

**SCIENCE FOUNDATION ARIZONA**

**TERMS AND CONDITIONS**

**of**

**SFAz GRANTS and Contracts**

**(January 2007)**



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## 1. Definitions

<b>Annual Report</b>	<i>Shall comprise the report submitted by the Research Performing Institution (RPI) to the Foundation in accordance with Clause 5 below.</i>
<b>Application</b>	<i>Shall comprise the grant application form; all documents attached thereto (within the limits prescribed in any supporting notes and the General Terms and Conditions; and all Budgets concerning the application between the RPI, the Principal Investigator and the Foundation.</i>
<b>Budget</b>	<i>Shall mean the budget annexed or otherwise identified in the Letter of Offer and any modification thereof agreed in writing by the Foundation following annual review or otherwise.</i>
<b>Direct Costs</b>	<i>Shall mean those costs described in Clauses 2.3 and 2.4.</i>
<b>Eligible Costs</b>	<i>Shall mean those costs outlined in Clause 2.</i>
<b>Foundation</b>	<i>Shall mean Science Foundation Arizona, an Arizona nonprofit corporation, recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code, established to promote and develop world class research capability in strategic areas of science and engineering.</i>
<b>Grant Conditions</b>	<i>Shall mean collectively the Application, the Budget, the Letter of Offer, the Intellectual Property Guidelines and General Terms and Conditions together with any binding Modification thereof.</i>
<b>General Overheads</b>	<i>Shall comprise the general facility made available by the RPI for use by the Research Program, including office and research space; utilities (i.e. electricity, heat, and water); technical and other support; and clerical and administrative staff.</i>
<b>General Terms and Conditions</b>	<i>Shall mean the terms, conditions, warranties and covenants set out in this document together with any binding Modification thereof.</i>
<b>Indirect Costs</b>	<i>Shall mean those costs described in Clause 2.5.</i>
<b>Intellectual Property (IP)</b>	<i>Shall mean all Subject Inventions, Subject Writings and devices, products or software, whether patentable or unpatentable, which are developed as a result of conducting the Research Program.</i>

<b><i>Intellectual Property Guidelines</i></b>	<i>Shall mean the intellectual property guidelines of the RPI. Science Foundation Arizona does not own the Intellectual Property that evolves from its support. Science Foundation Arizona encourages exploitation of the IP to benefit Arizona, including company formation, licensing, agreements, etc. The goal of the Foundation is to promote a culture that is IP-friendly. The Foundation requires that the RPI and Principal Investigator comply with the Intellectual Property Guidelines.</i>
<b><i>Letter of Offer</i></b>	<i>Shall mean the letter issued by the Foundation awarding the Research Grant to the RPI and all documents related thereto.</i>
<b><i>Modifications</i></b>	<i>Shall mean any written amendments, alternations, modifications or variations to the Grant Conditions made in accordance with Clause 24.</i>
<b><i>No-Cost Extension</i></b>	<i>Shall have the meaning set out in Clause 18.</i>
<b><i>Overhead Investment Plan</i></b>	<i>Shall mean such details of the RPI's strategic plan for the overall development of research support services and infrastructure for the benefit of their researchers, requirements or other details relating to General Overheads as may be requested by the Foundation in accordance with Clause 2.</i>
<b><i>Parties</i></b>	<i>Shall mean the Foundation, the RPI and/or the Principal Investigator.</i>
<b><i>Program Asset</i></b>	<i>Shall mean any asset, including real estate or equipment, acquired, generated or established directly or indirectly with the benefit of the Research Grant.</i>
<b><i>Principal Investigator</i></b>	<i>Shall mean the individual employed by the RPI, who is nominated as such by the RPI in the Application and is approved in writing by the Foundation, and who will be responsible for the scientific and technical direction of the Research Program, including the submission of reports to the Foundation.</i>
<b><i>Remuneration</i></b>	<i>Shall mean a contribution towards the salary of the Principal Investigator and members of the Research Team together with the RPI's contribution to fringe benefit costs, if applicable, at the rate indicated in the Budget or as otherwise expressly agreed in writing by the Foundation.</i>

<b>RPI</b>	<i>Shall mean the Research Performing Institution, which shall be a nonprofit educational establishment or any other nonprofit research organization in Arizona, exempt from tax under the Internal Revenue Code.</i>
<b>Research Grant</b>	<i>Shall mean the lesser of</i> (i) <i>The specific eligible costs actually incurred by the RPI in the establishment, administration, and execution of the Research Program plus all reasonably necessary ancillary activities indicated in the Budget or otherwise agreed in writing between the RPI and the Foundation, or</i> (ii) <i>The maximum sum offered by the Foundation to the RPI in the Letter of Offer.</i>
<b>Research Program</b>	<i>Shall mean the work proposed in the Application and outlined therein, and any Modifications thereto agreed to in writing by the Foundation.</i>
<b>Research Team</b>	<i>Shall mean the Principal Investigator and the additional research staff, if any, working on the Research Program and whose employment by the RPI is necessitated by the Research Program.</i>
<b>Scientific Misconduct</b>	<i>Shall mean fabrication, or falsification of research or research results, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.</i>
<b>Subject Invention</b>	<i>Shall mean any invention conceived or first actually reduced to practice in the performance of the Research Program and falls within the scope of planned and committed research set forth in the Application and any Modifications thereto.</i>
<b>Subject Writing</b>	<i>Shall mean any writing, sketch, diagram, calculation, record, or document of any kind conceived or produced in the course of the Research Program in which copyright may vest and includes such items as reports, books, journal articles, software, sound recordings, video tapes, and/or video discs.</i>
<b>Term</b>	<i>Shall have the meaning set out in Clause 19.</i>

## **2. Costs Eligible for Grant Support**

### *General*

- 2.1 The objective of the Foundation is to (a) build and strengthen medical, scientific and engineering research programs and infrastructure in areas of greatest strategic value to

Arizona's competitiveness in the global bioscience economy, and (b) actively engage scientific research, academic and medical institutions representing both the public and private sectors on a world wide basis.

- 2.2 Costs eligible for support from the Research Grant shall be only those specified in the Budget, as agreed with the Foundation, and shall comply with such guidance as may be issued from the Foundation from time to time and the Grant Conditions. They may include both Direct and Indirect Costs set out hereunder.

