

SCIENCE FOUNDATION ARIZONA

TERMS AND CONDITIONS

of

SFAz GRANTS and CONTRACTS

(Revised November 2009)



The initial public portion of funding for Science Foundation Arizona's strategic investments comes from Arizona's 21st Century Fund, an initiative established in 2006 by the Governor and the Legislature. This funding comes through the Commerce and Economic Development Commission (CEDC) in the Arizona Department of Commerce.

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1. Definitions

<i>Annual Report</i>	<i>Shall comprise the report submitted by the Educational Establishment or Research Performing Institution (collectively referred to as RPI) to the Foundation or its representative in accordance with Clause 5 below.</i>
<i>Award Letter</i>	<i>Shall mean the letter issued by the Foundation awarding the Grant to the RPI and all documents related thereto.</i>
<i>Budget of Record</i>	<i>Shall mean the budget annexed or otherwise identified in the Award Letter and any modification thereof agreed in writing by the Foundation following annual review or otherwise</i>
<i>Direct Costs</i>	<i>Shall mean those costs described in Clauses 2.3 and 2.4.</i>
<i>Eligible Costs</i>	<i>Shall mean those costs outlined in Clause 2.</i>
<i>Foundation</i>	<i>Shall mean Science Foundation Arizona, an Arizona nonprofit corporation, recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code. The Foundation does not grant awards to for-profit organizations</i>
<i>General Terms & Conditions</i>	<i>Shall mean the terms, conditions, warranties and covenants set out in this document together with any binding Modifications thereof.</i>
<i>Grant</i>	<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 Program plus all reasonably necessary ancillary activities indicated in the Budget of Record or otherwise agreed in writing between the RPI, industry partner when applicable, and the Foundation, or</i> <i>(ii) The maximum sum offered by the Foundation to the RPI in the Award Letter.</i>
<i>Grant Conditions</i>	<i>Shall mean collectively the Proposal, the Budget of Record, the Award Letter, the Intellectual Property Guidelines and General Terms and Conditions together with any binding Modifications thereof.</i>
<i>Grantee</i>	<i>Shall mean RPI receiving the award.</i>
<i>Institutional Allowance</i>	<i>Shall be 10% of: Total direct costs minus cost of equipment.</i>

Intellectual Property (IP)	<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 Program.</i>
IP Guidelines	<i>Shall mean the IP guidelines of the organizations involved. The Foundation reserves the right to negotiate some form of licensing agreement such that if the RPI or industry partner ceases work on the Program supported by the Foundation, the Foundation has access to the IP and results of the Foundation-sponsored work so that the Program could continue through other means. The Foundation 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 conducive to streamlined IP agreements and exchanges. The Foundation requires that the RPI and PI comply with the IP Guidelines.</i>
Modifications	<i>Shall mean any written amendments, alternations, modifications or variations to the Grant Conditions made in accordance with Clause 24.</i>
No-Cost Extension	<i>Shall have the meaning set out in Clause 18.</i>
Parties	<i>Shall mean the Foundation, the RPI and/or the PI, and industry partner when applicable.</i>
Principal Investigator (PI)	<i>Shall mean the individual employed by the RPI, who is nominated as such by the RPI in the Proposal and is approved in writing by the Foundation, and who will be responsible for the scientific and technical direction of the Program, including the submission of reports to the Foundation.</i>
Program	<i>Shall mean the Research or Educational work in the Proposal and outlined therein, and any Modifications thereto agreed to in writing by the Foundation.</i>
Proposal	<i>Shall comprise the grant application form; all documents attached thereto within the limits prescribed in the relevant Request for Proposals (RFP); and Budget of Record concerning the Proposal between the RPI, industry partner where applicable, and the Foundation.</i>
Remuneration	<i>Shall mean a contribution towards the salary of the PI and members of the Team together with the RPI's contribution to fringe benefit costs, if applicable, at the rate indicated in the Budget of Record or as otherwise expressly agreed in writing by the Foundation.</i>
RFP	<i>Request for Proposal</i>
RPI	<i>Shall mean the Educational Establishment or Research</i>

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.

