

COLLABORATIVE RESEARCH AGREEMENT

THIS COLLABORATIVE RESEARCH AGREEMENT (this "**Agreement**") is by and between Hewlett-Packard Company, a Delaware corporation with a place of business at 1501 Page Mill Road, Palo Alto, California 94304 ("**HP**") through its sponsoring HP division, HP Labs, on the one hand; and [REDACTED] ("**University**"), on the other, and is effective [REDACTED], 200[REDACTED]. Each of HP and University may be referred to separately as a "**Party**" and collectively as the "**Parties**" in this Agreement.

1. **Background and Scope of Agreement**

1.1 University is submitting herewith to HP a proposal for a specific research or development topic of potential mutual interest to University and HP Labs. The scope of this collaboration is set forth more fully in the Research Project Specification, attached hereto as Exhibit 1, which sets forth general terms regarding personnel, departments, goals, deliverables, loans of equipment, and funding from one Party to the other, if such is to be provided.

1.2 HP expects that it will receive multiple research project proposals directed to the same or closely related subject matters. In order to evaluate such proposals, the proposals will be reviewed by HP scientists, who will become knowledgeable of the information disclosed in the multiple research proposals. During the evaluation process, HP cannot maintain confidentiality of information between and among such proposals. Therefore, HP requires, and University understands and agrees, that no University confidential or proprietary information will be included in the proposal submitted herewith to HP. Each Party undertakes not to disclose any confidential or proprietary information to the other Party prior to the effective date of this Agreement, and as a condition precedent to this Agreement becoming effective, each Party acknowledges and agrees that any information that it discloses to the other Party prior to the effective date of this Agreement is not confidential or proprietary and hereby waives any cause of action against the other Party for any alleged misuse, misappropriation or unauthorized disclosure or such information.

1.3 If HP Labs accepts University's proposed Research Project as set forth in Exhibit 1, this Agreement will set forth the terms and conditions that will be applicable to the performance of the Research Project. It is the intent of the Parties that the terms set forth herein apply only to the Research Project Specification specifically attached to this Agreement as Exhibit 1. No pre-existing research agreement between University and HP will be affected by this Agreement, and each Party reserves discussion of other projects to other written agreements between the Parties.

2. **Definitions.** In addition to terms defined elsewhere in this Agreement, the following terms shall have the following meanings when used herein:

2.1 "**HP Visiting Scientist**" means an HP employee assigned to work at University's facilities in accordance with Article 5 of this Agreement.

2.2 “**Intellectual Property**” and “**IP**” mean discoveries, inventions, designs, works of authorship, and any related rights, such as patents, registered designs, copyrights (including moral rights), mask works and trade secrets.

2.3 “**Project Results**” means results, conclusions and work product conceived or created by University Personnel in the course of performing this Agreement, including but not limited to tangible items, such as reports, computer programs and prototype hardware, and intangible items such as IP, data, information, ideas and concepts.

2.4 “**Research Project**” means a project which is defined in the Research Project Specification attached hereto as Exhibit 1.

2.5 “**University Personnel**” means any employee, agent, or contractor of or to University, and any student of University.

2.6 “**University Project IP**” means Intellectual Property that is conceived (in the case of inventions) or created (in the case of Intellectual Property other than inventions) solely by University Personnel in the performance of this Agreement.

2.7 “**HP Personnel**” means any employee, agent, or contractor of or to HP.

2.8 “**HP Project IP**” means Intellectual Property that is conceived (in the case of inventions) or created (in the case of Intellectual Property other than inventions) solely by HP Personnel in the performance of this Agreement.

2.9 “**Visiting Researcher**” has the meaning set forth in Article 5, below.

3. **Research Projects**

3.1 **Research Project Specification; Precedence.** Any changes in a Research Project Specification, including changes of the Principal Investigator(s) (as named in each Research Project Specification), shall be effective only upon the mutual written consent of the Parties. The body of this Agreement shall be the exclusive statement of the Parties' legal rights and duties, and the Parties intend for the Research Project Specification to set forth only technical matters pertaining to the research to be conducted, and related logistics; the Research Project Specification shall not be given any effect to the extent it purports to set forth or modify any rights or duties of the Parties independent of the body of this Agreement.

3.2 **Performance of Work.** Each Party shall use diligent efforts to perform the work that is set forth in the applicable Research Project Specification. The Parties understand that this application of diligent efforts is subject to the limitation of warranties that is set forth in Article 9 of this Agreement.

3.3 **Research Project Duration.** The duration of a Research Project shall be stated in the Research Project Specification. The Research Project may be terminated early or extended by mutual written agreement of the Parties. Either Party may unilaterally terminate its

participation in the Research Project at any time upon giving at least ninety (90) days' prior written notice to the other Party. In addition, either Party may terminate this Agreement and all outstanding Research Projects in the event that a Party fails to conform to its obligations under this Agreement or under a Research Project Specification, as set out in Paragraph 10.3 below. If HP unilaterally terminates its sponsorship of the Research Project (other than in the context of a failure by University to conform to its obligations under this Agreement or under a Research Project Specification, or failure of a third party to provide funding contemplated for a Research Project), HP shall pay all costs up through the termination date and all non-cancelable obligations made by University before receipt of notice of termination, even if they extend beyond the termination date, subject to the limitations of Article 9 hereof.

4. **Donated and Loaned Equipment; Licensed Software**

Subject to express limitations that HP may impose on the transfer of donated equipment, University shall own any equipment furnished by HP towards satisfaction of HP's financial obligation to fund the Research Project. In addition, from time to time, the Parties may agree to loan equipment, or loan and license software code, to one another for purposes of performing work under this Agreement. With respect to such equipment, and absent a specific written agreement to the contrary, the Parties agree that: (a) the providing Party retains all title and rights whatsoever, and no IP license is granted beyond the right to use the loaned equipment or licensed software, nor is an IP warranty or indemnity provided; (b) the receiving Party shall not encumber, transfer, loan, assign, sell, dispose of or damage the equipment or software; (c) if the equipment or software is not generally offered to the public as a commercial product, it shall be deemed "confidential" to the providing Party if identified by a label stating that it is confidential or proprietary to the providing Party and information pertaining thereto shall be governed by the confidentiality provisions of this Agreement; (d) software source code shall be treated confidentially, even if the software in question is offered commercially in object code format; (e) if software is provided commercially subject to confidentiality restrictions, such restrictions will apply to a Party's use of such software; (f) there shall be no warranty that the equipment or software is product grade or of commercial quality, and no warranties or support obligation are provided; (g) use of the equipment or software is at the receiving Party's own sole risk and exposure; and (h) the equipment or software copies must be returned in well-maintained and good working order to the providing Party, upon demand, at the receiving Party's expense.

5. **Visiting Scientists and Visiting Researchers**

HP Labs may send HP Personnel ("Visiting Scientists"), if specified by the Research Project Specification, as visiting scientists to work in University's facilities. Similarly, University may send University Personnel ("**Visiting Researchers**"), if specified by the Research Project Specification, as visiting scientists to work in HP's facilities. In each case, the visiting scientist's employer and the hosting Party shall execute an agreement ("Visiting Researcher Agreement") that will govern the rights and obligations of the Parties and the visiting scientists.

6. Intellectual Property

6.1 Research Project Participants. University shall permit only University Personnel (or HP Visiting Scientists) to work on the Research Project. University shall ensure that all University Personnel associated with the Research Project have been made fully aware of the terms of this Agreement and the applicable Research Project Specification to the extent necessary for University to fulfill its obligations to HP under this Agreement. University shall obtain legal obligations respecting confidentiality and ownership of IP with all University Personnel associated with the Research Project sufficient to enable University to meet its obligations to HP under this Agreement.

6.2 Inventions and Software

6.2.1. Disclosure; Project Review Meetings. Each person who works on the Research Project shall disclose to University and HP all Project IP and Deliverables as set forth in the Research Project Specification, conceived, created, or developed by that person in the course of the Research Project. Such disclosures shall be made in accordance with the Research Project Specification if specifically set forth therein but no less often than quarterly and at the conclusion of the Research Project. The Parties shall conduct a project review meeting at the end of each phase of the Research Project and at the conclusion or termination of the Research Project, but in no event less often than annually. During each project review meeting University and HP shall review disclosures of all inventions and software arising from the Research Project and not considered in any previous project review meeting.

6.2.2. Disposition of Project IP. (a) As between HP and University, all University Project IP shall be owned by University. All HP Project IP shall be owned by HP. However, in the event that under the applicable IP laws an item of Project IP shall be jointly owned by University and HP, then that item of IP shall be "jointly owned" as defined below. (b) In the event that HP and University agree that all or part of the Project IP should be dedicated to the public domain, University agrees to publish such agreed-upon Project IP in an appropriate scholarly publication as soon as practicable after such decision.

6.2.3. Joint Ownership. IP that is jointly owned by HP and University (i.e., where joint inventors or creators include both of at least one individual who is HP Personnel and at least one individual who is University Personnel), "**joint ownership**" shall for all purposes and for all forms of Intellectual Property (irrespective of the country of creation or development, or where rights or enforcement is sought) mean that each joint owner may independently license, enforce, collect royalties, make, use, sell, import, distribute, copy, and have made and otherwise enjoy benefits of such Intellectual Property without any obligation to account to, obtain permission from, or share royalties with the other joint owner. In the event that local country law provides for compensation to an inventor, each Party agrees to be solely responsible for its own employees, i.e., in no event shall either joint owner have any obligation to compensate an employee of another Party, and each employing Party agrees to hold the other Party harmless from any such claim. For formal rights procurement (e.g., patents and patent applications), for any invention made jointly by University Personnel and HP Personnel, said

University Personnel and HP Personnel (the joint inventors) shall prepare and present to University and HP an invention disclosure describing any potentially patentable invention. HP will review the invention disclosure and determine whether HP elects to prepare and file an application for patent at HP's expense. If HP elects not to file an application for patent on any such invention, HP will promptly notify University and University may elect to do so at University's expense. The Party that prepares and files a patent application will provide a copy of the application to the other Party upon the other Party's request during preparation, and prior to filing. During prosecution, the Party prosecuting the application will provide to the other Party a copy of each official action and a copy of each response prepared in response thereto. If during the prosecution of such application, or after issuance of a patent thereon, the Party that prepared and filed the patent application elects to discontinue prosecution of the patent application or discontinue payment of maintenance fees on the patent, that Party shall notify the other Party in good time to permit the other Party to decide whether to assume prosecution of the patent application or maintenance of the patent, and if the other party elects to do so, timely take all necessary steps to permit the other Party to assume prosecution or maintenance, as the case may be. All such patent applications and patents, whether prepared and filed by HP at HP's expense or by University at University's expense, shall be jointly owned by University and HP.

6.2.4. Non-Exclusive License to HP. University hereby agrees to grant to HP upon completion or termination of the Research Project, a non-exclusive, royalty-free, paid-up, perpetual, irrevocable, worldwide license in and to IP rights in each item of University Project IP. This license includes a right to enable third parties to make products for HP, or to dispose of HP products, as well as to include in their products features that interoperate with HP products. In any jurisdiction in which any such item of University Project IP is protected by patent, copyright or other governmental grant of rights, this license includes the rights to make, have made, use, offer to sell, sell and import products; the right to practice methods; and in the case of copyrightable works, the additional rights to reproduce, make derivative works, publicly distribute, publicly perform, publicly display and sublicense such rights to HP customers. In any jurisdiction in which any such item of University Project IP is not protected by patent, copyright or other governmental grant of rights, this license means that University shall not attempt to prevent or restrict HP from exercising the above-identified rights and licenses. All licenses and rights granted to HP under this Agreement inure to the benefit of Hewlett-Packard Company, a Delaware corporation, and its subsidiaries. Hewlett-Packard Company shall have the right to sublicense or transfer the licenses granted in this Paragraph 6.2.4 to, from, and among its wholly owned subsidiaries. Other than as set out in the foregoing sentence, or in the event of the disposition of the entire line of business in which such license rights are used, the license granted in this Paragraph 6.2.4 is personal and non-transferable.

6.2.5. Non-Exclusive License to University. HP hereby grants to University a non-exclusive, royalty-free, paid-up, perpetual, irrevocable, worldwide license to use all HP Project IP for internal academic research and for teaching purposes (and not for any commercial or for-profit or private purpose). Other than as set out in the foregoing sentence, the license granted in this Paragraph 6.2.5 is personal, non-transferable, and non-sublicensable.

6.3 Publication

6.3.1. Publication. Should any University Personnel desire to publish a paper (that is not co-authored with HP Personnel) that will disclose research that has been performed pursuant to the Research Project Specification, the University Personnel shall deliver a copy of the paper to HP at the time that the paper is submitted for publication. HP shall then have thirty (30) days to review the paper for the limited purpose of determining whether it discloses patentable HP Project IP or patentable IP that is jointly owned by HP and University. On a case by case basis, the University Personnel and HP Personnel may agree to a shorter period of time for HP to review a paper. If HP determines that the paper contains patentable HP Project IP or patentable IP that is jointly owned by HP and University, HP shall so inform the University Personnel and the University Personnel shall either remove such patentable HP Project IP or patentable IP that is jointly owned by HP and University from the paper, or delay publication of the paper to permit a patent application to be prepared and filed, however, the delay shall not exceed a total of three (3) months from the date that the paper was delivered to HP. Upon receiving a notice of acceptance of the paper for publication, and if the paper as accepted for publication contains any material in addition to the content of the paper initially delivered to HP, the University Personnel shall promptly provide to HP a copy of the paper as accepted for publication and inform HP of the scheduled publication date..

6.3.2. Attribution. Each Party shall acknowledge the contributions of the other in any publication, as scientifically and professionally appropriate.

6.4 Third Party IP and Background IP

6.4.1. University Personnel who work on the Research Project shall avoid use in the Research Project of proprietary IP that is personally known to them to be owned by a third party, and shall avoid use in the Research Project of proprietary background IP that is personally known to them to be owned or controlled by University. (As used herein, “personally known” means known without making a search of any records or databases.) In the event that any such third party IP or University background IP is inadvertently or unavoidably used in the Research Project, University Personnel upon acquiring personal knowledge of such use shall promptly notify HP thereof.

6.4.2. Nothing in this Agreement shall be construed to operate as, or to require, the assignment of any right, title, or interest in or to any Intellectual Property that has been or shall be conceived or created prior to or outside the scope of this Agreement, nor to require the license of such IP.

6.5 Further Assurances. Each Party covenants to execute all further documents and to take all steps that the other may reasonably request to effect such Party's rights under this Article 6.

6.6 Moral Rights Waiver. Each Party confirms that any and all moral rights which a Party or its personnel may have in any Project IP or Project Results have been waived.

7. **Confidential Information**

7.1 HP may from time to time disclose confidential information to University and University Personnel in connection with the Research Project (and for the avoidance of doubt, any loaned equipment from HP to University, including any software tools are expressly acknowledged by University as confidential information of HP if not generally distributed to the public by HP). The recipient of such information shall, except as otherwise permitted by this Agreement, use it only for the Research Project and shall protect the information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of the information as the recipient uses to protect its own confidential information of like nature.

7.2 The obligation to keep information confidential shall only extend to confidential information that (a) is marked as confidential at the time of disclosure or (b) is unmarked (e.g. orally disclosed) but is treated by the disclosing Party as confidential at the time of disclosure and is designated as confidential in a written memorandum provided within thirty days of disclosure by the disclosing Party to the receiving Party, with the memorandum summarizing the confidential information sufficiently for identification.

7.3 The obligation to keep information confidential shall expire three years after the date the information was disclosed, except for HP's obligation to keep unpublished manuscripts confidential in advance of publication, where HP's obligation shall endure for six months or until publication, whichever is sooner. The obligation to keep information confidential does not extend to any information that was in the recipient's possession before receipt from the discloser, or that is or becomes a matter of public knowledge through no fault of the recipient, or that is rightfully received by the recipient from a third party without a duty of confidentiality, or that is independently developed by the recipient, or that is disclosed to a third party by the discloser without any duty of confidentiality on the third party, or that is disclosed under operation of law.

7.4 If any University Personnel visit the premises of HP, any information input made by such visitor into any work or business of HP may be taken by HP to be non-confidential unless explicitly otherwise indicated prior to the input being given.

7.5 If access to this Agreement, or to data associated with the Research Project, is made under the Freedom of Information Act in the United States, or under similar State Law as applicable, or under any similar law in a country outside of the United States, HP does not relinquish any entitlement to object to disclosure under such law, to the extent that the aforementioned data and this Agreement reveals trade secrets and/or scientific, technical, commercial or financial information of HP, the disclosure of which would prejudice the competitive position of HP.

8. **Notices**

Any notice given under this Agreement shall be in writing, shall reference this

Agreement, and shall be deemed to have been given when personally delivered, when sent by confirmed telex or facsimile, five days after having been sent by mail with return receipt requested, or one day after deposit with an overnight courier that provides verification of receipt.

All communications shall be sent to the addresses set forth above or to such other address as may be designated by a Party by giving written notice to the other Party.

9. **INDEMNITY; LIMITATIONS ON WARRANTIES AND DAMAGES.**

9.1 Indemnity. HP agrees to protect, defend, indemnify and save harmless University (including its trustees, officers, students, and University Personnel) from and against all demands, claims, causes of action, damages, losses, liabilities, costs and expenses (including attorney fees and court costs) based upon any claim of property damage or loss, or bodily injury or death alleged to have been caused by HP's use or commercialization of Project Results, whether arising at law or in equity, and whether under contract, tort or strict liability principles.

9.2 **LIMITATION ON WARRANTIES.** EXCEPT AS SPECIFICALLY PROVIDED ELSEWHERE IN THIS AGREEMENT, NEITHER UNIVERSITY NOR HP MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, REGARDING ITS PERFORMANCE UNDER THIS AGREEMENT OR ANY RESEARCH PROJECT SPECIFICATION, INCLUDING BUT NOT LIMITED TO MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROJECT RESULTS.

