

ARIZONA BIOMEDICAL RESEARCH COMMISSION

REQUEST FOR COMPETITIVE SEALED PROPOSAL

RFP NO. FY10-100

SOLICITATION, EVALUATION, AND AWARD PROCESS

The Arizona Biomedical Research Commission (“ABRC”) is requesting statewide competitive sealed proposals from Arizona individuals, organizations, corporations and institutions, public or private, for: research projects that may advance the prevention and treatment of tobacco related disease and addiction, and research into the causes, epidemiology, and diagnosis of diseases, the formulation of cures, the medically accepted treatment, or the prevention of diseases, including new drug discovery and development; and that may include behavioral studies and attitude assessments.

ARIZONA PROCUREMENT CODE: The Arizona Procurement Code (A.R.S. §§ 41-2501 to 41-2673) and the Arizona Procurement Code Rules (A.A.C. R2-7-101 to R2-7-1301) are a part of this RFP as if fully set forth herein.

STATE PURCHASING OFFICE (SPO) VENDOR NUMBER: You may obtain a SPO Vendor Number by completing the Vendor Registration Application. Please contact SPO for a Vendor Registration packet:

State Procurement Office
Arizona Department of Administration
100 North 15th Avenue, Suite 104
Phoenix, Arizona 85007
(602) 542-5511

NOTE: Graduate students and post-doctoral fellows are not eligible to be named as principal investigators for an ABRC Contract.

ABRC reserves the right to cancel this RFP, and any or all applications may be accepted, modified, or rejected in whole or in part. Applicants are advised not to necessarily expect three (3) years of funding if selected for a contract award, even if their application contains a request for three (3) years. Contract awards necessarily may be made for shorter periods. Funding amounts identified herein are absolute maximum amounts for each category.

A. SOLICITED RESEARCH AREAS

Health Research Projects

Applications may be submitted for research projects involving any of the diseases or conditions in the areas listed below.

- A. Accidents, Trauma, Toxicology, and Environmental Medicine
- B. Aging and Disease
- C. Cancer
- D. Cardiovascular, Cerebrovascular, and Peripheral Vascular Disease
- E. Genetic, Congenital, Reproductive, and Developmental Diseases and Disorders
- F. Health Promotion and Disease Prevention
- G. Infectious and Immunological Diseases and Disorders
- H. Metabolic and Endocrine Disorders
- I. Neuroscience, Neurological, Mental and Behavioral Diseases and Disorders
- J. Health Policy
- K. Respiratory Diseases and Disorders
- L. Miscellaneous Diseases or Disorders not previously categorized
- M. Bioengineering/Bioinformatics
- N. Bioimaging

Translational Research Projects

The Arizona Biomedical Research Commission (ABRC) is also seeking proposals that address translational research issues with an emphasis on neurodegenerative diseases, trauma treatment and care, bioinformatics, and patient care process improvement. The proposals must be multidisciplinary and collaborative by engaging both laboratory researchers and clinicians in the research enterprise. The application must include human subject based research. Community based participatory research projects will also be accepted.

The Commission is especially interested in proposals that evidence:

1. Collaboration between basic science researchers and practice based clinicians including M.S., D.O., Pharm.D., D.Sc.N., R.N.'s and other allied health professions.
2. Patient care process improvement proposals headed by the clinical professional responsible for the study.
3. Multiple institutional involvement among hospitals, clinics, and private practices.

B. AVAILABLE PROJECT CATEGORIES

Projects may be in any one of the following categories.

Category I: This category is limited to total funding requests of *no more than* \$50,000 **per year**. This amount **includes** a maximum indirect cost allocation of ten (10) percent. These projects are designed for new investigators or as pilot research to obtain data to apply for further extramural support. Category I awards are not available to researchers who have received or completed an award within the last two request for proposal cycles.

Category I awards are available for patient care process improvement proposals but are not available for translational research proposals.

Category II: This category is designated for multi-investigator research project collaborations which may involve more than one institution. Multiple investigators should bring the unique components of a variety of disciplines together to solve a single problem. Total funding requests *may not exceed* \$125,000 per year. Category II awards are not for intra-departmental proposals but inter-departmental proposals may be acceptable for award. These projects are designed for mid-level researchers. Senior investigators should apply for Category III awards only.

Category III: This category is designated for multidisciplinary inter-institutional research projects. Multiple investigators should be working on varied components with distinct objectives that contribute to a common goal for all. Multidisciplinary projects typically receive funding from many sources. Therefore, projects in this category should **specifically define** the particular goals and objectives within each project component that ABRC funds will support if the project is approved. Total funding requests from ABRC *may not exceed*:

1. \$175,000 per year with no matching funds required or
2. \$250,000 per year with matching funds required.

Some Category III projects require matching funds. Projects should be reviewed and approved by the investigator's contract organization and should align with the contract organization institutional priorities and goals. A letter stating that the institutional review has been completed that includes the findings of the review and agreement to provide matching funds must be received before July 1, 2009. Category III projects are intended primarily to be translational research identifying basic research findings, with implications for improving healthcare and advancing those discoveries through pre-clinical developments and clinical research in human subjects.

B.1 Multi-Year Contracts.

Contracts with the ABRC may be entered into for a period not to exceed three (3) years, unless deemed to be in the best interest of the State. Contract awards of more than one (1) year are contingent upon the availability of funds, demonstration of sufficient progress toward Project goals and timely submission of required reports.

If monies are not made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled.

B.2 Inter-Institutional and Multi-Disciplinary Collaborations (Category III Projects).

The research team must consist of members from more than one institution who bring a unique set of skills and knowledge to focus on solving a single research problem. Subcontracting to obtain analytical or other services does not constitute a multi-institutional collaboration.

A one-to-one ratio (1:1) of matching funds will be required to receive a contract award of \$250,000. Collaborating institutions will be required to determine the share of matching funds each partner will provide to the Project. A copy of the agreement reached among the collaborating institutions must be provided to ABRC for review and approval prior to the start of the Project.

The match requirement must be met with currency or cash-equivalents. Limited in-kind matches will be accepted, at ABRC's discretion. In-kind matches will be examined on a case-by-case basis. The purpose of the match requirement is to provide the investigator(s) a maximum of \$500,000 annually for up to three (3) years, \$250,000 from ABRC and a matching amount from the collaborating institutions. Release time for clinicians will be considered to be a component of the institutional match. Salary limits and other information describing allowable release time for purposes of the matching requirement can be found in the instructions for the project budget.

B.3 Project Limitations/Special Requirements.

- (1) All research projects involving human or animal subjects must be submitted by the Principal Investigator to an Institutional Human and/or Animal Subjects Review Committee, established in accordance with Guidelines of the U.S. Department of Health and Human Services. Contract awards may not be finalized until Institutional Review Board approval is granted. If there are collaborating institutions, the project budget must also be approved by the organizations' authorized financial officer.
- (2) ABRC does not fund research that uses human fetal tissue, cells, or organs that are obtained from a living or dead embryo or fetus during or after an

induced abortion. This restriction does not apply to research that uses human fetal tissue, cells, or organs that are obtained from a spontaneous abortion or an ectopic pregnancy. (A.R.S. §36.2302.A)

In accordance with A.R.S. §35-397, Offeror hereby certifies that the Offeror does not have securitized business operations in Iran and Sudan.

In accordance with A.R.S. §41-4401 the offeror warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees.

- (3) Funds received from the ABRC shall not be used for capital construction projects.
- (4) As a general rule, a Principal Investigator is not eligible to receive more than one award in response to a RFP Solicitation. Principal Investigators may, however, submit more than one application in a given year. When more than one application is submitted, ABRC will decide which, if any, of the applications will receive a contract award. Principal Investigators already in receipt of an ABRC contract award are encouraged not to apply for a new award unless the application is being submitted in the final funding year of the existing award, or unless the Principal Investigator only holds a one-year funding agreement.

C. TIMETABLE

Advertisements of Public Notice will run the weeks of.....October 5 and October 12, 2009
 Pre-application Conference..... October 14, 2009
 Deadline for Receipt of Written Requests for Technical Assistance October 16, 2009
 Deadline for Submission of Applications Including Electronic Filings and Required
 Signed Documents and Agreements November 16, 2009
 Opening of Applications November 17, 2009
 Term of Funding Awarded under this RFP..... July 1, 2010 to June 30, 2011, 2012 or 2013

D. SUBMISSION OF APPLICATIONS

One original application and seven (7) copies for Categories I, II, and III must be **received** (not postmarked), in a **sealed** envelope or box **clearly marked PROPOSAL RFP NO. FY10-100 no later than 3:00 p.m. on November 16, 2009:**

Mail Hard Copy and CD's to:
 Arizona Biomedical Research Commission
 15 South 15th Avenue, Suite 103-A
 Phoenix, Arizona 85007

Email Submissions to:
 RFPABRC@azabrc.gov

The Commission is accepting electronic proposal submissions. The RFP is available on the Commission website www.abrc.gov It may be downloaded and the forms filled in on your computer. The proposal may be returned to the Commission via email. However, there are two documents that must be submitted with original signatures. They are: the Letter of Assurance and any collaborative and contractual arrangements. In addition to email filing, you may submit your proposal on a compact disc or you may file a paper response. Please follow the directions in the RFP for other submission requirements.

To be considered, all components (the Request for Competitive Sealed Proposals Application, the General Provisions, and the signed Letter of Assurance) of the proposal including electronic filings must be received by 3:00 PM November 16, 2009.

