

**RESEARCH AFFILIATION AND BIOMEDICAL SERVICES AGREEMENT
BETWEEN
THE NEMOURS FOUNDATION
AND
UNIVERSITY OF DELAWARE
FOR STUDENTS**

This Agreement, effective as of the 1st day of July, 2020, between The Nemours Foundation, a Florida not-for-profit corporation (“Nemours”) and University of Delaware, an educational nonprofit institution chartered under the laws of the state of Delaware (“School”);

WHEREAS, Nemours, in support and enhancement of the research programs of School, provides a setting in which certain of School’s graduate and undergraduate and post-doctoral researchers (the “Participant(s)”) may participate in translational research in medical sciences of Nemours Biomedical Research Department; and

WHEREAS, Nemours operations at 1600 Rockland Road, Wilmington, Delaware 19803 (hereinafter the “Site”), offers an extensive Biomedical Research program and is equipped with the facilities and professional staff necessary to provide a Biomedical Research training experience to the Participants; and

WHEREAS, Nemours and School are mutually desirous of establishing a relationship whereby certain School Participants may participate in a Biomedical Research program hereunder (the “Program”) at Nemours’ Site; and

NOW, THEREFORE, in consideration of these premises, the terms and conditions hereinafter set forth, and the mutual benefits received by the parties hereto, intending to be legally bound, Nemours and School agree as follows:

SECTION I. DEFINITIONS

- 1.1 Agreement. “Agreement” shall mean this Biomedical Research Services Agreement and any amendment(s) hereto as may from time to time be adopted as provided herein.
- 1.2 “Participant(s)” shall mean an individual or individuals who are graduate and undergraduate students or post-doctoral researchers of School with appropriate technical backgrounds for the Program.

SECTION II. RESEARCH SCOPE AND BUDGET

- 2.1 Nemours and School shall mutually agree and define the research scope and term of the Program at Nemours (the “Scope” and “Term” respectively) in Exhibit A. The Scope and Term shall be mutually agreed upon by the Vice President of Research of

School and the Operational Vice President, Research of Nemours, or his/her designee. Furthermore, the Scope shall identify the following components:

- (a) The Participant(s) involved.
- (b) The technical point of contact for each the School and Nemours.
- (c) The administrative point of contact for each the School and Nemours.
- (d) A detailed description of the technical aspects of the Program
- (e) The duration of the Program with “start” and “end” dates identified.

2.2 Nemours and School shall mutually agree and define the overall budget of the Program at Nemours (the “Budget”) in Exhibit A. Furthermore, the Budget shall identify the following components:

- (a) The source of Participant funding will be identified (the “Funding Sponsor”).
- (b) The direct costs applicable to the funding (the “Direct Costs”).
- (c) To the extent applicable, any amounts necessary to reimburse Participant tuition (the “Applicable Tuition Reimbursement”).
- (d) To the extent applicable, any amounts required to cover Facilities and/or administrative (F+/-A) overhead (the “Applicable F+/-A”).

SECTION III SCHOOL’S WARRANTIES AND RESPONSIBILITIES

3.1 School shall assume responsibility for and agree as follows:

- (a) to assure continuing and ongoing compliance with any and all research standards.
- (b) to notify the Nemours’ representative, at a time mutually agreed upon, including the name of the Participant(s) and resume(s).
- (c) to refer, as appropriate, to Nemours only those Participants who possess appropriate preparation to participate in the Program.
- (d) to inform the Participants, as appropriate, of the need to comply with Nemours’ requirements for acceptance, i.e., citizenship, health status, interview, Health Insurance Portability and Accountability Act (HIPAA) training, drug screening, abuse registry checks and criminal background

checks and as may otherwise exist from time to time and at Nemours' expense.

