**RESEARCH AGREEMENT**

This Research Agreement is by and between the University of South Carolina, an institution of higher learning organized under the laws of the State of South Carolina, with offices at 1600 Hampton Street, Suite 414, University of South Carolina, Columbia, South Carolina 29208, (hereinafter referred to as “USC”), and [insert company name], a for-profit corporation organized under the laws of [insert State of incorporation] and having offices at [insert address] (hereinafter referred to as “SPONSOR").

WHEREAS, the University of South Carolina (hereinafter referred to as “UNIVERSITY”) is a multi-campus public institution serving the entire State of South Carolina through teaching, research and creative activity, and service;

WHEREAS, UNIVERSITY has an active research program concerning [insert area of interest];

WHEREAS, SPONSOR is also interested in that research and wishes to encourage and assist in supporting certain aspects of the research;

WHEREAS, USC and SPONSOR wish to combine their mutual interest in this research;

Therefore, USC and SPONSOR agree to the terms stated below.

**1. SCOPE OF WORK**

The Scope of Work shall be as described in the research proposal entitled "[insert proposal title]" and dated [insert date], (Proposal) and incorporated into this Agreement as Attachment I.

**2. PROJECT PERIOD**

The Agreement will be effective for [insert period of performance] commencing [insert start date] through [insert end date]. This period may be amended by mutual written agreement by authorized representatives of USC and SPONSOR.

Notwithstanding the stated period of performance, USC will not commence work on this project prior to receipt of the initial payment specified under Article 6.

**3. REASONABLE EFFORTS**

This project will be performed by [insert PI], Principal Investigator, in the Department of [insert department], University of South Carolina. As an independent agent, USC will apply its reasonable efforts, applying appropriate scientific principles and academic research practices, to complete the research described in the Scope of Work statement.

**4. KEY PERSONNEL**

The project director will be [insert PI], who may select and supervise other project staff as needed. No other person will be substituted for the project director except with SPONSOR's approval. SPONSOR may exercise Termination provision of this Agreement if a satisfactory substitute is not identified.

**5. DIRECTION OF RESEARCH**

Direction of the research will rest with USC. It is agreed, however, that USC, through its project director, will maintain continuing communication with a designated liaison for the SPONSOR. The frequency and nature of these communications will be mutually defined by USC's project director and SPONSOR's liaison person.

**6. FUNDING AND PAYMENT SCHEDULE**

SPONSOR will provide funding in the amount of $[insert dollar value for total effort]. Payment of $[insert dollar value which shall be 25% of the total value of the agreement] is due upon execution of agreement. Thereafter, payment of $[insert dollar value] is due at the beginning of each calendar quarter beginning within 3 months after award.

Checks should be made payable to USC and sent to University of South Carolina, Financial Services, P.O. Box 84900, Columbia, SC  29208.

**7. INTELLECTUAL PROPERTY**

7.1. Intellectual Property (IP). IP means any and all patents or rights to patent, copyrights, trademarks, and any and all technical data and computer software within the scope of the agreement developed as a direct result of the research project (PROJECT).

7.2. Background IP. IP not arising within the research but of use to the PROJECT, the rights to which are controlled by UNIVERSITY or SPONSOR, and which is expressly made available to the PROJECT by the controlling party.

7.3 Ownership. For the purposes of this agreement, "UNIVERSITY IP” means Intellectual Property developed solely by UNIVERSITY made in the course of work resulting from the PROJECT. "SPONSOR IP" means Intellectual Property developed solely by SPONSOR Personnel made in the course of work resulting from the PROJECT. "Joint IP" means Intellectual Property developed jointly by SPONSOR Personnel and University Personnel or which are made solely by employees of SPONSOR utilizing UNIVERSITY facilities made in the course of work resulting from the PROJECT. "UNIVERSITY Background IP" means Background IP in the possession of UNIVERSITY. "SPONSOR Background IP" means Background IP in the possession of SPONSOR. UNIVERSITY and SPONSOR shall not, by performance under this Agreement, obtain any ownership interest in the other parties' Background IP.

7.4 Title. Title to UNIVERSITY IP shall vest with UNIVERSITY. Title to SPONSOR IP shall vest with SPONSOR. Title to Joint IP shall vest jointly with UNIVERSITY and SPONSOR unless UNIVERSITY and SPONSOR agree otherwise. Both SPONSOR and UNIVERSITY have the right to make, have made, reproduce, use, sell, and offer to sell Joint IP without consultation with the other party, unless an exclusive license is negotiated between USC and SPONSOR.

