# RESEARCH AGREEMENT

*Between*

*And*

THE UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES

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

This research agreement (“Agreement”) is made and entered into by and between

(“COMPANY”) and The University of Central Florida Board of Trustees (“UCF”), (individually, “Party”, or collectively, “Parties”).

The terms of this Agreement are intended to provide the framework for the Parties cooperating in the performance of this project as outlined in Appendix A. UCF’s sole obligations under this Agreement are set forth in the terms and conditions of this Agreement.

# STATEMENT OF WORK

UCF shall make all reasonable efforts to conduct its work under this Agreement as outlined in the Statement of Work (“SOW”), set forth in Appendix A and incorporated herein by reference.

# TERM

This Agreement is effective as of the date of last signature (“Effective Date”) and shall not extend beyond unless extended by written modification of this Agreement.

# FINANCIAL SUPPORT

This is a cost reimbursable Agreement in the amount of $ UCF may re-budget as necessary to accomplish the SOW. Serially numbered invoices from UCF shall be sent to COMPANY monthly. The invoices shall contain:

* 1. Agreement number; and
	2. Period of Performance covered; and
	3. Description of work; and
	4. Costs incurred and allowable under the Agreement

Invoices shall be submitted to: Name

Address Address

City, State Zip

Upon receipt of invoice(s), payment shall be made to the University of Central Florida and remitted to the following address: University of Central Florida

Contracts & Grants Payment PO Box 160118

Orlando, FL 32816-0118

# ADMINISTRATIVE CONSIDERATION

The policies of UCF concerning salaries and fringe benefits are to apply.

# ADMINISTRATIVE PERSONNEL

Company Name University of Central Florida

Technical Contact: Technical Contact:

Company Name: Address: Address: City, State, Zip: Phone: Fax: Email:

University of Central Florida

Department:

4000 Central Florida Boulevard Orlando, FL 32816

Phone: Fax: Email:

Contractual Contact: Contractual Contact:

Company Name: Address: Address: City, State, Zip: Phone: Fax: Email:

University of Central Florida

Office of Research & Commercialization 12201 Research Parkway, Suite 501

Orlando, FL 32826-3246

Phone: Fax: Email: ospcontracts@ucf.edu

# AUDIT

All costs incurred in the performance of this Agreement will be subject to audit by any cognizant audit agency.

# EQUIPMENT AND PROPRIETARY MATERIALS

UCF will be accountable for and hold title to all equipment purchased under this Agreement and will be responsible for employing it for the overall purpose of the project. UCF agrees to maintain sufficient records to enable COMPANY to fulfill its accountability. Each Party will be accountable for and keep title to all equipment it owns and utilizes under this Agreement.

# PUBLICATION

Any research or research results generated in conjunction herewith shall be subject to unrestricted publication or dissemination provided that such publication or dissemination will not compromise the ability to file for patent protection or inadvertently divulge proprietary information of a Party.

# INTELLECTUAL PROPERTY

“Intellectual Property” means individually and collectively all inventions, improvements and/or discoveries, patentable or unpatentable, copyrightable or uncopyrightable, including but not limited to mask works, computer software, both object and source code, data, data bases and works of authorship.

As between the Parties, Intellectual Property developed solely by a Party shall be solely and exclusively owned by that Party. “Joint Intellectual Property” means any Intellectual Property developed jointly by COMPANY and UCF under this Agreement. Joint Intellectual Property will be owned jointly by COMPANY and UCF, who agree to jointly determine proper inventorship and authorship subject to Title 35 for the United States Code for inventions and Title 17 of the United States Code for works of authorship.

“Background Intellectual Property” means Intellectual Property which was in existence prior to the Effective Date of this Agreement, or which is created or developed by a Party outside the course of the SOW . The Parties agree that Background Intellectual Property of COMPANY and UCF is their separate property, respectively, and is not affected by this Agreement. Neither Party shall acquire any claims to or rights in the Background Intellectual Property of the other Party by this Agreement or performance hereunder.

Nothing in this Agreement shall circumvent or restrict either Party’s pre-existing obligations with the United States government pertaining to any kind of Intellectual Property, including but not limited to such pre- existing obligations contained in grants, contracts and other types of agreements or arrangements between either Party and the U.S. government. These obligations may include granting licenses to the

U.S. government for certain Intellectual Property which is being developed.

Notwithstanding any provision to the contrary in this Agreement, UCF shall retain the right to practice any Intellectual Property developed hereunder for its own academic, non-commercial research and teaching purposes.

# 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), and the Export Control Reform Act (ECRA) as amended and enumerated in the Export Administration Regulations (EAR)). The transfer of such items and technical data may require a license from the cognizant agency of the U.S. Government or written assurances by COMPANY that it shall not export such items to certain foreign countries and/or foreign persons without prior approval of the cognizant agency. UCF neither represents that a license is or is not required or that, if required, it shall be issued.

# ASSUMPTION OF RISK

Each Party assumes any and all risks of personal injury and property damage attributable to the negligent acts or omissions of that Party and its officers, employees, servants, and agents thereof while acting within the scope of their employment. UCF warrants and represents that it is self-funded for liability insurance, both public and property, with said protection being applicable to officers, employees, servants, and agents while acting within the scope of their employment by UCF. COMPANY and UCF further agree that nothing contained herein shall be construed or interpreted as (1) denying to either Party any remedy or defense available to such Party under the laws of the State of Florida: (2) the consent of the State of Florida or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.

# CONFIDENTIAL INFORMATION

Should it be necessary for either Party to receive confidential information, the disclosing Party agrees to label in writing at the time of delivery that such information is confidential, or if given orally, reduce to writing, clearly marked as confidential, and delivered within thirty (30) days of the oral disclosure to the receiving Party. The receiving Party and its personnel shall keep the confidential information confidential, and shall use procedural safeguards to the same extent as it does for its own information, but in no event less than reasonable care. Receiving Party agrees to use the confidential information solely for the purpose of carrying out the scope of work under this Agreement and not for any other purpose without prior written consent of the disclosing Party. It shall not be considered a breach of confidentiality to disclose information that is:

1. already known to the receiving Party at the time of disclosure as evidenced by written record; or
2. generally available to the public or becomes available to the public through no fault of the receiving Party as evidenced by written record; or
3. developed independently of and without reference to the confidential information as evidenced by written record; or
4. received from a third party who had a legal right to disclose such information without restriction as evidenced by written record.

If required by applicable law, regulation, or judicial, administrative or legislative order, the receiving Party may disclose the confidential information it receives hereunder to comply with such requirement, provided that (a) the receiving Party shall, to the extent permitted by law, promptly notify the disclosing Party so that disclosing Party may contest such disclosure, and (b) the receiving Party shall limit the scope of such disclosure to only such portion of the confidential information that it is legally required to disclose.

Upon written request of the disclosing Party, the receiving Party shall promptly return all confidential information of the disclosing Party, together with all copies thereof provided, however, that receiving Party may retain one (1) copy of confidential information solely for its legal and archival purposes.

The confidentiality obligations set forth in this provision shall survive for a period of three (3) years from the Effective Date. Notwithstanding anything to the contrary in this provision, any inventions disclosed under this Agreement shall be considered confidential information, whether labeled or not.

# REPORTING REQUIREMENTS

UCF shall render to the COMPANY technical progress reports in accordance with Appendix A.

# NO WARRANTIES

UCF MAKES NO REPRESENTATIONS AND EXTENDS NO W ARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED WITH REGARD TO THE RESEARCH, INTELLECTUAL PROPERTY, AND/OR PROPRIETARY MATERIALS. THERE ARE NO EXPRESS OR IMPLIED W ARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT COMPANY’S USE OF THE RESEARCH DELIVERABLES OR INTELLECTUAL PROPERTY WILL NOT INFRINGE ANY THIRD PARTY PATENT, COPYRIGHT, TRADEMARK, OR OTHER THIRD PARTY RIGHTS. UCF MAKES NO REPRESENTATION AS TO THE USEFULNESS OF RESEARCH DELIVERABLES, INTELLECTUAL PROPERTY, OR PROPRIETARY MATERIALS. IF COMPANY CHOOSES TO EXPLOIT RESEARCH DELIVERABLES, INTELLECTUAL PROPERTY, OR PROPRIETARY MATERIALS IN ANY MANNER W HATSOEVER, IT DOES SO AT ITS OW N RISK.

# 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 either Party’s reasonable control including, but not limited to, strike, lockouts, or inactions of governmental authorities; epidemics; war; embargoes; fire; hurricane; 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 either 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.

# GOVERNING LAW

This Agreement is governed and construed in accordance with the laws of the State of Florida without regard to its conflict of laws provisions. The Parties shall bring any action in connection with this Agreement in courts of competent jurisdiction in Orange County, Florida. The Parties specifically waive the right to any other jurisdiction and venue, and the defense based on inconvenient forum.

# LIMITATION OF DAMAGES

In no event will UCF 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 a Party was advised or had reason to know of the possibility of incurring such damages in advance.

# NON-USE OF NAMES

Neither Party may use each other’s name or trademarks in any promotion, statement, advertisement, press release or communications to the general public or any third party without each other’s express written consent. Any proposed public statement, advertisement, press release or communications by either Party shall be submitted to the other Party for its review and written approval at least thirty (30) days prior to the planned dissemination or publication, unless otherwise required. However, nothing shall prohibit either Party from complying with Florida Statute 1004.22(2) regarding sponsored research activities.

# NO ASSIGNMENT

Neither Party may assign or transfer its rights and remedies nor transfer its obligations or subcontract for any of the services to be performed under this Agreement, in whole or part, without the prior written consent of the other Party. This Agreement is binding upon the Parties and their permitted successors and assigns.

# INDEPENDENT CONTRACTOR

In the performance of all services under this Agreement, each Party shall be deemed to be, and shall be, an independent contractor. This Agreement shall not be deemed to create any other form of employment relationship or business organization between the Parties. Neither Party is authorized or empowered to act as agent for the other for any purpose and shall not, on behalf of the other, enter into any contract, warranty or representation as to any matter. Neither Party shall be bound by the acts or conduct of the other.

# 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, of any of the provisions of this Agreement a Party, in addition to any other available rights, remedies or damages, a Party 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 Party, or its employees, servants, agents and any and all persons directly or indirectly acting for the Party.

# TERMINATION

Either Party may terminate this Agreement for convenience upon thirty (30) calendar days written notification to the other. In the event of termination, UCF will be reimbursed for all costs incurred and any non-cancelable obligations properly incurred through the date of termination.

Either Party may terminate this Agreement in the event of failure of the other Party to fulfill any of its obligations under this Agreement. Prior to termination, the terminating Party shall provide to the other Party written notification regarding the reason(s) for termination. If the Parties cannot reach an agreement within seven (7) calendar days from notice of termination on the corrective measures to be taken and the schedule for corrective action, the terminating Party may terminate this agreement by providing an additional seven (7) calendar days written notice to the other. Said notice shall specify the effective time and date of termination.

# MODIFICATIONS

Modifications to this Agreement may be made only in writing signed by authorized signatories of both Parties.

# COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be considered an original, but which together shall constitute but one and the same Agreement.

# 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.

# SEVERABILITY

If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Agreement shall not be in any way affected or impaired thereby and shall remain in full force and effect.

# ENTIRE AGREEMENT

This Agreement consists of the following parts with the following order of precedence in the event of any conflict:

|  |  |  |
| --- | --- | --- |
| a. | Articles 1 - 27 |  |
| b. | Appendix A: | Scope of Work & Deliverables |
| c. | Appendix B: | Budget |

and constitutes the entire Agreement of the Parties with respect to the subject matter hereof. Any other understanding, purchase order, or agreement, whether written or oral, relating to the subject matter is hereby superseded.

IN W ITNESS W HEREOF, the Parties hereto have executed this Agreement with the Effective Date shown herein:

THE UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES

Name: Name:

Title: Title:

Date Date

# APPENDIX A: SCOPE OF WORK & DELIVERABLES

UCF and/or COMPANY shall perform the work described in:

1. Proposal entitled and dated .

Which documents are hereby incorporated into this Agreement by reference with the same force and effect as if set forth herein in full.

The following deliverable items are required:

|  |  |
| --- | --- |
| **Due Date** | **Deliverable** |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

# APPENDIX B: BUDGET