- (e) to inform Participants that the terms of the funding sponsor govern the technical aspects of the Program. Any deviations, if permitted, will be specified in Exhibit A.
- (f) to inform, as appropriate, Participants placed in the Nemours' Program may be required to have received relevant immunizations, a recent tuberculosis test, have qualifying health status to work directly with patients, and have been properly certified in CPR and educated in universal precautions. Action taken to satisfy Nemours' requirements will be conducted at Nemours' expense.
- (g) to advise and inform the Participants of the responsibility of complying with the applicable policies, bylaws, and rules and regulations of Nemours in place at the time of formation of the Agreement. Issues may include, for example, confidentiality of all patient charts, information, records, personnel information and business records and that they are prohibited from taking medical records, charts and other identifiable health information off premises of Nemours.
- (h) to maintain for itself, faculty, agents, and Participants a policy of general liability and a policy of professional liability insurance with a single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate. The insurance shall cover, among other things, School, its faculty and Participants for their acts, failure to act, or negligence arising from, related to or caused by the activities that are the subject of this Agreement. School shall supply to Nemours a certificate of insurance evidencing such coverage. In the event that the policy is a "claims made" form, School agrees to purchase appropriate "tail" coverage. Alternatively, School shall ensure that Participants maintain, at all relevant times, a policy of general liability and professional liability in the limits as set forth above. Prior to participating in the Program, the Participants shall provide proof of insurance to Nemours.
- (i) to the extent applicable, to maintain in effect during the term of this Agreement statutory Workers' Compensation insurance in minimum amounts as set by state law and employer's liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence. School shall furnish proof of such coverage to Nemours.
- (j) to comply with all existing non-discrimination School policies in the selection and assignment of all Participants.

- (k) to inform the Participant of the requirement to wear name tags identifying themselves as Participant in the Program.

SECTION IV. NEMOURS' WARRANTIES AND RESPONSIBILITIES:

4.1 Nemours shall assume responsibility for and agree as follows:

- (a) to provide the physical facilities and equipment necessary to conduct the Program hereunder, when applicable.
- (b) to provide, when feasible, use of the library facilities, if any, and reasonable study and storage space to each Participant.
- (c) to provide the School and Participant with a copy of Nemours' existing pertinent rules and regulations, policies, and bylaws with which the Participant is expected to comply prior to commencement of activities.
- (d) to advise School of any changes in its personnel, operations or policies which are likely to affect the Program.
- (e) to make available whenever possible, emergency health care in the case of a Participant accident or illness during working hours. For clarity, Nemours is not responsible for costs involved, follow-up care, or hospitalization. The Participant is responsible for these costs.
- (f) to advise School of any serious deficit noted in the ability of the assigned Participant to progress toward achievement of the stated objectives of the Program.
- (g) to have the right, when hosting a Participant and at its reasonable discretion, to reject, terminate and remove from the Program any such Participant whose credentials, health, conduct, or performance is, or is reasonably believed to be, a detriment to patient well-being, to achievement of the stated objective of the Program hereunder, or to the purpose and mission of Nemours. Nemours will provide School with full documentation of the reason(s) that it removed/terminated the Participant from the Program. School, however, retains final authority with regard to academic disciplinary actions of Participants.
- (h) to honor all existing State and Federal non-discrimination laws, and Nemours policies in the provision of Program hereunder.
- (i) to maintain for itself, its employees and agents professional and general liability insurance with limits not less than \$1,000,000 per occurrence and

\$5,000,000 in the aggregate covering the action of it, its employees, or agents hereunder.

- (j) to the extent applicable, to maintain in effect during the term of this Agreement statutory Workers' Compensation insurance in minimum amounts as set by state law and employer's liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence. Nemours shall furnish proof of such coverage to Nemours.

SECTION V. ASSIGNMENT:

- 5.1 This Agreement or any part, articles, or sections thereof, may not be assigned during the term of the Agreement by any of the parties hereto without the prior written consent of the other party, except (i) as may otherwise be provided for herein and (ii) each party may at any time assign its rights and obligations hereunder to a corporation controlled by, in control of, or under common control of the assigning party provided, however, it provides the non-assigning party with thirty (30) days' prior written notice of said assignment.

SECTION VI. TERM AND TERMINATION:

- 6.1 This Agreement shall commence on July 1, 2020, and shall continue thereafter until June 30, 2025, unless terminated as provided herein.
- 6.2 This Agreement can be terminated by either party, with or without cause, by giving notice in writing no less than thirty (30) days prior to the termination date. In the event of a breach of this Agreement or other conduct determined to be detrimental to either party, the Agreement can be immediately terminated. In the event of termination, the parties agree to take reasonable steps, as appropriate, to complete the training of any Participant presently in the Program.

SECTION VII. INDEPENDENT PARTIES.

