

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“Agreement”) effective as of Oct 23, 2017 2017, by and between WRIGHT STATE UNIVERSITY, an Ohio institution of higher education (“WSU” and the “University”) and the WRIGHT STATE APPLIED RESEARCH CORPORATION, an Ohio nonprofit corporation (“WSARC”). Each party is also referred to individually as a “Party” and collectively as “the Parties.”

RECITALS:

1. WSU's research programs enhance knowledge and understanding of fundamental and applied problems, communicate new knowledge to society as a whole, and engage and train students to be life-long, independent learners and thinkers. University research is supported by a broad range of federal, state and industry grants and contracts.
2. The University manages its research enterprise through the Office of Research and Sponsored Programs, the Office of the Vice President for Research, The Technology Transfer Office, and the Research Compliance Office, subject to all applicable state and federal rules and regulations. The research enterprise of the University is based on research performed by faculty, staff, and students from all of its academic and research units including all colleges and schools, Wright State Research Institute (WSRI), and the Clinical Trials Research Alliance (CTRA). The research enterprise of the University is focused primarily on basic research.
3. WSARC supports the WSU research enterprise primarily by acting as a contracting entity for WSU, WSRI, and the State of Ohio and it provides supplemental operational mechanisms necessary to fulfill the mission and vision directives of the University and its constituent units, thereby benefitting the University, the State, and the nation. As a 501(c)(3), WSARC has a separate governing board and follows the Office of Management and Budget (OMB) Uniform Guidance Super Circular and federal costing principles of OMB Circular A-122, whereas the University is subject to OMB Circular A-21.
4. The WSARC enabling documents, Code of Regulations and management practices are consistent with the University's purpose, mission, and procedures as defined in this Agreement and associated SOPs.
5. Operationally, WSARC provides applied research services to WSU and WSRI that includes business development, total cost accounting and recovery, Federal Acquisition Regulations (FAR) based contracting support for large contracts, security support for classified contracts and facilities, and special facilities compliant with International Traffic in Arms Regulations (ITAR) to support ITAR performance based contracts. WSARC is particularly focused on supporting research and development contracts from industry, federal, or state sponsors.
6. WSARC has established business and compliance procedures to ensure self-sufficiency and the highest levels of integrity across all its component divisions.

7. WSU and WSARC desire to completely and accurately document the nature and scope of the affiliation between their respective organizations, document the contractual relationship between them and provide procedural, staffing, and liability protection guidelines and authority for WSARC in its relationship with the University.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

ARTICLE I

WSARC GOVERNANCE

A. Composition of WSARC Board of Directors. At all times, the number of elected Directors independent of and unrelated to WSU will exceed the number of Directors who are related to WSU. The WSARC Code of Regulations currently provides that the Board of Directors of WSARC will consist of the following:

1. The President of WSU, or his / her designee;
2. Two individuals appointed by the President of WSU (University Directors)¹;
3. A representative of the WSU Board of Trustees appointed by the Chair of that Board; and
4. A maximum of nine elected Directors who are independent of and unrelated to WSU.

B. The administrative point of contact for WSARC is the Vice President for Research.

C. WSU Reserved Powers. Pursuant to the WSU Policy on Affiliated Entities, the WSARC Code of Regulations requires the affirmative vote of a majority of the Board, including at least one University Director to authorize any of the following actions:

1. Amending the WSARC Articles of Incorporation or Code of Regulations;
2. Dissolving WSARC or selling, leasing or disposing of substantially all of WSARC's subsidiaries;

¹ A University Director, as defined by the Wright State University Policy on Affiliated Entities, is a member of an Affiliated Entity's governing board who is appointed by the University President who is a University employee or an individual who has been determined by the University President, with the approval of the University's Board of Trustees, to have significant, close ties with the University which shall include but not be limited to: a University alumni, a past University employee, or an individual who has worked closely with the University in supporting its purpose and mission. WSARC is under no obligation to verify whether an individual appointed by the President of WSU satisfies the requirements of the Wright State University Policy on Affiliated Entities.

