

AMENDMENT TO MASTER RESEARCH AGREEMENT: BIG

THIS AMENDMENT (*“Amendment”*) is entered into as of December __, 2017 by and between **The Research Foundation for the State University of New York**, a not-for-profit educational corporation acting on behalf of the University at Buffalo (*“UB”*) with offices located at Sponsored Projects Services, 520 Lee Entrance, UB Commons, Suite 211, Amherst, New York, 14228 (hereinafter referred to as *“Institution”*) and **Garwood Medical Devices, LLC**, a New York Corporation having its principal office at 77 Goodell Street, Suite 450, Buffalo, New York, 14203 (hereinafter referred to as *“Garwood”*). Institution and Garwood may be hereinafter referred to collectively as the *“Parties”* and individually as a *“Party”*.

WHEREAS, the Parties have previously entered into a *“Master Research Service Agreement: BIG”* as part of an award to Garwood through the University at Buffalo Institute for Genomics and Data Analytics, a SUNY initiative to advance genomic medicine and enhance the life sciences ecosystem and related research atmosphere in the Buffalo-Niagara Region and beyond (*“UB BIG”*) (*“Agreement”*), a true and correct copy of which is annexed hereto and made a part hereof as Exhibit A; and

WHEREAS, the Parties wish to amend the Agreement in order to revise, among other things, the equity contributions, job goals, and to indicate the Scope of Work is completed; and

WHEREAS, the Parties acknowledge that as of the date hereof, Garwood has created three (3) jobs as part of its UB BIG obligation; and

WHEREAS, the Parties acknowledge that Institution has expended Three Hundred Twenty-Five Thousand Dollars (\$325,000) in UB BIG funds [REDACTED] to Garwood’s benefit under the Agreement; and

WHEREAS, all capitalized items not otherwise defined herein shall have the same meaning ascribed to them in the Agreement.

NOW, THEREFORE, in consideration of the promises and undertakings of the Parties herein set forth, the Parties agree as follows:

1. **SCOPE OF PROJECT:** The Parties agree that the Scope of Work for the UB-BIG-related Project referred to in Section 1 of the Agreement is hereby completed.
2. **FUNDING:** *Section 4 of the Agreement is hereby deleted and replaced in its entirety with the following:*

Funding: The total resources dedicated to this UB BIG engagement will be \$1.3 million. Garwood has committed resources of \$975,000, in the form of equity match, and as of the date of this Agreement, has raised all of its maximum \$3.6M Series A, which ended on September 30, 2016. Garwood’s equity match shall be applied to the Project and operating expenses incurred in Erie County. Institution has provided research services valued at \$325,000 in support of the Project. The Parties agree that

Garwood shall have no further obligation under the Agreement to make any equity or cash contribution to the Institution, including but not limited to funding tuition for graduate students. Garwood understands and agrees that under no circumstances will the Institution reimburse it for any costs that Garwood may incur under this Amendment to Master Research Agreement.

3. **DISBURSEMENTS:** *Section 5 of the Agreement is hereby deleted in its entirety.*

4. **EMPLOYMENT GOALS:** *Section 6 of the Agreement shall be modified as follows:*

deleting "forty 40" and replacing it with "eleven (11)";

deleting "May 31, 2021" and replacing it with "December 31, 2021", and;

deleting the table in its entirety and replacing it with the following:

<u>Date</u>	<u>UB BIG Allocation</u>	<u>Beneficiary Equity Match</u>	<u>Employment Goal</u>
December 31, 2017	\$325,000	\$700,000	Three (3) FTEs as of 12/31/2017
December 31, 2018	-0-	\$275,000	Three (3) FTEs as of 12/31/2018
December 31, 2019	-0-	-0-	Five (5) FTEs as of 12/31/2019
December 31, 2020	-0-	-0-	Seven (7) FTEs as of 12/31/2020
Completion Date: December 31, 2021	Total \$325,000	\$975,000	Eleven (11) Cumulative Total of FTEs as of 12/31/2021

5. **REPORTING AND COMPLIANCE:**

Section 7(b) shall be deleted in its entirety. Section 7(c) shall be amended by replacing "40" with "11".