No facsimiles will be accepted. **Late proposals including electronic filings will not be accepted or considered. This deadline is absolute. There will be no exceptions.**

Note: ABRC shall not reimburse the cost of developing, presenting, or providing any application or other response to this Solicitation.

E. PRE-APPLICATION CONFERENCE

A Pre-application Conference will be held:

Date: October 14, 2009

Time: 2:00p.m.

Place: Arizona Biomedical Research Commission
15 South 15th Avenue, Suite 103-A
Phoenix, Arizona 85007

Statements made at a pre-application conference are not amendments to the RFP unless a written amendment is issued.

F. QUESTIONS AND/OR TECHNICAL ASSISTANCE

Questions and/or requests for technical assistance shall be in writing, email, or fax and shall be submitted to:

Executive Director
Arizona Biomedical Research Commission
15 South 15th Avenue, Suite 103-A
Phoenix, Arizona 85007
abrc1@getnet.net

The deadline for receipt of written, email, or fax questions or requests is:

4:00 p.m., October 16, 2009.

ABRC responses to questions and/or requests for technical assistance shall be posted on the Commission website within seven (7) working days after the submission deadline. Verbal requests for technical assistance will **only** be allowed at the Applicants' Conference.

G. AMENDMENTS TO SOLICITATION

Any and all amendments to this RFP shall be sent to all RFP recipients by first class mail. **Copies of such amendments must be signed by the required signatories to the Contractual Funding Agreement and returned with the application.**

H. OPENING OF APPLICATIONS

Applications shall be opened publicly at the time, date, and place specified below:

Place: Arizona Biomedical Research Commission
15 South 15th Avenue, Suite 103-A
Phoenix, Arizona 85007

Time and Date: 10:30 a.m., November 17, 2009

Confidentiality.

Applications shall be opened publicly at the time and place designated in the RFP. The name of each applicant shall be publicly read and recorded. All other information in the application is confidential during the process of evaluation. All applications shall be open for public inspection after contracts are awarded. **To the extent that the applicant designates, and ABRC concurs, trade secrets and other proprietary information contained in the application shall remain confidential.**

I. POST-APPLICATION SUBMISSION DISCUSSIONS AND REVISIONS

ABRC may allow applicants to make oral or written presentations regarding the scope of work, contractual terms and conditions of the contract, budget and other relevant matters set forth in the RFP. Applicants shall be accorded fair treatment with respect to any opportunity for oral or written presentations. ABRC may require an applicant to revise its application to reflect information provided in an oral or written presentation. Language deleted

J. EVALUATION FACTORS AND CRITERIA

The following factors and criteria shall be used to evaluate applications submitted in response to this RFP. Where the same term is used to describe the relative importance of more than one evaluation factor, those evaluation factors are deemed of equal importance.

Evaluation Factors:	Relative Importance
1. Scientific merit, including: study design, methodology, feasibility, evaluative content, and importance of the proposed research.	Maximum
2. Productivity and ability of the investigators in the project to perform the research, as shown by their knowledge and experience. (For new investigators, demonstration of adequate research training and promise of support from colleagues).	Maximum
3. Relevance of the proposed research to Arizona residents. Proposals representing continuing ABRC research involving technology development issues or the ABRC mission may be given favorable consideration.	Maximum
4. Novelty and originality of the proposed research or research methodology.	Maximum
5. Adequacy of facilities and staff, including: personnel and equipment capable of supporting the proposed research, expertise and competence of staff in the techniques required for performance and in the field of proposed investigation.	Moderate
6. Appropriateness of the budget request: the proposed budget will be evaluated to assure that it is reasonable relative to the proposed research and that the expenditures are justifiable.	Moderate

K. ABRC REVIEW PROCESS

First level of review: **STAFF REVIEW**

All applications are reviewed and may be eliminated from further review for failure to comply with or be responsive to the RFP. **Applications shall be eliminated from further review if determined to be materially incomplete according to the instructions set forth in the RFP.**

Second level of review: **PEER REVIEW (EXTERNAL)**

Technical evaluations are obtained from out-of-state peer reviewers. Qualified out-of-

state peer reviewers are scientific, health, and medical experts recruited in accordance with the fourteen (14) priority research areas that have been established by ABRC. ABRC makes every effort to obtain three (3) outside peer reviews for each application. **All applications must include the name, address, phone number, and/ or e-mail address of at least three (3) out-of-state reviewers who would be qualified to review the application.**

Third level of review: (ABRC) **COMMISSION REVIEW**

The Commissioners form sub-committees to review the applications submitted in response to the RFP. Each sub-committee reviews a portion of the applications in their entirety, all of the lay summaries, and all of the peer reviews. **The ABRC has three lay members. Investigators must describe the proposed research in clear, concise, non-scientific language in the lay summary.** The lay summary and scientific narrative must state the research **OBJECTIVE** clearly. What the investigator plans to accomplish must be made clear and understandable to the lay reader. Information in the lay summary will be published and provided to members of the public requesting information. If an application has not been reviewed or has only been partially reviewed by the panel of peer reviewers, the Commission may, nevertheless, review and consider the application.

The Commissioners shall review each application based solely on the evaluation criteria or factors set forth in Section J.

The Commissioners shall make final award decisions based on their review of information obtained from the peer reviews and their own review of each application. The Commissioners may adjust the budget on any proposed award individually or on all awards by an amount or percentage.

L. NOTIFICATION OF CONTRACT AWARD

Each applicant shall be notified in writing of ABRC's decision to select or reject their application for a contract award.

All contract awards are made subject to the availability of ABRC funds and the Parties' execution of the contract. Additionally, continuation of contracts is subject to the contractor(s)' ongoing demonstration of sufficient progress toward project goals, timely submission of required reports, and continuing compliance with all other terms and conditions of the contract.

SAMPLE LETTER OF ASSURANCE

NOTE: THIS LETTER OF ASSURANCE MUST BE ON INSTITUTION LETTERHEAD AND SIGNED BY A PERSON AUTHORIZED TO COMMIT THE INSTITUTION TO THESE ASSURANCES.

1. If a Contract is awarded, the **(FILL IN NAME OF INSTITUTION)** certifies that the price submitted was independently arrived at without collusion and agrees to:
 - a. Comply with the Commission’s monitoring activities.
 - b. Comply with the Commission’s auditing activities
 - c. Comply with the Commission’s General Contract Provisions, Special Provisions, and Amendments
 - d. Provide services as required by the Work Statement of the Contract.
 - e. Submit with the signed Contract, proof of insurance adequate to meet the stipulations of the General Contract Provisions.
 - f. If applicable, submit with the signed Contract, documentation that the contract institution approved the use of human and/or animal subjects by its standing committee.
 - g. Institution certifies and agrees

2. Name of Principal Investigator: _____

3. Telephone Number of Principal Investigator: _____

4. Contract institution Organizational Structure (select only one type):

County Agency	For-Profit Corporation
Municipality	Not-For-Profit Organization
Individual State Agency	Partnership
Educational Institution/District	Sole Proprietorship
	Other

5. Contract Institution’s Federal Employer’s Identification Number or Social Security Number if you are not associated with any institution: _____

Signature of Principal Investigator	Date
Signature of Institution’s Authorized Officer Indicating Approval of Proposal Submission	Date
Typed or Printed Name and Title of Authorized Officer	

REQUEST FOR COMPETITIVE SEALED PROPOSAL

RFP NO. FY09-100

APPLICATION

M. INTRODUCTION TO PART II: APPLICANT(S)' ATTESTATION

Part II of this RFP contains the Application itself. The Application can either be copied from this document (or printed from the “pdf” version on the ABRC Website), completed by hand, and provided to ABRC as per the instructions in Section “N” below, **or can be downloaded from ABRC’s Website (www.azabrc.gov/) in Microsoft Word, completed on a computer, and emailed as an attachment to ABRC at: RFPABRC@azabrc.gov. Enter RFP10-100 on the subject line. If this method is selected, the header at the top of each page can be completed by clicking twice within the header box, filling in the information, and clicking twice again to return to the text. The completed header information will then be automatically entered on each page. If the header box does not open, the top of each page should contain the name of the principle investigator and the name of the project proposed. If the latter method is elected, any photographs, graphs, or other materials intended to accompany the application must be provided to ABRC in the manner, and with the required copies, described in Section N. In addition, the 2-page Applicant(s)' Attestation that follows must be copied from this document or printed from the pdf version on the Website, executed, and provided to ABRC to accompany the Application**

If the Principal Investigator is affiliated with a public or private organization, in either an employment or contracted relationship, **then the associated organization must agree with the Principal Investigator, to sign the Attestation, and shall be legally bound jointly and severally with the Principal Investigator to all of the terms and conditions of the contract (after execution) if awarded an ABRC contract.**

If the Principal Investigator has no association with an organization, then he or she shall be the sole applicant and shall sign the Applicant(s)' Attestation, and shall be legally bound individually to all of the terms and conditions of the contract (after execution) if awarded an ABRC contract.

N. FORMAT OF APPLICATION

The application consists of your responses to all requests for information listed in Sections N – V.

Hard Copy:

Clip applications together with binder clips. Do not bind or staple. Label the application with original signature “ORIGINAL” and place it on top. If your application contains original photographs or other materials that are necessary for the peer reviewers, you may mark three (3) of the seven (7) copies “PEER REVIEWER COPY.” These three (3) copies shall be placed directly beneath the ORIGINAL.

