Allocation of Rights Agreement

Between

[Company Name]

[Company Address]

and

University of Central Florida Research Foundation, Inc.

12201 Research Parkway, Suite 501, Orlando, FL 32826-3246

This Allocation of Rights Agreement (“Agreement”) between 1, a [Insert Type of Entity], organized under the laws of [State or Country], (“Company”) and University of Central Florida Research Foundation, Inc., (“UCFRF”), a Florida non-profit corporation and direct support organization acting for the benefit of and as an instrumentality of The University of Central Florida Board of Trustees (“UCF”), a public body corporate and statute university of the State of Florida, is entered into on [Start Date] (“Effective Date”) for the purpose of allocating between the parties certain rights relating to a project to be carried out by Company and UCFRF (hereinafter individually referred to as “Party” and collectively referred to as “Parties”) under a funding agreement that may be awarded to Company to fund a proposal entitled “ [Insert Proposal Title]” and submitted, or to be submitted, by Company on or about [Insert Proposal Submission Date] (“Project”).

1. Applicability of this Agreement.
   1. This Agreement shall be applicable only to matters relating to the Project.
   2. If a funding agreement for the Project is awarded to Company, Company will promptly provide a copy of such funding agreement (including the award number) to UCFRF, and Company will make a subaward to UCFRF in accordance with the funding agreement, the Project, and this Agreement. If the terms of such funding agreement appear to be inconsistent with the provisions of this Agreement, the Parties will attempt in good faith to resolve any such inconsistencies. However, if such resolution is not achieved within a reasonable period, Company shall not be obligated to award, nor UCFRF to accept the subaward. If a subaward is made by Company and accepted by UCFRF, this Agreement shall not be applicable to contradict the terms of such subaward or of the funding agreement awarded by the funding agency to Company except on the grounds of fraud, misrepresentation, or mistake, but shall be considered to resolve ambiguities.
   3. The applicable provisions of this Agreement shall be contractually applied to any and all consultants, subcontractors, independent contractors, or other individuals employed by Company or UCFRF for the purposes of this Project. The Parties understand that UCFRF does not have employees, and that all personnel performing under this Agreement for UCFRF are employees or agents of UCF. As a result and notwithstanding anything to the contrary hereunder, UCFRF shall be able to disclose confidential information, as described in this provision, to employees of UCF who have a legitimate need to know the confidential information. All UCF personnel performing under this Agreement are obligated to comply with the terms and conditions pertaining to UCFRF.
2. Intellectual Property.
   1. "Intellectual Property" means inventions, including Subject Inventions (“Subject Invention(s)” is as defined under Title 35, United States Code), patent applications, patents, copyrights (excluding scholarly works), trademarks, works of authorship, mask works, trade secrets and any information embodying proprietary information such as technical data and computer software.
   2. Background Intellectual Property
      1. "Background Intellectual Property" or “BIP” means Intellectual Property and the legal right therein of either or both Parties developed before or independent of this Agreement.
      2. This Agreement shall not be construed as implying that either Party hereto shall have the right to use Background Intellectual Property of the other in connection with this Project except as otherwise provided hereunder.
         1. The following Company Background Intellectual Property may be used nonexclusively and except as noted, without compensation by UCFRF in connection with research or development activities for this Project (if "none" so state): [Identify Company Background Intellectual Property or Insert “None”]
         2. The following UCFRF Background Intellectual Property may be used nonexclusively and, except as noted, without compensation by Company in connection with research or development activities for this Project (if "none" so state): [Identify UCFRF Background Intellectual Property or Insert “None”]
         3. If Sections 2(b)(ii)(*1*) and (*2*) are marked “none”, the Parties agree that the Parties anticipate that neither will need to use BIP of the other in connection with performance of the Project. If during the performance of the Project, the Parties determine that BIP of one Party is required for the performance of the Project by the other Party, the Parties agree to identify such BIP and provide, to the extent a Party is able to do so, appropriate internal license(s) under separate agreements with reasonable, cost free terms for performance under the Project.
   3. Project Intellectual Property.
      1. “**Project Intellectual Property**" means Intellectual Property and the legal right therein of either or both Parties as developed pursuant to this Agreement.
      2. Ownership. Except as otherwise provided herein, ownership of Project Intellectual Property shall vest in the Party whose personnel conceived the subject matter or first actually reduced the subject matter to practice, in accordance with Title 35 of the United States Code for inventions and Title 17 of the United States Code for works of authorship, and such Party may perfect legal protection therein in its own name and at its own expense. Jointly made or generated Project Intellectual Property shall be jointly owned by the Parties unless otherwise agreed in writing.
      3. Disclosure. The Parties agree to confidentially disclose to each other, in writing, all Project Intellectual Property. All written disclosures of Project Intellectual Property shall contain at least details of the invention or work (or other form of Intellectual Property, as applicable), the federal award number, and identification of any known statutory deadlines.
      4. Reporting. The Company acknowledges that it will report all Company and joint Subject Inventions to the funding agency within two (2) months after receipt of written disclosure by the Company and will provide confirmation of such reporting to UCFRF within thirty (30) of report submission. The Company shall also report to the funding agency all patent application(s) filed for such Subject Inventions, any decisions affecting such patent applications (including without limitation decisions not to continue prosecution of a patent application), and otherwise agrees to comply with all reporting obligations of the federal agency. For any joint Subject Inventions, the Company shall, if possible, grant to UCFRF access rights, e.g., view access rights in iEdison, to view the joint Subject Invention.
      5. Use. Each Party hereto may, itself, use Project Intellectual Property of the other Party nonexclusively and without compensation in connection with this Project, including in Project reports to the funding agency. For clarity, such license to use the other Party’s Project Intellectual Property in connection with this Project only extends to additional phases of the Project that include both Parties, i.e. Company is awardee and UCFRF is subawardee, with no license to use any Intellectual Property of either Party granted for any further phases of the Project in which UCFRF is not a subawardee. Any other use of the Project Intellectual Property of one Party by the other Party shall be separately negotiated in advance and agreed to in writing.
      6. Government rights. The Parties agree that the US government shall have an irrevocable, royalty free, nonexclusive license in and to Project Intellectual Property for any and all Governmental purposes.
      7. Protection. Further to Section 2(c)(ii), for UCFRF Project Intellectual Property, UCFRF will control the preparation and prosecution of all patent applications, registrations for copyright and maintenance of all patents (collectively, “Protection Activities”). For joint Project Intellectual Property, Company may, with UCFRF’s written approval of and limited joint engagement with Company’s selected prosecution counsel, take the lead in directing the Protection Activities in the name of both Parties. If Company does not seek such lead for joint Project Intellectual Property, UCFRF may take the lead in directing the Protection Activities in the name of both Parties.

