

RESEARCH AGREEMENT

This Research Agreement (this "Agreement") is entered into as of _____ (the "Effective Date") by and between _____, a _____ ("Sponsor") and the University of Southern California, a California non-profit public benefit corporation ("USC").

RECITALS

WHEREAS, the research project contemplated by this Agreement is of mutual interest and benefit to USC and to Sponsor, will further the instructional, scholarship and research objectives of USC in a manner consistent with its status as a non-profit educational institution, and may result in benefits for both Sponsor and USC through inventions, improvements and discoveries;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. DEFINITIONS

- 1.1 "Commitment" means the financial payment made by Sponsor to USC as specified in the Statement of Work.
- 1.2 "Confidential Information" shall have the meaning ascribed to it in Section 9.1 of this Agreement.
- 1.3 "Copyrightable Material" means any material or other property developed or reduced to practice in the course of conducting the research specified for the Project that is or may be copyrightable or otherwise protectable under Title 17 of the United States Code.
- 1.4 "Invention" means any invention or discovery developed or reduced to practice in the course of conducting the research specified for the Project that is or may be patentable or otherwise protectable under Title 35 of the United States Code.
- 1.5 "Noncancellable Obligations" means noncancellable obligations, including noncancellable graduate fellowships and appointments called for or incurred for the Project that are incurred prior to the effective date of termination.
- 1.6 "Principal Investigator" shall be _____.
- 1.7 "Project" means the project as described in the Statement of Work.
- 1.8 "Sponsor Supplied Material" has the meaning ascribed to it in Section 3.3 of this Agreement.
- 1.9 "Statement of Work" means the form attached hereto as Exhibit A and which is incorporated herein in its entirety by this reference.

- 1.10 “USC Personnel” means persons employed, appointed, engaged or authorized by USC from time to time to work for or in connection with USC as professors, investigators, fellows, graduate or undergraduate students, staff, consultants, or in other capacities.
- 1.11 “USC Intellectual Property” means all existing or future Copyrightable Material, Inventions, improvements, discoveries, trade secrets, data, and know-how conceived or made in whole or in part by USC Personnel and Sponsor personnel working in collaboration with the USC Personnel in the course of their work with USC or using USC facilities, resources, equipment or funds under this Agreement.

2. GENERAL CONTACT INFORMATION

USC:

<u>Technical/Scientific</u>	<u>Contractual</u>
<i>Principal Investigator Name</i>	<i>Contact Name</i>
<i>Department</i>	<i>Title</i>
<i>School</i>	
<i>address</i>	<i>address</i>
<i>tel#</i>	<i>tel#</i>
<i>fax#</i>	<i>fax#</i>
<i>email</i>	<i>email</i>

Sponsor:

<u>Technical/Scientific</u>	<u>Contractual</u>
<i>Contact Name</i>	<i>Contact Name</i>
<i>Title</i>	<i>Title</i>
<i>address</i>	<i>address</i>
<i>tel#</i>	<i>tel#</i>
<i>fax#</i>	<i>fax#</i>
<i>email</i>	<i>email</i>

Notwithstanding the general contact information above, any notices shall be provided as set forth in Section 16.6 of this Agreement.

3. RESEARCH PROJECT

- 3.1 USC shall use reasonable efforts to perform the research set forth in the Project substantially in accordance with the terms and conditions of this Agreement and USC’s Code of Ethics.
- 3.2 Nothing in the Agreement shall be construed to limit the freedom of USC Personnel, whether participants in this Agreement or not, from engaging in similar research

inquiries made independently under other grants, contracts or agreements with parties other than Sponsor.

3.3 Sponsor hereby grants to USC a non-exclusive, worldwide, perpetual, royalty-free license to use any, information, equipment, supplies, or other support Sponsor supplies to USC in furtherance of this Agreement in connection with the Project (“Sponsor Supplied Material”).

3.4 Sponsor represents and warrants to USC that: (a) it is the sole owner of the Sponsor Supplied Material, and (b) nothing contained in the Sponsor Supplied Information nor the exercise of the rights granted to USC infringes upon the proprietary rights of any third party.