Applications shall be submitted on 8 ½ X 11 inch pages, single-spaced using standard type sizes of 11 point or larger for word-processed documents. Seven (7) copies of any attachments that cannot conform to the size requirements, or that rely upon color for effectiveness, must be provided.

All information requested in Sections N – V must be provided. Each section and subsection of the application must be clearly identified. Any tables, charts, photos, and/or diagrams must reference their appropriate location in the text, with each bearing an appropriate identifying number and caption. Each section (*i.e.*, N – S) of the application must begin on a separate page which bears the indicated header.

Electronic Filing:

The Commission is accepting electronic proposal submissions. The RFP is available on the Commission website www.abrc.gov It may be downloaded and the forms filled in on your computer. The proposal may be returned to the Commission via email. However, there are two documents that must be submitted with original signatures. They are: the Letter of Assurance and any collaborative and contractual arrangements. In addition to email filing, you may submit your proposal on a compact disc or you may file a paper response. Please follow the directions in the RFP for other submission requirements.

O. APPLICANT(S)' BACKGROUND INFORMATION

1. Name of Principal Investigator (last, first, middle initial)

2. Principal Investigator's Contact Information (address, telephone, fax, email)

3. Principal Investigator's Educational Background (include all degrees, licenses, certifications, etc.)

- 4.1 Positions and Honors (List previous positions in chronological order, concluding with your present position. Do not exceed four (4) pages. List any honors or posts held in professional organizations.)

- 4.2 Selected Peer-Review Publications in Chronological Order (Do not include publications submitted or in preparation.)

- 4.3 Research Support. List selected research projects ongoing or completed during the last 3 years including federal and non-federal supported projects. Begin with the projects that are most relevant to the research proposed in this application. Briefly indicate the overall goals of the projects and your role (*e.g.* Principal Investigator, Co-Investigator, Consultant, etc.) in the research project. List award amounts.

5. Any previous funding of Principal Investigator by ABRC if yes, list the fiscal years during which investigator was funded, identify the title of the project, and describe what was accomplished.

6. Principal Investigator's Current Employer (if any)

7. Affiliated Organization Contact Information (name, address, fax, email of affiliated organization's authorized representative – *i.e.*, person with legal contracting authority on behalf of the organization)

8. Principal Investigator's Current Position with Employing Organization Identify if employed, contracted, or other – describe.

P. PROJECT BACKGROUND INFORMATION	
1.	Name of Principal Investigator
2.	Name of Institution
3.	Title of Project
4.	ABRC Solicited Research Area (A-N)
5.	ABRC Available Project Category (I-III)
6.	Total Funds Requested for Project Budget Period (identify dollar amount per year)
	Year 1:
	Year 2:
	Year 3:
	Total:

P. PROJECT BACKGROUND INFORMATION – Con’t.	
7.	Human Subjects Research: Yes _____ No _____
7.1	Research Exempt: Yes _____ No _____ If yes, please describe.
7.1.1	Human Subjects Assurance Number (provide, if applicable)
8.	NIH-defined Clinical Trial: Yes _____ No _____ If yes, what phase _____
9.	Involves Vertebrate Animals: Yes _____ No _____ If yes, provide IACUC approval date.
9.1	Animal Welfare Assurance Number: Provide, if applicable.
10.	Dates of Requested Funding Support (month & year, from – through)
11.	Have you been funded by ABRC before? If yes, list the fiscal years during which you were funded, the contract number, the title of your proposal and describe what was accomplished.
12.	Other Existing Internal and External Sources of Project Funding: List all, identifying the dollar amounts and funding periods for each source.
13.	Project Represents a Continuum of Work Previously Funded by ABRC: Yes _____ No _____ (if yes, identify any and all funding sought from national or other sources – explain.
14.	Other Sources of Funding also being Sought for Project: Yes _____ No _____ If yes, identify for each source the dollar amount sought and corresponding funding period.

Q. PROJECT ABSTRACT

The abstract is a concise overview of the Project's specific aims, as related to the research being proposed. Describe concisely the research design and methods for achieving the goals. Avoid summaries of past accomplishments and the use of first person narrative. The abstract is meant to serve as a succinct and accurate description of the proposed work when separated from the Application. If the Project is funded, the abstract, as is, will become public information. Therefore, do not include proprietary/confidential information. Note that the abstract is different than the Lay Summary. Do not exceed 150 words in the body of the abstract.

R. PROJECT LAY SUMMARY

The importance of the Lay Summary cannot be over-emphasized. Summarize your Project in non-scientific, lay language. Include a short summary paragraph outlining the specific relevance of your project to biomedical issues facing Arizona. Specifically include: (1) a description of the research problem, and (2) a concise summary of the goals and objectives of the research and the hypotheses to be tested.

S. DETAILED PROJECT WORK STATEMENT

INSTRUCTIONS:

The following information shall be provided as “the Project Work Statement.” More than one page may be used when responding to each of the items, however applicants are urged to limit their responses to twenty (20) printed, single-spaced pages for Category I, and thirty (40) printed, single-spaced pages for Categories II and III proposals, using standard type sizes of 11 point or larger for word processed documents.

I. ACTIVITY: Goals and Objectives.

List the specific aims, goals, and objectives of the proposed research, and the hypothesis(es) to be tested.

II. BACKGROUND INFORMATION AND LITERATURE REVIEW.

Include a narrative introduction to your proposal providing relevant background information. The narrative should not exceed five (5) pages. An annotated bibliography of the relevant literature **shall** be included. It is recommended that the list be limited to five (5) pages.

III. PRELIMINARY WORK.

A list of all studies and publications previously completed by the Applicant **shall** be included, if appropriate.

IV. ACTIVITY: Experimental Methodology.

Outline the experimental design and procedures to be used to accomplish the specific aims, goals, and objectives of the project. Describe any new methodology and its advantage(s) over existing methodologies.

V. ACTIVITY: Data Analysis.

Describe the means by which the data will be collected, analyzed, and interpreted. Discuss potential difficulties and limitations of the proposed techniques. Point out any procedures, situations, or materials that may be hazardous to personnel.

VI. ACTIVITY: Timeline.

Provide a chronological outline in regard to goals, objectives, methods, and data analysis. Define as clearly as possible the progression of the research plan over the year(s).

S. DETAILED PROJECT WORK STATEMENT

VII. ACTIVITY: Evaluation.

Discuss how you will ensure that the research goals and objectives will be met, and how you plan to evaluate the methods used. Also discuss what precautions will be taken to minimize hazards to personnel, if necessary.

VIII. LITERATURE CITED.

A list of all publications cited in the Work Statement **shall** be included.

IX. COLLABORATIVE AND CONTRACTUAL ARRANGEMENTS.

Copies of consortium, contractual, and sub-contractual arrangements must be disclosed and copies of completed proposed agreements must be attached.

X. LETTERS OF SUPPORT.

Letter(s) in support of the proposed Project **may** be included.

XI. BIOGRAPHICAL SKETCHES.

The biographical sketches of the Principal Investigator (see Subsection O above) **and** main collaborators **shall** be included.

T. LIST OF THREE (3) REVIEWERS

Provide a list of, and all contact information for, three (3) **out-of-state reviewers** qualified to review the proposed Project.

- 1.
- 2.
- 3.

U. PROJECT RESOURCES

Specify the facilities/items/materials to be used for the conduct of the proposed research project by the listed categories. Indicate the performance sites and describe capacities, pertinent capabilities, relative proximity, and extent of availability to the Project. Under number seven (7) identify support services such as machine shop, electronics shop, etc., and specify the extent to which they will be available to the Project. Use continuation pages if necessary.

- 1. **Laboratory:**
- 2. **Clinical:**
- 3. **Animal:**
- 4. **Computer:**
- 5. **Office:**
- 6. **Major Equipment:** (List the most important equipment items already available for this project, noting the location and pertinent capabilities of each.)
- 7. **Other:**

V. PROJECT BUDGET

1. Budget Forms.

Immediately following the Budget Instructions below are three (3) pages of budget forms for the Applicant's use. **These forms (pages) should be reproduced and completed by the applicant and included in the application under this Section heading (i.e., Project Budget) in the same manner as all other Sections N – V.** The guidelines given in the Budget Instructions immediately below should be strictly adhered to in completion of the budget forms.

2. Budget Instructions.

NOTE: (1) An itemized budget for each year of the proposed Project must be included.

(2) In all cases, indirect costs may not exceed ten (10) percent of the total Project cost. (Indirect costs + direct costs = total project cost.)

2.1 **Personnel**

(a) ABRC Contract Funds may not be used for salary support of tenure track faculty with 12-month appointments.

(b) ABRC Contract Funds may be used, for a maximum of two (2) months, for salary support of tenure track faculty with 9-month appointments who do not have salary support from any other source for their summer salary.

(c) ABRC Contract Funds may be used for **no more than four (4) months salary support** of research track faculty. The salary of such faculty from all sources cannot exceed the equivalent of an 11-month appointment. An individual with 9-months of salary support from other sources may receive **no more than two (2) months of salary support** from ABRC Contract Funds. Individuals with 7-months or less of salary support from other sources may receive **no more than four (4) months of salary support** from ABRC Contract Funds. Cost shifting to increase the amount of salary support from ABRC Contract Funds is not permitted. Lab personnel are eligible for salary support at the level of time committed to the project.

(d) Investigators in private institutions are subject to the same

V. PROJECT BUDGET

limitations in the use of ABRC Contract Funds for salary support.