- 7.1 School and its Participants participating in the Program at Nemours shall in no event become nor be deemed to be employees, servants, or agents of Nemours, nor shall any person on the staff or administration of Nemours become or be deemed to be an employee, servant, or agent of School except as specifically set forth herein. In the performance of the duties and obligations under this Agreement, it is mutually agreed that School and the Participants shall at all times be acting independent of Nemours and that nothing hereunder should be construed to make or render either School or the Participants, the agent, employee, or partner of Nemours. School shall be solely responsible for any and all payment, if any, to Participants (including salary benefits and insurance) and shall be solely responsible for its own debts, obligations, acts, and omissions,

including the payment of all required withholding, social security, worker's compensation, and other taxes and benefits, if any.

SECTION IX. INDEMNIFICATION

- 9.1. School agrees to indemnify, defend, and hold harmless Nemours, its affiliates, directors, officers, employees, agents, and representatives, from and against any and all third party claims, demands, actions, settlements, judgments, costs, or expenses, including, but not limited to, reasonable attorneys' fees and litigation expenses, based upon or arising out of activities described in this Agreement, to the extent such claims, demands, actions, settlements, costs or expenses are occasioned by or connected with the negligent acts or omissions of School, its agents, employees, servants, or Participants. Notwithstanding the foregoing, this indemnification obligation shall not apply if the alleged negligent act or omission was performed at the direction or under the supervision of Nemours' personnel.
- 9.2. Nemours agrees to indemnify, defend, and hold harmless School, its affiliates, directors, officers, employees, agents, trustees, and representatives, from and against any and all third party claims, demands, actions, settlements, judgments, costs or expenses, including, but not limited to, reasonable attorneys' fees and litigation expenses, based upon or arising out of activities described in this Agreement, to the extent such claims, demands, actions, settlements, costs or expenses are occasioned by or connected with the negligent acts or omissions of Nemours, its agents, employees or servants.
- 9.3. The provisions of this Section IX shall survive the expiration or termination of this Agreement.

SECTION X. GENERAL TERMS OF AGREEMENT

- 10.1. Notices: All notices under this Agreement shall be in writing and shall be sent by certified or registered mail, return receipt requested or personal courier service. If notice given to Nemours, notice shall be sent to:

The Nemours Foundation
1600 Rockland Road
Wilmington, DE 19803
Attn: Vicky Funanage, PhD

With copy to: The Nemours Foundation
Office of Contract Administration
10140 Centurion Parkway North
Jacksonville, FL 32256

If notice given to School, notice shall be sent to:

University of Delaware
Research Office
210 Hullihen Hall
Newark, DE 10716
Attn: Charles G. Riordan, PhD

- 10.2 Amendment: This Agreement, including any attachments hereto, may be amended or revised from time to time provided said revisions are set forth in writing and signed by authorized representatives of both parties.
- 10.3 Nondiscrimination Compliance: School and Nemours, in compliance with all local, state, and federal law and regulations, shall not discriminate on the basis of race, religion, color, sex, age, national origin, handicap, sexual preference, disabled or Vietnam era veteran status or financial status in admission or access to the Program hereunder. Further, School and Nemours agree to fully comply with all laws in the performance hereunder.
- 10.4 Compliance with Law. School and Nemours agree to fully comply with all laws in the performance hereunder. The parties agree to comply with HIPAA and its rules and regulations. Without limitation to its other requirements under HIPAA and other federal, state, and local laws and regulations, the parties will safeguard protected health information (“PHI”) by using and disclosing PHI only in accordance with HIPAA. Without limitation to other rights and remedies under this Agreement or afforded by law, either party may immediately terminate this Agreement in the event that it has determined that there is a material breach of this section. The parties further agree to execute additional mutually agreed upon documents as required under HIPAA rules and regulations to assure the safeguarding of PHI. In the event such documentation is not agreed upon and executed, either party may terminate this Agreement within thirty (30) days’ written notice after ten (10) dates to cure.
- 10.5 Sanctioned Provider. The parties agree and acknowledge that they each have an affirmative duty during the term of this Agreement to notify each other immediately if they or any individual participating in the Program (i) is determined to be a “Sanctioned Provider” under any federal or state program or law; (ii) has been listed on the current Cumulative Sanction List of the OIG for the United States Department of Health and Human Services for currently sanctioned or excluded individuals or entities; (iii) has been listed on the General Services Administration’s List of Parties Excluded from Federal Programs; (iv) or has been convicted of a criminal offense related to health care.
- 10.6 Waiver. Failure of the parties hereto to complain of any act or omission on the part of the other party(ies) no matter how long the same may continue, shall not be deemed to be a waiver by said party(ies) of any of its rights hereunder. No waiver by any of the parties hereto at any time, expressed or implied, of any

breach of any provision of this Agreement shall be deemed a waiver or breach of any other provision of this Agreement or a consent to any subsequent breach of the same of any other provision.