4. **PRICE AND PAYMENT SCHEDULE**

4.1 It is agreed and understood by the parties hereto that the price for performing the Research shall be <\$ amount> in accordance with Exhibit B (Budget). Payment shall be made by Sponsor according to the following schedule:

- a. \$dollars upon execution of this Agreement (*usually 50% of the price or greater*)
- b. \$dollars at some date or completion of a milestone
- c. \$dollars upon submission of the final report

4.2 Checks shall be made payable to the University of Southern California (Fed ID No. 95-1642394) and sent to:

University of Southern California
Sponsored Projects Accounting
File # 52095
Los Angeles, CA 90074-2095
ATTN: Cindy Lee, Manager

5. **TERM/TERMINATION**

5.1 This Agreement is entered into as of the Effective Date and shall continue until _____ unless earlier terminated pursuant to this Section. This Agreement shall not be effective until it is executed by both parties.

5.2 This Agreement may be terminated by either party for any reason, with or without cause, upon thirty (30) days prior written notice to the other party. Sponsor shall allow full credit to, or reimburse, USC for any Noncancellable Obligations incurred by USC prior to termination.

5.3 In the event Sponsor commits a material breach of this Agreement, USC may provide written notice of the breach and Sponsor shall have ten (10) business days within

which to remedy the breach. If Sponsor fails to remedy the breach within such period, the Agreement automatically shall terminate upon the expiration of the ten (10) day cure period. In such an event, Sponsor shall not later than thirty (30) days after such termination, pay to USC any outstanding amounts remaining to be paid, including any Noncancellable Obligations incurred by USC prior to termination. Sponsor's payment under this Section 5.3 does not preclude USC from pursuing any other remedies under law or equity, which shall be in addition to the remedy specified in this Section 5.3.

5.4 In the event of termination or expiration of this Agreement: (i) Sponsor shall promptly return to USC all USC Confidential Information in Sponsor's possession or control, (ii) USC shall promptly return to Sponsor all Sponsor Confidential Information in USC's possession or control, (iii) Sponsor shall pay all costs accrued by USC as of date of termination, including Noncancellable Obligations, and (iv) each party shall provide to the other party a written statement certifying that it has complied with the foregoing obligations. All rights, benefits and licenses granted to Sponsor under this Agreement shall terminate upon such termination.

5.5 The provisions and obligations of Sections 3, 5, 7, and 9-15 shall survive notwithstanding the expiration or termination of this Agreement.

6. **REPORTS**

USC shall furnish Sponsor with annual reports or reports at such other frequency as set forth in the Statement of Work.

7. **TRADEMARKS**

Neither party shall use the name, trade name, trademark or other designation of the other party or its affiliates in connection with any products, promotion or advertising without the prior written permission of the other party.

8. **PUBLICATIONS**

USC shall have the right, at its discretion, to release information or to publish any material resulting from the Project. USC shall furnish Sponsor with a copy of any proposed publication thirty (30) days prior to submission for publication for review and comment. Sponsor may request USC to delay publishing such proposed publication for a maximum of an additional sixty (60) days in order to protect the potential patentability of any invention described therein.

9. **CONFIDENTIAL INFORMATION**

9.1 During the course of this Agreement, the parties may provide each other with certain information, data, or material in writing which the disclosing party has clearly marked

or identified in writing as confidential or proprietary in nature (“Confidential Information”). The receiving party shall receive and hold Confidential Information in confidence and agrees to use its reasonable efforts to prevent disclosure to third parties of Confidential Information in the manner the receiving party treats its own similar information, but in no case less than reasonable care shall be exercised by the receiving party.

- 9.2 The receiving party shall not consider information disclosed to it by the disclosing party as Confidential Information such information which: (a) is now public knowledge or subsequently becomes such through no breach of this Agreement; (b) is rightfully in the receiving party’s possession prior to the disclosing party’s disclosure as shown by written records; (c) is disclosed to the receiving party by an independent third party who, to the best of the receiving party’s knowledge, is not under an obligation of confidentiality for such information to the disclosing party; or (d) is independently developed by or for the receiving party without benefit of Confidential Information received from the disclosing party as shown by written records.
- 9.3 Each party acknowledges that the Confidential Information of the other party is owned solely by such party, and that the unauthorized disclosure of such information may cause irreparable harm and significant injury, the degree of which may be difficult to ascertain. Accordingly, each party agrees that the other party will have the right to seek an immediate injunction enjoining any breach of this Agreement, as well as the right to pursue any and all other rights and remedies available at law or in equity for such breach.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 All rights, title and interest to USC Intellectual Property shall belong to USC and shall be subject to the terms and conditions of this Agreement. To the extent Sponsor has any rights, title, or interest in any USC Intellectual Property, through this or any other arrangement, Sponsor hereby irrevocably assigns and transfers such rights to USC.
- 10.2 USC will promptly notify Sponsor of any USC Intellectual Property. Sponsor shall, upon reviewing such notification, determine whether to request USC to file, prosecute and maintain any patent application or application for other intellectual property protection, domestic or foreign, in USC’s name. Sponsor shall bear all reasonable costs incurred in connection with such preparation, filing, prosecution and maintenance directed to said USC Intellectual Property. USC shall keep Sponsor advised as to all developments with respect to such applications and Sponsor shall be given an opportunity to review and comment thereon.
- 10.3 If Sponsor elects not to exercise its option in accordance with Section 11 of this Agreement or decides to discontinue the financial support of the application for intellectual property protection, USC shall be free to file or continue prosecution and maintenance on any such application, at USC's sole expense. If Sponsor elects to