6. **EQUITY CONVERSION:** *Section 11 shall be deleted and replaced by the following:*

Equity Conversion. Institution may elect to convert any outstanding amounts owed by Company into equity in the Company ("Equity Securities") if: (i) Company does not meet its Performance Milestones for any given year; (ii) at the end of the initial five-year term, Company owes any amounts to Institution or (iii) Institution deems Company to be in Default. The number of Equity Securities issuable to Institution upon conversion thereof shall be equal to the outstanding amount divided by the lower of either: (A) the lowest price per unit at which Equity Securities were purchased by a third party in a bona-fide, arm's length transaction that closed on a date that is the closest date prior to the effective date of

such Institution's proposed conversion (a "Third Party Sale"), or (B) in the event no such Third Party Sale has occurred, the share price paid by investors at the September 30, 2016 closing. Should the Institution elect to convert outstanding amounts owed by Garwood into equity, then in such event, Wayne D. Bacon shall have the option of fulfilling its financial obligation by providing the requisite Equity Securities from Garwood Capital, LLC.

7. **BUDGET:** Exhibit C shall be deleted in its entirety.
8. **RATIFICATION:** All other terms and conditions of the Agreement shall remain in full force and effect.
9. **ENTIRE AGREEMENT:** This Amendment and the Agreement contain the entire understanding among the Parties and supersedes any and all prior agreements, understandings and arrangements, whether written or oral, among the Parties with respect to the matters contained in the Agreement and this Amendment. No amendments, changes, modifications or alterations of the terms and conditions of this Amendment shall be binding upon any Party unless made in writing and signed by an authorized representative of each Party.
10. **COUNTERPARTS:** This Amendment may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The counterparts of this Amendment may be executed and delivered by facsimile, email or other electronic transmission by any of the Parties to any other Party and the receiving Party may rely on the receipt of such documents so executed and delivered by facsimile, email or other electronic means as if the original had been received, and the Parties may execute the Agreement using electronic or digital signatures.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their duly authorized representatives set forth below.

GARWOOD MEDICAL DEVICES, LLC

**THE RESEARCH FOUNDATION FOR
THE STATE UNIVERSITY OF
NEW YORK**

By: 

By: 

Name: WAYNE D BACON

Name: VENU Govindaraju

Title: PRESIDENT

Title: Vice President for Research
and Economic Development

MASTER AGREEMENT

THIS AGREEMENT is made as of the ___ day of _____ 2014, between Computer Task Group, Incorporated, a New York corporation ("CTG"), with its principal place of business at 800 Delaware Avenue, Buffalo, New York 14209 and The Research Foundation for The State University of New York ("RF SUNY") located at 35 State Street, Albany, New York 12207, on behalf of the State University of New York – University at Buffalo. CTG and RF SUNY sometimes collectively referred to as "Parties" and sometimes individually referred to as "Party."

1. Services. CTG agrees to perform for RF SUNY the services listed in the Statement of Work ("SOW") appended hereto. This Agreement may be amended through one or more Statement(s) of Work as agreed by RF SUNY and CTG. These will be attached as further Appendices. The services set forth in the SOW shall be referred to as "Services." The method, manner and means by which the Services will be performed will be specified in the corresponding SOW. The end product of the Services shall consist of anything provided to the RF SUNY pursuant to the relevant SOW including any written documentation and any license granted pursuant to the Contract to use the executable code written on behalf of RF SUNY, all of which shall be referred to as "Deliverables." Rights in the deliverables will be specified and agreed in the corresponding SOW(s).

Each SOW shall become effective upon agreement by the authorized representative of CTG and RF SUNY. This Agreement and any SOW(s) appended to this Agreement shall be collectively referred to as the "Contract."

The SOW shall set forth the details and define any Deliverables, including submission, review, and acceptance thereof, or if not specified in the SOW, RF SUNY shall, within ten (10) days of receipt of each Deliverable submitted to RF SUNY, advise CTG of RF SUNY's acceptance or rejection of such Deliverable. Any rejection shall specify the nature and scope of the deficiencies in such Deliverable. CTG shall, upon receipt of such a notice of rejection, act diligently to correct such deficiencies. The failure of RF SUNY to provide such a notice of rejection within such period shall constitute acceptance by RF SUNY of said Deliverable.

2. Rate of Payment for Services. RF SUNY agrees to pay CTG for Services in accordance with the Price and Payment section contained in the relevant SOW(s).

3. Invoicing. RF SUNY shall pay to CTG the amounts agreed to in each SOW upon receipt of CTG's invoices.

4. Confidential Information. CTG and RF SUNY hereby acknowledge that during the performance of this Contract, they each may learn or receive confidential information ("Confidential Information") of the other. Each Party hereto shall hold in trust for the other Party hereto and shall not disclose to any non-Party to the Contract, any Confidential Information of the other Party, except with other Party's prior written consent. This section shall remain in full force and effect after the termination of this Contract, for a period of three (3) years.

Confidential Information shall include all information disclosed by one Party to the other Party which is identified in writing as Confidential Information. Confidential Information that is disclosed orally shall be identified as Confidential by the disclosing party within 10 days of disclosure. All Confidential Information of one Party which comes into the possession of the other Party shall remain the sole property of the disclosing Party and shall not be copied by the other Party except to the extent required in the performance of their respective obligations under this Contract. Upon the request of a disclosing Party, the non-disclosing Party shall return or destroy, at the expense of the disclosing Party, all such Confidential Information which is requested by the disclosing Party to be returned or destroyed. In the event that a Party must disclose Confidential Information as required by law or a court order, the compelled Party shall give advance, reasonable notice to the other Party of the compelled disclosure.

Confidential Information shall also include: (a) any unannounced product or services; (b) all information and reports that may be generated by the disclosing Party pursuant to any SOW; (c) interim reports and work product that may be generated in association with the Contract.

Information falling into any of the following categories shall be excluded from the requirements of this Section: (a) information, which at the time of disclosure, is already in the public domain; (b) information, which after disclosure hereunder enters the public domain other than by breach of this Agreement; (c) information, which is already known by the recipient prior to disclosure hereunder; (d) information, received from a third party which has an independent right to disclose the information; and/or (e) information, which is made available through independent research without use of or access to the Confidential Information. CTC agrees that it will not use the RF SUNY's name, or the name of The State University of New York (SUNY) or The University at Buffalo (UB) without prior written approval by the named entity. Use of name is deemed to also include trademarks, logos and any symbols associated with RF SUNY, SUNY or UB.

5. Staff. For the purposes of this Contract, CTC's staff ("Staff") shall include employees of CTC and subcontractors engaged by CTC to provide all or any portion of the Services. CTC is, and shall remain, an independent contractor, and neither CTC nor its Staff is or shall be deemed to be employed by RF SUNY of the University at Buffalo. CTC shall have the sole responsibility for recruiting, hiring, training, evaluating, replacing, supervising, disciplining and terminating Staff assigned to fill the RF SUNY's needs.

RF SUNY agrees that, while CTC is performing Services under this Agreement, and for a period of twelve (12) months following the date of the final invoice of the last SOW pursuant to which Services were performed, RF SUNY will not, except with CTC's prior written approval, solicit, offer employment to, employ or retain the services of (directly or indirectly) CTC's employees or contractors engaged in any efforts generated by this Agreement.

RF SUNY hereby acknowledges that during the performance of this Contract, CTC may need to hire subcontractors to assist it in the performance of Services. RF SUNY hereby agrees to the retention by CTC of subcontractors. Any subcontractors retained by CTC shall be independent contractors of CTC. The subcontractors shall be bound by the terms and conditions of this Contract.