3. Creating or dissolving WSARC subsidiaries;
4. Approving budgets;
5. Incurring significant legal or financial obligations following the WSARC Signing and Approval limits;
6. Incurring any liability for which WSU could be directly responsible; and
7. Changing WSARC's business purpose.

ARTICLE II

FINANCIAL RELATIONSHIP

A. No WSU Contributions. WSARC is fully responsible for its own funding. WSARC will acquire, hold and manage its own assets. WSU has no obligation to contribute funds to WSARC, even though WSARC is considered a "component unit" for tax and audit purposes. WSARC has obligations payable to WSU from various organizations, constituted in part of the contractual relationships with other organizations, which WSARC will endeavor to pay in full to WSU.

B. WSARC Financial Management and Accounting Systems. WSARC owns and operates its own financial management systems that are compliant with the requirements of being a Certified Accounting System (CAS) for the execution of FAR contracts. WSARC will use a system for its accounting and financial reporting that is compliant with the FAR and Defense Contract Audit Agency (DCAA) audit requirements.

C. Arm's Length Agreements. Services provided by the University to WSARC will be documented through operating agreements and charged to WSARC at the same rate as other non-university customers. Transactions occurring between WSARC and the University shall be treated as ordinary business transactions requiring appropriate review and approvals.

D. WSARC Annual Report to WSU. WSARC will provide WSU an annual report of its activities that includes the following:

1. Audited financial statements;
2. A description of its audit procedures;
3. Any required tax filings;
4. An annual budget report;
5. Disclosure of any material contingent liabilities and litigation;
6. A list of current officers and directors;

7. Disclosure of significant events that change the financial profile or operations of WSARC;
8. Proof of compliance with Ohio Attorney General charitable registration requirements;
9. All other reports issued by auditors and external consultants.

E. WSARC Monthly Report to WSU. WSARC will provide WSU a monthly report of its activities that includes the following:

1. A report on financial performance against the annual budget;
2. Disclosure of any material contingent liabilities and litigation;
3. A list of current officers and directors, if a change occurs;
4. Disclosure of significant events that change the financial profile or operations of WSARC;
5. Progress towards financial independence, which shall include a monthly due to and due from analysis between WSARC to WSU.

F. WSU Right to Audit. WSARC shall establish and maintain a reasonable accounting system with appropriate controls and reporting functions that enables the University to readily identify WSARC's assets, liabilities, revenues, expenses, cost of goods, and use of funds. The University and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records relating to or pertaining to this agreement kept by or under the control of the entity. Such records shall include, but not be limited to, accounting records, written policies and procedures; cancelled checks; deposit slips; bank statements; journals; and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

WSARC shall, at all times during the term of this agreement and for a period of ten (10) years after completion of this agreement, maintain such records, together with such supporting or underlying documents and materials. Such records shall be made available to the University during normal business hours at WSARC's office or place of business and subject to a three (3) day written notice.

WSARC shall use its best efforts to ensure the University has these rights with WSARC's employees, agents, assigns, successors, and subcontractors.

ARTICLE III

CONTRACTING ACTIVITY

A. Government and Industry Contracting. WSARC will support the WSU research enterprise by developing new contracting opportunities with the federal and state governments, and the industrial community to enhance the WSU research mission and vision. Without limiting the scope of its performance, WSARC will also assist WSU with:

1. Coordination with WSU on assignment of research opportunities between the organizations with basic research primarily being managed through WSU and WSRI and applied research primarily through WSARC;
2. Faculty involvement and compliance regarding the National Industrial Security Program (NISPO);
3. Managing the execution of prime contracts, particularly those that include dealing with classified information or to which other information security controls apply, so that customers have a firewall between basic research conducted on campus and applied research requiring dissemination of classified materials;
4. Maintenance and support of Technology Control and Assessment Plans to effectively engage WSU academic expertise regardless of citizenship status, to the extent allowed by law, in the furtherance of basic science for contracts which include ITAR and the Export Administrative Regulations (EAR) control laws that affect the manufacturing, sales and distribution of technology while supplying secure IT and physical facilities to meet customer security protection requirements and end use goals.