2.2 Salary Limitations

Clinician-scientist salary and benefit amounts applied to any matching funds requirement may not exceed the 2009 NIH guidelines. Clinician-scientists who use “release time” as part of any match requirement may not use ABRC Contract Funds for additional salary support.

2.3 Consultant Costs

Itemize consultant fees, travel, etc.

2.4 Equipment

Itemize each major piece of equipment, or portion thereof.

Expenses for major equipment may not exceed 20% of the total project budget. As indicated in Section 5, **any single piece of equipment costing more than \$5,000 to be acquired with ABRC Contract Funds must be individually approved by ABRC.**

2.5 Supplies

Itemize by category. ABRC Contract Funds shall not be used for office costs or supplies (*e.g.*, paper, copying costs, telephone costs, postage, etc.). Non-expendable property having a useful shelf life of more than two (2) years and an acquisition cost of \$5,000 or more per unit must **not** be listed under supplies. Rather, such items must be listed under Equipment.

2.6 Travel

ABRC Contract Funds shall not be used for travel to scientific meetings, or any other travel that is not directly related to the specific research project being funded. ABRC Contract Funds may only be used for travel that is essential to the research project outcomes.

2.7 Patient Care

Itemize these costs in the in-patient and out-patient categories.

V. PROJECT BUDGET

2.8 Other Expenses

Itemize and describe the purpose of these expenses. ABRC Contract Funds shall not be used for such items as: subscriptions to journals, membership dues to organizations or societies, purchase of books, library search fees, journal article copying costs, telephone cost, paper and other copying costs, etc. Also disallowed are tuition costs or laboratory fees for work leading to an academic degree. ABRC Contract Funds may be used, up to a maximum of \$1,000, for manuscript preparation fees, including page charges and illustration costs. Animal purchases and related costs should be itemized here. **Any costs or expenses incurred through a subcontract must be identified as such and likewise be “broken out” and itemized by the above-indicated categories.**

3. Sample Indirect Cost Calculation for Inter-Institutional, Collaborative Projects Only

For a \$150,000 contract, \$135,000 is available for research. No more than \$15,000 in indirect costs may be captured by the institution.

When two institutions are collaborating, one institution cannot take an indirect cost allocation on any indirect costs which may be included in a subcontract. Rather, the total allowed indirect cost (*i.e.*, 10%) is to be divided among the collaborating institutions performing the research project. For example:

Primary Institution:	Cost of Research	\$90,000
	Indirect Costs	\$10,000
Secondary Institution: (<i>i.e.</i> , subcontractor)	Cost of Research	\$45,000
	Indirect Costs	\$ 5,000

Collaborating institutions may develop their own agreements about indirect cost allocations, so long as the following criteria are met:

Indirect costs for all institutions combined cannot exceed 10% of the total Project cost.

COST BUDGET FOR SINGLE YEAR RESEARCH PROJECT					Budget Period	
DIRECT COSTS					From	To
PROJECT PERSONNEL		TYPE APPT. (MONTHS)	% EFFORT ON PROJECT	DOLLAR AMOUNT (omit cents)		
NAME	ROLE ON PROJECT			INSTITUTIONAL BASE SALARY	(A) SALARY REQUESTED	(B) FRINGE BENEFITS
	PRINCIPAL INVESTIGATOR					(A)+(B)
						(A)+(B)
						(A)+(B)
						(A)+(B)
						(A)+(B)
SUBTOTAL						(A)+(B)
CONSULTANT COSTS						
EQUIPMENT (<i>Itemize</i>)						
SUPPLIES (<i>Itemize by category</i>)						
TRAVEL						
PATIENT CARE COSTS		INPATIENT				
		OUTPATIENT				
ALTERATIONS AND RENOVATIONS (<i>Itemize by category</i>)						
OTHER EXPENSES (<i>Itemize by category</i>)						
TOTAL DIRECT COSTS						
TOTAL INDIRECT COSTS (Indirect Costs cannot exceed 10% of Total Project Cost.)						
TOTAL COST (Direct costs + indirect costs = total cost, which cannot exceed Category Limit.)						

COST BUDGET FOR MULTI-YEAR RESEARCH PROJECT						Budget Period			
						From		To	
			Dollar Amount (<i>Omit cents</i>)						
PROJECT PERSONNEL: NAME / Role on Project	Type Appt. (months)	% Effort on Project	Insti- tutional Base Salary	(A) Salary Requested	(B) Fringe Benefits	Initial Year	Additional Years of Funding Requested		Totals
							2 nd	3 rd	
						(A)+(B)	(A)+(B)	(A)+(B)	
						(A)+(B)	(A)+(B)	(A)+(B)	
						(A)+(B)	(A)+(B)	(A)+(B)	
						(A)+(B)	(A)+(B)	(A)+(B)	
SUBTOTAL						(A)+(B)	(A)+(B)	(A)+(B)	
CONSULTANT COSTS									
EQUIPMENT (<i>Itemize</i>)									
SUPPLIES (<i>Itemize by category</i>)									
TRAVEL									
PATIENT CARE COSTS	Inpatient								
	Outpatient								
ALTERATIONS AND RENOVATIONS									
OTHER EXPENSES (<i>Itemize by category</i>)									
INDIRECT COSTS*									
CONSORTIUM/ CONTRACTUAL COSTS	Direct								
	Indirect*								
TOTAL DIRECT COSTS									
TOTAL INDIRECT COSTS *(Indirect Costs cannot exceed 10% of Total Project Cost)									
TOTAL COST (Direct costs + indirect costs = total cost)									
TOTAL COST FOR ENTIRE PROPOSED PROJECT PERIOD									

MATCHING FUNDS DOCUMENTATION

If awarded a contract that requires matching funds, the Applicant shall provide documentation that the matching requirement has been, or can be, met.

___ No matching funds required.

___ Yes matching funds required. Explain here, or attach matching fund documentation to this form.

BUDGET NARRATIVE

The Applicant shall here provide a narrative explanation of, and justification for, the proposed Project budget, consistent with the guidelines given in the Budget Instructions. Use properly-headed continuation pages as needed.

REQUEST FOR COMPETITIVE SEALED PROPOSAL

RFP NO. FY09-100

GENERAL PROVISIONS FOR CONTRACTS

1. DEFINITIONS

As used throughout this document, the following terms shall have the meanings set forth:

- 1.1 “ABRC” means the Arizona Biomedical Research Commission.
- 1.2 “Bayh-Dole Act” means the provisions of 35 U.S.C. ' ' 200 through 212 (as amended) together with all regulations promulgated there under.
- 1.3 “Budget Request” means those provisions of the Contract that describe the specific financial amounts, payment, accounting, and substantiation requirements and arrangements of the Contract.
- 1.4 “Chairman” means the Arizona Biomedical Research Commission (ABRC) Chairman or duly authorized representative.
- 1.5 “Commission” means the Arizona Biomedical Research Commission (ABRC) or any successor in interest.
- 1.6 “Contract” means all written documents comprising the agreement of the parties, including but not limited to, these General Provisions, the solicitation, the Contractor’s proposal, the Acceptance Declination of Contract Award, Budget Requests, Budget Summaries, and budget transfer requests.
- 1.7 “Contract Material” means all written and electronic information, recordings, reports, findings, research information, abstracts, results, software, data, and any materials created, prepared, or received by the Contractor and Subcontractors in performance of this Contract.
- 1.8 “Contractor” means the person, firm, or organization performing, or accountable for performing the services or delivering the items described in this Contract.
- 1.9 “Controlling Party” means the party to this Contract is in the Best Position to perform the duties of the Controlling Party hereunder. For purposes of this Contract, “Best Position” means the party to the Contract who has the money to fully advance the development of any Discovery, and/or the party that owns or

controls a dominant patent or a minor patents critical to the development of any Discovery.

- 1.10 “Cost Reimbursement” provides for reimbursement to the Contractor for actual costs incurred, as outlined in the Contract, in delivering services under the Contract.
- 1.11 “Derivative Research” means any research that was deduced or evolved from prior research and/or testing of a discovery.
- 1.12 “Derivative Work” means any work that is deduced or obtained from Contract Material or any portion thereof including, but not limited to any translation, arrangement, abridgment, recasting, transformation, or adaptation of Contract Material or any portion thereof.
- 1.13 “Development Costs” shall include only those Verifiable expenses arising solely and directly from the testing of a discovery or any derivative research thereto, evaluation of a Discovery, registration of a Discovery, obtaining or protecting a patent covering a Discovery, marketing of a Discovery (including fees or commissions payable to a third party), negotiations of contracts with third parties for licenses to make use of a Discovery, attorneys’ fees for obtaining a patent, attorney’s fees for the negotiation and/or drafting of license agreements for a Discovery, and licensing of a Discovery. Verifiable expenses shall not include any allocation of indirect costs by any party.
- 1.14 “Direct payment of money to the research being performed hereunder” means those payments of money made directly to the research being performed under this Contract solely for the purpose of completing that research and the term shall not include any indirect payments or administrative costs. In calculating a party’s direct payment of money to the research being performed hereunder, the party may include amounts of salaries and benefits proportionate to the amount of time devoted by an employee directly to the research being performed hereunder, and funds that it receives from outside grants and other sources that the party pays directly to the research being performed under this Contract solely for the purpose of completing that research.
- 1.15 “Discovery” means any discovery, invention, or resulting patent(s) that arise(s) from research carried on by or under the direction of the Contractor in performance of this Contract.
- 1.16 “EDA” means effective date of Amendment.
- 1.17 “Executive Director” means the person designated to represent the Commission in the program administration of this Contract.
- 1.18 “Gross Income” means the total revenue received by the Controlling Party from