discontinue the financial support of the application for intellectual property protection prior to issuance of a valid patent, Sponsor thereby waives and gives up any right it may have under this Agreement to license the USC Intellectual Property under Section 11 below.

11. RIGHT TO OPTION AND LICENSE

USC grants Sponsor a time-limited first right to negotiate a commercial option or worldwide, royalty-bearing license, to USC Intellectual Property. Such first right must be exercised within six (6) months after disclosure of USC Intellectual Property to Sponsor in accordance with Section 10.2 above. USC and Sponsor shall negotiate the terms of any such option or license in good faith.

12. COMPLIANCE WITH LAWS

12.1 USC and Sponsor agree to abide by all applicable Federal, State, and local laws, rules, regulations, and ordinances in the performance of this Agreement.

12.2 Sponsor agrees that no technical data, or any direct products thereof, will be made available or re-exported, directly or indirectly, by Sponsor (or by any employee of, Sponsor, to any person, entity or country unless such prior written authorization as may be required is obtained by Sponsor from the appropriate U.S. government agency(ies), including, as applicable, the U.S. Office of Export Licensing of the U.S. Department of Commerce, in accordance with the U.S. Export Administration Regulations (15 CFR, parts 779 et seq.) issued by the Department of Commerce of the United States in the administration of the Export Administration Act of 1979 as amended from time to time. Sponsor asserts that it is not now doing business with any country to which the United States Government prohibits export of products under consideration in this Agreement.

13. WARRANTY DISCLAIMER

13.1 USC makes no warranties for any purpose whatsoever, express or implied, as to the Project or the results of the Project, including the merchantability or fitness for a particular purpose of the Project or the results of the Project under this Agreement.

13.2 Sponsor agrees that it will not rely solely upon technical information provided by USC or the Principal Investigator in developing any invention or product, but will independently test, analyze and evaluate all inventions and products prior to manufacture and distribution of such inventions and products.

13.3 Neither the Principal Investigator, Sponsor, nor any other person is authorized to give any warranty in the name of or on behalf of USC.

14. LIMITATION OF LIABILITY

Notwithstanding anything to the contrary contained herein, to the maximum extent permitted by law, in no event will either party be responsible for any incidental, consequential, indirect, special, punitive, or exemplary damages of any kind, lost goodwill, lost profits, lost business or other indirect economic damages, whether such claim is based on contract, negligence, tort (including strict liability) or other legal theory, as a result of a breach of any warranty or any other term of this agreement, and regardless of whether a party was advised or had reason to know of the possibility of such damages in advance. Additionally, USC's total liability under this agreement shall not be in excess of the total amount of Commitment paid by sponsor to USC under this agreement.

15. INSURANCE AND INDEMNITY

- 15.1 USC agrees to maintain adequate liability insurance, such protection being applicable to officers, employees and agents while acting within the scope of their employment by USC.
- 15.2 Sponsor agrees to hold harmless, indemnify and defend USC, its trustees, officers, employees and agents from all liabilities, demands, damages, expenses and losses, including reasonable attorneys' fees, arising out of (a) performance of this Agreement, except to the extent of USC's gross negligence or willful misconduct, (b) Sponsor's use of the results of the Project, or (c) Sponsor's use, manufacture or sale of products or inventions made by use of the results of the Project.
- 15.3 Sponsor warrants that at its sole cost and expense it maintains in effect a policy or program of comprehensive general liability insurance or self-insurance on an occurrence made basis in single limit coverage of not less than Two Million Dollars (\$2,000,000) per incident and Two Million Dollars (\$2,000,000) annual aggregate for death, bodily injury, illness or property damage to support the indemnification obligations assumed herein. Such policy shall name USC as an additional insured and shall provide for not less than thirty (30) days prior written notice before any cancellation or material change in coverage shall be effective. A Certificate evidencing the comprehensive general liability policy shall be delivered to USC upon request.