6. **Termination for Convenience.** Unless otherwise set forth in the applicable Engagement Proposal, either party may terminate this Contract, for any or no reason, upon no less than ninety (90) days prior written notice to the other.

Termination for Cause. Either RF SUNY or CTG may terminate this Contract subject to the following conditions:

- a. The Party terminating the Contract is not in breach of any material provision of the Contract; and
- b. The non-terminating Party has breached a material provision of the Contract; and
- c. The non-terminating Party has been given written notice of the breach and has failed to cure such breach within 30 days of the date of said notice.

If the non-terminating Party fails to cure the breach within 30 days, the terminating Party may give the non-terminating Party a three-day written notice ("Termination Notice") that the Contract is terminated.

As part of any Termination process, CTG shall inform RF SUNY of the extent to which performance has been completed for all SOW(s) where all deliverables have not been accepted by RF SUNY. Upon receipt of payment in full, CTG will deliver to RF SUNY any applicable work product in a commercially reasonable manner. If CTG is the breaching Party, it shall be paid only for work performed through the date of termination.

7. **Work Product.**

Except as otherwise agreed to in an individual SOW(s), CTG acknowledges that RF SUNY shall maintain ownership rights to all materials developed or provided under this Contract, including the Deliverables. CTG is hereby granted a non-transferable, non-exclusive perpetual license for non-commercial use of the Deliverables provided to RF SUNY under this Contract.

8. **Contract Representative.** CTG's Director of Strategic Alliances or a substitute contract representative designated in writing by CTG (the "Representative"), shall represent CTG with the RF SUNY during the performance of this Contract with respect to the terms and conditions of this Contract. Only an officer of CTG shall have the authority to execute written modifications or additions to this Contract.

9. **RF SUNY Tax Exemption.** If requested, RF SUNY will provide CTG a copy of its Tax Exemption Certificate as verification of its exemption upon execution of this Agreement.

10. **Insurance.** The Parties shall keep in full force and effect at all times during the term of this Contract workers' compensation insurance coverage on their respective employees who are assigned to work on any SOW(s). The Parties also agree at their own cost to keep in full force and effect at all times during the term of this Contract comprehensive commercial general liability insurance in amounts not less than (i) \$1,000,000 per incident and \$5,000,000 aggregate annual during the period of this Contract.

11. **Limited Warranty.** CTG warrants to RF SUNY that the Services will be of the kind and quality designated in the SOW and will be performed by qualified personnel. All special requirements for format standards or methods to be followed shall be included in the SOW(s) and executed by both RF SUNY and CTG. In the event of a breach of the foregoing warranty, CTG sole obligation shall be to correct any material error so as to bring the Deliverables into compliance therewith. Any claim for breach of the foregoing warranty must be made by written notice to CTG within thirty (30) days of CTG's delivery of the Deliverables. This is a contract for services and is not governed by the Uniform Commercial Code. **EXCEPT AS PROVIDED IN THIS SECTION, CTG MAKES NO OTHER WARRANTIES OR REPRESENTATIONS WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, ORAL OR WRITTEN STATEMENTS OF CTG, ITS AGENTS, OFFICERS, SHAREHOLDERS, SUBCONTRACTORS OR OTHERWISE, AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

RF SUNY understands and agrees that CTG shall have no responsibility for or be liable for to any extent for any hardware, software or other items or property manufactured or prepared by anyone not a party to this Agreement.

RF SUNY represents and warrants to CTG that any software it asks CTG to modify, RF SUNY has the authority to engage a third Party to modify such software. For all such requested modifications, RF SUNY shall provide applicable third party documentation. RF SUNY also represents and warrants that for all third party documentation which it provides, that it has the authority to provide such documentation to CTG for CTG's use in such requested modifications. RF SUNY shall indemnify, hold harmless and defend CTG, its officers and directors, shareholders, employees, agents and subcontractors, at RF SUNY's sole cost, from any and all claims against CTG alleging copyright infringement for software modifications made by CTG. If a suit for copyright infringement is filed against CTG based upon the aforementioned modifications, RF SUNY shall have the right to select the defense counsel who RF SUNY is to provide, however, CTG shall be consulted in the selection of defense counsel and shall have the right to reasonably reject defense counsel selected by RF SUNY.

