

GEORGIA TECH RESEARCH CORPORATION
Specialized Services Agreement

Project No. _____

THIS AGREEMENT is made by and between **GEORGIA TECH RESEARCH CORPORATION**, a Georgia corporation, having principal offices at 505 Tenth Street NW, Atlanta, Georgia 30332-0420 ("GTRC") _____, having an office and place of business at _____ ("COMPANY").

In consideration of the mutual promises and covenants herein contained and intending to be legally bound, we agree as follows:

Section 0. Preamble.

The purpose of this Agreement is to provide terms and conditions that GTRC and COMPANY (individually "Party", collectively "Parties") agree to apply to the performance of specialized services under this Agreement.

Further, the Parties understand and agree that the terms and conditions of this Agreement are specific to this Agreement and the specialized services described in the Statement of Work and will not necessarily be used as precedent for any other sponsored research agreement that the Parties may enter into in the future.

Section 1. Term.

1.1 GTRC will perform the specialized services (the "Services"), as described in Exhibit A (incorporated herein by reference), beginning on _____ (the "Effective Date") and continuing for until and through _____. The Services will be performed by employees, independent contractors, visiting scholars, consultants and/or student assistants of the Georgia Institute of Technology ("Staff Members").

Section 2. Payment; Contract Cost Limitation.

2.1 COMPANY will pay GTRC the actual direct and indirect costs incurred by GTRC in the performance of the Services. GTRC reserves the right to modify its direct and indirect rates effective July 1, each year.

2.2 GTRC will submit its monthly invoices to COMPANY on or about the twentieth day of each month. COMPANY will pay each invoice within thirty days of the invoice date. Any invoice not paid within thirty days of the invoice date will be considered delinquent and subject to one and one half percent (1.5%) per month fee for each month or fraction thereof, until payment is received.

2.3 COMPANY agrees to pay up to _____ Dollars (\$_____) ("Contract Cost Limitation") for the Services. GTRC will not invoice COMPANY for any amount in excess of the Contract Cost Limitation without first obtaining COMPANY's approval. COMPANY will make payments to:

Georgia Tech Research Corporation
P. O. Box 100117
Atlanta, Georgia 30384-0117

For electronic payments:

Georgia Tech Research Corporation
c/o Bank of America
600 Peachtree Street, NE
Atlanta, GA 30308

Account No. 0100825661
Routing Transit No. 061000052

2.4 GTRC may choose to discontinue performance of the Services if COMPANY fails to pay any GTRC invoice within the time specified in Section 2.2. GTRC will not be obligated to incur costs in excess of the Contract Cost Limitation.

Section 3. Reports.

3.1 GTRC will provide COMPANY a final report summarizing the results of the Services (“Final Report”).

Section 4. Publicity.

4.1 Each Party agrees not to authorize or commission the publication of any promotional materials containing any reference to the other Party without the prior written approval of the other Party; provided, however, that GTRC and the Georgia Institute of Technology (“GIT”) may include COMPANY’s name and project title in listings of research sponsors. The provisions of this Section shall survive termination of this Agreement.

Section 5. Intellectual Property.

5.1 GTRC hereby grants to COMPANY the right, title and interest to the data or test results generated during the performance of the Services and contained in the Final Report.

5.2 Title to all other intellectual property developed by Staff Members including, without limitation, any inventions and discoveries conceived or first reduced to practice, all computer software, works, and material developed in the course of performance of the Services, whether or not protectable by patent or copyright, will reside in GTRC.

5.3 Subject to Section 7 hereunder and notwithstanding anything to the contrary contained herein, COMPANY hereby grants to GTRC and GTRC reserves for itself and GIT an irrevocable, fully paid-up, worldwide, nonexclusive, royalty-free license in and to the data and test results developed hereunder for educational and research and development purposes, whether alone or with a third party.

Section 6. Publication.