Scientific Misconduct *Shall mean falsification of research or research results, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.*

Sponsored Projects *Entity responsible for Grant administration at RPI*

STEM *Shall be the acronym for Science, Technology, Engineering and Mathematics and is a form of instruction that provides individuals with critical skills and knowledge in these content areas including the ability to think critically, solve complex problems, work collaboratively and communicate effectively.*

STEM Initiative *Shall mean SFAz's strategic investment with support from industry and philanthropic partners in STEM education efforts with the goal of helping to build an Arizona workforce that is prepared to work in a 21st Century, knowledge-based economy.*

Subject Invention *Shall mean any invention or discovery conceived or first actually reduced to practice in the performance of the Program and falls within the scope of planned and committed research set forth in the Proposal and any Modifications thereto. On Education Grants this terms shall include any curricula and related instructional materials developed in performance of the grant, and falls within the scope of planned and committed education and research set forth in the Proposal and Modifications thereto.*

Subject Writing *Shall mean any writing, sketch, diagram, calculation, record, curriculum or document of any kind conceived or produced in the course of the Program in which copyright may vest and includes such items as reports, books, journal articles, software, sound recordings, video tapes, and/or video discs.*

Team *Shall mean the PI and any additional research or educational staff, if any, working on the Program and whose employment by the RPI is necessitated by the Program.*

Term *Shall have the meaning set out in Clause 19.*

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 economy, (b) actively engage scientific research, academic and medical institutions representing both the public and private sectors on a world-wide basis and (c) support STEM education that builds a highly skilled workforce as the foundation for a 21st century knowledge-based economy.
- 2.2** Costs eligible for support from the Grant shall be only those specified in the Budget of record, as agreed between the Foundation, the Grantee, and the industry partner when applicable. Costs eligible may be revisited periodically, with written approval from the Foundation. They may include both Direct Costs and Institutional Allowance set out hereunder.

Direct Costs

- 2.3** Direct Costs eligible for support from the Grant are those costs that can be specifically identified with a particular Program that is being conducted in Arizona. All eligible Direct Costs shall be:

- (a) Reasonable and necessary;
- (b) Incurred solely to advance the Program or, if any single item shall benefit both the 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 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 PI and the members of the 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 & 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 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 Program from any other activity;

- (b) The cost of all equipment acquired in accordance with the RPI's standard procurement practices;
- (c) Reasonable and vouched travel and other expenses directly related to scientific collaboration on the 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 Program and which purpose so justifies; and
- (e) Other approved direct costs associated with the Program as outlined in the Budget of Record and agreed to in writing by the Foundation.

Institutional Allowance

- 2.5 Institutional allowance eligible for grant support shall be incurred in accordance with the terms of the Grant Conditions and shall comprise a contribution of 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 there from the cost of all equipment identified in the Proposal.
- 2.6 Unless agreed otherwise by the Foundation, Eligible Costs (Direct or Institutional Allowance) for the 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 Proposal.

3. Certifications

3.1 The RPI certifies 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 made all reasonable efforts to obtain 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 Proposal, any documents furnished therewith, any report including but not limited to the 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 of Record 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 Proposal or the interests of the Foundation concerning the Proposal or the Grant that has not been disclosed in writing to the Foundation;
- (g) The Program will be performed with due skill care and diligence and by appropriately qualified personnel to meet commonly accepted standards;
- (h) The Program shall be conducted in compliance with United States Laws or other applicable laws, including, but not limited to, laws pertaining to the following:
 - (i) Live Organisms

By accepting funds under this Grant, Grantee 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.

The RPI should be prepared to submit a copy of all relevant Institutional Review Board (IRB) approvals to the Foundation prior to commencement of the work described by the Program

(B) For animals:

- (1) 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. While it is only a requirement for projects co-funded by a Public Health Service entity (example: The NIH) or conducted in AAALAC-Accredited Organizations, we highly encourage that other national standards, such as the United States Public Health Service Policy on the Humane Care and Use of Laboratory Animals (Public Health Service Policy on Humane Care and Use of Laboratory Animals, Office of Laboratory Animals, National Institutes of Health, RKL. 1, Suite 1050, MSC 7982, 6705 Rockledge Drive, Bethesda, MD 20892-7982); the Guide for the Care and Use of Laboratory Animals (Institute of Laboratory Animal Resources, National Academy Press, Washington D.C., 1996, or subsequent revisions) be followed as well.

The RPI should be prepared to submit a copy of all relevant Institutional Animal Care & Use Committee (IACUC) approvals to the Foundation prior to commencement of the work described by the Program

- (2) Rules 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.

(ii) Research Involving Recombinant DNA Molecules

By accepting funds under this Grant, any Grantee 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.

(iii) Environmental Standards

By accepting funds under this Grant, the Grantee 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:

- (1) 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.
- (2) 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.

(iv) CDC/HHS/USDA Select Agents and High Consequent Plant and Animal Pathogens Program

By accepting funds under this Grant, the Grantee assures that it will comply with all requirements for possession, use, and transfer for select agents and toxins as published by HHS (42 CFR part 73) and by USDA (9 CFR part 121 and 7 CFR part 331) or any amendments thereof, in accordance with the Public Health Security and Bioterrorism

Preparedness and Response Act of 2002 (Public Law 107-188; June 12, 2002)

(v) OSHA Regulations

By accepting funds under this Grant, the Grantee 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.

(vi) Nondiscrimination

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

(vii) Drug Free Workplace

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

(viii) 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.

The 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. RPIs with an approved IRB will comply with that process.

4. Responsibilities of the RPI

4.1 The RPI shall have full responsibility for the Program, the Grant, and for the adherence by the RPI, the PI, and the Team to the Grant Conditions. The RPI is encouraged to propose to discontinue or modify unpromising lines of investigations which may appear during the development of the research and to propose instead to explore interesting new leads. However, the RPI must consult the Foundation before deviating from the objectives or overall Program in the original Proposal. 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 Program, and that any proposed action on the part of the PI, the 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 RPI, and when applicable, the industry partner;
- (b) Ensure that the PI receives a copy of each part of the Grant Conditions, and any subsequent changes or binding Modifications thereto;
 - (c) Ensure that the PI and the Team shall fully discharge and comply with the obligations on their part to be performed in the Grant Conditions;
 - (d) Employ the PI and all members of the Team from resources allocated in respect of the cost of such employment in the Budget of Record and upon such terms and conditions as may be agreed between the RPI, the Foundation and the individual member of the Team in accordance with the practices of the RPI;
 - (e) Secure through each of the employment agreements with the members of the 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 Grant funds received only in accordance with the Budget in furtherance of the Program and in accordance with the Grant Conditions.
 - (g) Ensure that each PI as a condition of release of Grant Funds completes and returns the summary grant information found at <http://www.sfaz.org/Common/Files/Science%20Foundation%20Arizona%20Award%20Letters.%20Requirements.doc>

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. Required Reports¹

The Foundation will provide a schedule on the reporting and payment structure of the Grant, which will be enclosed with the Award Letter, and will assume precedence over the required reports listed below. All administrative and financial reports must be submitted with signatures from Sponsored Projects.

Quarterly Progress Report

- 5.1** The PI shall provide to the Foundation not later than the last day of each calendar quarter a report on the progress (“milestone report”) of the Program. The Foundation may or may not provide a template for this report. For Small Business Catalytic Awards, this report must be in narrative form and cover business and technical progress. This requirement does not apply to the last quarter of each calendar year of the Program

Quarterly Expense Report

- 5.2** The RPI shall provide to the Foundation not later than the last day of the month following each calendar quarter a cumulative expense for the Program. Line items in this expense report must be consistent with the approved Budget of Record on file at the Foundation. The Foundation will provide a template for this report. This requirement does not apply to the last quarter of the Program.

Interim Report and Site Visit

- 5.3** Close to the six-month mark for each year of the Program, an additional progress report (“Interim Report”) may be requested from the PI either on a template or in a narrative form. Additionally, a site visit may be requested by the Foundation, either at the RPI or at the Foundation, during which both the PI and a representative of the Industry Partner (Chair of the Advisory Board for Small Business Catalytic Awards) should be in attendance.