In no event shall CTG or its officers, shareholders, subcontractors, employees, representatives or subsidiaries be liable, for any consequential, cost of cover, exemplary, indirect, punitive, incidental or special damages, even if informed of the possibility of such damages, whether foreseeable or unforeseeable, regardless of the cause of action, regardless of whether such damages are based upon lost goodwill, lost profits, loss of use of money, loss of data or interruption in the use or availability of data, stoppage of work, impairment of assets, or otherwise arising out of a breach of any express or implied warranty, breach of contract, negligence, misrepresentation, strict liability, and whether based on this Contract, by any transaction performed or undertaken under or in connection with this Contract, or otherwise.

The provisions of this Agreement allocate the risks between the Parties. CTG's pricing reflects this allocation of risk and the limitation of liability specified herein.

No actions or disputes, regardless of form, arising out of any Services, may be brought by either Party more than one (1) year after the termination of this Agreement.

12. **Force Majeure.** Neither Party shall be held liable for failure to fulfill its obligations under the Contract, if such failure is caused by flood, communications failure, power outages, extreme weather, fire, or other natural calamity, or similar significant causes beyond the reasonable control of such Party.

13. **Complete Agreement.** The provisions of this Contract contain the entire agreement between the Parties hereto and supersede all prior agreements, oral or written, with respect to the matters covered herein. No other agreements, representations, warranties or others, oral or written, purportedly agreed to or represented by or on behalf of CTG by any of its employees or agents or contained in sales materials or brochures, shall be deemed to bind the Parties hereto with respect to the subject matter. RF SUNY acknowledges that it is entering into this Agreement solely on the basis of the representations contained herein.

14. **Applicable Laws.** This Contract shall be construed in accordance with the laws of the State of New York without application of principles of conflicts of laws.

15. **Severability.** If any provision of this Contract is held by a court of competent jurisdiction to be unenforceable, the remaining provisions of the Contract will remain in full force and effect.

16. **Waiver.** Failure by either Party at any time to require performance by the other Party or to claim a breach of any provision of this Contract will not be construed as a waiver of any subsequent breach nor affect the intent of this Contract, nor any part thereof, nor prejudice either Party as regards to any subsequent action.

17. **Notices.** Any notice or payment required or permitted to be made or given by either Party hereto pursuant to the Contract will be sufficiently made or given on the date of issuance if sent by such Party to the other Party by mail, telecopy, commercial courier, personal delivery or a similar reliable delivery method, addressed as set forth below, or to such other address as the Parties shall designate by written notice given to the other Party:

(a) Notices to RF SUNY should be sent to:

(b) Notices to CTG should be sent to:

Michael Colson, SVP
CTG
800 Delaware Avenue
Buffalo, New York 14209

Copy to:
Computer Task Group, Inc.

Attn: General Counsel
800 Delaware Avenue
Buffalo, New York 14209

18. **Assignment.** This Contract may not be assigned by either Party without the prior written consent of the other Party, other than to any person or entity acquiring greater than fifty (50%) percent of the assets or voting shares of a Party. Notwithstanding the foregoing, all assignments of rights to any direct competitor of the other Party, under this Agreement, are void.

19. **Succession.** This Contract shall be binding upon and inure to the benefit of the heirs, permitted successors and assigns of the Parties hereto.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date first above written.

**The Research Foundation for The
State University of New York:**

By: 

Type Name and Title:

Alexander N. Cartwright

Vice President for Research
and Economic Development

Computer Task Group, Incorporated:

By: 

Type Name and Title:

Senior Vice President

Michael J. Colson