All joint Project Intellectual Property patent applications will list the name(s) of the inventor(s) and will identify each inventor(s)’ assignee (i.e., the party or parties owning the patent rights) as assignee(s), applicant(s) and owner(s). For UCFRF, such assignee designation is the University of Central Florida Research Foundation, Inc., as UCFRF is UCF’s designee responsible for protecting and commercializing Intellectual Property invented or created by UCF personnel. The Party leading the Protection Activities for joint Project Intellectual Property shall (*1)* cause its attorneys to forward to the other Party all correspondence regarding the Protection Activities at the same time such correspondence is forwarded to the lead Party or the government agency responsible for protection, as appropriate, and (*2*) provide to the other Party an opportunity to advise and comment on the Protection Activities, which comments the lead Party shall consider in good faith. For UCFRF, such correspondence should be sent to the attention of the UCF Office of Technology Transfer.

As between the Parties, neither is obligated by this Agreement to engage in Protection Activities for Project Intellectual Property. Absent a written agreement to the contrary, neither Party is obligated for patent expenses incurred by the other Party.

1. Commercialization. Company will have the first right to commercialize the Project Intellectual Property developed by UCFRF, whether sole or joint, by notifying UCFRF of its desire to enter into a separate license agreement for the commercial exploitation of the Project Intellectual Property within sixty (60) days after such Project Intellectual Property has been reported to Company.  If the Parties do not execute such separate license agreement within six (6) months of Company’s notice to UCFRF of its desire to enter into such license agreement, UCFRF will have no further obligations to Company with respect to that particular Project Intellectual Property. Notwithstanding anything to the contrary in this Agreement, UCFRF is not required to enter into such separate license agreement with Company unless the terms and conditions are satisfactory to UCFRF in its sole discretion.

1. Confidentiality/Publication.
   1. Intellectual Property of a Party, as well as other proprietary or confidential information of a Party (“Confidential Information”), disclosed by that Party to the other Party in connection with this Agreement shall be received and held in confidence by the receiving Party and except with the consent of the disclosing Party or as permitted under this Agreement, neither used by the receiving Party other than in performance of the Project nor disclosed by the receiving Party to others during the term of this Agreement and for a period of three (3) years from the expiration or termination of this Agreement. Written Confidential Information shall be clearly marked as proprietary or confidential at the time of disclosure, and any orally disclosed Confidential Information shall be reduced to a summarized writing that is marked as proprietary or confidential and delivered to the receiving Party within thirty (30) days of initial disclosure. Notwithstanding the immediately preceding sentence, all non-public information relating to the Intellectual Property of a Party shall be treated as Confidential Information under this Agreement, regardless of whether marked as such.
   2. The receiving Party will use the other Party’s Confidential Information only during the term of the Agreement and only for performance of the Project. Upon termination or expiration of this Agreement, the receiving Party will stop using and return or destroy all Confidential Information provided by disclosing Party, together with all copies, other forms of reproduction, or description of the Confidential Information made by the receiving Party, except that the receiving Party may retain one (1) copy of Confidential Information for legal and archival purposes only.
   3. The limitations on use or disclosure by the receiving Party shall not apply to Confidential Information that: (**i)** is or becomes generally available to the public other than as a result of a disclosure by the receiving Party; **(ii)** is obtained by the receiving Party on a non-confidential basis from a source that is not prohibited from disclosing such information; **(iii)** is independently developed by the receiving Party; **(iv)** is released by the disclosing Party without restriction to a party other than the receiving Party; or **(v)** is explicitly authorized by the disclosing Party. The receiving Party may disclose Confidential Information to the extent required to comply with an order of a court of competent jurisdiction or governmental agency, or in accordance with a statute, regulation or other law, provided that the receiving Party gives, to the extent permitted by law, the disclosing Party timely notice, where reasonably practicable, so as to give the disclosing Party an opportunity to intervene to seek to prevent or limit such disclosure.
   4. Subject to any confidentiality obligations, either Party may publish its results from this Project. The publishing Party shall provide the other Party a copy of any proposed publication or presentation at least thirty (30) days in advance of publication submission to allow the non-publishing Party an opportunity to review for its Confidential Information or material which would adversely affect or limit the reviewing Party’s ability to assert or protect Project Intellectual Property rights. The reviewing Party will complete its review and provide the publishing Party with any objections within twenty (20) days of receipt. In the absence of timely objection, the publishing Party shall be free to proceed without restriction. In the event of an objection, the Parties will negotiate in good faith the removal or restatement of the objectionable material or agree on an appropriate delay to allow for patent filing (not to exceed thirty (30) days from the date of receipt of the objection).
2. Disclaimers, Limitation of Liability and Indemnity.
   1. THE INTELLECTUAL PROPERTY AND ALL OTHER INFORMATION, WHETHER VERBALLY OR IN WRITING, PROVIDED TO THE COMPANY UNDER THIS AGREEMENT ARE PROVIDED ON AN “AS-IS” BASIS AND WITH DISCLAIMER OF ALL WARRANTIESS, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND FREEDOM FROM INFRINGEMENT, AS TO ANY INFORMATION, RESULT, DESIGN, PROTOTYPE, PRODUCT OR PROCESS DERIVING DIRECTLY OR INDIRECTLY AND IN WHOLE OR PART IN CONNECTION WITH THIS PROJECT.
   2. Company will indemnify, defend and hold harmless UCFRF and UCF, and their respective trustees, directors, officers, employees, servants and agents from and against any and all suits, claims (including without limitation Intellectual Property infringement), demands, penalties, fines, charges, causes of action, damages, losses, liabilities, costs and expenses (including without limitation attorneys’ fees) arising in connection with or related to the Project. Company and UCFRF further agree that nothing contained herein shall be construed or interpreted as (i) denying to either Party any remedy or defense available to such Party under the laws of the State of Florida; (ii) the consent of the State of Florida or its agents and agencies to be sued; or (iii) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.
   3. UCFRF will not be responsible for any indirect damages, incidental damages, consequential damages, exemplary damages of any kind, lost goodwill, lost profits, lost business and/or any indirect economic damages whatsoever regardless of whether such damages arise from claims based upon contract, negligence, tort (including strict liability or other legal theory), a breach of any warranty or term of this Agreement, and regardless of whether it was advised or had reason to know of the possibility of incurring such damages in advance.
3. Term and Termination.
   1. The term of this Agreement shall be one (1) year from Effective Date, unless terminated sooner in accordance with Section 5 of this Agreement.
   2. If a funding agreement for the Project:

is not awarded to Company, this Agreement shall terminate upon Company’s receipt of notice from the funding agency; or

is awarded, the Parties will enter into a subaward agreement into which applicable terms of this Agreement will be incorporated, and this Agreement will automatically terminate. If a subaward between the Parties for the Project is not executed within six (6) months from Company’s receipt of notice of award from the funding agency, this Agreement shall automatically terminate.

* 1. This Agreement may be terminated by either Party upon thirty (30) days written notice to the other Party.
  2. This Agreement may also be terminated by either Party in the event of the failure of the other Party to comply with the terms of this Agreement.
  3. In the event of termination of this Agreement by either Party, each Party shall be responsible for its own costs incurred under this Agreement through the date of termination, as well as costs incurred under this Agreement after the date of termination which are related to the termination if other than for breach.
  4. If this Agreement is terminated by either Party, all rights, licenses, and interest granted to one Party by the other Party pursuant to this Agreement shall immediately revert to the granting Party without any further notice or action by the granting Party.

1. Notices.

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| **UCFRF Contacts** | **Company Contacts** |
| For Notice:  Attn: Name]  12201 Research Pkwy, Ste 501  Orlando, FL 32826  Phone: [Phone Number]  E-mail: [Email Address]  For Intellectual Property:  Attn: [Name]  12201 Research Pkwy, Ste 501  Orlando, FL 32826  Phone: [Phone Number]  E-mail: [Email Address] | Contact for Notice:  Attn: [Name]  [Address]  Phone: [Phone Number]  E-mail: [Email Address] |

1. Governing Law. This Agreement and the rights of the Parties will be governed by and construed in accordance with the laws of the State of Florida, without regard to its choice of law principles. The Parties agree that jurisdiction and venue for any action arising under this Agreement shall lie exclusively within the state courts of Florida located in Orange County, Florida. The Parties specifically waive the right to any other jurisdiction and venue, and the defense based on inconvenient forum.
2. Use of Names.Company will not use the name, trademarks or other marks of UCFRF or UCF (or the names of any Board Members, Trustees or employees) without the advance written consent of UCFRF for each instance of use. UCFRF may useCompany’s name and logo for annual reports, brochures, website, internal reports, and to comply with applicable law, without prior consent.
3. **Export Control**. Each Party acknowledges that it is subject to and agrees to abide by the United States laws and regulations controlling the export or transfer of information, technical data, software, items, materials, mockups/prototypes, biological materials and other items, (including the Arms Export control Act (“AECA”), as amended, an enumerated in the International Traffic Arms Regulations (“ITAR”) 22 CFR Parts 123 – 130, and the Export Administration Act (“EAA”) of 1979 enumerated in the Export Administration Regulations (“EAR”) 15 CFR Parts 300 – 799). The transfer of such items and technical data may require a license from the cognizant agency of the U.S. Government. UCFRF neither represents that a license is or is not required or that, if required, it shall be issued.
4. **No Assignment.** Neither Party shall assign this Agreement or any of its rights or obligations hereunder without obtaining prior written consent of the other Party. This Agreement is binding upon the Parties and their permitted successors and assigns.
5. **Entirety, Amendment, and Severability.** This Agreement constitutes the entire agreement of the Parties concerning the matters discussed herein. If any of the provisions of this Agreement are determined to be invalid under applicable law, they are, to that extent, deemed omitted. The invalidity of any portion of this Agreement shall not render any other portion invalid. This Agreement may be amended only by a written instrument executed by authorized representatives of the Parties.
6. **Waiver**. No failure or delay by a Party hereto to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter the remaining terms of this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.
7. **Remedies**. The Parties understand and agree that a Party may suffer irreparable harm in the event of breach of any of the obligations under this Agreement and that monetary damages may be inadequate to compensate for such breach. Accordingly, the Parties agree that, in the event of a breach, or threatened breach by a Party, in addition to any other available rights, remedies or damages, shall be entitled to seek a temporary restraining order, preliminary injunction and permanent injunction in order to prevent or to restrain any such breach by the other Party, or its employees, servants, agents and any and all persons directly or indirectly acting for the Party.
8. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument. Signature pages to this Agreement delivered by facsimile or electronic mail shall be binding to the same extent as an original.
9. **Force Majeure.** No default, delay, or failure to perform on the part of either Party shall be considered a default, delay, or failure to perform hereunder, if such default, delay, or failure to perform is due to causes beyond such Party’s reasonable control including, but not limited to, strike, lockouts, or inactions of governmental authorities; epidemic; pandemic; war; embargoes; fire; earthquake; acts of God; or default of a common carrier. In the event of such default, delay, or failure to perform, any date or times by which the applicable Party is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the excused default, delay, or failure to perform.

**IN WITNESS WHEREOF**, the Parties hereto have caused their duly authorized representatives to execute this Agreement.

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| UNIVERSITY OF CENTRAL FLORIDA  RESEARCH FOUNDATION, INC. | [COMPANY NAME] |
| Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: [Name] | Name: [Name] |
| Title: [Title] | Title: [Title] |
| Date: [Date Signed] | Date: [Date Signed] |