Annual Reports

- 5.4** Metrics Reports: In May of every year of the Program and for five years thereafter, a metrics report will be required from the PI by the Foundation. These metrics will include but will not be limited to the following:
- (a) Details of all academic, industrial and other partnerships
 - (b) A list of all publications concerning the Program, whether published by the RPI, the Team or any third party;
 - (c) A list of all Subject Inventions, including resulting patent applications and patents awarded;
 - (d) A list of all disclosures of Subject Inventions, together with full details thereof;
 - (e) A summary of scientific recognitions received;
 - (f) A list of all presentations made at public or invited gatherings, conferences or

¹ 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.

other forums, concerning the Program; and

- (g) Copies of any PR, press clippings, and video and audio links that highlight public attention garnered from the research and outcomes; and,
- (h) A breakdown of all funds leveraged with the initial Grant
- (i) Any other qualitative or quantitative benchmarks and measures stipulated in the Award Letter

5.5 Progress reports: By the last day of the month preceding each anniversary of the commencement of the Program, except during the last year of said Program, the PI shall provide to the Foundation a report on the progress of the Program which will include but not be limited to the following:

- (a) Such information as may be reasonably required by the Foundation or the State as part of the contract with the Foundation and notified to the RPI and/or PI from time to time, including updated metrics as described in clause 5.4;
- (b) A concise summary of the progress of the 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 Proposal and any subsequent Annual Reports;

Final Narrative Report

5.6 The PI shall provide to the Foundation not more than 90 days following completion of the Program a Final Narrative Report which will include but not be limited to the following:

- (a) Details of all academic, industrial and other partnerships
- (b) A list of all publications concerning the Program, whether published by the RPI, the Team or any third party;
- (c) A list of all Subject Inventions, including resulting patent applications and patents awarded;
- (d) A list of all disclosures of Subject Inventions, together with full details thereof;
- (e) A summary of scientific recognitions received;
- (f) A list of all presentations made at public or invited gatherings, conferences or other forums, concerning the Program; and
- (g) Copies of any press clippings, and video and audio links that highlight public attention garnered from the research and outcomes;
- (h) A breakdown of all funds leveraged with the initial Grant
- (i) A list of students who have received advanced degrees along with thesis titles
- (j) Any other qualitative or quantitative benchmarks and measures stipulated in the Award Letter
- (k) Any other such other information as may be reasonably agreed upon by the

Foundation and the RPI.

Final Financial Report

- 5.7** The RPI shall provide to the Foundation not more than 90 days following completion of the Program a Final Expense Report which should cover the entire funding period and should reconcile with the approved Budget of Record. A template will be provided for this report. Failure to fully expend all funds received from the Foundation will result in RPI refunding unspent funds within 30 days of receipt of Final Financial Report by the Foundation.

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

Ownership

- 6.2** Unless specified otherwise by the Foundation in the Award Letter or elsewhere in the Grant Conditions, all right, title and interest in Program Assets purchased or generated

with the 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 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 Grantee 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.

Where Grantee is an agency of the State of Arizona, the RPI participates in the self-insurance programs of the Arizona Sate Risk Management Program. This Program maintains general and professional liability coverage of sufficient amounts to cover

claims arising from the acts and omissions of the RPI's employees while participating in this Program.

7. Prevention of Scientific Misconduct

7.1 The RPI shall have in place adequate systems for assuring the quality of the Program carried out by the PI, the 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 Grant is paid, and subsequently before any installment of the 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 Program, and the Foundation shall have no obligation, responsibility, or any liability financial or otherwise of any kind to the PI or the RPI or any member of the Team arising from the Grant Conditions, or any representation or other act or omission connected with the Program or the use of the Grant, except to pay the 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, PI or any member of the Team in connection with the Program or the use of the Grant or from the provision of any funds, advices, or assistance of any kind given by the Foundation pursuant to the Grant Conditions.

Where Grantee is an agency of the State of Arizona, each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

10. Responsibilities of PI

10.1 The PI shall be responsible for the direction, management and pursuit by the Team of the 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 PI 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 Program may not continue without the active direction of the PI approved for, and identified in, this Grant. If the approved PI severs his or her

connection with the RPI or otherwise relinquishes active direction of the Program, whether permanently or for more than three months, the RPI must either:

- (a) Appoint a replacement PI with the approval of the Foundation, or
- (b) Relinquish the Grant, in which case the Grant shall be terminated and the RPI shall furnish Final Reports (described in Clause 5.6 and 5.7).