**8. LICENSE**

To the extent it has the legal right to do so, USC grants SPONSOR the first option to negotiate, in good faith, for a royalty-bearing license for all UNIVERSITY IP and/or an exclusive royalty-bearing license for all Joint IP made in the course of work resulting from the PROJECT.

SPONSOR shall have (2) two months from USC notification of disclosure of any UNIVERSITY IP and/or Joint IP to notify UNIVERSITY that it wants to enter into such a license agreement. The parties shall negotiate in good faith for a period not to exceed (4) four months from SPONSOR’s notification or a longer period of time if the parties mutually agree to extend negotiations. If SPONSOR and UNIVERSITY fail to enter into an agreement within the (4) four month period of time SPONSOR forgoes any rights to UNIVERSITY IP and exclusive rights to Joint IP. Until UNIVERSITY IP and/or Joint IP has been presented as set forth above, USC shall not offer UNIVERSITY IP or Joint IP rights to any third party. UNIVERSITY shall retain unrestricted rights to use and to transfer to other universities and non-profits UNIVERSITY IP and/or Joint IP for research purposes.

**9. PATENTS**

In the event SPONSOR elects to exercise its option as detailed in Article 8-License, it shall be obligated to reimburse USC for all patent filing, prosecution and maintenance expenses (US and Foreign) for the licensed UNIVERSITY IP and/or Joint IP. Failure to reimburse patent expenses within 30 days of written request for reimbursement shall be basis to terminate option and SPONSOR forgoes rights to UNIVERSTIY IP and/or exclusive rights to Joint IP.

**10. DISCLAIMER OF WARRANTIES**

All information received from or technology developed with the UNIVERSITY is experimental in nature and USC makes no express or implied warranties or representations with respect to its utility, safety, merchantability, or fitness for a particular purpose. All warranties express or implied arising out of or in connection with furnishing, performance, or use of any UNIVERSITY technology are hereby disclaimed.

**11. CONFIDENTIALITY**

USC and SPONSOR recognize that certain technical information and/or tangible technical materials provided by disclosing party under this Agreement may be valuable, proprietary assets of disclosing party (“CONFIDENTIAL INFORMATION”). Accordingly, the receiving party shall use its reasonable efforts to maintain and assure the confidential and proprietary nature of the disclosing party’s CONFIDENTIAL INFORMATION. In particular, the receiving party will not publish or otherwise make public the disclosing party’s CONFIDENTIAL INFORMATION without first receiving written permission from disclosing party. Finally, the receiving party will not transfer the disclosing party’s CONFIDENTIAL INFORMATION to any third party unless the receiving party has first received the disclosing party’s written permission to do so.

The obligations of confidentiality assumed by USC and the SPONSOR under this Article shall apply to CONFIDENTIAL INFORMATION which is provided to the receiving party by the disclosing party in written form, including samples which are designated in writing as being confidential, and to information which is initially disclosed orally and the substance of such oral disclosure is reduced to writing and transmitted to the receiving party within 20 days of oral disclosure.

The obligations of non-disclosure and the limitation upon the right to use CONFIDENTIAL INFORMATION (including test results) imposed upon the parties to this Agreement shall not apply to the extent that the receiving party can demonstrate that the information disclosed by the disclosing party: (a) was in the possession or control of, or was independently developed by, the receiving party prior to the time of disclosure hereunder, as evidenced by the receiving party's prior written records; or (b) at the time of disclosure or thereafter becomes public knowledge through no fault or omission of the receiving party; or (c) was lawfully obtained by the receiving party from a third party under no obligation of confidentiality to the disclosing party; or (d) is disclosed pursuant to an order of law after the receiving party has given notice to the disclosing party of such order and has cooperated with disclosing party's efforts, if any, to obtain a protective order or confidentiality agreement with provisions equivalent to the provisions of this Agreement.

When the CONFIDENTIAL INFORMATION is no longer required for the purposes of this Agreement, receiving party shall return it or dispose of it as directed by disclosing party. Receiving party’s obligations of confidentially with respect to CONFIDENTIAL INFORMATION provided under this Agreement will expire two (2) years after the termination date of this Agreement.

**12. PUBLICATION**

SPONSOR recognizes that under USC policy, the results of the project must be publishable and agrees that researchers engaged in the project shall be permitted to present at symposia, national or regional professional meetings and to publish in journals, theses or dissertations, or otherwise of their own choosing, methods and results of project, provided, however, that SPONSOR shall have been furnished copies of any proposed publications or presentations at least 30 days in advance of the submission of such proposed publication or presentation to a journal, editor, or other third party. SPONSOR shall have 30 days, after receipt of said copies, to object in writing to such proposed presentation or proposed publication either because there is patentable subject matter which needs protection and/or there is Confidential Information of SPONSOR contained in the proposed publication or presentation.