- the manufacture, use, lease, or sale of title to a Discovery or license to use thereof or any amounts attributable thereto, including the fair market value of any in-kind compensation.
- 1.19 “Management Fees” means fees for expenses of maintenance of a Discovery and administrative costs arising from the accounting and reporting required under this Agreement. Management Fees shall be paid only from Net Income received after all Development Costs of both parties have been fully reimbursed. Management Fees shall not exceed ten percent (10%) of the Net Income received.
- 1.20 “Net Income” means the Gross Income received by the Controlling Party less all Development Costs.
- 1.21 “Net Net Income” means the Gross Income received by Controlling Party less:
- 1.21.1 All Development Costs;
 - 1.21.2 Management Fees; and
 - 1.21.3 All other amounts agreed to be excluded by prior written approval of both parties.
- 1.22 “Outside Funding” means all funding for the work to be conducted by the Principal Investigator under this Contract that does not come from the Contractor and shall include internal monetary awards from the Contractor over which the Principal Investigator has exclusive control.
- 1.23 “Principal Investigator” means a person or entity who provides services or materials pursuant to the Contract in the nature of a developer, inventor, or researcher, usually requiring special skill and advanced education of a mental and intellectual nature. A Principal Investigator is usually a person who is an employee or agent of the Contractor, but a Principal Investigator could also be an entity, the Contractor, or a Subcontractor. A Contract may involve more than one Principal Investigator.
- 1.24 “Professional acts” means services or acts of persons whose vocation or occupation requires special, usually advanced, education and skill which is predominantly mental or intellectual rather than physical or manual.
- 1.25 “Reporting Period” means one of the two Reporting Periods during each calendar year. The first Reporting Period of the calendar year shall run from the first business day of each calendar year to the last business day in June. The second Reporting Period of each year shall run from the first business day in July to the last business day in December.
- 1.26 “Shall” means what is mandatory.

- 1.27 “State” means the State of Arizona including the Commission, and shall not, for purposes of this contract, include the Contractor.
- 1.28 “Subcontract” means any Contract between the Contractor and a third party to provide or be accountable for providing all or a specified part of the services or items which the Contractor has himself contracted with the Commission to provide.
- 1.29 “Verifiable” means evidenced by true and complete copies or originals of bills, invoices or the like and similar evidence of payments of such bills, invoices or the like.
- 1.30 “Work Statement” means those provisions of this Contract which delineate the scope and manner of the specific services to be performed and/or describe the items to be supplied in the performance of this Contract. If the provisions of the Work Statement conflict with the General Provisions, the terms of the Work Statement shall govern.

2. GENERAL REQUIREMENTS

- 2.1 The Contract Term is the date identified by the Commission as the start and end date of the Contract or Amendment. The Contract Term begins when the Contract or Amendment is fully executed by the parties or at a later date as specified therein. The Contractor shall not begin work or bill the Commission for costs incurred under this contract or Amendment until the Contract or Amendment is fully executed.
- 2.2 The effective date of the Contract or Amendment is the date the Contract or Amendment is signed by all parties.
- 2.3 The Contractor, unless otherwise exempt by law, shall obtain and maintain all licenses, permits and authority necessary to do business and render services under this Contract.
- 2.4 The parties hereto agree that the Contractor is an independent Contractor in the performance of this Contract and is not an officer, employee or agent of the Commission.
- 2.5 Except for persons employed by the Arizona Board of Regents, or units thereof, no individual employed by the State shall have a substantial interest in this Contract or receive a substantial benefit that may arise there from.
- 2.6 Contractors receiving State funds under this Contract shall comply with the certified financial and compliance audit provisions of A.R.S. ' 35-181.03.
- 2.7 If matching funds are required to receive an award of this Contract, matching funds should be met with currency or cash equivalents, unless otherwise

specified. The Commission may elect to authorize limited in-kind matches on a case by case basis. Release time for clinicians will be considered as a component of the Contractor match. Salary limits and other information describing allowable release time for purposes of the match can be found in the instructions for the budget.

3. OTHER CONTRACTS

The Commission may authorize additional work related to this Contract or award other Contracts for such work. The Contractor shall cooperate reasonably with such other Contractors and/or State employees in scheduling and coordinating its work with such additional work. The Contractor shall afford other Contractors reasonable opportunity for the execution of their work and shall not commit or permit any act which will unreasonably interfere with the performance of work by any other Contractor or by State employees. The Commission shall equitably enforce this Section as to all Contractors to prevent unreasonably burdening any Contractor.

4. SUBCONTRACTS AND ASSIGNMENTS

- 4.1 The Contractor shall not subcontract with any other person or entity to provide or account for any service or item required by this Contract unless (a) the subcontract was already part of the proposal or (b) the Commission has provided the Contractor with prior written approval.
- 4.2 If Subcontracts are permitted hereunder, the Contractor agrees to use written Subcontracts which conform to Federal and State laws and regulations appropriate to the service or activity covered by the Subcontract, and which are consistent with the terms of this Contract.
- 4.3 The Contractor is responsible for the actions and performance of any Subcontractor. The Contractor is also responsible for Contract performance without regard to whether Subcontractors are used.
- 4.4 The Contractor shall submit a complete copy of each proposed Subcontract with all attachments and proposed amendments to the Commission for its prior approval. Upon approval by the Commission and the execution of the Subcontract, the Contractor shall submit a complete copy of each Subcontract with all attachments to the Executive Director within fifteen (15) business days of its effective date.
- 4.5 The Contractor's rights or obligations under this Contract shall not be assigned without the prior written consent of the Commission. It shall be deemed to be an assignment without approval if, without the prior written approval of the Commission: (i) more than fifty percent (50%) of the voting control of the Contractor has been or will be transferred to third parties within a twelve (12) month period or (ii) more than fifty percent (50%) of the equity ownership in the

Contractor has been or will be transferred to third parties within a twelve (12) month period.

- 4.6 The Contractor and all subcontractors shall agree that if, at anytime while this Contract is in effect, they or any one of them acquire or have acquired patents, rights, or interests in a patent that dominates over a Discovery that arises under this Contract, the Contractor or subcontractor that so acquired or acquires will notify the Commission within thirty (30) days of learning of a dominating patent and will cooperate fully with the Commission if it so requests in order to protect any interest in or with respect to the Discovery that belongs to or is to be received, in whole or in part, by the Commission pursuant to the Contract.

5. OWNERSHIP OF INTELLECTUAL PROPERTY

- 5.1 It is the intent of the Commission that all intellectual property developed under this Contract be used and controlled in ways to produce the greatest benefit to the parties to this Contract, the inventor, the inventor's parent institution, and the citizens of the State of Arizona.

5.2 Copyrights and Research Information

5.2.1 Title and exclusive copyright to all Contract Material shall vest solely in the Controlling Party. Each party to this Contract shall execute all documentation requested by the Controlling Party for the purpose of securing for the Controlling Party all interests in and to all copyrights to the Contract Material.

5.2.2 Each party to this Contract that is not the Controlling Party shall have full, complete, perpetual, irrevocable and nontransferable rights to reproduce, duplicate, adapt, make Derivative Works, distribute, display, disclose, publish, and otherwise use all Contract Material. The Controlling Party may, at its option, and in its sole discretion, hold, sell, or otherwise dispose of its title or any lesser right or interest to any Contract Material. If the Controlling Party declines to take title to the Contract Material or desires to transfer title of the Contract Material to a third party, the other party to this Contract shall have the first right of refusal to take title to that Contract Material and act as the Controlling Party hereunder.

5.2.3 Prior to any presentation or publication, the Contractor shall notify the Commission of the date, time and location of any planned publication and forward to the Commission a copy of any Contract Material or Derivative Works including, but not limited to, manuscripts, abstracts, presentations, illustrations, tables, and photographs accepted for publication prior to the publication release date. Contract Material that contains proprietary or confidential information, sent to the Commission for review, shall be kept confidential to the extent permitted by law. Neither party shall release

confidential information to the public without the prior express written permission of the other or pursuant to subpoena or court order.

- 5.2.4 Unless otherwise required by law, neither party shall release draft, interim, incomplete, or unfinished Contract Material to the public received from, or concerning any ongoing research project.
- 5.2.5 The Contractor shall give recognition to the Commission for its support of the research project when publishing Contract Material, Derivative Work, or releasing research project related public information.

5.3 Discoveries

- 5.3.1 Except as provided in section 5.7 below, title to and the exclusive right to patent any Discovery resulting from research carried on by or under the direction of the Contractor in performance of this Contract shall vest solely in the Controlling Party. Each party to this Contract shall execute all documentation requested by the Controlling Party for the purpose of securing for the Controlling Party all rights (including but not limited to the right to patent), titles, and interests in and to such Discovery in the United States and in all foreign countries or jurisdictions. If the Controlling Party declines to take title or desires to transfer title of the Discovery to a third party, the other party to this Contract shall have the first right of refusal to take title to that Discovery and act as the Controlling Party hereunder.
- 5.3.2 Each party to this Contract that is not the Controlling Party shall have full, complete, perpetual, irrevocable, and nontransferable rights to duplicate, produce, and otherwise use any Discovery. The Controlling Party may, at its option, and in its sole discretion, hold, sell, or otherwise dispose of its title or any lesser right or interest to any Discovery. No less than ten (10) business days prior to any transfer of title or any lesser interest in a Discovery, the Controlling Party shall notify all other parties of the proposed transfer and provide copies of the operative transfer documents to the other parties. The Controlling Party may evaluate, patent, or license any Discovery using its own resources or may make an agreement with the other party to this Contract, third party, or patent management organizations to undertake such activities.
- 5.3.3 The Contractor shall require each Principal Investigator and other persons involved in the research hereunder to promptly (defined as no later than 30 days after discovery) disclose all Discoveries made hereunder to the Commission and to a designated Contractor representative. Within 60 days of the parties' receipt of the disclosure and any supporting documentation, the parties shall mutually determine which party shall be the Controlling Party.

- 5.3.4 The Controlling Party will be responsible for all actions or decisions related to the Discovery. The Controlling Party may take one or more of the following actions relating to the Discovery:
 - 5.3.4.1 transfer, license, or assign the Discovery or any interest in the Discovery outright to the discoverer or inventor.
 - 5.3.4.2 transfer, license, or assign the Discovery or any interest in the Discovery to one or more institutions or patent management organizations for patent and/or commercial development;
 - 5.3.4.3 evaluate the Discovery for commercial potential by a third party;
 - 5.3.4.4 license or assign the Discovery or any interest in the Discovery to any other party to this Contract for patent management or development; or
 - 5.3.4.5 patent the Discovery and then license or assign the Discovery to any other person or entity for commercialization.
- 5.3.5 The Controlling Party shall not grant or sell a license or any other interest in a Discovery unless the other party to this Agreement has been given a minimum of 30 days written notice prior to the grant or sale.
- 5.4 Within sixty (60) days of receipt of any Gross Income from the sale, transfer, or licensing of any Contract Material or any copyright thereto or any Discovery or patent thereto, the Controlling Party shall reimburse each party their respective Discovery Costs, Management Fees, and distribute their shares of the Net Net Income as described in section 5.5 below.
- 5.5 For sections 5.2 and 5.3, within forty-five (45) days of the receipt of Gross Income, the Controlling Party shall distribute the Gross Income in the following order and in accord with the following:
 - 5.5.1 The Controlling Party shall reimburse each party to this Agreement for all accrued Development Costs. The Controlling Party shall distribute reimbursements of Development Costs between itself, and all other parties to the extent possible. If sufficient funds are not available to pay all Development Costs in full, the Gross Income shall be distributed pro rata to each party. Before paying any Management Fees or distributing any Net Net Income, the Controlling Party shall first pay all accrued Development Costs of all parties.
 - 5.5.2 The Controlling Party may, at its discretion, take a Management Fee not to

exceed ten percent (10%) of the Net Income received. The Management Fees distributed to the Controlling Party shall not exceed ten percent (10%) of the Net Income. Management Fees shall be reimbursed only after all of the accrued Development Costs of all parties have been reimbursed in full. The Commission may adopt a percentage Management Fee equal to that elected by the Contractor or taken by the Contractor acting as Controlling Party on other projects.

- 5.5.3 The Controlling Party shall pay all of the Net Income equally to each party unless the parties agree otherwise in writing. Net Income may be distributed only after all of the accrued Development Costs of all parties have been fully reimbursed and the applicable Management Fees have been paid.
- 5.5.4 In the event that a share of Net Income is received by the Commission pursuant to section 5.5, a portion of that share of Net Income received by the Commission shall be paid to the individual(s) who created that intellectual property as consideration for his, her, or their creative efforts. This portion is to be determined by the commission considering individual institutional policy, recommendations from patent management organizations or any other knowledgeable source, and other relevant factors. In no event will the inventor or inventors collectively, be awarded less than 25 percent of the share of Net Income provided to the Commission.
- 5.6 Within thirty (30) days after the end of each Reporting Period, the Controlling Party shall account to each party in writing for all Gross Income received during that Reporting Period and all distributions there from. At that same time, each party to this Agreement shall report to the other all outstanding Development Costs that it has incurred under this Agreement.
- 5.7 If the Bayh-Dole Act applies to a Discovery made hereunder, and the Commission would otherwise be the Controlling Party hereunder, the party that is the Contractor under the Bayh-Dole Act shall have title to the Discovery. Within sixty (60) days of the Commission's receipt of written notice in section 5.3.3, the Commission may make written request for and the Contractor shall make an application to the Federal funding agency and/or the United States Department of Commerce as provided in the Bayh-Dole Act for permission to transfer the title to such Discovery or resulting patent to the Commission. The Commission shall approve the form of the application before it is submitted. The Commission shall be informed promptly of any subsequent communications with the Federal funding agency and/or the United States Department of Commerce regarding the request. If the Federal funding agency and/or the United States Department of Commerce does not grant permission for the transfer: (1) the Commission shall, nevertheless, have the rights to its share of Gross Income as described in 5.5, and (2) the Contractor shall then assume the responsibilities and

authorities of the Controlling Party or license the Discovery to the Commission for purposes of commercial development. In all circumstances, and without regard to whether the Commission has requested the transfer of title or patent rights or whether the Federal funding agency and/or the United States Department of Commerce has approved any such transfer, the Commission shall retain its right to share in the distribution of Gross Income as described in section 5.5 above.

6. CONFIDENTIALITY

- 6.1 The Contractor, its Principal Investigators, employees, and authorized agents engaged in work under this Agreement may present at symposia or professional meetings and publish in journals, theses or dissertations, or otherwise of their own choosing, methods and Contract Material. The Contractor agrees to submit manuscripts of proposed publications to the Commission and all other parties prior to publication for review to ascertain that no confidential or proprietary information has been inadvertently disclosed by the proposed manuscript. The Contractor shall delay publication for no less than thirty (30) days to allow the parties to review the manuscript. If the parties determine that confidential or proprietary information may be disclosed, the Contractor shall further delay publication for a time period necessary to allow the parties to protect their interests.
- 6.2 Except as provided in Sections 5.2.3 and 6.1, the Contractor shall not disclose any Contract Material any third party without the Commission's prior written consent, which shall not be unreasonably withheld.
- 6.3 To accomplish the work under this Agreement, the Commission may disclose information to the Contractor that it considers confidential. The Commission agrees to disclose only information necessary to the work and to clearly mark as "Confidential Information" any information it considers confidential. The Commission will send Confidential Information in writing only to the Principal Investigator or orally disclose it to the Principal Investigator and reduce it to writing within thirty (30) days of disclosure. The Contractor and the Principal Investigator agree, to the extent permitted by law, that Confidential Information will remain the property of the Commission and, for 5 years from the end of this Agreement, Confidential Information will not be used or disclosed to others except in furtherance of this Agreement. This obligation of non-use and non-disclosure will not apply to any portion of the Confidential Information that: (1) was known to the Principal Investigator before disclosure by ABRC; (2) is disclosed to the Principal Investigator by a third party; or (3) is or becomes known to the public through no fault of the Principal Investigator.

7. CONFIDENTIALITY OF PERSONAL HEALTH INFORMATION AND MEDICAL RECORDS

- 7.1 The Contractor warrants that it is familiar with the requirements of HIPAA and will comply with all applicable HIPAA requirements in the performance of this Contract. Contractor agrees to notify the Commission of any HIPAA related concerns arising under the performance of this Contract, and will cooperate with the Commission in any HIPAA related inquiries.
- 7.2 The Contractor shall be in compliance with all Federal and State law requirements regarding the handling and disclosure of confidential medical/health information and records. No medical information contained in Contractor's records or obtained from the Commission or from others in carrying out its functions under this Contract shall be used or disclosed by Contractor, its agents, officers, employees or Subcontractors except as lawfully allowed and that such disclosure is essential to the performance of duties under this Contract. Disclosure to the Commission is deemed essential to the performance of duties under this Contract. Medical information, names, or other information regarding any person applying for, claiming, or receiving items or services contemplated in this Contract, or any employer of such person shall not be made available for any political or commercial purpose. Information received from a Federal or State agency or from any person or provider acting under the Federal or State agency pursuant to Federal or State law, shall be disclosed only as provided by Federal or State law.

8. RECORDS

- 8.1 Contractors who submit cost or pricing data as provided in A.R.S. '41-2543 shall maintain books and records which reflect that cost or pricing data under the Contract and shall reflect the Contract services and expenditures. All books and records shall be maintained in accordance with Generally Accepted Accounting Principles (GAAP).
- 8.2 Contractor further agrees:
- 8.2.1 To timely submit all accurate and complete reports and invoices as specified in the Work Statement of this Contract. Contractor and Subcontractor understand that the failure to timely submit required accurate and complete documents in the performance of this Contract may be grounds to withhold payments otherwise due or may result in termination of the Contract.
- 8.2.2 The Contractor and any Subcontractors shall preserve and make available to the Commission and its auditors all records for a period of five (5) years from the date of final payment under this Contract and for such period as is required by any other paragraph of this Contract including the following:
- 8.2.2.1 If this Contract is completely or partially terminated, the records

relating to the work terminated shall be preserved and made available for a period of five (5) years from the date of any such termination.

8.2.2.2 Records that relate to disputes, litigations or the settlement of claims arising out of the performance of this Contract or to cost and expenses of this Contract to which exception has been taken by the Executive Director shall be retained by the Contractor until such appeals, litigations, claims or exceptions have been finally resolved.