9.3 **LIMITATION ON DAMAGES.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR INDIRECT, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES HEREUNDER, INCLUDING AS A RESULT OF THE OTHER PARTY'S USE OF ANY PROJECT RESULTS. IN NO EVENT SHALL HP BE LIABLE TO UNIVERSITY FOR DIRECT DAMAGES, OTHER THAN UNDER PARAGRAPH 3.3 WITH RESPECT TO ANY RESEARCH PROJECT, AND IN NO EVENT SHALL SUCH DIRECT DAMAGES BE IN EXCESS OF THE AMOUNT OF HP'S UNPAID CASH (AND NOT IN-KIND) FUNDING COMMITMENT SET OUT IN THE RELEVANT RESEARCH PROJECT SPECIFICATION FOR THAT RESEARCH PROJECT AT THE TIME A CLAIM IS RAISED.

10. **Term and Termination**

10.1 This Agreement begins on the Effective Date and shall expire three (3) years thereafter. The Effective Date shall be the date when this Agreement has been signed by both Parties. This Agreement may be renewed by mutual written agreement of the Parties. Any Research Project which is active as of the expiration of this Agreement shall remain in effect until the Research Project is completed, unless the Research Project is terminated as provided in Paragraph 3.3.

10.2 At any time either Party may terminate this Agreement without penalty by a written notice specifying a termination date at least six months subsequent to the date of the notice. Any Research Project that is active as of the termination date shall automatically terminate on that date, and the settlement of costs shall be governed by Paragraph 3.3 on the

basis that the Party which terminated this Agreement shall be deemed also to be the Party that terminated the Research Project.

10.3 If one of the Parties fails in a material way to fulfill its obligations under this Agreement or any Research Project, the other Party may give written notice to such Party, calling upon it to comply with its obligations within a specified term of not less than thirty days, if such failure is capable of being remedied. If at the expiration of such 30-day period the relevant Party has not fulfilled its obligations (or immediately, if no remedial period is available), the other Party shall have the right to immediately terminate this Agreement and the Research Project Specification in writing. The settlement of costs for terminated Research Projects shall be governed by Paragraph 3.3, on the basis that the Party failing to have met its obligations shall be deemed to be the Party that terminated the Research Project. Termination as a result of the other Party failing to meet its obligations shall be in addition to any other remedy to which the terminating Party is entitled, subject to Article 9 hereof.

10.4 The provisions of Paragraph 3.3 and Articles 6 through 11 hereof shall survive the expiration or termination of this Agreement. If any Research Project remains active past the expiration or termination of this Agreement, the terms of this Agreement shall remain in effect as to that Research Project until completion thereof and satisfaction of the various rights and obligations set forth in Article 7.

11. Miscellaneous Clauses.

11.1 Relationship of the Parties. The Parties are independent contractors. Nothing in this Agreement shall constitute the Parties as entering into a partnership, joint venture, or agency relationship.

11.2 No Third Party Beneficiary. Except as provided in Paragraph 6.2.4 there are no third party beneficiaries under this Agreement and except for third parties referred to in Paragraph 6.2.4 no third party shall have any right to enforce this Agreement.

11.3 Entire Agreement. This Agreement is the entire understanding between HP and University with respect to the subject matter hereof and merges all prior agreements, dealings and negotiations. No modification, alteration or amendment of this Agreement shall be effective unless in writing and signed by both Parties.

11.4 No Assignment. Other than as set out in Paragraph 6.2.4, neither Party may assign its rights or obligations unless the other gives written consent. Any attempted assignment without such consent shall be voidable at the option of the non-assigning Party.

11.5 Governing Law. This Agreement shall be governed by the laws, excluding choice of law provisions, of the jurisdiction to which University is subject.

11.6 Counterparts. This Agreement may be executed in one or more counterparts, including facsimile copies, each of which shall be deemed an original, and all of which together shall be deemed to be one and the same instrument.

It is so agreed.

SIGNATURES

HEWLETT-PACKARD COMPANY
Sponsoring HP Division:

UNIVERSITY

By _____
Name:
Title:

By _____
Name:
Title:

ENCLOSURES

Exhibit 1 - Research Project Specification



Exhibit 1

Form of Research Project Specification

NOTE: This Exhibit will be populated with information automatically imported by the on-line tool from the Research Project Proposal

Title of Research Project:

Name(s) of Principal Investigator(s):

Period of Performance: _____

Summary Project Description:

Summary of Deliverables: _____

Financial terms (all figures quoted in United States Dollars):

- Direct and indirect costs of research: _____
- Amount to be funded by HP: _____
- Third Party Cash and In-Kind Funding: _____

Attachments:

- Project Proposal