16. GENERAL PROVISIONS

- 16.1 USC will function solely as an independent contractor under this Agreement and not as an agent, servant, employee, associate, joint venturer or partner of Sponsor, and nothing in this Agreement shall be deemed or construed to create the relationship of partnership or joint venture.
- 16.2 This Agreement shall not create any rights or confer a benefit in favor of any person or entity not a party to this Agreement. This Agreement, and all rights and obligations hereunder, shall be binding on the parties hereto and their respective heirs, successors, licensees and permitted assigns.
- 16.3 In the event of a dispute between the parties, the aggrieved party shall notify the other party and provide a detailed description of the alleged problem. The parties agree to use reasonable efforts to resolve such dispute by good faith negotiations and mutual agreement. In the event such informal resolution is not successful within a reasonable period of time, the parties hereby agree to submit any claim or dispute arising out of or relating to the terms of this Agreement to private and confidential arbitration by a single neutral arbitrator in Los Angeles, California. Subject to the terms of this paragraph, the Arbitration Rules of JAMS shall govern the arbitration proceedings. The arbitrator shall be appointed by agreement of the Parties hereto or, if no agreement can be reached, by JAMS pursuant to its Rules. The decision of the arbitrator shall be final and binding on all Parties to this Agreement, and judgment thereon may be entered in any court of competent jurisdiction. The costs of the arbitration proceeding, including all attorneys' fees, shall be paid by the Party against whom the arbitrator rules. This arbitration procedure is intended to be the sole and exclusive method of resolving any claim arising out of or relating to this Agreement.
- 16.4 Neither party may assign, transfer or encumber its rights or obligations under this Agreement without the prior written consent of the other party hereto. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of the parties' respective successors and assigns.
- 16.5 No failure or delay by either party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise of any right, power or privilege.
- 16.6 Any notices given under this Agreement shall be in writing and delivered to the following addresses by return receipt mail, postage prepaid; by overnight courier service; or by facsimile transmission. Such notices shall be effective upon the third business day following mailing, if by mail; upon receipt, if by courier; or upon confirmation of successful transmission, if by facsimile.

USC:

University of Southern California
Department of Contracts and Grants
University Park Campus
837 Downey Way, Room 330
Los Angeles, CA 90089-1147
Phone: (213) 740-7762
Fax: (213) 740-6070
Attention: *Name* _____
Senior Contract and Grant Administrator

OR

University of Southern California
Department of Contracts and Grants
Health Sciences Campus
1540 Alcazar Street, CHP 100
Los Angeles, CA 90033
Phone: (323) 442-2396
Fax: (323) 442-2835
Attention: *Name* _____
Senior Contract & Grant Administrator

with a copy to:

USC Office of the General Counsel
University Park, ADM 352
Bovard Administration Building
Los Angeles, California 90089-5013
Los Angeles, CA 90071
Tel: (213) 740-7922
Fax: (213) 740-3249

with a copy to the USC Principal Investigator named in Article 2.1.

Sponsor:

name and address

- 16.7 USC and Sponsor represent that they have the authority to enter into this Agreement and to perform their obligations hereunder, and the officer executing this Agreement is authorized to do so.
- 16.8 This Agreement may be modified or amended, including extension of the term of this Agreement, at any time only by a written amendment executed by both parties.
- 16.9 This Agreement constitutes the entire understanding between the parties hereto concerning the subject matter of this Agreement. There are no collateral, oral or written agreements or understandings. This Agreement supersedes any prior oral or written agreement or understanding between the parties.
- 16.10 In the event litigation or arbitration is commenced to enforce any of the terms of this Agreement, the prevailing party shall recover, as part of the award and judgment, its reasonable attorneys' fees and costs.

16.11 Both parties have had their legal counsel review, or have had the opportunity for legal counsel to review, this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date provided above in two or more counterparts, each as an original and all together as one instrument.

SPONSOR

By _____

Name _____

Title _____

UNIVERSITY OF SOUTHERN CALIFORNIA

By _____

Name _____

Title _____

**EXHIBIT A
STATEMENT OF WORK**

1. DESCRIPTION OF PROJECT

2. DELIVERABLES

3. REPORTS

EXHIBIT B
BUDGET