*Direct Costs*

- 2.3 Direct Costs eligible for support from the Research Grant are those costs that can be specifically identified with a particular Research Program that is being conducted in Arizona, unless the Foundation agrees in writing that it may be conducted outside Arizona. All eligible Direct Costs shall be:

- (a) Reasonable and necessary;
- (b) Incurred solely to advance the Research Program or, if any single item shall benefit both the Research Program and other work, then such costs shall be eligible only in proportion that such costs bear to the proportionate benefit derived from them by the Research Program;
- (c) Of the type normally charged as a direct cost to sponsored agreements; and
- (d) Incurred in accordance with the terms of the Grant Conditions.

- 2.4 Direct Costs may include:

- (a) The Foundation's contribution to the Remuneration, pension and other benefits of the Principal Investigator and the members of the Research Team employed by the RPI (in this Clause referred to as "the Employee") at the rate indicated in the Budget or as otherwise agreed in writing by the Foundation, in accordance with the practices of the RPI and provided that the terms of such employment shall enable the RPI to comply with the requirements of the General Terms and Conditions set out at Clause 4.1(e) (procuring compliance with Grant Conditions) and Clause 13 (Intellectual Property) below. Where the Employee is not employed full time upon the Research Program, Direct Costs shall include only that portion of the contribution towards the Employee's Remuneration which shall produce an equitable distribution of charges for the Employee's activities in accordance with methods that shall clearly distinguish the Employee's activities on the Research Program from any other activity;
- (b) The cost of all equipment acquired at the least cost and upon the most competitive terms having regard to the needs of the Research Program as to economy, time, and quality, and without any conflict of interest and upon a commercial basis with the supplier and always to the best advantage of the Research Program;
- (c) Reasonable and vouched travel and other expenses directly related to scientific collaboration on the Research Program, or for the learning of special techniques

in accordance with the established travel and subsistence policies of the RPI, including attendance at conferences. In the case of working visits, the rates sought for subsistence and other allowances shall be payable up to the level allowed by the RPI to its permanent staff of equivalent grade or seniority unless otherwise expressly agreed in writing by the Foundation;

- (d) The actual costs of materials and consumables, including software licenses, and costs associated with access to and the use of equipment and services not available in the RPI that are specifically acquired for the Research Program and which purpose so justifies; and
- (e) Other approved direct costs associated with the Research Program as outlined in the Budget and agreed to in writing by the Foundation.

#### *Indirect Costs*

- 2.5 Indirect costs eligible for grant support shall be incurred in accordance with the terms of the Grant Conditions and shall comprise a contribution to General Overheads up to a maximum sum equivalent to the percentage of Direct Costs, as defined in accordance with any guidance issued by the Foundation in this respect from time to time. In the absence of any such specific guidance, such amount shall not exceed 10% of the Direct Costs, but excluding therefrom the cost of all equipment identified in the Application.
- 2.6 Unless agreed otherwise by the Foundation, Eligible Costs (Direct or Indirect) for the Research Program shall not include any item to the extent that it is sponsored or funded by other sources including, in particular, where such sponsorship or funding has not been disclosed in the Application.

### **3. Warranties**

#### 3.1 The RPI warrants that:

- (a) It has full power and authority to execute and deliver the Grant Conditions and to comply with the provisions of, and perform all its obligations and exercise all of its rights under the Grant Conditions;
- (b) The Grant Conditions are executed by its duly authorized representative with full power and authority to bind it;
- (c) It has obtained all necessary consents, approvals, authorizations, licenses and permissions which are required to enable it to comply with its obligations under the Grant Conditions and will throughout the duration of the Grant Conditions maintain all such consents, approvals, authorizations, licenses and permissions and shall not commit any act or omission which might invalidate, breach or otherwise impair the effect of such consents, approvals, authorizations, licenses or permissions;
- (d) Every statement, representation or information provided in the Application, any documents furnished therewith, any Annual Report, or in response to request of the Foundation is, to the best of the RPI's knowledge, true, complete and accurate;

- (e) The Budget submitted or agreed with the Foundation comprises only Eligible Costs above;
- (f) There is no information of which the RPI or its agents is aware that is relevant to the Application or the interests of the Foundation concerning the Application or the Research Grant that has not been disclosed in writing to the Foundation;
- (g) The Research Program will be performed with due skill care and diligence and by appropriately qualified personnel to meet commonly accepted standards;
- (h) The Research Program shall be conducted in compliance with United States Laws or other applicable laws, including, but not limited to, laws pertaining to the following:

(1) Live Organisms:

By accepting funds under this Research Grant, the recipient assures that it will comply with applicable provisions of the following national policies concerning live organisms:

(A) For human subjects:

The Common Federal Policy for the Protection of Human Subjects codified by the Department of Health and Human Services at 45 CFR Part 46 and implemented by the Department of Defense at 32 CFR Part 219.

(B) For animals:

(i) Rules on animal acquisition, transport, care, handling, and use in (i) 9 CFR Parts 1-4, Department of Agriculture rules that implement the Laboratory Animal Welfare Act of 1966 (7 U.S.C. 2131-2159, as amended); and (ii) the "Guide for the Care and Use of Laboratory Animals," National Institutes of Health Publication No. 86-23.

(ii) Rule of the Departments of Interior (50 CFR Parts 10-24) and Commerce (50 CFR Parts 217-227) implementing laws and conventions on the taking possession, transport, purchase, sales, export or import of wildlife and plants, including the Endangered Species Act of 1973 (16 U.S.C. 131-1543); Marine Mammal Protection Act (16 U.S.C. 1361-1384); Lacey Act (18 U.S.C. 42); and Convention on International Trade in Endangered Species of Wild Fauna and Flora.

(2) Research Involving Recombinant DNA Molecules

By accepting funds under this Research Grant, any recipient performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules agrees by acceptance of this award to comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules," of July 5, 1994,

and such later revision of those guidelines as may be published in the Federal Register.

(3) Environmental Standards

By accepting funds under this Research Grant, the recipient assures that it will:

(A) Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7501, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at 40 CFR Part 15. In accordance with the EPA rules, the recipient further agrees that it will:

(i) Not use any facility on the EPA's List of Violating Facilities in performing any award that is nonexempt under 40 CFR 15.5 (awards of less than \$100,000, and certain other awards, exempt from the EPA regulations), as long as the facility remains on the list.

(ii) Notify the awarding agency if it intends to use a facility in performing this award that is on the List of Violating Facilities or that the recipient knows has been recommended to be placed on the list.

(4) OSHA Regulations

By accepting funds under this Research Grant, the recipient assures that it will comply with all applicable OSHA Regulations (29 CFR 1900 et seq.) as prescribed and amended by the U.S. Department of Labor.

(5) Nondiscrimination

By accepting funds under this Research Grant, the recipient assures that it will comply with all national policies prohibiting discrimination.

