

VISITING INDUSTRIAL SCIENTIST AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 20__ by and between Rutgers, The State University of New Jersey having its principal place of business at New Brunswick, New Jersey 08901-1281 (hereinafter referred to as RUTGERS or UNIVERSITY) and _____, having its principal place of business at _____ (hereinafter referred to as COMPANY) to govern the duties and responsibilities of the Visiting Industrial Scientist Program.

WHEREAS the RUTGERS _____ (hereinafter referred to as _____) has been set up as an Advanced Technology Center to create and maintain a world-class center in _____ in New Jersey; and

WHEREAS _____ wishes to enhance collaboration with companies interested in related research activities and to provide access for industrial scientists to the publicly funded research facilities; and

WHEREAS this objective can be accomplished by accepting industrial researchers as Visiting Scientists for designated residency periods;

NOW THEREFORE, in consideration of the premises and mutual promises and covenants herein contained, the parties hereto agree as follows:

1. The Director of _____, Dr. _____ will appoint _____ an employee of the COMPANY, as a visiting industrial scientist (hereafter referred to as Visiting Scientist) at _____ for a period of ___ year(s) commencing _____ to undertake the program of core research described in Exhibit A.
2. Dr. _____ will act as Faculty Mentor, sponsor, advisor, and collaborator to the Visiting Scientist during her/his appointment.
3. During the appointment period, the Visiting Scientist will remain an employee of the COMPANY which shall be responsible for all compensation and employee benefits before, during, and after the period of residency, including insurance.
4. During the residency period, the Visiting Scientist shall be subject to all rules and regulations, including safety rules and practices, governing the conduct of _____ Resident Faculty Members, and shall be responsible for exercising due care in use of _____ facilities and property.
5. COMPANY agrees to indemnify, defend and hold harmless RUTGERS, its employees and agents against any liability, damages, loss or expense (including reasonable attorney fees and expenses of litigation) arising out of the actions of the COMPANY, its employees or any Third Party acting on behalf or under authorization from COMPANY while on RUTGERS' premises; in the performance of this AGREEMENT; or as the result of any products

developed or made as a result of information or materials received from RUTGERS.

Without limiting the foregoing, COMPANY agrees to defend, indemnify and hold harmless RUTGERS from all liabilities, demands, damages, expenses and losses (including reasonable attorney fees and expenses of litigation) arising out of the use by COMPANY, or by any party acting on behalf of or under authorization from COMPANY, of RUTGERS authorized technical information or out of any use, sale or other disposition by COMPANY, or by any party acting on behalf of or under authorization from COMPANY, of products made by use of RUTGERS authorized technical information. The provisions of this paragraph shall survive termination of this AGREEMENT.

6. The COMPANY shall pay the UNIVERSITY the fee of \$_____ as detailed in the budget attached as Exhibit B. This fee shall include the use by the Visiting Scientist of all _____ and UNIVERSITY facilities, supplies, and all secretarial and technical assistance furnished by UNIVERSITY employees to the Visiting Scientist. All indirect costs shall be included in the fee which shall be paid in full before the Visiting Scientist commences his/her period of residency at _____. All equipment purchased under this AGREEMENT shall be and remain the property of the UNIVERSITY.

7. In the course of the research program to be undertaken by the Visiting Scientist, it may be necessary for the parties to exchange confidential information. The UNIVERSITY and the COMPANY, therefore, agree to maintain in confidence for a period of three (3) years from the date of termination of this AGREEMENT all information received from the other party which is, at the time of disclosure, designated in writing by the disclosing party to be proprietary information of the disclosing party. Disclosure may be in writing or by oral disclosure confirmed in writing within thirty (30) days of the date of oral disclosure. Each party will use the same level of care to prevent the use or disclosure of any information received under this AGREEMENT as it exercises in protecting its own information of a similar nature. Such obligation of confidentiality shall not apply to any information which, at the time of disclosure, was in the possession of the receiving party, was generally available to the public or thereafter becomes generally available to the public through a source other than the receiving party, was rightfully obtained from a third party, or was developed by or for the receiving party independent of any disclosure under this AGREEMENT.

8. The Visiting Scientist agrees to maintain a Research Notebook of Visiting Scientist's research projects and disclose to the Director of _____ any discovery or Intellectual Property, whether patentable or not, developed during the period of residency at _____. The Director of _____ will in turn notify the UNIVERSITY. Such Research Notebook shall be the property of RUTGERS.

