

COLLABORATIVE RESEARCH AGREEMENT

THIS AGREEMENT is made as of _____ by and between Monterey Bay Aquarium Research Institute, a California nonprofit public benefit corporation, having its principal office in Moss Landing, California ("MBARI"), and a[n] _____ having its principal place of at _____ ("Collaborator").

WHEREAS, MBARI and Collaborator desire to perform certain research work and are willing to: (select all that apply.)

have certain employees directly collaborate
provide MBARI with access to proprietary research materials
receive from MBARI certain proprietary research materials.

WHEREAS, the performance of collaborative research is consistent with the research objectives of MBARI;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, MBARI and Collaborator agree as follows:

1. DEFINITIONS

As used in this Agreement, capitalized terms have the meanings given them below or elsewhere in this Agreement:

- 1.1. Research Materials means those experimental materials one party may provide the other in connection with and as stated in the Research Program.
- 1.2. Research Program means the research program set forth in Exhibit A.
- 1.3. Research Program Invention will mean any invention, discovery, work of authorship, software, information or data, patentable or unpatentable, that is conceived, discovered and reduced to practice in performance of the Research Program.

- 1.4. Confidential Information means certain information of a confidential nature, including but not limited to scientific, business or financial information, which will be clearly marked as such in writing provided that such information:
- 1.4.1. is not publicly known or available from other sources who are not under a confidentiality obligation to the source of the information;
 - 1.4.2. has not been made available by its owners to others without a confidentiality obligation;
 - 1.4.3. is not already known by or available to the receiving party without a confidentiality obligation;
 - 1.4.4. is not independently developed by the receiving party.

2. RESEARCH PROGRAM

- 2.1 Research Efforts. Provided Collaborator performs all its obligations under this Agreement, MBARI will use its reasonable efforts to conduct those activities for which it is responsible under the Research Program. Collaborator shall conduct its activities at MBARI in conformity with applicable MBARI policies, including MBARI's policies on Intellectual Property, Safety, and Information Systems Usage. All parties in this collaboration agree to comply in strict accordance with all applicable U.S. export laws and regulations, including, but not limited to, the International Traffic in Arms Regulations and the Export Administration Regulations.
- 2.2 MBARI Primary Contact. The conduct of MBARI's activities under the Research Program will be under the direction of _____ ("MBARI's Primary Contact").
- 2.3 Collaborator's Primary Contact. The conduct of Collaborator's activities under the Research Program will be under the direction of _____ ("Collaborator's Primary Contact").
- 2.4 Use of Research Materials. Any Research Materials of one party transferred to the other party in connection with the Research Program may only be used as stated in the Research Program. Unless the parties agree otherwise, Research Materials are to be considered the "Confidential Information" of the party providing them. The parties provide these Research Materials "as is", with no warranty, express or implied, of the data quality or consistency. The Research Materials are provided

without support and without obligation on the part of the providing party to assist in their use, correction, modification, or enhancement. Usage is limited to research activities only; written permission must be obtained for all other uses (including peer-reviewed publication, supplementary media posting to publisher's or other websites or video channels, other data repositories, news releases, internet blogs, etc.) of these Research Materials for the Project in either their original or any derivative form (e.g., video subsample, cropped images, etc.).

- 2.5 Reporting. The parties will generally keep one another informed of the results of the work performed in connection with the Research Program, principally through their respective Primary Contacts. In addition, the parties' respective Primary Contact will meet and provide reports as stated in the Research Program.
- 2.6 Changes to the Research Program. During the course of the Research Program, either or both of the Primary Contacts may find it advantageous to modify the Research Program. Any modifications will be documented and formalized in a written amendment to this Agreement and any such amendment will become effective only if signed by an authorized representative of both parties to this Agreement.
- 2.7 MBARI Purposes; Use of Facilities; No Guarantee of Results. Collaborator acknowledges that the primary mission of MBARI is scientific research and public education and the advancement of knowledge; and, consequently, the Research Program will be performed in a manner best suited to carry out that mission. Specifically, MBARI's Primary Contact will determine the manner of performance of MBARI's part in the Research Program and MBARI does not represent or warrant that the Research Program will be successful in any way or that any specific results will be obtained.
- 2.8 Similar Research. Nothing in this Agreement will be construed to limit the freedom of either party or its researchers who are participants under this Agreement, from engaging in similar research made under other grants, contracts, or research agreements with parties other than the collaborating party hereto.