(6) Drug Free Workplace

By accepting funds under this Research Grant, the recipient agrees to comply with all federal requirements specified in the Drug-Free Workplace Act of 1988 (41 U.S.C. 701, et seq.).

(7) Activities Abroad

The RPI shall assure that project activities carried on outside the United States are coordinated as necessary with appropriate Government authorities and that appropriate licenses, permits, or approvals are obtained prior to undertaking proposed activities. The awarding agency

does not assume responsibility for the RPI compliance with the laws and regulations of the country in which the activities are to be conducted.

- (i) The Research Program shall be conducted in accordance with such ethical guidelines as agreed upon by the Foundation and the RPI, or any relevant industry or other regulatory body, from time to time, including (without limitation) guidelines relating to the conduct of trials, clinical or otherwise, which involve members of the public or samples taken from them. Institutions with an approved IRB will comply with that process.

#### 4. **Responsibilities of the RPI**

4.1 The RPI shall have full responsibility for the Research Program, the Research Grant, and for the adherence by the RPI, the Principal Investigator and the Research Team to the Grant Conditions. The RPI is encouraged to suggest or propose to discontinue or modify unpromising lines of investigations or to explore interesting leads, which may appear during the development of the research. However, the RPI must consult the Foundation before deviating from the objectives or overall program of the research originally proposed in the Application. Although the RPI is encouraged to seek the advice and the opinion of the Foundation on special problems that may arise, such advice does not diminish the RPI's responsibility and shall not imply that the responsibility of the RPI has shifted to the Foundation in any way. In particular, but without prejudice to the generality hereof, the RPI shall:

- (a) Comply in every respect with the Grant Conditions and help ensure that all funds claimed and paid are allowable, necessary and reasonable for the conduct of the Research Program, and that any proposed action on the part of the Principal Investigator, the Research Team, or the RPI:
  - (i) Is consistent with the Grant Conditions;
  - (ii) Is consistent with the policies of the Foundation;
  - (iii) Represents effective utilization of the resources of the known resources of the Foundation; and
  - (iv) Does not constitute a significant program change, unless otherwise agreed in writing by the Foundation and the RPI;
- (b) Ensure that the Principal Investigator receives a copy of each part of the Grant Conditions, and any subsequent changes or binding Modifications thereto;
- (c) Ensure that the Principal Investigator and the Research Team shall fully discharge and comply with the obligations on their part to be performed in the Grant Conditions;
- (d) Employ the Principal Investigator and all members of the Research Team from resources allocated in respect of the cost of such employment in the Budget and upon such terms and conditions as may be agreed between the RPI, the

Foundation and the individual member of the Research Team in accordance with the practices of the RPI;

- (e) Secure through each of the employment agreements with the members of the Research Team the covenants and assignments which the RPI may require to comply with the requirements of the General Terms and Conditions set out at Clause 13 (Intellectual Property) below; and
- (f) Use the entirety of the Research Grant monies received only in accordance with the Budget in furtherance of the Research Program and in accordance with the Grant Conditions.

4.2 The only method by which the Grant Conditions can be amended, altered, modified or varied is by a written Modification signed by the Foundation and the RPI. No other communications, whether oral or written, shall modify the Grant Conditions.

## 5. **Reports<sup>1</sup>**

### *Annual Report*

5.1 The RPI shall deliver to the Foundation not later than June 30 annually and on each anniversary of the commencement of the Research Program, a report on the progress of the Research Program which shall contain:

- (a) Such information as may be reasonably required by the Foundation and notified to the RPI and/or Principal Investigator from time to time;
- (b) A concise summary of the progress of the Research Program in accordance with such guidelines as may be issued by the Foundation in respect of such Annual Reports, and having regard to the objectives set out in the Application and any subsequent Annual Reports; and
- (c) A list of all outputs concerning the Research Program, whether provided by the RPI, the Research Team or any third party, including:
  - (i) Details of all academic, industrial and other interactions;
  - (ii) A list of all publications concerning the Research Program, whether published by the RPI, the Research Team or any third party;
  - (iii) A list of all Subject Inventions, including resulting patent applications and patents awarded;
  - (iv) A list of all disclosures of Subject Inventions, together with full details thereof;
  - (v) A summary of scientific prizes received;

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<sup>1</sup> We believe this reporting structure is consistent with U.S. Federal agencies; we may be required to modify this procedure to comply with the SFAz contract with the State of Arizona. Notice will be given in the event of a change to Reports procedures.

- (vi) A list of all presentations made at public or invited gatherings, conferences or other fora, concerning the Research Program; and
- (vii) An expenditure report containing such data, outlining the use made of the funding to date, and any additional sources of funding obtained by the Research Program since the commencement of the Research Program or which the RPI hopes to obtain in support of the Research Program.

*Final Report*

5.2 The RPI shall deliver to the Foundation not more than 90 days following completion of the Research Program, or earlier if requested by the Foundation, a Final Scientific Report which shall include:

- (a) Details of all academic, industrial and other partnerships;
- (b) A concise summary of the research achievements relative to the original proposal set forth in the Application;
- (c) A list of all publications concerning the Research Program, whether published by the RPI, the Research Team or any third party;
- (d) A list of all Subject Inventions, including resulting patent applications and patents awarded;
- (e) A list of all disclosures of Subject Inventions, together with full details thereof;
- (f) A summary of scientific prizes received;
- (g) A list of all presentations made at public or invited gatherings, conferences or other fora, concerning the Research Program;
- (h) A reconciliation of the Budget with actual expenditure throughout the term of the Research Program;
- (i) A list of students who have received advanced degrees along with thesis titles; and
- (j) Such other information as may be reasonably required by the Foundation and notified to the RPI.

6. **Program Assets**

*General*

6.1 The RPI shall act with prudence and probity in the acquisition and care of all Program Assets and shall ensure that all expenditures shall be an Eligible Cost. In particular, but without limitation, the RPI shall:

- (a) Not pledge, charge or otherwise encumber any Program Asset without the written approval of the Foundation;

- (b) Use the Program Assets on the Research Program for which they were acquired as long as they are needed, whether or not the Research Program continues to be supported by the Research Grant, and if, during the term of the Research Program or thereafter, an asset is not required for use by the Research Program, the RPI shall make it available for use in the following order of priority:
- (i) To any other Research Program within the RPI sponsored by the Foundation;
  - (ii) To any other Research Program sponsored by the Foundation;
  - (iii) To any other research in Arizona in receipt of sponsorship or funding from the RPI;
  - (iv) To any other research within the RPI which is in receipt of sponsorship or funding from any agency of the State of Arizona;
  - (v) To any other research in Arizona which is in receipt of sponsorship or funding from any agency of the State;
  - (vi) To any other research or use nominated or directed in writing by the Foundation; or
  - (vii) As the RPI itself may reasonably desire in furtherance of its educational and research objectives.