9. Intellectual Property, whether or not capable of being protected by patents or copyrights, developed by the Visiting Scientist during his/her residency at _____ shall be assigned to and remain solely the property of the UNIVERSITY. However, the UNIVERSITY agrees to grant the COMPANY a first right to negotiate a world-wide, royalty-bearing license (at rates which will be determined at time of licensing) for rights to the Intellectual Property. Such

first right to negotiate a license must be exercised within sixty (60) days following the notification by the UNIVERSITY to the COMPANY that such Intellectual Property is available for license. Such negotiations and execution of a license agreement shall be concluded within six (6) months thereafter. If the COMPANY decides not to take a license to such Intellectual Property or fails to negotiate a license in good faith, the UNIVERSITY shall then be free to license it to a third party.

In consideration of the payment made by the COMPANY to the UNIVERSITY in connection with the _____ Visiting Scientist Program, no fees shall be imposed on the COMPANY as a condition for the granting of such option. If the COMPANY decides to license the Intellectual Property, a separate License AGREEMENT shall be executed which shall require that the UNIVERSITY be reimbursed for all reasonable expenses incurred in the patenting or copyrighting of the licensed Intellectual Property both past and future, and that the COMPANY exercise due diligence in commercializing the product.

10. The COMPANY agrees to permit the UNIVERSITY to review any data, results, manuscripts, or other information pertaining to the Program prior to any publication thereof, and to delay said publication for up to three (3) months if required for preparation of patent applications. COMPANY further agrees to either acknowledge or refrain from identifying UNIVERSITY in any such publication, as requested in writing. Further, if UNIVERSITY objects to the inclusion in any such publication of any proprietary information, such proprietary information shall be excluded from such publication by COMPANY.

11. RUTGERS MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE AVAILABILITY OR CONDITION OF THE UNIVESITY RESEARCH LABORATORIES OR COLLABORATIVE RESEARCH OR ANY INVENTION(S) OR PRODUCT(S), WHETHER TANGIBLE OR INTANGIBLE, CONCEIVED, DISCOVERED, OR DEVELOPED UNDER THIS AGREEMENT BY UNIVESITY AND USED BY COMPANY; OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE UNIVERSITY RESEARCH OR ANY RESULTING INVENTION OR PRODUCT. RUTGERS SHALL NOT BE LIABLE FOR ANY DIRECT, CONSEQUENTIAL, OR OTHER DAMAGES SUFFERED BY ANY COMPANY OR LICENSEE OR ANY OTHERS RESULTING FROM THE USE OF ANY RUTGERS FACILITIES, EQUIPMENT OR RESEARCH RESULTS OR ANY SUCH INVENTION OR PRODUCT.

RUTGERS MAKES NO REPRESENTATION OR WARRANTY REGARDING ACTUAL OR POTENTIAL INFRINGEMENT OF PATENTS OR COPYRIGHTS OF THIRD PARTIES, AND COMPANY ACKNOWLEDGES THAT THE AVOIDANCE OF SUCH INFRINGEMENT IN THE DESIGN, USE AND SALE OF PRODUCTS AND PROCESSES RELATED TO THIS RESEARCH PROJECT SHALL REMAIN THE RESPONSIBILITY OF COMPANY.

12. The obligations of the parties under paragraphs 5 through 11, inclusive, shall survive termination of this AGREEMENT.

13. This AGREEMENT may be terminated by either the UNIVERSITY or the COMPANY by providing thirty (30) days written notice by certified mail to the other party. If terminated by the UNIVERSITY, the fee paid by the COMPANY shall be refunded on a pro rata basis, except for noncancellable items. Each part of a calendar month shall count as a full month for the purpose of calculating the refund.

If the AGREEMENT is terminated by the COMPANY, or if the Visiting Scientist does not complete the specified period of residence at _____, the fee shall be nonrefundable. The COMPANY may propose a substitute Visiting Scientist. However, such substitute must be acceptable to both the Director of _____ and the Faculty Mentor.

Upon termination, COMPANY agrees to submit to RUTGERS the original copy of the Research Notebook and any other written documentation pertinent to the Visiting Scientist's research performed under this AGREEMENT.

14. This AGREEMENT constitutes the entire AGREEMENT and understanding between the UNIVERSITY and the COMPANY and supercedes and cancels any and all prior oral or written understanding and AGREEMENT. No modifications, amendments, or waiver of any provision of this AGREEMENT shall be valid unless in writing and signed by duly authorized officers or representatives of the UNIVERSITY and the COMPANY.

15. This AGREEMENT shall be construed and interpreted in accordance with the laws of the State of New Jersey, without regard to its conflict of laws provisions.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be signed by their duly authorized representatives.

**RUTGERS, THE STATE UNIVERSITY
OF NEW JERSEY**

By: _____
Name: William T. Adams
Title: Director, OTC
Date: _____

THE COMPANY

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