6.1 GTRC and GIT may catalog and place reports of the Services in the GIT Library as to ensure that such results are available to the interested public, and they may issue publications based on the Services and use any results non-proprietary to COMPANY in their research and educational programs. GTRC will give COMPANY an opportunity for thirty (30) days prior to any proposed presentation or submission of any publication to review such publication or presentation and, if necessary, request GTRC to delete any reference to COMPANY’s proprietary information included in the publication. Furthermore, COMPANY shall have the right to request a delay in publication for up to thirty (30) additional days, if necessary, to allow for filing of patents if such publication contains patentable subject matter. COMPANY’s right of review under this Section shall terminate twelve (12) months from completion of the Services. In no event shall any of COMPANY’s proprietary information be included in any publication without written authorization from COMPANY.

Section 7. Proprietary Information and Confidentiality.

7.1 In the course of performing the Services, COMPANY may disclose to GTRC COMPANY Proprietary Information. “COMPANY Proprietary Information” means any data or information having commercial value which may include but not be limited to data, databases, product plans, strategies, forecasts, research procedures, marketing techniques and materials, customer names and other information related to customers, price-lists, pricing policies and financial information which COMPANY considers sensitive and which is not generally known to the public.

7.2 GTRC agrees to hold in confidence and not disclose any and all COMPANY Proprietary Information received from COMPANY hereunder. The confidentiality obligations of GTRC shall extend for three (3) years from the Effective Date. Unless otherwise permitted by separate written agreement, GTRC shall use the COMPANY Proprietary Information only for and to the extent required to perform the Services. GTRC shall only disclose the COMPANY Proprietary Information to those Staff Members that have a legitimate business need for such information and only for and to the extent required to perform the Services. Notwithstanding the foregoing, GTRC may disclose COMPANY Proprietary Information to GIT provided that GIT is obligated to GTRC under terms at least as restrictive as those contained in this Agreement not to disclose COMPANY Proprietary Information to any other third party.

7.3. Written information exchanged hereunder shall be clearly marked with an appropriate stamp or legend "Proprietary Information." Markings such as "In Confidence", "Proprietary", or "COMPANY Use Only" shall be sufficient. Non-written information exchanged hereunder shall only be considered Proprietary Information if, at the time of such disclosure, the Proprietary Information being disclosed is identified as proprietary and the COMPANY provides GTRC with a written notice that clearly identifies the nature and content of the disclosed information within thirty (30) days after such disclosure.

7.4 GTRC will not be liable to the COMPANY for the disclosure of Proprietary Information that:

- a. is published or otherwise in the public domain through no fault of GTRC; or
- b. can be demonstrated by GTRC to have been in its possession prior to receipt under this Agreement; or
- c. is obtained by GTRC without restriction from a third party; or
- d. is independently developed by GTRC by individuals who have not had either direct or indirect access to such information; or
- e. is disclosed by GTRC to a third party with the written approval of the COMPANY without any restriction; or
- f. is obligated to be disclosed by order of a court of competent jurisdiction.

7.5 GTRC shall, at COMPANY's written request or upon expiration or upon termination of this Agreement, promptly return or destroy all materials, and/or samples furnished under this Agreement, including all copies thereof. GTRC shall have the right to retain one (1) copy of such written information in its files for record purposes only.

Section 8. Disclaimer.

8.1 GTRC AND GIT DISCLAIM ANY AND ALL WARRANTIES BOTH EXPRESS AND IMPLIED WITH RESPECT TO THE SERVICES TO BE PERFORMED HEREUNDER AND ANY DELIVERABLES (INCLUDING COPYRIGHTABLE DELIVERABLES) RESULTING THEREFROM, INCLUDING THEIR CONDITION, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS THEREIN, AND THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, VALIDITY OF ANY INTELLECTUAL PROPERTY RIGHTS OR CLAIMS, OR NONINFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

Section 9. Limitation of Liability.

9.1 The cumulative liability of GTRC to COMPANY for all claims, demands or actions arising out of or relating to this Agreement, the Services to be performed hereunder and any deliverables resulting therefrom, will not exceed the total amount paid to GTRC hereunder during the twelve (12) months immediately preceding such claim, demand or action. Without limiting the foregoing, in no event shall GTRC be liable for any business expense, machine down time, loss of profits, any incidental, special, exemplary or consequential damages, or any claims or demands brought against COMPANY or COMPANY's customers even if GTRC has been advised of the possibility of such claims and demands. The foregoing limitation of

liability will survive any termination of this Agreement and will apply without regard to any other provision of this Agreement which may have been breached or have been proven ineffective.