PROVIDED that where such Program Asset is made available for other use, the RPI may require payment of a reasonable market fee in respect of such use that shall be treated as income of the Research Program.

#### *Ownership*

- 6.2 Unless specified otherwise by the Foundation in the Letter of Offer or elsewhere in the Grant Conditions, all right, title and interest in Program Assets purchased or generated with the Research Grant funds by the RPI will vest in the RPI, provided that the RPI complies with the Grant Conditions, including, without limitation, Clause 6.1 above. In the event of a default by the RPI under the terms of the Grant Conditions, the RPI shall be deemed to have forfeited all right, title and interest in the Program Assets to the Foundation, and the RPI shall execute any documentation requested by the Foundation to evidence such ownership in the Program Assets. Notwithstanding the foregoing, consistent with federal granting bodies, the RPI shall be the owner of individual items of in an amount of \$10,000 or less purchased by the RPI.

#### *Property Management*

- 6.3 The RPI shall ensure effective property management and maintenance standards and in particular shall maintain detailed and accurate records containing the following information:
- (a) A description of the Program Asset;

- (b) Manufacturer's serial number and model number;
- (c) Source and/or supplier of the Program Asset;
- (d) Details regarding the funding by which each Program Asset was acquired;
- (e) Details regarding title to the asset;
- (f) Date of acquisition and cost;
- (g) Information from which one can calculate the percentage of the Foundation's participation in the cost of the Program Asset;
- (h) Location and condition of the Program Asset and the date upon which that information was reported;
- (i) Unit acquisition cost; and
- (j) Ultimate disposition data, including date of disposal and sale price and the method used to determine current fair market value.

6.4 The RPI shall suitably designate or label the Program Asset in accordance with its standard procedures and the designated ownership.

6.5 The RPI shall suitably designate or label the Program Asset to acknowledge the support of the Foundation.

*Insurance*

6.6 The RPI shall insure all Program Assets with an insurer of good repute against fire, loss, damage or theft and such other appropriate risks as may be advised, to the full replacement value thereof and unless otherwise agreed by the Foundation in writing shall employ the proceeds of any claim made pursuant to that insurance upon the provision of a suitable replacement of the Program Asset.

**7. Prevention of Scientific Misconduct**

7.1 The RPI shall have in place adequate systems for assuring the quality of research carried out by the Principal Investigator, the Research Team and the staff of the RPI so that Scientific Misconduct shall be prevented, and if not prevented, shall be detected and terminated forthwith. The RPI shall have effective mechanisms for identifying Scientific Misconduct and shall have clearly publicized and agreed procedures for investigating allegations made of such misconduct.

**8. Tax status**

8.1 Before any part of the Research Grant is paid, and subsequently before any installment of the Research Grant is claimed, the RPI shall satisfy the Foundation that it qualifies as a not-for-profit institution, exempt from tax under the Internal Revenue Code.

**9. Limitation of Liability and Indemnity**

- 9.1 The RPI shall be wholly responsible for the conduct of the Research Program, and the Foundation shall have no obligation, responsibility, or any liability financial or otherwise of any kind to the Principal Investigator or the RPI or any member of the Research Team arising from the Grant Conditions, or any representation or other act or omission connected with the Research Program or the use of the Research Grant, except to pay the Research Grant in accordance with the Grant Conditions.
- 9.2 The RPI shall fully indemnify and hold the Foundation, and its officers, members, servants or agents, harmless against all liabilities, loss, damages, costs (including, without limitation, attorneys' fees, costs and litigation expenses and/or professional costs) and claims of any kind arising from any act or omission of the RPI, Principal Investigator or any member of the Research Team in connection with the Research Program or the use of the Research Grant or from the provision of any funds, advices, or assistance of any kind given by the Foundation pursuant to the Grant Conditions.

## **10. Responsibilities of Principal Investigator**

- 10.1 The Principal Investigator shall be responsible for the direction, management and pursuit by the Research Team of the Research Program in all of its objectives and the efficient, proper and appropriate conduct of that program from a financial, legal and ethical perspective. In particular the Principal Investigator shall do all acts, deeds and things necessary or desirable to facilitate and enable the RPI to comply with the Grant Conditions and its reporting obligations in particular.
- 10.2 Support for the Research Program may not continue without the active direction of the Principal Investigator approved for, and identified in, this Grant. If the approved Principal Investigator severs his or her connection with the RPI or otherwise relinquishes active direction of the Research Program, whether permanently or for three or more consecutive months, the RPI must either:
- (a) Appoint a replacement Principal Investigator with the approval of the Foundation, or
  - (b) Relinquish the Research Grant, in which case the Research Grant shall be terminated and the RPI shall furnish a Final Report (described in Clause 5.2).

## **11. Responsibilities of Research Performing Institution and Principal Investigator**

- 11.1 The RPI, with the cooperation of the Principal Investigator, shall do all acts, deeds and things reasonably required in order to give effect to the Grant Conditions and to further the objectives of the Foundation, in particular in so far as the Grant Conditions provide for:
- (a) The transfer by bailment, licensing or sharing of ownership, exploitation, commercialization and management of any Intellectual Property resulting from the Research Program; and
  - (b) The transfer, licensing or sharing of ownership, use, exploitation, commercialization and management of all Program Assets, including real property and equipment.

- 11.2 The RPI and Principal Investigator shall jointly and severally ensure that they, or one of them shall notify the Foundation of the following matters:
- (a) The achievement or occurrence of any milestone in the Research Program identified in the Application or any Modifications thereto;
  - (b) The conception or creation of any Subject Invention by any member of the Research Team in the course of their employment in the Research Program or deriving directly or indirectly from the use or access to the knowledge of the Research Program of which the Principal Investigator is or ought to have been aware;
  - (c) Any significant problems relating to the administrative or financial aspects of the Research Program;
  - (d) If the Principal Investigator intends:
    - (i) To devote substantially less effort to the work anticipated in the Application;
    - (ii) To sever his or their connection with the RPI;
    - (iii) To be absent for a continuous period of three months or more; or
    - (iv) To otherwise relinquish active direction of the Research Program;
  - (e) The accrual of any income to the Research Program through the receipt of matching funds, gifts, or the transfer by bailment or licensing of Intellectual Property;
  - (f) If there are reasonable grounds for believing there has been or shall be a breach of the Grant Conditions;
  - (g) If there are reasonable grounds for believing there has been or shall be an act of Scientific Misconduct;
  - (h) If there are reasonable grounds for the Foundation to suspend, reduce, terminate or revoke the Research Grant;
  - (i) Of the occurrence of any event which is or provides reasonable grounds for believing that any Intellectual Property rights have been or are likely to be infringed; or
  - (j) Of the occurrence of any event which has had or may have a material adverse effect on the Research Program.

