.2 Checks shall reference WU Contract Number OTM_____ and will be made payable to Washington University in St. Louis and sent to:
   Washington University
   Sponsored Projects Accounting
   Campus Box 1034
   700 Rosedale Avenue
   St. Louis, MO 63112-1408
   FAX 314-935-4309

8.3 Invoices, if any, will be sent to:

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9. TERM AND TERMINATION

9.1 This Agreement shall become effective on the Effective Date and shall continue in effect for the full duration of the Term unless terminated earlier in accordance with the provisions of this Article. The Parties hereto may, however, extend the Term for additional periods as desired under mutually agreeable terms and conditions.

9.2 In the event that either Party hereto shall commit any breach of or default in any such terms or conditions of this Agreement, and shall fail to remedy such default or breach within thirty (30) days after receipt of written notice thereof from the other Party, the Party giving notice may at its option and in addition to other remedies that it may have at law or in equity terminate this Agreement by sending notice of termination in writing by certified mail to the other Party to such effect. Such termination will be effective as of the date of the receipt of such notice.
9.3 Upon failure of CORPORATION to pay the costs in Article 8 or upon early termination by WU after notice to CORPORATION and failure to cure by CORPORATION, WU shall have no further obligation under this Agreement, whether to provide WU Deliverables to CORPORATION, or otherwise, no later than as of the date of said termination.

9.4 This Agreement and/or the Project to be performed hereunder shall be immediately terminable at any time by CORPORATION upon written notice to WU. Upon notice by CORPORATION, WU shall immediately cease work on the Project, deliver to CORPORATION all work in progress, and return all CORPORATION Confidential Information. Upon termination, CORPORATION’s sole obligations to WU shall be to return all WU Confidential Information and pay any monies due and owing up to the time of termination for work actually performed and all costs reasonably and properly incurred by WU as of the date that termination is effective, including all non-cancelable obligations reasonably and properly entered into for the purposes of the Project, which may include any non-cancelable Project Participant salaries, fellowships or post-doctoral stipends, and other non-cancelable executory obligations reasonably and properly incurred by WU in furtherance of Project, subject to WU taking reasonably steps to mitigate and minimize such costs and subject to CORPORATION's maximum liability not exceeding any unpaid balance of the $XXXXX US as referred to in Article 8.1.

10. REPRESENTATIONS AND WARRANTIES; LIABILITY.

10.1 WU represents and warrants that:

(i) it is a corporation organized, existing and in good standing under the laws of Missouri;

(ii) it has the authority to enter into this Agreement and that the person signing this Agreement on its behalf has the authority to do so;

(iii) the making or performance of this Agreement would not violate any separate agreement it has with any other person or entity; and

(iv) it is not a Party to any agreement or arrangement that would prevent it from performing its duties and fulfilling its obligations to CORPORATION under this Agreement.

10.2 CORPORATION represents and warrants that:

(i) It is a corporation duly organized, existing and in good standing under the laws of XXXXX.

(ii) it has the authority to enter into this Agreement and that the person signing
this Agreement on behalf of CORPORATION has the authority to do so;

(iii) the making or performance of this Agreement would not violate any separate agreement it has with any other person or entity; and

(iv) it is not a Party to any agreement or arrangement that would prevent it from performing its duties and fulfilling its obligations to WU under this Agreement.

10.3 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, EVERYTHING PROVIDED BY WU UNDER THIS AGREEMENT IS UNDERSTOOD TO BE EXPERIMENTAL IN NATURE, MAY HAVE HAZARDOUS PROPERTIES, AND IS PROVIDED WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF ANY THIRD-PARTY PATENT, TRADEMARK, COPYRIGHT OR ANY OTHER THIRD-PARTY RIGHT. WU MAKES NO WARRANTIES REGARDING THE QUALITY, ACCURACY, COMMERCIAL VIABILITY OR ANY OTHER ASPECT OF ITS PERFORMANCE PURSUANT TO THIS AGREEMENT OR REGARDING THE PERFORMANCE, VALIDITY, SAFETY, EFFICACY OR COMMERCIAL VIABILITY OF ANYTHING PROVIDED BY WU UNDER THIS AGREEMENT. IN NO EVENT SHALL WU OR CORPORATION BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, WHETHER IN BREACH OF CONTRACT, TORT OR OTHERWISE, EVEN IF THE PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR THEIR RESPECTIVE INDEMNITY OBLIGATIONS, EACH OF WU’S AND CORPORATION’S AGGREGATE LIABILITY TO THE OTHER UNDER THIS AGREEMENT SHALL NOT EXCEED THE PAYMENTS MADE OR PAYMENTS DUE UNDER THIS AGREEMENT, RESPECTIVELY.
11. INDEMNIFICATION