11. Responsibilities of RPI and PI

11.1 The RPI, with the cooperation of the PI, 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 licensing or sharing of ownership, exploitation, commercialization and management of any IP resulting from the 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 PI shall jointly and individually 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 Program identified in the Proposal or any Modifications thereto upon occurrence
- (b) Any new publication or press article related to the Program, and provide either a copy or World Wide Web link to the Foundation
- (c) The conception or creation of any Subject Invention by any member of the Team in the course of their employment in the Program or deriving directly or indirectly from the use or access to the knowledge of the Program of which the PI is or ought to have been aware;
- (d) Any significant problems relating to the administrative or financial aspects of the Program;
- (e) If the PI intends:
 - (i) To devote substantially less effort to the work anticipated in the Proposal;
 - (ii) To sever his/her/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 Program;
- (f) The accrual of any income to the Program through the receipt of matching funds, gifts, or the transfer by licensing of IP;
- (g) Any potential instance of funding overlap

- (h) If there are reasonable grounds for believing there has been or shall be a breach of the Grant Conditions;
- (i) If there are reasonable grounds for believing there has been or shall be an act of Scientific Misconduct;
- (j) If there are reasonable grounds for the Foundation to suspend, reduce, terminate or revoke the Grant;
- (k) Of the occurrence of any event which is or provides reasonable grounds for believing that any IP rights have been or are likely to be infringed; or
- (l) Of the occurrence of any event which has had or may have a material adverse effect on the Program.

12. Publication, Press, Logo Usage

12.1 The RPI shall encourage the PI to disseminate, as widely as reasonably practicable and in accordance with the IP Guidelines, the products and results of the Program in internationally peer-reviewed publications and the scientific press, and where appropriate, among the general public, except where such dissemination could undermine the IP or other rights and entitlements of the RPI or the PI.

12.2 The RPI and the PI shall promote the reputation and standing of the Foundation in the conduct and administration of the 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 Program, in the following terms:

“This material is based upon works supported by Science Foundation Arizona under Grant No. [Foundation Grant No.]”

- b. The support of the Foundation is acknowledged, by the full name of Science Foundation Arizona in all news media, interviews, including popular media, such as, radio, television, online and news magazines;
- c. RPI websites are requested to link to the Foundation's website at www.sfaz.org
- d. Every publication of material (including World Wide Web pages) based on or developed on the Grant, except scientific articles or papers appearing in scientific, technical or professional journals contains the following disclaimer:
- e. “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.”
- f. Every publication of material based on or developed under the Grant is clearly labeled with the 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 World Wide Web page of the PI and/or the RPI; and
- g. In any communications, including media appearances and releases, as well as journals and conferences concerning the 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. Permission to use the Science Foundation Arizona logo in materials is only granted to designated RPIs

- h.** The Foundation is to approve all RPI press releases related to the Grant to ensure proper branding. The RPI is to communicate with their respective organization's Communications Department to make them aware that all that press releases pertaining to the Foundation must be approved by the Foundation.

13. IP

13.1 The Foundation wishes to promote and encourage the development, use and commercialization of IP 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 IP from publicly funded education or research.

13.2 The RPI and the PI shall ensure that the relevant provisions of the IP Guidelines of the RPI are complied with and in particular shall ensure that whenever and wherever possible:

- a.** IP produced by a Program, where commercially appropriate, is exploited and commercialized;
- b.** IP 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 IP 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 PI and the Team.

Timeline of documents required by the Foundation for Grant agreement to be binding

13.4 Within 90 days of entering into a grant agreement with the Foundation, and as a pre-condition to the Foundation being contractually bound hereunder, the PI and the RPI shall submit to the Foundation such documents (in the form and/or with such content) regarding ownership and use of IP or as may be required under the IP Guidelines of the RPI or this document.

Ownership of Intellectual Property

13.5 Ownership of IP resulting from a Program shall be governed by the IP Guidelines of the RPI and any IP agreement. Ownership of Intellectual Property shall be allocated according to applicable employment contracts and other agreements related to the Grant or the Program 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 IP was created. As such IP may be solely owned by one party or jointly owned by two or more parties, depending on whether the Program is a sponsored or collaborative program with third parties and the respective parties' contribution. The Foundation reserves the right to negotiate some form of licensing agreement, which the applicable parties will negotiate in good faith, such that if the RPI and/or partner ceases work on the Program supported by the

Foundation, the Foundation has access to and use of the IP and results of the Foundation-sponsored work so that the Program could continue through other means.