## 12. **Publication**

- 12.1 The RPI shall encourage the Principal Investigator to disseminate, as widely as reasonably practicable and in accordance with the Intellectual Property Guidelines, the products and results of the Research Program in internationally peer-reviewed

publications and the scientific press, and where appropriate, among the general public, except where such dissemination could undermine the Intellectual Property or other rights and entitlements of the RPI or the Principal Investigator.

12.2 The RPI and the Principal Investigator shall promote the reputation and standing of the Foundation in the conduct and administration of the Research Program. In particular, the RPI shall ensure that:

(a) An acknowledgement of the Foundation's support is made in any publication (including the World Wide Web pages) of any material based or developed under this Research Program, in the following terms:

*"This material is based upon works supported by the Science Foundation Arizona under Grant No. [Foundation Grant No]."*

(b) The support of the Foundation is acknowledged in all news media, interviews, including popular media, such as, radio, television and news magazines;

(c) Every publication of material (including World Wide Web pages) based on or developed on the Research Grant, except scientific articles or papers appearing in scientific, technical or professional journals contains the following disclaimer:

*"The opinions, findings and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the Science Foundation Arizona."*

(d) Every publication of material based on or developed under the Research Grant is clearly labeled with the Research Grant number and that other appropriate identifying information is available to the authorized representative of the Foundation on request subject to the acceptance of the concerned peer-reviewed journal, and is listed on the web page of the Principal Investigator and/or the RPI; and

(e) In any communications, including media appearances and releases, as well as journals and conferences concerning the Research Program, acknowledgements shall mention the form of the Foundation's support and shall publish the logo of the Foundation in accordance with the Foundation guidelines, subject to the journal or media rules of the RPI, wherever journal or other media rules permit.

### 13. **Intellectual Property**

13.1 The Foundation wishes to promote and encourage the development, use and commercialization of Intellectual Property for the benefit of the citizens of Arizona. The Foundation subscribes to the framework and process in the Bayh-Dole Act to ensure transparent and consistent procedures for managing Intellectual Property from publicly funded research.

13.2 The RPI and the Principal Investigator shall ensure that the relevant provisions of the Intellectual Property Guidelines of the RPI are complied with and, in particular, shall ensure that:

- (a) Intellectual Property produced by a Research Program, where commercially appropriate, is exploited and commercialized;
  - (b) Whenever possible, Intellectual Property shall be managed for the benefit of enterprise development in Arizona; and
  - (c) Where an industrial partner is involved, the RPI and the industrial partner have entered into an Intellectual Property agreement that complies in all respects with the Grant Conditions.
- 13.3 The RPI shall ensure that as a result of commercialization, attractive incentives and financial returns are provided to the Principal Investigator and the Research Team.

*Documents Required by the Foundation Prior to Grant Agreement*

- 13.4 Prior to entering into a grant agreement with the Foundation, and as a pre-condition to the Foundation being contractually bound hereunder, the Principal Investigator and the RPI shall submit to the Foundation such documents (in the form and/or with such content) as may be required under the Intellectual Property Guidelines.

*Ownership of Intellectual Property*

- 13.5 Ownership of Intellectual Property resulting from a Research Program shall be governed by the Intellectual Property Guidelines of the RPI. Ownership of Intellectual Property shall be allocated according to applicable employment contracts and U.S. Patent Law (Title 35 U.S. Code) and U.S. Copyright Law (Title 17 U.S. Code) in effect at the time the Intellectual Property was created. As such Intellectual Property may be solely owned by one party or jointly owned by two or more parties, depending on whether the Research Program is a sponsored or collaborative program with third parties.

*Royalties*

- 13.6 Any royalties, equity participation or other returns arising as a result of the exploitation, commercialization and management of Intellectual Property produced under the Research Program shall be managed in accordance with the Intellectual Property Guidelines of the RPI.

*Copyright*

- 13.7 Ownership of copyright in respect of all Subject Writings shall be governed by the Intellectual Property Guidelines of the RPI.

**14. Payment**

- 14.1 The Foundation shall pay the Research Grant in the sum indicated in the Letter of Offer at the times and in the manner set out in the Letter of Offer or in the Budget as agreed with the Foundation subject to the observance and performance by the RPI and the Principal Investigator of the Grant Conditions.

- 14.2 Claims for the payment of Research Grant shall confirm cumulative actual expenditure since the last payment of any installment of the Research Grant, together with the estimated expenditure for the payment in respect of which payment is sought.
- 14.3 If the costs incurred by the RPI in carrying out the Research Program amount to less than the maximum grant approved, the Foundation shall be obliged to pay only such amount as may be necessary to discharge the actual costs, and if the costs incurred by the RPI exceed the amount of the maximum grant approved, such excess shall be borne by the RPI.
- 14.4 The RPI may incur pre-award costs for up to ninety (90) days prior to the effective date of the Research Grant award. Pre-award costs as incurred by the RPI must be necessary for the effective and economical conduct of the Research Program, and the costs must be otherwise allowable in accordance with the appropriate cost principles specified in the Grant. Any pre-award costs are incurred at the RPI's risk. The incurring of pre-award costs by the RPI does not impose any obligation on the Foundation (1) if an award is not subsequently made, or (2) if an award is made for a lesser amount than the RPI expected.
- 14.5 In the absence of any specific notice to the contrary, the RPI is authorized to carry forward unexpended balances of funds received to subsequent funding periods.

15. **Audit/Record Retention**

- 15.1 The RPI and the Principal Investigator shall retain all appropriate financial, statistical, administrative, scientific and all other relevant supporting papers, statistical records and other records in both hard and electronic form in relation to the Research Program, the Research Grant and the Intellectual Property, and shall make all such records and papers available to the Foundation or its authorized representatives upon reasonable notice for the duration of the Research Program and for a period of five (5) years following submission of the Final Scientific Report or for such longer period as the Foundation may request.
- 15.2 The financial information referred to Clause 15.1 shall include, without limitation, such information, data, ledgers, bank statements, accounts, authorities, directions and instructions to its auditors, accountants, banks and other servants or agents, and any other papers which may be reasonably necessary to enable the Foundation to exercise its rights of audit and to satisfy itself that the RPI has complied with the Grant Conditions.