- 10.7 Entire Agreement: This Agreement, and any attachments hereto, constitute the entire agreement between the parties with respect to the subject matter hereof. This Agreement supercedes any and all other agreements, either oral or in writing, between School and Nemours with respect to the subject matter herein.
- 10.8 Exclusive Control: The parties to this Agreement remain in exclusive control of their respective policies, management, assets, and affairs. Except as otherwise provided herein, neither party shall by virtue of this Agreement assume any liability as obligation of the other party.
- 10.9 Headings; Severability: The article and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this agreement. If any provision of this Agreement is found to be invalid or unenforceable, the remaining provisions shall continue in full force and effect.
- 10.10 Governing Law: This Agreement shall be interpreted in accordance with the laws of the State of Delaware without regard to its conflicts of law rules.
- 10.11 Dispute Resolution: Any and all disputes, claims, or controversies arising out of this Agreement shall be resolved by “high level negotiations” between the School’s Vice President for Research and/or his/her designee, and Nemours’ Vice President for Research, Scholarship and Innovation and/or his/her designee, within thirty (30) days following notice of such dispute, claim or controversy. In the event the Parties are unable to resolve through such negotiations the Parties may seek arbitration administered by the American Arbitration Association and conducted under its then existing rules. The arbitration shall take place in Wilmington, Delaware. The cost of the arbitration shall be shared equally by the parties; however, each party shall pay its own legal fees. The decision of the arbitrator shall be in writing and shall be final, binding, and unappealable except upon a claim of fraud on the part of the arbitrator or on the basis of a mistake as to the applicable law. Judgment may be entered on the award of the arbitrators in any court having jurisdiction.
- 10.12 Non-Exclusivity. Each party hereto shall be free to enter into other agreements, such as this Agreement, with other parties, as each deems appropriate for its respective manner of business.
- 10.13 Unforeseen Circumstances. None of the parties hereto shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder for reasons beyond its reasonable control, including, but not limited to, any of the following: acts of God, strikes, statutes, rules, regulations or

interpretations of statutes and regulations to which either party is subject. In the event the services a party has agreed to provide are substantially interrupted, pursuant to any such events, the other party (ies) shall have the right to terminate this agreement upon ten (10) days' prior written notice to the affected party.

10.14 Promotional Materials. The parties hereto agree not to use the other's name or any trademark, service mark, or registered design in any publicity, promotional or advertising material, unless review and written approval of the intended use shall first be obtained from the other party (ies) prior to the release of any such material. Said approval shall be at the discretion of the requested party. Notwithstanding the foregoing the Parties may promote the existence of the relationship established by this Agreement.


IN WITNESS WHEREOF, the parties intending to be legally bound have caused this Agreement to be executed by their duly authorized officers as of the day and year first set forth above.

THE NEMOURS FOUNDATION

By: 
Vicky L. Funanage, PhD
Its: Operational Vice President, Research

Date: 6-18-2020

UNIVERSITY OF DELAWARE

By: 
Charlie Riordan, Ph.D.
Its: Vice President, Research, Scholarship & Innovation

Date: June 25, 2020

Exhibit A

Project Title:

Nemours POC/PI:

UD POC/PI:

Funding Sponsor:

Please identify original sponsor.

Start Date:

End Date:

Scope:

Please layout clearly the scope of the project including milestones.

Budget:

Please identify all budgetary expenses below. Different categories should be listed as separate line items.

Student tuition and F&A if appropriate should be added as separate line items and should be consistent

with the policies of the Funding Sponsor.

The signatures indicate that the individuals named below have read the Research Affiliation and Biomedical Services Agreement and this Exhibit A between The Nemours Foundation and University of Delaware, agree to abide by its terms, and have been provided access to the necessary and referenced documents, practices, and policies.

Participant Name(s) (print and sign)

UD POC/PI Name(s) (print and sign)

Nemours POC/PI Name (print and sign)

Administrative Approvals:

THE NEMOURS FOUNDATION

By: _____
Vicky L. Funanage, Ph.D.

Its: Operational Vice President, Research

Date: _____

UNIVERSITY OF DELAWARE

By: _____
Cordell M. Overby, Sc.D.

Its: Associate Vice President, Research & Regulatory Affairs

Date: _____