3. PROPRIETARY INFORMATION

- 3.1 Either party's acceptance and use of any Proprietary or Confidential Information supplied by the other party in the course of the Research Program will be subject to the provisions hereunder.

- 3.2 The parties acknowledge that, in the course of participation in the Research Program, they may have access to certain trade secrets, copyrights, patents or other proprietary information of each other's institutions, including, without limitation, its audiovisual and other recordings, techniques, processes, formulae, innovations, inventions, discoveries, specifications, data, analyses, know-how, and formats ("Proprietary Information"). The parties agree to preserve in strictest confidence all such Proprietary and Confidential Information during the Research Program and as long thereafter as any such information is proprietary to its respective owner. Each party acknowledges that it will acquire no rights in any Proprietary or Confidential Information of the other party by reason of participation in the Research Program.
- 3.3 Notwithstanding any other provision of this Agreement, the parties shall keep confidential and will not disclose to any third party, or make use of, the Proprietary or Confidential Information except in the course of their participation in the Research Program. No party will cause the reproduction of Proprietary or Confidential Information or its transmission, removal, or transport from the respective owner's place of business without the prior written consent of the owning party. Each party acknowledges that the unauthorized disclosure of Proprietary or Confidential Information may be highly prejudicial to the other party's privacy and other interests, as well as an improper disclosure of trade secrets.

4. PUBLICITY

- 4.1 Neither party will identify the other party in any products, publicity, promotion, promotional advertising, or other promotional materials to be disseminated to the public, or use any trademark, service mark, trade name, logo, or symbol that is representative of a party or its entities, whether registered or not, or use the name, title, likeness, or statement of the other party's employee, without the other party's prior written consent. Any use of a party's name shall be limited to statements of fact and shall not imply endorsement of products or services.

5. PUBLICATION

- 5.1 The basic objective of research activities at MBARI is the generation of new knowledge and its expeditious dissemination for the public's benefit. Collaborator will provide all reasonable cooperation with MBARI in meeting this objective.

5.2 As a matter of basic research policy, each party retains the right at its discretion to publish freely any results of the Research Program. Thirty (30) days prior to submission for publication of any research resulting from the Research Program, the collaborating researchers shall provide a copy of the proposed publication to both MBARI and Collaborator's institution for review:

5.2.1 To ascertain whether Confidential Information would be disclosed by the publication;

5.2.2 To identify any potentially patentable Research Program Invention so that appropriate steps may be taken to protect such Research Program Invention; and

5.2.3 To confirm that the privacy rights of individuals are adequately protected.

The reviewing party will provide comments, if any, to the publishing researcher within fifteen (15) days of receipt of manuscript.

5.3 **Publication Credit.** The publishing Primary Contact will give the other party's Primary Contact the option of receiving an acknowledgment in such publication.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 Ownership of Research Program Inventions. Research Program Inventions conceived, discovered and reduced to practice by MBARI, or its employees or agents will be owned by MBARI. Research Program Inventions conceived, discovered and reduced to practice by Collaborator, or its employees, or agents will be owned by Collaborator (Collectively, "Sole Inventions"). Research Program Inventions conceived, discovered and reduced to practice by at least one employee or agent of each of MBARI and Collaborator will be owned by MBARI and Collaborator, without any obligation to account to one another ("Joint Inventions"). Inventorship will be determined according to the principles of United States patent law. Neither party shall make any claim to the other party's Sole Inventions.

6.2 Pre-Existing Rights. Except to the limited extent required to perform a party's obligations under this Agreement, neither party receives any right, title, or interest in or to any Research Materials provided to it by the other party or any technology, works or inventions of the other party that are not Research Program Inventions, or any patent, copyright, trade secret or other proprietary rights in any of the foregoing.