16. **Site Visits**

- 16.1 The Foundation, and/or any authorized representative who the Foundation, in its absolute discretion, deems appropriate, has the right, at all reasonable times, to make site visits to review Research Program accomplishments and management control systems. If any site visit is made by the Foundation and/or its authorized representative on the premises of the RPI, or other premises where the Research Program may be conducted, the RPI shall provide, and shall require its servants or agents to provide, all reasonable assistance to the Foundation and/or its authorized representatives in the performance of their duties.

17. **Transfer of Research Grant**

17.1 If a Principal Investigator takes up an appointment at another RPI located in Arizona-, the Research Grant may be transferred, provided that:

- (a) Arrangements satisfactory to the Foundation and the new RPI are put in place to continue the Research Program in the new RPI in a manner in which it was originally approved; and
- (b) The transfer is approved, in writing, by the original RPI and the Foundation before any such transfer takes place.

18. **No-Cost Extensions**

18.1 The Foundation may, on request by the RPI and the Principal Investigator in accordance with Clause 18.2 below, extend the Term of the Research Grant by up to 6 months if additional time is required to ensure adequate completion of the Research Program within the funds already made available (a “**No-Cost Extension**”).

18.2 Any request for a No-Cost Extension by the RPI and the Principal Investigator must be made in writing to the relevant program officer within the Foundation at least 90 days prior to the expiration of the Term. The request must explain the need for the No-Cost Extension and include an estimate of the unobligated funds remaining and a plan for their use. The fact that unobligated funds may remain at the expiration of the Term is not, in itself, sufficient justification for a No-Cost Extension. The plan must adhere to the previously approved objectives of the Research Program.

18.3 Any No-Cost Extension approved in writing by the Foundation will specify a new expiration date. The RPI and/or the Principal Investigator shall not make new commitments or incur new expenditures after the original expiration date in anticipation of a No-Cost Extension.

19. **Term and Termination**

19.1 The Research Grant shall commence on the date specified in the Letter of Offer and shall continue for the period specified in the Letter of Offer (the “**Term**”).

19.2 The Research Grant may be, reduced, suspended, terminated or revoked by the Foundation in whole or in part in any of the following circumstances:

- (a) If, in the reasonable opinion of the Foundation, progress of the Research Program is not deemed to be satisfactory;
- (b) When the RPI has materially failed to comply with the Grant Conditions;
- (c) When the RPI or the Principal Investigator commits an act of insolvency; or
- (d) When the Principal Investigator
  - (i) Is convicted of any criminal offence involving dishonesty;

- (ii) Severs his connection with the RPI;
  - (iii) In the reasonable opinion of the Foundation, relinquishes active direction of the Research Program; or
  - (iv) Does not initiate the Research Program actively within 60 days of the effective date specified in the award letter; and/or
- (e) When the Foundation has other reasonable cause.
- 19.3 The Research Grant may be reduced, suspended, terminated or revoked by the RPI in whole or in part in any of the following circumstances:
- (a) On giving 30 days' written notice to the Foundation, setting forth the reasons for such action and, in the case of partial termination, the portion to be terminated or suspended (with the understanding that if the Foundation determines that the unterminated portion will not accomplish the purposes of the Research Grant, it may suspend or terminate the entire Research Grant); or
  - (b) On 30 days' notice following receipt of the Foundation's decision in respect of a Notice of Objection or Refusal or notification of rejection by the Foundation of a RPI Modification Notice both as provided for in Clause 24.
- 19.4 Normally, action by the Foundation to reduce, suspend, terminate or revoke a Research Grant will be taken only after the RPI has been informed by the Foundation of any deficiency on the part of the RPI or the Principal Investigator and given an opportunity to correct it; but the Foundation may immediately suspend or terminate the Research Grant without notice when it reasonably believes that such action is required to protect the interest of the Foundation, the Research Program or the Research Grant.
- 19.5 No costs incurred by the RPI during the suspension period or after the effective date of the termination will be Eligible Costs, except in circumstances where no fault attaches to the RPI and, in the opinion of the Foundation, the RPI could not reasonably avoid or eliminate such costs, or which were otherwise authorized by the suspension or termination notice, provided such costs would otherwise be Eligible Costs under the Grant Conditions.

## 20. **Effects of Termination**

- 20.1 Within 30 days of the termination date, the RPI shall furnish a report containing such information as would be contained in the Final Report (as detailed in Clause 5.2), together with an itemized accounting of costs incurred prior to the termination date. Final Eligible Costs under the termination settlement will be paid in accordance with the Grant Conditions, including this Clause, giving due consideration to the progress of the Research Program. In no event will the total of the Research Grant payment under a terminated award exceed the Research Grant amount.
- 20.2 Where the Research Grant is terminated or revoked by the Foundation, the RPI shall repay to the Foundation such amounts of the Research Grant as may have been advanced but not expended in performance of the Research Program. Repayment shall be made within 90 days of the date of the notice of termination.
- 20.3 Within 90 day of the expiration of the Research Grant, the RPI shall repay to the Foundation any part of the Research Grant as may have been advanced but not expended in the performance of the Research Program, except for any costs that are committed for Eligible Costs that may not be cancelled or are subject to reimbursement, provided that the RPI submits to the Foundation documentation of such costs and such costs would otherwise be Eligible Costs under the Grant Conditions.
- 20.4 Except as otherwise provided in the Grant Conditions, upon the termination or expiration of the Research Grant, the Foundation shall have no further obligation to fund the Research Grant.

## 21. **Confidentiality**

- 21.1 In this Clause 21 “**Confidential Information**” means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly and whether specifically designated as ‘confidential’ or which ought reasonably be regarded as confidential) under or in connection with this Agreement by one party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) whether before or after the date of this Agreement including, without limitation, information relating to the Disclosing Party's products, services, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs.
- 21.2 Subject to the terms of Clause 12 (Publication) and Clause 33 (Freedom of Information), and any applicable state statutory law, during the term of this Agreement and after termination or expiration of this Agreement for any reason the Receiving Party:
- (a) Will not use Confidential Information for a purpose other than the performance of its obligations under this Agreement;
  - (b) Will not disclose Confidential Information to a person except with the prior written consent of the Disclosing Party other than in accordance with Clauses 21.3 and 21.5; and