11.1 Notwithstanding anything else in this Agreement, CORPORATION agrees to indemnify, defend and hold harmless WU, WU personnel, the principal investigator, WU’s Affiliates, and each of their respective present trustees, faculty, staff, employees, students, directors, officers, agents, successors and assigns (altogether the “WU Indemnitees”) from, for and against any and all judgments, settlements, losses, expenses, damages and/or liabilities (“Losses”) and any and all court costs, attorneys’ fees, and expert witness fees and expenses (“Fees”) that a WU Indemnitee may incur from any and all allegations, claims, suits, actions or proceedings (the “Claims”) arising out of, relating to, or incidental to CORPORATION’s breach of this Agreement or its use, commercialization, or other exploitation of WU Deliverables, whether by or through CORPORATION, and including all Claims for infringement, injury to business, personal injury and product liability, but excluding Losses, not Fees, to the extent they are adjudicated by a Court of competent jurisdiction to be caused by the gross negligence or willful misconduct of a WU Indemnitee.

11.2 Obligations set forth in this section shall survive termination of this Agreement, shall continue even after assignment of rights and responsibilities, and shall not be limited by any provision of this Agreement outside this section. If WU seeks indemnification under this Agreement, WU shall: (a) give the CORPORATION prompt written notice of any Claim; (b) cooperate with the CORPORATION, at CORPORATION’s expense, in connection with the defense and settlement of the Claim; and (c) not settle or compromise the Claim without the written consent of CORPORATION, which shall not be unreasonably withheld. CORPORATION may satisfy its duty to indemnify for Fees by accepting an irrevocable duty to defend the Claim on behalf of WU Indemnitees without a reservation of rights, at which time CORPORATION shall be entitled to conduct and direct the defense of WU Indemnities against such Claim using attorneys of its own selection; for all other Claims, WU shall be entitled to conduct and direct its own defense and that of other WU Indemnities using attorneys of its own selection with Fees subject to CORPORATION’s ongoing obligation to indemnify for Fees.

12. INSURANCE

12.1 Throughout the Term of this Agreement and for a period of five (5) years thereafter, CORPORATION shall obtain and maintain workers-compensation and comprehensive general liability self-insurance or insurance, with carrier(s) having at least A.M. Best ratings/class sizes of A/VII, with financial reserves or coverage limits sufficient to support CORPORATION’s obligations under this Agreement.

13. GENERAL PROVISIONS

13.1 Import/Export Controls. In performing their respective obligations under the Agreement, the Parties will comply with United States export control and asset control
laws, regulations, and orders, as they may be amended from time to time, applicable to the export or re-export of goods or services, including software, processes, or technical data. Such regulations include without limitation the Export Administration Regulations (“EAR”), International Traffic in Arms Regulations (“ITAR”), and regulations and orders administered by the Treasury Department’s Office of Foreign Assets Control (collectively, “Export Control Laws”). WU makes no representation regarding the export control status or classification of any information or materials provided hereunder.

13.2 **Entire Agreement; Amendment.** This Agreement embodies the entire understanding of the Parties and supersedes all other past and present communications and agreements relating to the subject matter. No amendment or modification of this Agreement shall be valid unless made in writing and signed by authorized representatives of both Parties.

13.3 **Governing Law, Jurisdiction and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, without regard to its rules or procedures involving conflicts of laws. All actions relating to this Agreement shall be brought exclusively in the United States District Court for the Eastern District of Missouri or the Circuit Court of St. Louis County, Missouri, if no federal subject matter jurisdiction exists. The Parties irrevocably waive all present and future objections to personal jurisdiction, forum or venue in such courts.

13.4 **Survival.** Each provision of this Agreement that would by its nature or terms survive, shall survive any termination or expiration of this Agreement, regardless of the cause. Such provisions include, without limitation, Sections 6, 9.4, 10, 11, 12, and 13.