B. Other Duties to Assist WSU. The University intends that WSARC will provide business flexibility to enable the University to engage in transactions in which it cannot otherwise participate. Specifically, WSARC will provide support if requested by the University with the following:

1. Contracts with insurance requirements such as Errors and Omissions (E&O), not available to state entities.
2. Agreements that allow WSU to place prime contractor liability outside WSU and the university system, while keeping funding flowing through WSU.

ARTICLE IV

HUMAN RESOURCE MANAGEMENT

A. WSARC Operations. WSARC operations will be WSU employees. WSARC will reimburse WSU for all compensation related expenses (including paid time off) of WSU employees engaged as direct labor or included in indirect activities undertaken for WSARC. WSARC will support WSU, WSRI and other university divisions and affiliates by providing

recruiting and onboarding operational mechanisms necessary to attract and maintain the talent pool necessary to fulfill and grow its research contract obligations. The Parties further agree that unless otherwise specifically agreed, any person hired in support of WSARC and its affiliate's grants and contracts will be hired as an unclassified, special contract, WSU employee. WSARC agrees to comply with the University hiring policy and systems and will follow the WSU Policy unless deviations from that Policy are pre-approved by WSU.

B. WSARC Employment Policies and Practices. WSU agrees that its Human Resources office will collaborate with the appropriate WSARC representatives to develop specifications and procedures for applicable open, pro-active recruitment postings for technical (IT), research, and engineering positions through a mutually approved applicant tracking system, which will store and make applications available to WSARC representatives.

C. Consultants. From time to time, WSARC may hire independent contractors as consultants on WSARC projects. Those consultants will be hired through WSARC's contracting process.

ARTICLE V

FACILITIES

A. WSARC Facilities. WSARC owns and operates its own facilities and is fully responsible for the use and the costs of the facilities, including all necessary insurance coverage.

B. Specialized Facility Management. WSARC agrees to provide WSU access to specialized secure facilities at a cost to be mutually agreed, provide security support that is similar to industrial security practices across industry, the Department of Defense (DOD) and the Intelligence community, and provide security processing and controls, facilities, security and IT infrastructure, and personnel support at all levels possible in the DOD and the Intelligence Community.

C. Access to WSU Facilities. At WSARC's request, at WSU's discretion, and at a cost to be mutually agreed, WSU will provide WSARC access to specialized University facilities.

ARTICLE VI

COMMERCIALIZATION AND MANAGEMENT OF IP

A. Intellectual Property (IP). WSARC agrees to provide such services as are required to protect and commercialize IP developed by WSARC or developed by the University and transferred to WSARC for protection and commercialization. At its discretion, WSU will assign IP developed by WSU to WSARC for downstream development and marketing. WSARC will manage faculty IP royalty payments consistent with university policy and the Collective Bargaining Agreement with AAUP-WSU.

B. Compliance with External Funding Obligations. The Parties acknowledge that each is the recipient of research funding from external sponsors, including the federal and state government and private industry, and that such research funding typically is provided under grants or contracts that give the sponsor certain rights in any intellectual property developed using the

funds provided. The Parties intend that their respective performances under this Agreement shall be consistent with all such rights of research sponsors. Accordingly, the Parties agree that this Agreement, and all rights created under or derived from it, shall be subject to the University's and WSARC's existing and future grants and contracts with research sponsors and to any statutory or regulatory requirements, including, without limitation, the Bayh-Dole Act, as amended (codified at 35 U.S.C. §§200 *et seq.*) and Ohio Revised Code §§149.43 and 3345.14. The Parties resolve to work with one another in good faith to address any complications that might arise relative to such funding arrangements.