Section 10. Termination.

10.1 Either Party may terminate this Agreement for any reason upon thirty (30) days written notice to the other.

10.2 COMPANY will pay GTRC any costs which have accrued or been encumbered up to the actual date of termination under this Section and COMPANY will not be relieved of the obligation to pay those costs because of a termination under this Section.

Section 11. Export Control.

11.1 COMPANY understands and agrees that any and all information provided or exchanged shall be in compliance with all applicable United States export control laws (EAR/ITAR) including “deemed exports”. The transfer of certain technical data and commodities may require a license from a government agency or written assurances by COMPANY that COMPANY will not re-export data or commodities to foreign countries without prior approval of the appropriate U.S. Government Agency. GTRC agrees to cooperate with COMPANY in securing any such license necessary in connection with this Agreement.

11.2 Deemed export means any release of technology to a foreign national within the United States. Technology is released for export when it is (i) made available to foreign nationals for visual inspection, (ii) exchanged orally, or (iii) made available by practice or application under the guidance of persons with knowledge of the technology. The obligations of this section shall survive any expiration or termination of this Agreement.

Section 12. Miscellaneous.

12.1 All notices and other communication given under this Agreement will be effective five (5) days following deposit in the United States mail, postage prepaid and addressed to the parties at their respective addresses set forth below unless by a previous notice a different person or address has been designated.

To GTRC for administrative matters: **To COMPANY for administrative matters:**

Georgia Tech Research Corp.
505 Tenth Street NW
Atlanta, Georgia 30332-0420
Attn: _____
Phone: _____
Fax: _____
Email: _____

Attn: _____
Phone: _____
Fax: _____
Email: _____

To GTRC for technical matters: **To COMPANY for technical matters:**

Georgia Tech Research Corp.
Georgia Institute of Technology
Atlanta, Georgia 30332-0420
Attn: _____
Phone: _____
Fax: _____
Email: _____

Attn: _____
Phone: _____
Fax: _____
Email: _____

12.2 GTRC and COMPANY are and will remain independent contractors and nothing herein will be construed to create a partnership, agency or joint venture between the Parties for federal and state law purposes. Each Party will be responsible for wages, hours and conditions of employment of its respective personnel during the term of, and under, this Agreement.

12.3 All questions concerning the validity, operation, interpretation and construction of this Agreement will be governed by and determined in accordance with the laws of the State of Georgia.

12.4 The Parties irrevocably and exclusively submit to the jurisdiction of the state and federal courts of or for the State of Georgia, including the related appellate courts in any such action or proceeding and waive any rights to a jury trial. Personal jurisdiction over the Parties may be obtained by the mailing (postage prepaid) of a summons or similar legal document to the Party's address for notices under this Agreement.

12.5 No waiver by either Party of any breach of any provision hereof will constitute a waiver of any other breach of that provision or of any other provision hereof.

12.6 This Agreement sets forth the entire agreement and understanding between GTRC and COMPANY and merges all prior discussions between the Parties pertaining to the subject matter hereof; and neither Party will be bound by any conditions, definitions, warranties, understandings or representations with respect to the subject matter hereof except as expressly provided herein or in writing. This Agreement may not be modified or altered except by a written document executed by authorized representatives of both Parties. No provision contained in any standard form document issued by COMPANY, including but not limited to any purchase order or confirmation order, will be applicable, even if signed by the Parties, unless the Parties also execute a separate document expressly modifying this Agreement to include such provisions.

IN WITNESS WHEREOF, this Agreement has been duly executed by our duly authorized representatives on the day and year set forth below.

**GEORGIA TECH RESEARCH
CORPORATION**

By: _____
Typed Name: _____
Title: _____
Date: _____

By: _____
Typed Name: _____
Title: _____
Date: _____

By: _____
Typed Name: _____
Title: _____
Date: _____

EXHIBIT A