13.5 **Notices.** Notices pursuant to this Agreement shall be to the following contacts and are effective when sent if sent by a commercial carrier’s overnight delivery service or when received if sent otherwise:

To WU:
Office of Sponsored Research Services
Washington University
Attn: Director
4240 Duncan Ave., Suite 300, CB1054
St. Louis, MO 63110

To CORPORATION:

13.6 **Assignment.** This Agreement is binding upon and inures to the benefit of the Parties and their successors, but this Agreement may not be assigned by either Party without the prior written consent of the other Party.

13.7 **Construction.** The recitals and preamble to this Agreement, if any, are hereby incorporated as an integral part of this Agreement as if restated herein in full. Headings are included for convenience and reference only and are not incorporated as an integral
part of this Agreement. This Agreement may be executed in any number of counterparts each of which shall be deemed an original and as executed shall constitute one agreement, binding on both Parties, even though both parties do not sign the same counterpart.

13.8 **Relationship of the Parties.** Each Party is an independent contractor and not a partner or agent of the other Party. This Agreement will not be interpreted or construed as creating or evidencing any partnership or agency between the Parties or as imposing any partnership or agency obligation or liability upon either Party. Further, neither Party is authorized to, and will not, enter into or incur any agreement, contract, commitment, obligation or liability in the name of or otherwise on behalf of the other Party.

13.9 **Severability.** If any provision in this Agreement is held invalid, illegal, or unenforceable in any respect, such holding shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if it had never contained the invalid, illegal, or unenforceable provisions.

13.10 **Remedies.** The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement, or to exercise any right or remedy under this Agreement will not be interpreted or construed as a waiver or relinquishment of that Party's right to assert or rely upon any such provision, right or remedy in that or any other instance; rather, the same will be and remain in full force and effect. All rights and remedies under this Agreement are cumulative of every other such right or remedy and may be exercised concurrently or separately from time-to-time.

13.11 **Use of Names.** Neither Party may use the trademarks or name of the other Party or its employees for any commercial, advertisement, or promotional purposes without the prior written consent of an authorized corporate office of the other.

13.12 **Force Majeure.** Neither WU nor CORPORATION will be liable for failure of or delay in performing obligations set forth in this Agreement, and neither will be deemed in breach of its obligations, other than for Payments, if such failure or delay is due to natural disasters or other causes reasonably beyond the control of a Party and reasonable notice of the delay is provided to the other Party.

13.13 **WUSTL Personnel.** CORPORATION agrees that for all WU faculty or staff members who serve CORPORATION in the capacity of consultant, officer, employee, board member, advisor, or otherwise through a personal relationship with CORPORATION (a “Consultant”) (i) such Consultant shall serve the CORPORATION in his or her individual capacity, as an independent contractor, and not as an agent, employee or representative of WU; (ii) WU exercises no authority or control over such Consultant while acting in such capacity; (iii) WU receives no benefit from such activity; (iv) neither CORPORATION nor the Consultant may use WU resources in the course of such service; (v) WU makes no representations or warranties regarding such service and otherwise assumes no liability or obligation in connection with any such work or service undertaken by such Consultant; and (vi) any breach, error, or omission by a Consultant
acting in the capacity set forth in this paragraph shall not be imputed or otherwise attributed to WU, and shall not constitute a breach of this Agreement by WU.

13.14 **Further Acts.** Each Party shall, at the reasonable request of the other, execute and deliver to the other such instruments and/or documents and shall take such actions as may be required to more effectively carry out the terms of this Agreement.

13.15 **Impact on Tax-Exempt Status.** WU advises (a) that it is exempt from federal income tax under Section 501(c) (3) of the Internal Revenue Code, (b) that maintenance of such exempt status is of critical importance to WU and to its members, and (c) that WU has entered into this Agreement with the expectation that there will be no adverse impact on its tax exempt status. As such, and if it becomes necessary, the Parties agree to amend, modify or reform this Agreement as necessary (i) in order to ensure that there is no material adverse impact on WU's tax exempt status, and (ii) in a manner that preserves the economic terms of the Agreement as such are set forth in this Agreement.

The signatures of the undersigned indicate that they have read, understand and agree with the terms of this Agreement and have the authority to execute this Agreement on behalf of their represented Party and to bind their Party to all the terms of this Agreement.

For WU

By: ___________________________
Title: _________________________
Date: _________________________

For CORPORATION

By: ___________________________
Name: _________________________
Title: __________________________
Date: _________________________
Attachment A

Material

Research Plan

Budget