Royalties

- 13.6** Any royalties, equity participation or other returns arising as a result of the exploitation, commercialization and management of IP produced under the Program shall be managed in accordance with the IP Guidelines of the organizations involved. The Foundation reserves the right to negotiate a return on its investment in the form of a royalty, share, equity or other outcome, which the applicable parties will negotiate in good faith.

Copyright

- 13.7** Ownership of copyright in respect of all Subject Writings shall be governed by the IP Guidelines of the organizations involved, any IP agreement and applicable copyright law. Notwithstanding any contrary provision in the IP Guidelines of such organizations or any IP agreement, the Grantee agrees that if it or anyone else does own copyright in a Subject Writing, the Foundation will have a non-exclusive, nontransferable, irrevocable, royalty-free license to exercise or have exercised on its behalf throughout the world all the exclusive rights provided by copyright. To the extent the copyright in a Subject Writing is owned by someone other than the Grantee, the Grantee will secure such license on behalf of the Foundation.

14. Payment

- 14.1** The Foundation shall pay the Grant in the sum indicated in the Award Letter at the times and in the manner set out in the Award Letter or in the Budget of Record as agreed with the Foundation subject to the observance and performance by the RPI and the PI of the Grant Conditions. Multi-year Grants may be terminated at the end of any fiscal year in which the State has not appropriated additional funds if the 21st Century Fund was the source of Grant funding.
- 14.2** Claims for the payment of Grant shall confirm cumulative actual expenditure since the last payment of any installment of the 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 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. The Foundation will withhold 10% of the final payment until a Final Financial Report is received demonstrating that 100% of the Grant was expended. Failure to fully expend all funds received from the Foundation will result in RPI refunding unspent funds within 30 days of receipt of Final Financial Report by the Foundation.
- 14.4** The RPI may incur pre-award costs for up to ninety (90) days prior to the effective date of the Grant award. Pre-award costs as incurred by the RPI must be necessary for the effective and economical conduct of the 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 The RPI may not carry forward unexpended balances of funds received to subsequent funding periods.

15. Audit/Record Retention

15.1 The RPI and the PI 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 Program, the Grant and the IP, and shall make all such records and papers available to the Foundation or its authorized representatives upon reasonable notice for the duration of the Program and for a period of five (5) years following submission of the Final Narrative 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. The Foundation's audit committee requires that the Foundation audit: 1) One Grant from every institution that receives a Grant; 2) All Grants exceeding \$1 million.

16. Site Visits, Reverse Site Visits, and Additional Reports

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, request reverse site visits, or to request reports to review 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 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 Grant

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

- a.** Arrangements satisfactory to the Foundation and the new RPI are put in place to continue the Program in the new RPI in a manner in which it was originally approved
- b.** The transfer is approved, in writing, by the original RPI, the new RPI, by any industry partner providing matching funds, and the Foundation before any such transfer takes place; and
- c.** A new IP agreement is in place prior to such transfer taking place
- d.** SFAz must confirm acceptability of the transfer in writing

18. No-Cost Extensions

18.1 The Foundation may, on request by the RPI and the PI in accordance with Clause 18.2 below, extend the Term of the Grant by up to six (6) months if additional time is

required to ensure adequate completion of the Program within the funds already made available (a “**No-Cost Extension**”). Only in exceptional circumstances will a No-Cost Extension be granted for more than 6 months. All requests that originate from the PI must be officially submitted to the Foundation through the PI’s Sponsored Projects office

- 18.2** Any request for a one time No-Cost Extension by the RPI and the PI must be made in writing to the Foundation’s finance department and copied to the assigned program officer at least 60 days prior to the expiration of the Term. The request must explain the need for the No-Cost Extension, be accompanied by an updated expense report including an estimate of the unobligated funds remaining and a plan for its 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 Program.
- 18.3** Any No-Cost Extension approved in writing by the Foundation will specify a new expiration date. The RPI and/or the PI shall not make new commitments or incur new expenditures after the original expiration date in anticipation of a No-Cost Extension. At the discretion of the Foundation, all reporting requirements may be extended throughout the No-Cost Extension.

19. Term and Termination

- 19.1** The Grant shall commence on the date specified in the Award Letter and shall continue for the period specified in the Award Letter (the “**Term**”).
- 19.2** The 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 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 PI commits an act of insolvency; or
 - d.** When the PI
 - (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 Program; or
 - (iv)** Does not initiate the Program actively within 60 days of the effective date specified in the award letter;
 - e.** When the Foundation has other reasonable cause and/or
 - f.** For multiple year Grants, at the end of any physical year in which the State has not appropriated additional funds if the 21st Century Fund was the source of Grant funding.

- 19.3** The 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 Grant, it may suspend or terminate the entire 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 Action by the Foundation to reduce, suspend, terminate or revoke a Grant will normally be taken only after the RPI has been informed by the Foundation of any deficiency on the part of the RPI or the PI and given an opportunity to correct it; but the Foundation may immediately suspend or terminate the Grant without notice when it reasonably believes that such action is required to protect the interest of the Foundation, the Program or the 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 Narrative Report (as detailed in Clause 5.6), together with a Final Financial Report (as detailed in Clause 5.7) 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 Program. In no event will the total of the Grant payment under a terminated award exceed the Grant amount.

20.2 Where the Grant is terminated or revoked by the Foundation, the RPI shall repay to the Foundation such amounts of the Grant as may have been advanced but not expended in performance of the Program. Repayment shall be made within 30 days of the date of the notice of termination.

20.3 Within 30 day of receipt of the Final Financial Report of the Grant by the Foundation, the RPI shall repay to the Foundation any part of the Grant as may have been advanced but not expended in the performance of the 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 Grant, the Foundation shall have no further obligation to fund the Grant.

21. Confidentiality

21.1 In this Clause 21 "**Confidential Information**" means all information disclosed in writing and clearly designated 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. Any information that is transmitted orally or visually, in order to be protected hereunder, shall be identified as such by the Sponsor at the time of disclosure, and identified in writing to the RPI, as Confidential Information, within thirty (30) days after such oral or visual disclosure.

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 & Conditions applicable to the payment of the 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 & Conditions, the Proposal, the Award Letter, such conflict or inconsistency shall be resolved by giving the following precedence:

- a. Award Letter
- b. Budget;
- c. General Terms & Conditions;
- d. The Proposal.

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 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 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's finance containing full details of the proposed modifications and reasons for the change ("**RPI Modification Notice**").

Reallocation of awarded fund should follow these guidelines:

If the dollar value of the reallocation does NOT exceed 10% of the total Grant budget or \$100,000, whichever is less:

- a. The PI is authorized to reallocate expenditures within general budget categories (defined as Salaries, Benefits, Equipment, Travel, Other Direct Costs, and Institutional Allowance) without prior Foundation approval but *must* submit an updated Budget of Record with Sponsored Projects signature within 30 days of making the change
- b. The PI is authorized to reallocate expenditures between general budget categories, but must submit an updated Budget of Record to the Foundation 30 days prior to making the change. None of these reallocations should affect the Institutional Allowance
 - i. If the dollar value of the reallocation does exceeds 10% of the total Grant budget or \$100,000, whichever is more:
- c. The PI must obtain prior approval from Foundation by submitting an official request justifying the reallocation. This request should include an updated

Financial Report and Budget of Record. All documents should be signed by Sponsored Projects.

- d. The Foundation shall give reasonable consideration to the RPI Modification Notice and shall within not more than 30 days either:
 - i. Accept the proposed modification in which case the Grant Conditions shall be amended accordingly; or
 - ii. 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 Grant paid to it prior to the date of the Modification Notice.

25. Assignment

25.1 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 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 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 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 there from, provided always that if any such deletion substantially affects or alters the basis of the Grant, the Parties shall negotiate in good faith to amend and modify the provisions and terms of the 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 Grant, or the operation thereof or the provision of any services by the Foundation, the PI, the Team or the RPI be construed as evidence of any contract of employment between the Foundation and any member of the Team or any servant or agent of the RPI, which is expressly denied.

29.2 Neither the PI nor any member of the 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 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 & 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 PI 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 PI 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 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.