- 6.3 Patents will mean those United States and foreign patents and patent applications including any continuation, reissue, or renewal thereof, or substitute therefor, and the patents that may be issued thereon, relating to any patentable Research Program Invention.
- 6.4 Patent Prosecution and Expenses. The parties agree to meet in good faith to discuss the filing, prosecution, defense, maintenance and sharing of expenses of all Patents for Joint Inventions.
- 6.5 Licensing. Each party reserves the right to license its interest in its Sole Inventions or Joint Inventions, and neither party shall have any right to compensation in connection with any such license granted by the other.
- 6.6 Rights Subject to Federal Patent Policy. To the extent that any Research Program Invention has been partially funded by the Federal government, the assignment of title or the granting of any license above is subject to the rights of the Federal government and federal law set forth in 35 U.S.C. §§ 200 et. seq., as amended, and the regulations promulgated thereunder, as amended, or any successor statutes or regulations (the "Federal Patent Policy"). Any right granted in this Agreement greater than that permitted under the Federal Patent Policy will be modified as may be required to conform to the provisions of the Federal Patent Policy.

7. INDEMNIFICATION

- 7.1 As used herein, "Claim" includes but is not limited to every phase of any lawsuit, loss, claim, damage or liability for death, illness or personal injury of any person (including employees of MBARI or Collaborator) and/or for property damage. This indemnity shall not be deemed excess coverage to any insurance or self-insurance MBARI may have covering Claim.
- 7.2 Collaborator hereby waives any Claim against MBARI, and agrees to indemnify, defend, and hold harmless MBARI, and its trustees, directors, employees, or agents from any Claim arising out of or connected with this Agreement or the work done under this Agreement, except to the extent such Claim is due to their negligence or willful misconduct. MBARI shall promptly notify Collaborator of any such Claim and shall cooperate with Collaborator and its insurance carrier in the defense of the Claim.
- 7.3 MBARI hereby waives any Claim against Collaborator, and agrees to indemnify, defend, and hold harmless Collaborator, and its trustees, directors, employees, or

agents from any Claim arising out of or connected with this Agreement or the work done under this Agreement, except to the extent such Claim is due to their negligence or willful misconduct. Collaborator shall promptly notify MBARI of any such Claim and shall cooperate with MBARI and its insurance carrier in the defense of the Claim.

- 7.4 Collaborator's indemnity shall not be limited by the amount of Collaborator's insurance.

8. REPRESENTATIONS, WARRANTIES, LIABILITY LIMITS

- 8.1 NO WARRANTIES. BOTH PARTIES ACKNOWLEDGE AND AGREE THAT THE RESEARCH PROGRAM IS OF AN EXPERIMENTAL NATURE. AS A RESULT, ANY RESULTS OF THE RESEARCH PROGRAM AND ANY RESEARCH MATERIALS ARE PROVIDED AS IS AND WITH ALL FAULTS. NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE RESULTS OF THE RESEARCH PROGRAM, WHETHER ANY RESULTS WILL OBTAIN, ANY RESEACH MATERIALS OR ANY INVENTION, PROCESS OR PRODUCT, WHETHER TANGIBLE OR INTANGIBLE, CONCEIVED, DISCOVERED, DEVELOPED OR REDUCED TO PRACTICE UNDER THIS AGREEMENT; OR THE OWNERSHIP, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH, ANY RESEARCH MATERIALS OR ANY SUCH INVENTION OR PRODUCT.
- 8.2 NO DAMAGES. NEITHER PARTY SHALL BE LIABLE FOR ANY DIRECT, CONSEQUENTIAL, OR OTHER DAMAGES SUFFERED BY COLLABORATOR, ANY LICENSEE, OR ANY OTHERS INCLUDING, BUT NOT LIMITED TO, DAMAGES ARISING FROM LOSS OF DATA OR DELAY OR TERMINATION OF THE RESEARCH PROGRAM, OR FROM THE USE OF THE RESULTS OF THE RESEARCH PROGRAM, THE USE OF ANY RESEARCH MATERIALS OR ANY SUCH INVENTION OR PRODUCT. COLLABORATOR ACKNOWLEDGES AND AGREES THAT THIS EXCLUSION AND LIMITATION IS REASONABLE CONSIDERING THE EXPERIMENTAL NATURE OF THE RESEARCH PROGRAM AND THE NATURE AND TERMS OF THE PARTIES' RELATIONSHIP.

9. TERM AND TERMINATION

- 9.1 Term. This Agreement will remain in effect for ____ months from the date first written above unless terminated sooner or extended in writing in an amendment hereto signed by the parties in accordance with this Agreement
- 9.2 Termination. Either party may terminate this Agreement upon sixty (60) days written notice to the other party.
- 9.3 Survival. The provisions of Articles 3, 4, 5, 6, 7, 8, 9, 10, and 11 will survive any expiration or termination of this Agreement.