Each Party understands that any transfer of any intellectual property or other rights to the other Party under any agreement, including transfers to each Party's affiliates and permitted uses by certain third parties, may require a license from a cognizant agency of the United States Government and/or written assurances by the receiving Party that the receiving Party shall not transfer data or commodities to certain foreign countries without the prior approval of an appropriate agency of the United States Government.

ARTICLE VII

INSURANCE

A. Insurance. WSARC agrees to maintain the minimum insurance coverage set forth below with qualified commercial insurers as are reasonably acceptable to WSU. By requiring such minimum insurance, WSU shall not be deemed to have assessed the risk that may be applicable to WSARC. WSARC shall assess its own risks and, if it deems appropriate, maintain higher limits and/or broader coverage. These policies shall be endorsed to include Wright State University as an additional insured. A current Certificate of Insurance evidencing coverage and additional insured endorsement shall be provided to WSU upon request during the term of this Agreement.

i. Commercial General Liability coverage with limits of \$1M per occurrence for bodily injury and property damage. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products and liability assumed under an insured contract.

ii. Errors and Omissions (E&O).

iii. Directors and Officers Liability (D&O) coverage with limits of \$1M to protect its directors, officers and trustees against wrongful acts, to include governance liability, fiduciary liability and employment practices liability.

B. Professional Liability Insurance. To the extent that research pursuant to this Agreement is clinical research or involves the delivery of professional services, the Parties agree that WSARC will maintain professional liability coverage.

C. Other. WSARC will secure and maintain any other applicable insurance required for its operations.

D. Discontinuance or Lapse in Coverage. WSARC shall issue irrevocable instructions to its insurance agent and its insurer to notify WSU of any discontinuance or lapse of such insurance not less than thirty (30) days prior to the time that any such discontinuance or lapse is

due to become effective. Any changes to reduce coverage below the minimum amounts set forth above must be approved by WSU.

ARTICLE VIII

STANDARD OPERATING PROCEDURES

A. Standard Operating Procedures. The University and WSARC shall jointly adopt a set of standard operating procedures (“SOP”) designed to implement the terms of this Agreement. Topics to be addressed in the SOP include, but are not limited to, human resource management, facilities management, industrial security, information technology, business development, contracting, and grants, WSARC services procurement, intellectual property and commercialization, investments, procurement and capital asset acquisition, insurance, accounting and financial reporting, and legal compliance. University employees performing duties on behalf of WSARC will comply with all University policies, except where there is a necessary and agreed upon variance with University policy.

B. Other WSARC Policies. WSARC may adopt further written policies and procedures designed to implement the terms of this Agreement and the SOP. Such policies and procedures shall at all times be consistent with this Agreement and the SOP, and WSU policies.

ARTICLE IX

CONFIDENTIALITY

The Parties acknowledge that each may receive or have access to non-public information owned by the other Party. The Parties agree that the use or disclosure of such information will be subject to a Non-Disclosure Agreement in the form attached as Exhibit A to this Agreement.

ARTICLE X

SECURITY AND COMPLIANCE

A. WSARC to Maintain Secure Systems. WSARC will establish separate email and other such collaborative technologies as required insuring compliance with ITAR, EAR and other security requirements.

B. U.S. Laws and Regulations. Each Party understands that both Parties may be subject to the laws and regulations of the United States, including the export of technical data, computer software, laboratory prototypes and other commodities (including the Arms Export Control Act, as amended, the Export Administration Act of 1979, and the U.S. Patriot Act), and each Party's obligations hereunder are contingent upon compliance with all applicable laws and regulations, including those for export control.

C. Access to Records. From time to time, it may be necessary for one Party to access the records of the other Party to fulfill regulatory obligations, proactive compliance activities or to respond to external audits. The Parties agree to work in good faith to facilitate such access to records.

D. Lobbying/Participating in Political Campaigns. WSARC will comply with state and federal rules and regulations related to lobbying and political campaigns.

E. EthicsPoint Hotline. WSU recognizes the importance of preventing, detecting, and correcting violations of law and University policy and has established a confidential hotline. WSARC acknowledges the existence of EthicsPoint and agrees to inform all WSU employees hired in support of or engaged in activities undertaken for WSARC about the EthicsPoint hotline. Any such WSU employee who becomes aware of a violation or potential violation of law or University policy is expected to make a report immediately.

F. Legal Counsel. WSARC has retained and will contain to retain outside legal counsel to provide advice and represent WSARC on all matters, including but not limited to, ethics, contracts, subcontracts, external legal matters, intellectual property, and compliance with federal, state and local laws and regulations.

ARTICLE XI

RELATIONSHIP OF THE PARTIES

A. No Authority to Bind. Nothing in this Agreement shall be interpreted as creating a relationship of agent, partnership, joint venture, profit-sharing, association or similar relationship between the Parties. The Parties are independent contractors in relation to one another. Neither Party shall have the authority to expend or commit to expend funds of the other Party or enter into any binding legal agreement of any type on behalf of the other Party, except as may be expressly authorized in writing by the Party to be bound thereby.

B. Non-exclusivity. The Parties understand and agree that nothing herein shall be interpreted as establishing any form of exclusive relationship between each other. The Parties further understand and agree that nothing herein shall be interpreted as precluding either Party from entering into similar agreements with third parties or from conducting research, educational, or other activities that may involve the same or similar subject matter as those related to this Agreement, provided that any such educational activities are not done in a manner that is inconsistent with the rights and obligations of the Parties to this Agreement.

C. Non-Use of Names. Each Party agrees that it will not use the name, trademark or other identifier of the other Party for any advertising, promotion, or other commercially related purpose without the express prior written consent of the other Party. WSARC and WSU will enter into a royalty free license agreement authorizing WSARC's use of the WSU name, logo, and other WSU trademarks.

ARTICLE XII

INDEMNIFICATION

A. Indemnification. To the extent permitted by law, and except to the extent caused by the negligent acts or omissions of the University or its officers, employees, agents, students, or assigns, WSARC agrees to defend, indemnify and hold harmless the University from liability arising from any loss, claim or damage (including reasonable attorney's fees) arising from the

negligent acts or omissions of WSARC or its directors, trustees, officers, agents, or assigns or WSU employees supporting WSARC operations.

B. Notice. A Party invoking its rights of indemnification under this Agreement ("Indemnified Party") shall provide written notice within thirty days of the receipt of any third party claim covered hereunder to the party from whom indemnification is sought (the "Indemnifying Party"). The Indemnifying Party shall have the right to assume exclusive control of the defense of such claim, or at the option of the Indemnifying Party, to settle the same. The Indemnified Party agrees to cooperate reasonably with the Indemnifying Party in connection with the performance by the Indemnifying Party of its obligations under this section, and failure to do so shall terminate the Indemnifying Party's obligations.

ARTICLE XIII

TERM AND TERMINATION

A. Term. This Agreement is effective for three (3) years or if terminated in accordance with Section B or C. The Agreement may be renewed pursuant to a Memorandum of Extension signed by the parties at least thirty (30) days prior to expiration.

B. Termination for Breach. When either Party to this Agreement believes the other has breached the Agreement, that Party shall give written notice of such breach to the other in accordance with Section XIV.B. If such breach has not been cured within ninety (90) days after such written notice, this Agreement shall terminate on the ninety-first (91st) day following the date of the written notice of breach. The Party in breach will be liable to the other Party for prompt payment for any damages resulting from the breach. The waiver by either Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party or a breach of the entire Agreement.

C. Termination Without Cause. When either Party to this Agreement seeks to terminate the Agreement without cause, that Party shall give one hundred and eighty days (180 days) written notice of termination to the other in accordance with Section XIV.B.

D. Sunset Provision. At least every five years, WSU will assess whether or not to continue its relationship with WSARC.

ARTICLE XIV

GENERAL PROVISIONS

A. WSU Reserved Rights. Nothing in this Agreement shall be interpreted as limiting or restricting the right of WSU to interpret, modify or change any or all policies, procedures and practices related to the University.

B. Notices. All notices, demands, requests, or other communications required to be given or sent by either Party shall be in writing and shall be personally delivered, or sent by overnight or second day courier or by first class mail, return receipt requested, or by facsimile or electronic mail, to the Party to whom such notice or other communications is to be given or made at such Party's address(es) (or facsimile number or electronic mail address) set forth below, or to

such other address(es) (or facsimile number or electronic mail address) as such Party shall designate by written notice to the other Party. All notices, demands, requests, and other required communications hereunder shall be deemed given if properly addressed (as specified below) and delivered as follows: (a) if delivered personally or by facsimile (with written acknowledgment of a complete transmission) or electronic mail, on the day of delivery; (b) if delivered by registered or certified mail (return receipt requested) or first class mail, three (3) days after mailing; or (c) if delivered by overnight or second day courier, two (2) days after mailing. Notices shall be deemed to be properly addressed to any Party hereto if addressed to the addresses set forth below (or at such other address for a Party as shall be specified by like notice).

For WSU:
President
Wright State University
3640 Col Glenn Highway
Beavercreek OH 45435

For WSARC:
Dennis Andersh, CEO
Wright State Applied Research Corporation
4035 Col Glenn Highway
Beavercreek OH 45440

with copy to:
Vice President of Research
Wright State University
3640 Col Glenn Highway
Beavercreek OH 45435

C. Applicable Law. This Agreement shall be governed in all respects by the laws of the State of Ohio without regard to its or any other jurisdiction's choice of law provisions.

D. Assignment or Transfer. Except as otherwise indicated elsewhere in this Agreement, neither Party may assign or transfer any rights or obligations arising from this Agreement without the prior written consent of the other Party.

E. Severability. If any provision of this Agreement is determined to be illegal or unenforceable by a court of competent jurisdiction, the other provisions shall remain in full force and effect.

F. Amendments and Waivers. Any amendment to this Agreement must be in writing and signed by authorized representatives of both Parties. No waiver of a provision in this Agreement shall be valid and enforceable unless in writing and signed by an authorized representative of the Party granting the waiver. The waiver by any Party of the other Party's default under or breach of any provision of this Agreement shall not operate or be construed as a waiver by a Party of any subsequent default under or breach of this Agreement by the other Party.

G. Force Majeure. Nonperformance by a Party shall not operate as a default under or breach of the terms of this Agreement to the extent and for so long as any such nonperformance is due to: strikes or other labor disputes; prevention or prohibition by law; the loss or injury to products in transit; an Act of God; or war or other cause beyond the control of such Party.

H. Entire Agreement. This Agreement, including any attachments hereto, embodies the entire understanding of the Parties and supersedes all previous communications, representations, or understandings, either oral or written, between the Parties relating to the subject

matter hereof. This Agreement shall not be deemed to be an amendment or modification of any other agreements between the Parties pertaining to any other subject matter.

I. Headings. The headings herein are for convenience and reference only and shall not govern the interpretation of any of the terms of this Agreement.

J. Counterparts. This Agreement may be executed in counterparts, each of which so executed will be deemed to be original and such counterparts together will constitute one and the same agreement.

K. No Third-Party Rights. The parties do not intend the benefits of this Agreement to inure to any third person not a signatory. The Agreement shall not be construed as creating any right, claim, or cause of action against any party by any person or entity not a party to this Agreement.

L. Survivability. The Parties expressly intend and agree that the confidentiality and intellectual property restrictions set forth in Article IX and VI, shall survive termination of this Agreement.

IN WITNESS WHEREOF, this AGREEMENT has been duly executed by the authorized representatives of the organizations on the date shown opposite their respective names and signatures below.


WRIGHT STATE UNIVERSITY

By: Cheryl B Schrader

Its: President

Date: October 23, 2017

**WRIGHT STATE APPLIED
RESEARCH CORPORATION**

By: 

Its: WSARC CEO

Date: ~~22~~ 23 Oct 2017