- (c) Shall make every effort to prevent the use or disclosure of Confidential Information.
- 21.3 During the term of this Agreement the Receiving Party may disclose Confidential Information to any of its directors, other officers and employees (a “**Recipient**”) to the extent that disclosure is reasonably necessary for the purposes of this Agreement.
- 21.4 Before disclosure to a Recipient, the Receiving Party shall ensure that a Recipient is made aware of and complies with the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement.
- 21.5 The Receiving Party may disclose Confidential Information of the Disclosing Party, whenever reasonably possible on obtaining the prior written consent of the Disclosing Party, if and to the extent that:
- (a) Disclosure is required by the law of any relevant jurisdiction (including the Freedom of Information Acts, 1997 and 2003) or pursuant to an order of a court of competent jurisdiction;
  - (b) Disclosure is required by any securities exchange or regulatory or governmental body to which that party is subject to, wherever situated, whether or not the requirement for information has the force of law;
  - (c) The information is disclosed on a strictly confidential basis to the attorneys, auditors and bankers of the Receiving Party;
  - (d) The information has come into the public domain through no fault of the Receiving Party;
  - (e) The information was in the possession of the Receiving Party before such disclosure by the Disclosing Party;
  - (f) The information was obtained by the Receiving Party from a third party who was free to divulge the same;
  - (g) The Disclosing Party has given prior written approval to the Receiving Party in respect of the disclosure, such approval not to be unreasonably withheld or delayed;
  - (h) Disclosure is required to enable that party to enforce its rights or perform its obligations (including the publication obligations in Clause 12) under the Grant Conditions;
  - (i) The information is disclosed to bona fide current and/or potential purchaser, investor and/or lender of the Receiving Party, and any legal and/or professional representatives thereof, provided that such potential purchaser, investor and/or lender shall be subject to a confidentiality agreement (on terms usual to such transactions) covering such Confidential Information, or
  - (j) The information was developed independently by the Receiving Party.

- 21.6 The Parties acknowledge and agree that in the event of a default in the obligations set out in this Clause 21, damages may not be a sufficient remedy for the Disclosing Party. Accordingly, in addition to other remedies, such Disclosing Party will have the right to seek injunctive relief or specific performance of the other party's obligations. Any such remedy shall not be deemed to be exclusive and shall be in addition to any and all other remedies which may be available to the other party at law or in equity.
- 21.7 Upon termination or expiration of this Agreement the Receiving Party shall, at the option of the Disclosing Party, either destroy or return to the Disclosing Party all records, documentation or other information and all copies thereof which are held by the Disclosing Party. The Receiving Party may retain one copy of written Confidential Information for its archival purposes only.
- 21.8 The obligations of each of the Parties as to disclosure and confidentiality shall continue in force notwithstanding the termination of this Agreement.

## 22. **Entire Agreement**

- 22.1 Subject to Clause 24, the Grant Conditions contain the entire of the terms and conditions applicable to the payment of the Research Grant and supersede and replace any prior written or oral agreements, representations or understandings between the Parties.

## 23. **Conflicts**

- 23.1 In the event of a conflict or inconsistency between any provisions of the General Terms and Conditions, the Application, the Letter of Offer, such conflict or inconsistency shall be resolved by giving the following precedence:
- (a) Letter of Offer;
  - (b) Budget;
  - (c) General Terms and Conditions;
  - (d) the Application.

## 24. **Modifications**

- 24.1 The Foundation shall be entitled at any time on written notice to the RPI ("**Modification Notice**") to vary the terms of the Grant Conditions ("**Modifications**"). Any Modification Notice shall provide full details of the proposed modifications including the date on which it becomes operative and the reasons for the change. Notwithstanding the remaining provisions of this Clause 24, Modifications shall become effective on the operative date specified in the Modification Notice.
- 24.2 The RPI may, within 30 days of receipt of a Modification Notice, issue a Notice of Objection or Refusal to the Foundation setting out the reasons for such objection or refusal and the direct consequences (including breach of any contract directly related to the Research Program between the RPI and a third party) that shall flow from the Modifications. The Foundation shall reasonably consider such Notice of Objection or

Refusal and, within a reasonable period following receipt of a Notice of Objection or Refusal, the Foundation shall (subject to Clause 24.3) be entitled at its discretion to:

- (a) Withdraw the Modification Notice in which case the Grant Conditions shall continue in force unchanged;
- (b) Issue a revised Modification Notice having regard to the reasons given for any refusal or objection (in which event, the provisions of Clause 24.2 shall apply once again); or
- (c) Issue a notice of reduction, suspension, termination or revocation pursuant to Clause 19.

24.3 Where the Notice of Objection or Refusal states that the proposed modifications specified in the Modification Notice would, if implemented, cause the RPI to be in material breach of a contract directly related to the Research Program, then the Foundation shall reasonably and in good faith further consult the RPI and shall reasonably consider the matters raised by the RPI.

24.4 The RPI shall be entitled to request a Modification of the Grant Conditions at any time on written notice to the Foundation containing full details of the proposed modifications and reasons for the change (“**RPI Modification Notice**”). The Foundation shall give reasonable consideration to the RPI Modification Notice and shall within not more than 30 days either:

- (a) Accept the proposed modification in which case the Grant Conditions shall be amended accordingly; or
- (b) Reject the proposed modification in which case the Grant Conditions shall continue in force unchanged.

24.5 No Modification of the Grant Conditions shall give rise to any requirement for repayment by the RPI of the whole or any part of a Research Grant paid to it prior to the date of the Modification Notice.

## 25. **Assignment**

25.1 The Research Grant is made only to the RPI and the RPI shall not, without the written agreement of the Foundation, assign, transfer, sub-contract or in any other manner make over to any third party the benefit and/or burden of the Research Grant.

## 26. **Dispute Resolution**

26.1 The Parties will use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to the Research Grant, the Grant Conditions or any breach of them. If any such dispute cannot be settled amicably through ordinary negotiations by the authorized representative of the Parties, the dispute shall be referred to the Vice President/Dean of the RPI and the Chief Operations Officer of the Foundation, who will meet in good faith to try and resolve the dispute. If the dispute or difference is not resolved as a result of such meeting, the following procedure shall apply before resorting to litigation:

- (a) Where the Parties agree that a matter is of a technical nature, it may be referred to a technical expert (the “Expert”) to be appointed by agreement between the parties. Where the parties cannot agree on the appointment of the Expert, the matter may be referred to mediation pursuant to subclause (b) below. If the parties agree upon the Expert, within 10 days of such agreement, each party shall submit to the expert its position regarding the matter in dispute. Within 20 days of receipt of such submittals, the Expert shall issue its opinion with respect to the matter in dispute. Each party shall bear its own costs in connection with the Expert opinion and the costs of the Expert shall be borne equally between the parties; or
  - (b) Where the dispute is of a non-technical nature, or the Parties cannot agree as to whether or not the dispute is of a technical nature, or where the parties cannot agree on the appointment of the Expert, the matter may be referred to mediation. The mediator shall be appointed by agreement between the Parties or, if the parties cannot agree upon a mediator, the matter shall be referred to the American Arbitration Association for appointment of a mediator. Each party shall bear its own costs in connection with the mediation and the costs of the mediator shall be borne equally between the Parties.
- 26.2 Nothing contained in this Clause 26 shall restrict the party’s freedom to commence legal proceedings to preserve any legal right or remedy or protect any Intellectual Property rights.
- 26.3 If the dispute is not resolved pursuant to Clause 26.1, either party may commence litigation. In the event of a dispute hereunder that involves the sum of Fifty Thousand Dollars (\$50,000) or less, in money damages only, exclusive of interest, costs and attorneys’ fees, the parties will submit the matter to binding arbitration pursuant to the Arizona Arbitration Act, Section 12-1501, et seq., (the “Act”) whose rules shall govern the interpretation, enforcement and proceedings pursuant to this paragraph. The decision of the arbitrator(s) shall be final and binding upon the parties.