8.2.2.3 If requested, the Contractor shall submit such records relating to the Contract to the address specified by the Executive Director.

9. INDEMNIFICATION AND INSURANCE

9.1 Unless the Contractor is insured pursuant to A.R.S. ' ' 41-621, *et seq* the Contractor shall at all times indemnify, defend and save harmless the Commission and/or any of its agents, officials and employees from any and all claims, demands, suits, actions, proceedings, loss, cost and/or damages of every kind and description including any attorney's fees and/or litigation expenses brought or made against or incurred by the Commission on account of loss of or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, in whole or in part, by reasons of any act, omission, professional error, fault, mistake, or negligence of the Contractor, its employees, agents, representatives, or Subcontractors, their employees, agents, or representatives in connection with or incident to the performance of this contract or arising out of Worker's Compensation claims, Unemployment Compensation claims, or Unemployment Disability Compensation claims of employees of the Contractor and/or its Subcontractors or claims under similar such laws or obligations. The Contractor's obligation under this paragraph shall not extend to any liability caused by the sole negligence of the Commission or its employees.

9.2 The Contractor shall comply with all laws regarding unemployment insurance and worker's compensation.

9.3 The Contractor shall provide and maintain liability insurance as described below or liability coverage from the Arizona Department of Administration Risk Management Division to cover all actions of the Contractor, any Subcontractor, and their employees, agents, or representatives. In no event shall the total coverage be less than the minimum insurance coverage specified below:

9.3.1 Comprehensive general liability insurance with a minimum combined single limit of two million dollars (\$2,000,000) each occurrence. The policy shall include coverage for bodily injury, broad form property damage, (including completed operations), personal injury (including

coverage of Contractual and employee acts), blanket Contractual, Contractor's protective, sudden and accidental pollution, products and completed operations.

9.3.2 Comprehensive automobile liability insurance with a combined single limit for bodily injury and property damage of not less than two million dollars (\$2,000,000) each occurrence with respect to Contractor's vehicles (whether owned, hired, non-owned), assigned to or utilized in the performance of this Contract.

9.3.3 Professional liability insurance with a minimum combined single limit of two million dollars (\$2,000,000) for each occurrence if professional acts shall be required in the performance of this Contract.

9.4 The Contractor shall name the State of Arizona, its agents, officials and employees as additional insured's and shall specify that the insurance afforded by the Contractor shall be primary insurance and any insurance or self-insurance of the State, the Commission or its employees shall be excess, not contributory insurance, to that provided by the Contractor. Said policy shall contain a severability of interests provision. Such policy(ies) shall contain a requirement that the insurer notify the Commission promptly of any change in coverage terms or amounts, in advance of a lapse or cancellation of coverage, or of failure to pay premium when due.

9.5 Contractor's failure to procure and maintain the required liability insurance or to provide proof thereof to the Commission within thirty (30) days following the commencement of a new policy period, shall constitute a material breach of the Contract upon which the Commission may immediately terminate this Contract. Prior to the effective date of this Contract, the Contractor shall furnish the Commission with copies of the State of Arizona Certificate of Insurance (RM7200.1) drawn in conformity with the above insurance requirements. The State of Arizona reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements.

10. CERTIFICATIONS

The Contractor certifies and agrees to provide proof that all services shall be performed in conformity with the requirements of this Contract and by qualified personnel in accordance with generally recognized standards in the biomedical research community and industry. The Commission must approve all certifications relating to animal or human research.

Contractor acknowledges that the Principal Investigator is critical to the performance of this contract and certifies that the named Principal Investigator will be responsible for the work performed. The Contractor shall notify the Commission of any changes in the status of the Principal Investigator under this contract.

11. AMENDMENTS

- 11.1 No condition, requirement or alteration contained in or made a part of this Contract shall be waived or modified without an approved, written amendment to this Contract. Amendments shall be effective only if in writing and signed by all parties.
- 11.2 Any request for an amendment shall be in writing, shall be delivered in person, courier or U.S. mail and shall be directed to the persons and addresses specified herein.

12. DISPUTES

- 12.1 In the event of a dispute under this Contract, the parties agree to make a good faith attempt to resolve the dispute prior to taking formal action.
- 12.2 If the dispute cannot be resolved pursuant to Subsection 12.1 above, the dispute shall be resolved in an administrative hearing pursuant to A.R.S. ' 41-2615 and A.A.C. R2-7-901, *et seq.*
- 12.3 This Contract shall be construed in accordance with Arizona law and any legal action thereupon shall be initiated in the State of Arizona.

13. TERMINATION OF CONTRACT

The Commission, the State or Contractor may terminate this Contract under the following conditions:

- 13.1 The Commission, in addition to other rights set forth elsewhere in the Contract, may terminate this Contract in whole or in part without cause effective thirty (30) days after mailing written notice of termination by certified mail, return receipt requested to the Contractor.
 - 13.1.1 In the event of termination as provided in this Section, the Contractor shall stop all work as specified in the notice of termination and immediately notify all Subcontractors in writing to do the same.
 - 13.1.2 The Contractor shall be paid the Contract price for all services and items completed up to the date of termination. In addition, the Contractor will be paid its reasonable actual costs for work in progress as determined by GAAP up to the date of termination. Upon such termination, the Contractor shall deliver to the Commission a complete set of all documents, programs and other information prepared in performance of the Contract.

- 13.2 The Commission may terminate this Contract in whole or in part if, during the term of this Contract, the Contractor is listed on the Master List of debarments, suspensions and voluntary exclusions maintained pursuant to A.A.C. R2-7-933. In such case, the Executive Director shall transmit written notice of termination to the Contractor by certified mail, return receipt requested, and this Contract shall be terminated effective upon receipt thereof by the Contractor or such later date as is specified in the notice. In the event the Executive Director terminates this Contract in whole or in part as provided in this Subsection, all subsections of this Section 13 are incorporated into this Subsection by reference and shall apply to the same extent as if expressly set out herein.
- 13.3 The Commission may terminate this Contract by written notice to the Contractor if it is found by the Executive Director after notice and opportunity for a hearing that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the State with a view toward securing a Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Contract.
- 13.4 Pursuant to A.R.S. '38-511 the Commission or any other agency of the State may, within three (3) years after its execution, cancel this Contract without penalty or further obligation by the Commission or such other State agency if any person significantly involved in initiating, negotiating, securing, drafting or creating this Contract on behalf of the Commission or such other State agency is, at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter of the Contract. Cancellation under this subsection shall be effective when written notice from the Commission or such other State agency is received by all other parties to the Contract unless the notice specifies a later time. In addition to the right to cancel this Contract as provided in this Subsection, the Commission or such other State agency may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this Contract on behalf of the Commission or such other State agency from any other party to this Contract arising as the result of this Contract.
- 13.5 This Contract may be terminated by mutual written agreement of the parties specifying the termination date therein.
- 13.6 If monies are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled without any further obligation upon the Commission or State.
- 13.7 The Commission may, at any time, by written order to the Contractor, require the Contractor to stop all or any part of the work called for by this Contract for a

period of ninety (90) calendar days after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of a stop work order, the Contractor shall immediately cease all work being performed hereunder and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work suspension. The Commission may, in its sole discretion, extend for ninety (90) days the term of or cancel a stop work order at any time. If the Commission cancels a stop work order or the period of a stop work order or any extension thereof expires, the Contractor shall promptly resume work. If the Commission issues a stop work order, the Commission shall make an equitable adjustment in the performance schedule and the Contract shall be amended accordingly.

- 13.8 The Commission may terminate this Contract upon the failure of the Contractor to cure a default under this Contract. The Commission may also terminate this Contract if the Contractor demonstrates a pattern of noncompliance, regardless of whether the defaults are ultimately cured.

14. DEFAULT

- 14.1 The Commission, in addition to other rights set forth elsewhere in the Contract, may by written notice of default require that the Contractor cure any default within a period of time specified by the Commission in the notice of default. Upon receipt of a notice of default, the Contractor shall promptly send written acknowledgment of receipt of the notice of default to the Commission. If the Contractor fails to cure the default within the time period specified in the notice of default, the Commission may terminate this Contract in whole or in part if the Commission determines that the Contractor has failed to perform any requirement.
- 14.2 The Contractor shall continue the performance of this Contract to the extent not terminated.
- 14.3 In the event the Commission terminates this Contract in whole or in part as provided in this Section, the Commission may procure, upon such terms and in such manner as deemed appropriate, services similar to those so terminated, and unless the Contractor is a governmental agency, instrumentality or subdivision thereof, or Indian tribe, it shall be liable to the Commission for any excess costs incurred by the Commission in obtaining such similar services.
- 14.4 Except with respect to defaults of Subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes, natural and unnatural, that are unanticipated and beyond the control and which occur without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the State or Federal Government in either their sovereign or contractual capacity,

fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, unanticipated loss of personnel, unanticipated changes in availability of patient populations, and unanticipated equipment malfunctions. If the failure to perform is caused by the default of Subcontractor, and if such default arises out of causes beyond the control of both the Contractor and Subcontractor and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

14.5 If this Contract is terminated as provided herein, the Commission, in addition to any other rights provided in this Section, may require the Contractor to transfer title to and deliver to the Commission or its successor or assigns, in the manner and to the extent directed by the Commission, such partially completed reports or other documentation as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated consistent with Section 5 herein. Payments for completed reports and other documentation delivered to and accepted by the Commission shall be at the Contract price. Payment for partially completed reports and other documentation delivered to and accepted by the Commission shall be in an amount agreed upon by the Contractor and the Commission.