10. DISPUTE RESOLUTION

- 10.1 Any controversy, claim or other dispute arising out of this Agreement or relating to the subject matter of this Agreement hereof will be decided by binding arbitration in accordance with the Rules of Conciliation and Arbitration of The American Arbitration Association before one or more arbitrators appointed in accordance with those Rules. Any arbitration will take place in Monterey, California, or at any other mutually agreeable location.

11. GENERAL

- 11.1 Binding Effect; Assignment. Neither party may assign or delegate its rights or obligations under this Agreement without the express written consent of the other party.
- 11.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the Research Program, and any and all prior or contemporaneous negotiations, representations, agreements and understandings are superseded hereby. No amendment or change to this Agreement may be made except by means of a written document signed by duly authorized representatives of the parties.
- 11.3 Notices. Any notice or communication required or permitted to be given hereunder will be in writing and, except as otherwise expressly provided in this agreement, will be deemed given and effective (i) when delivered personally or by fax or (ii) when received if sent by email, overnight courier, or mail:

To MBARI:

To Collaborator:

MBARI

Attn: CFO

7700 Sandholdt Road

Moss Landing, California 95039

Tel: (831) 775-1700

Fax: (831) 775-1620

- 11.4 Applicable Law. This Agreement will be construed and enforced in accordance with the laws of the State of California, United States of America, without regard to any choice or conflict of laws, rule or principle that would result in the application of the laws of any other jurisdiction.
- 11.5 Headings. Headings included herein are for convenience only, and will not be used to construe this Agreement.
- 11.6 Relationship of Parties. For the purposes of this Agreement and all services to be provided hereunder, each party will be, and will be deemed to be, an independent contractor and not an agent or employee of the other party. Neither party will have authority to make any statements, representations or commitments of any kind, or to take any action that is binding on the other party, except as explicitly provided for herein or authorized in writing.
- 11.7 Severability. If any provision of this Agreement will be found by a court of competent jurisdiction to be void, invalid or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.
- 11.8 Force Majeure. Neither party will be liable for any failure to perform as required by this Agreement, if the failure to perform is caused by circumstances reasonably beyond such party's control, such as labor disturbances or labor disputes of any kind, accidents, failure of any governmental approval required for full performance, civil disorders or commotions, acts of aggression, acts of God, energy or other conservation measures, explosions, failure of utilities, mechanical breakdowns, material shortages, disease, thefts, or other such occurrences.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

THE MONTEREY BAY AQUARIUM
RESEARCH INSTITUTE

Primary Contact

By:

Typed Name:

Title:

Date:

Primary Contact

By:

Typed Name:

Title:

Date:

THE MONTEREY BAY
AQUARIUM RESEARCH
INSTITUTE

By:

Typed Name:

Title: CFO

Date:

*Authorized Representative of Collaborator
Requires signature of an individual authorized
to sign on behalf of the Collaborator*

By:

Typed Name:

Title:

Date:

THE MONTEREY BAY
AQUARIUM RESEARCH
INSTITUTE

By:

Typed Name:

Title: CEO

Date:

THE MONTEREY BAY AQUARIUM
RESEARCH INSTITUTE

By:

Typed Name:

Title: Director of Human Resources

Date:

EXHIBIT A

Collaborator:

Project Title:

Collaborator Primary Contact

Name:

Address:

Collaborator Authorized Representative

Name:

Address:

Email:

Phone:

Fax:

Email:

Phone:

Fax:

MBARI Primary Contact Name:

Date and duration of agreement (*one year maximum*): to

The MBARI Primary Contact may provide the Collaborator Primary Contact access to the MBARI Primary Contact's allocated resources. Access to MBARI computers and network subject to Information Systems Usage Policies and requires signed [Computer Account Agreement](#). Any video laboratory access or support must be scheduled with the video lab staff in advance and will only be provided as available during regular business hours.

MBARI facilities and support to be made available to Collaborator's Primary Contact. If requesting an MBARI email address, please provide justification. If requesting network access, list specific shares that Collaborator's Primary Contact needs access to and specify the level of access required for each share (read-only or read-write):

Research Program Description:

Description of MBARI Primary Contact's research and authorship obligations for the project:

Anticipated products for this collaboration: (For publications, list proposed titles, authorship, journals, and approximate dates):