27. **Force Majeure**

No Party shall be in breach of this Agreement if there is any total or partial failure of performance by it of its duties and obligations under this Agreement occasioned by any act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies, labor disputes of whatever nature and any other reason, beyond the control of any other Party. If a Party is unable to perform its duties and obligations under the Grant Conditions as a direct result of the effect of one of those reasons that Party shall give written notice to the others of the inability, stating the reason in question. The operation of the Research Grant shall be suspended during the period (and only during the period) in which the reason continues. Forthwith, upon the reason ceasing to exist, the Party relying upon it shall give written advice to the others of this fact. If the reason continues for a period of more than 10 working days, the Party not claiming relief under this Clause 27 shall have the right to terminate the Grant Conditions forthwith upon giving written notice of such termination to the other Parties.

28. **Severability**

If any provision or term of the Grant Conditions or any part thereof shall become or be declared illegal invalid or unenforceable for any reason whatsoever, including but without limitation by reason of the provisions of any legislation or other provisions having the force of law, or by reason of any decision of any Court or other body or authority having jurisdiction over the Parties, such terms or provisions shall be severable from the Grant Conditions and shall be deemed to be deleted therefrom, provided always that if any such deletion substantially affects or alters the basis of the Research Grant, the Parties shall negotiate in good faith to amend and modify the provisions and terms of the Research Grant as may be necessary or desirable in the circumstances.

29. **Nature of Relationship**

29.1 Nothing in the Grant Conditions shall constitute a partnership or joint venture or establish a relationship of agency between the Parties hereto, nor shall the Research Grant, or the operation thereof or the provision of any services by the Foundation, the Principal Investigator, the Research Team or the RPI be construed as evidence of any contract of employment between the Foundation and any member of the Research Team or any servant or agent of the RPI, which is expressly denied.

29.2 Neither the Principal Investigator nor any member of the Research Team, nor any servant or agent of the RPI shall be, nor in any way represent himself to be an agent of the Foundation, and none of them shall have any authority to enter into any obligation on behalf of the Foundation or to bind the Foundation in any way, which is expressly denied.

30. **Waiver**

No failure or delay on the part of any Party having an interest in the Research Grant to exercise any right or remedy under the Grant Conditions shall be construed or operated as a waiver thereof, nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in the Grant Conditions are cumulative and are not exclusive of any rights or remedies provided by law.

31. **Notices**

31.1 Any notice or other document to be given under the Grant Conditions shall be in writing and shall be deemed to have been duly given if delivered by hand or sent by:

- (a) First-class post or express or air mail or other fast postal service;
- (b) Registered post; telex or facsimile; or
- (c) Electronic mail,

to the correct address, electronic mail address, telex or facsimile number (as may be amended from time to time by notice in writing to the other party) of the party to whom it is being sent.

- 31.2 Any notice or other document shall be deemed to have been received by the addressee as follows:

**Means of Dispatch Deemed Received**

Delivery by hand: the day of delivery;

Post: 2 Business Days after posting;

Telex/Facsimile when sender receives a completed transmission sheet or otherwise receives a mechanical confirmation of transmission; and

E-mail the date on which it is received by the intended recipient's e-mail server.

Provided that if, in accordance with the above provisions, any such notice or other communication would otherwise be deemed to be given or made outside working hours (being 9 a.m. to 5 p.m. on a business day) such notice or other communication shall be deemed to be given or made at the start of working hours on the next business day. To prove the giving of a notice or other document, it shall be sufficient to show that it was dispatched.

**32. Governing Law and Consent to Jurisdiction**

- 32.1 This Grant is subject to the laws and regulations of the United States. Any inconsistency or conflict in the terms and conditions specified in this Grant shall be resolved according to the following order of precedence:

- (a) The Federal statute authorizing this award, or any other Federal statutes directly affecting performance of this Grant.
- (b) The Arizona Revised Statutes, as applicable.
- (c) These General Terms and Conditions.
- (d) Other terms and conditions contained within the Grant and any attached schedules.

**33. Freedom of Information**

- 33.1 The Foundation may be required to disclose information provided to it in response to a request under the Freedom of Information Acts 1997 and 2003 (the "Acts") in the following circumstances;

- (a) When the Foundation is made subject to Freedom of Information Acts 1997 and 2003 (the "Acts") and receives a direct request; or

- (b) Where the Foundation has provided information to a public body which is subject to the Acts and that public body receives a direct request and seeks the views of the Foundation in connection with that request.
- 33.2 Should the RPI and/or the Principal Investigator consider that any information supplied to the Foundation is confidential and/or commercially sensitive it shall, at the time of providing the information, identify such information and give reasons for its confidentiality and/or commercial sensitivity. The Foundation may, if it considers it appropriate, consult with the RPI and/or the Principal Investigator prior to releasing or consenting to the release of such information in the circumstances mentioned in Clause 33.1.
- 34. **Legal Proceedings**
- 34.1 The RPI shall agree to be available to participate in any legal proceedings arising out of this Agreement to which the Foundation is a party including, but not limited to, proceedings in connection with the ownership, exploitation, commercialization and/or management of any Intellectual Property rights produced by a Research Program.
- 34.2 Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of seven (7) years from the date of submission of the Final Scientific Report. The Foundation shall have access to those records.
- 35. **Conflict of Interest**
- 35.1 This Agreement is subject to the provisions of A.R.S. Section 38-511 and the RPI may cancel this Agreement if any person significantly involved in negotiating, drafting, securing or obtaining this Agreement for or on behalf of the RPI becomes an employee or a consultant to any other party with reference to the subject matter of this Agreement while this Agreement or any extension thereof is in effect for a specific program.