14.7 The rights and remedies of the Commission enumerated in this Section shall be in addition to any other rights and remedies provided by or under this Contract by law.

15. NON-DISCRIMINATION

The Contractor shall comply with State Executive Order No. 99-4 and A.R.S. ' ' 41-1461 *et seq.*, which mandate that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities. The Contractor shall comply with all other applicable federal and state employment laws, rules and regulations, including the Americans with Disabilities Act. The Contractor shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

16. ASSIGNMENT OF OVERCHARGES

The Contractor, the Commission and the State recognize that in actual economic practice overcharges resulting from antitrust violations are in fact borne by the purchaser. Therefore, the Contractor hereby assigns to the Commission and the State any and all claims for such overcharges.

17. CONTRACT PAYMENTS

- 17.1 Payments made by the Commission to the Contractor pursuant to this Contract are conditioned upon the availability to the Commission of funds authorized for expenditure in the manner and for the purpose herein. The Commission shall not be liable for any purchases or Subcontracts entered into by the Contractor in anticipation of such funding.
- 17.2 Payments made by the Commission to the Contractor are conditioned upon receipt of timely, accurate, and complete reports to be submitted by the Contractor. The Commission will pay the Contractor within sixty (60) days of receipt of timely, accurate, and complete reports.
- 17.3 If the Contractor is in any manner in default in the performance of any obligation under this Contract, or if audit exceptions are identified, the Commission may, at its option and in addition to other available remedies, either adjust the amount of payment or withhold payment until satisfactory resolution of the default or exception. The Contractor shall have the right to written notice of the Commission's action in adjusting the amount of payment or withholding payment. Under no circumstances shall the Commission authorize payments to the Contractor that exceed an amount specified in the Contract without an approved written amendment to the Contract. The Commission may, at its option, withhold payments or terminate the contract for failure to file required reports or until all final reports and deliverables are received.
- 17.4 Contractor shall not have discretion under this Contract to carry-over funds or services delivery from one state fiscal year to a subsequent state fiscal year. Contract continuation is subject to the following conditions:
- 17.4.1 Availability of funds; and
- 17.4.2 Demonstration of sufficient progress toward Contract goals and objectives of the research as set forth in the Proposal or Work Statement; and
- 17.4.3 Work Statement and Contract rates negotiated and agreed to by both parties.
- 17.5 Under any extension of work authorized under section 14.4, the Contractor shall submit all revised requests for payment during the extension period.
- 17.6 The Commission will not authorize a revised expenditure report unless the Contractor has submitted such report to the Commission on or before June 1 of the year following the year to which the revision applies.

18. RECOUPMENT OF CONTRACT PAYMENTS

- 18.1 Unacceptable Expenditures

The Contractor shall reimburse the Commission for all Contract funds expended which are determined by the Commission or the Auditor General not to have been disbursed by the Contractor in accordance with the terms of this Contract.

18.2 Contracted Services

18.2.1 If the services to be performed as described in this Contract are materially less than one hundred percent (100%) of the services required hereunder, funds to be returned to the Commission will be determined by multiplying the unit of service cost as listed in the Budget Requests by the number of services which are below the one hundred percent (100%) requirement.

18.2.2 If the number of services provided in any service name is less than the services for which the Contractor received compensation, funds to be returned to the Commission shall be determined by multiplying the unit of service cost as listed in the Budget Requests by the number of services Contractor did not provide during the budget term.

18.3 Refunds

The Contractor shall, within forty-five (45) days of termination, refund the greater of the amount refundable in accordance with Subsection 17.2 hereof (Contracted Services).

19. MANAGEMENT OF FUNDS

For all Contracts, the practices, procedures and standards specified in and required by the Accounting and Auditing Procedures Manual for Arizona Department of Administration Funded Programs shall be used by the Contractor in the management of Contract funds and by the Commission when performing a Contract audit. Funds collected by the Contractor in the form of fees, donations and/or charges for the delivery of these Contract services shall be accounted for in a separate fund.

20. ALLOWABLE EXPENDITURES

Expenditure of funds advanced, or qualifying for reimbursement, pursuant to this Contract shall be made by the Contractor only for the following:

20.1 Services or material approved or appropriated for, and used in, the performance of services herein agreed to be provided.

20.2 Services or materials which are received by the Contractor:

20.2.1 During the Contract term for which the funds are made available; and

20.2.2 On or after the effective date of the Contract or, with regard to funds made

available during a Contract term by an amendment to the Contract, on or after the effective date of that amendment; and

20.2.3 On or before the termination date.

20.3 Dollar amounts approved in the account classifications shown on the annual Budget Summary Page of this contract may be adjusted within ten percent (10%) of the original amount shown provided that the total amount of the contract shown on the Budget Summary Page remains unchanged. Adjustments shall be made in accordance with the following:

20.3.1 The Contractor and Principal Investigator may reassign funds within the personnel category without requesting a change in writing so long as personnel are not being added or replaced. If key personnel are being added or replaced, the request must be made in writing. Approval by the Executive Director of the requested change constitutes a contract amendment.

20.3.2 The salary limits for Principal Investigators shall not be exceeded.

20.3.3 The Contractor and Principal Investigator may reassign funds without restriction from one category to another among all other categories in which funds have been approved except Personnel and Equipment. In order to reassign funds from Personnel or Equipment to any other category or reassign funds from any other category to Personnel or Equipment, the Contractor must make a written request to the Executive Director for such reassignment and the Executive Director must approve the request in writing

20.3.4 The Contractor shall submit a written request to the Commission for approval before the Contractor may reassign funds to a category in which no funds were approved in the annual Budget Request.

21. VISITATION AND INSPECTION

21.1 The Contractor agrees that the Commission and any other appropriate agent of the State or Federal Government, or any of their duly authorized representatives, shall have access during reasonable hours to the Contractor's or Subcontractor's facilities and the right to examine Contractor's or Subcontractor's contract files, documents and records involving transactions related to this Contract.

21.2 The Contractor further agrees to include in any Subcontracts relating to this Contract a provision to the effect that the Subcontractor agrees that the Commission and any other appropriate agent of the State or Federal

Government, or any of their duly authorized representatives, shall have access to the Subcontractor's facilities and the right to examine any books, documents and records of the Subcontractor, involving transactions related to the Subcontract and that such books, documents and records shall not be disposed of except as provided herein.

22. EQUIPMENT

- 22.1 The title to equipment purchased through expenditure of funds from the Commission costing \$5000 or less for a single item or equipment having a shelf life of 2 years or less will remain with the Contractor. The title to equipment purchased through expenditure of funds from the Commission costing in excess of \$5000 or having a shelf life of more than 2 years, for a single item shall remain the property of the Commission unless the Commission, in its sole discretion, agrees to transfer title to the Contractor. The final disposition of all Commission property shall be determined by the Commission in accordance with applicable statutes and rules relating to State Materials Management.
- 22.2 The Contractor agrees to exercise reasonable control over all equipment purchased with capital outlay expense of Contract funds. All Commission equipment lost, stolen, rendered unusable or no longer required for research project operation must be reported immediately to the Commission for disposition instructions. The Contractor shall conduct a physical inventory of Commission equipment, using forms supplied by the Commission, within sixty (60) days after the end of the Contract.
- 22.3 Requests for purchases of capital equipment which were not part of the original budget must be submitted prior to the third quarter of the Contract for all one year Contract awards. The same restriction applies to the final year of multi-year Contract awards. All new requests for purchases of capital equipment must be requested and justified in writing and require the written approval of the Executive Director.
- 22.4 Expenditures submitted for maintenance and/or repairs of equipment necessary to the research may be reimbursed upon approval by the Commission. Upon prior written approval maintenance agreements may be purchased for new equipment acquired under this contract. Maintenance agreements may only be purchased for the duration of the contract under which the equipment was acquired or is to be used. Requests for approval must be made in the Annual Budget Summary or in a Budget Transfer Request.

23. INFRINGEMENT OF PATENTS AND COPYRIGHTS

23.1 Unless the contractor is an agency insured pursuant to A.R.S. ' 41-621, *et seq.*,

the Contractor, at his/her sole expense, shall defend any claim, action, or suit which may be brought against the Commission for the infringement of United States patents or copyrights arising from the Contractor's use of any equipment, materials, or information prepared or developed in connection with performance of this Contract. In any such claim, action, or suit the Contractor shall satisfy any final judgment for such infringement. The Commission shall give the Contractor written notice of such claim, action, or suit together with full information. The Commission shall cooperate with the Contractor with regard to any claim, action, or suit. The Commission, acting in its sole discretion may participate in the defense of any such claim, action, or suit if principles of governmental or public law are involved, however, if the Commission participates it shall not assess its costs or expenses to the Contractor under this subsection without the Contractor's written consent.

23.2 If, in the Contractor's opinion, the equipment, materials or information mentioned

in Section 22 above is likely to or becomes the subject of a claim of infringement of a United States patent or copyright, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, with the Chairman's written consent, substitute other equally suitable equipment, materials and information, or at the Contractor's option and expense, obtain the right for the Contractor or the Commission to continue the use of such equipment, material and information.

24. ARIZONA LAW

This Contract is governed by the laws of the State of Arizona including the Arizona Procurement Code (A.R.S. Title 41, Chapter 23) and the Arizona Procurement Code Rules and Regulations (A.C.C.R. Title 2, Chapter 7).