In the event that SPONSOR makes such objection, the researcher(s) shall refrain from making such publication or presentation for a maximum of 60 days from date of receipt of such objection in order for USC to file patent application(s) with the United States Patent and Trademark Office and/or foreign patent office(s) directed to the patentable subject matter contained in the proposed publication or presentation. Authorship of published research results will take into account the contributions of collaborators for both the SPONSOR and USC. It is understood that in no case can this provision for delay of publication cause a delay in the normal academic progress of a graduate student of the University of South Carolina with respect to preparation and submission of a graduate thesis or dissertation.

USC’s obligations of obtaining SPONSOR review with respect to PUBLICATIONS provided under this Agreement will expire one (1) year after the termination date of this Agreement.

**13. INSURANCE AND LIABILITY**

13.1 Insurance. USC shall carry such workers' compensation, comprehensive general liability, and other insurance as is available from the South Carolina Insurance Reserve Funds sufficient in amount to cover the performance of its obligations hereunder.

13.2 LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY AMOUNTS REPRESENTING LOSS OF PROFIT, LOSS OF BUSINESS, OR OTHER INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF THE OTHER PARTY.

13.3 USC is and will be acting as an independent contractor in the performance of this work, and it shall be solely responsible where found liable to the extent covered by its insurance for the payment of any and all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of its employees or agents, acting within the scope of their employment in connection with the performance of this work.

**14. USE OF NAMES**

USC and SPONSOR each agree that they will not use the name, trademark, or other identifier of the other for any advertising, promotion, or other commercially related purpose except with advance written approval. Notwithstanding the forgoing the parties may satisfy any reporting requirements of their respective organizations.

**15. FORCE MAJEURE**

Any delay or failure of either party to perform its obligations hereunder shall be excused if, and to the extent that it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), inability to obtain power, material, labor, equipment or transportation, or court injunction or order.

**16. GOVERNMENT COMPLIANCE**

SPONSOR and USC agree to comply with all federal, state and local laws, Executive Orders, rules, regulations and ordinances which may be applicable to such party’s performance of its obligations under this Agreement.

**17. NO IMPLIED WAIVER**

The failure of either party at any time to require performance of any provision of this Agreement shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either party of a breach of any provision constitute a waiver of any succeeding breach of the same or any other provision.

**18. RELATIONSHIP OF PARTIES**

USC and SPONSOR are independent contracting parties and nothing in this Agreement shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

**19. SEVERABILITY**

If any term of this Agreement is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of this agreement shall remain in full force and effect.

**20. ASSIGNMENT**

Unless otherwise indicated elsewhere in this Agreement, neither party to this Agreement may assign nor transfer any rights or obligations arising from this Agreement without the prior written consent of the other party.

**21. NOTICES**

Unless otherwise indicated elsewhere in this Agreement, all notices and communications in connection with this Agreement will be addressed to the following:

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| --- | --- | --- |
| **University of South Carolina**Name: Brandi Boniface Title: Asst. Director Address: Sponsored Awards Management University of South Carolina 1600 Hampton Street, Suite 414 Columbia, SC 29208-0001 (803) 777-8749 |  | **[Sponsor]**Name: Title: Address:    ( ) - (phone) |
|  (803) 777-4136 (fax) BONIFACB@mailbox.sc.edu  |  |  ( ) - (fax) |

**22. TERMINATION**

Either USC or SPONSOR may terminate this Agreement by giving thirty (30) days written notice to the other. In the event of such termination, USC will cease further obligation of project funds and will take all reasonable steps to cancel or otherwise reduce outstanding obligations. SPONSOR will be obligated to pay actual costs and firm commitments to the date of termination, not to exceed the total value of this Agreement.

This Agreement may also be terminated for material breach of the terms of this Agreement which has not been cured within 15 days of written notice by the non-breaching party. Material breach of this Agreement shall include, but is not limited to, non-payment of amounts due under Article 6.

**23. MODIFICATIONS**

Any modification, alteration or amendment to this Agreement must be in writing and signed by both Parties hereto.

**24. GOVERNING LAW**

This Agreement shall be governed by the laws of the state of South Carolina.

**25. ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding between the SPONSOR and USC, and any previous discussion, negotiations, agreements or the like are superseded by this Agreement.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by persons thereunto duly authorized the day and year set forth below:

# University of South Carolina [Sponsor]

Name: Name:

Title: Title:

Date: Date: