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SPONSORED RESEARCH AGREEMENT

This Research 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 that is or may be copyrightable or otherwise protectable under Title 17 of the United States Code.
- 1.4 “Invention” means any discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code.
- 1.5 “Joint Project Intellectual Property” means all Project Intellectual Property made jointly by USC personnel and Sponsor personnel, or made solely by Sponsor personnel using USC facilities, resources, equipment or funds.
- 1.6 “Noncancellable Obligations” means noncancellable obligations, including noncancellable graduate fellowships and appointments called for or incurred for the Project that are incurred through the effective date of termination.
- 1.7 “Principal Investigator” shall be _____.
- 1.8 “Project” means the project as described in the Statement of Work.

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- 1.9 “Project Intellectual Property” means all Copyrightable Material, Inventions, trade secrets, data, computer software, and know-how conceived or made in the performance of the Project.
- 1.10 “Sponsor Project Intellectual Property” means all Project Intellectual Property made by Sponsor personnel without the use of USC facilities, resources, equipment or funds.
- 1.11 “Sponsor Supplied Material” has the meaning ascribed to it in Section 3.3 of this Agreement.
- 1.12 “Statement of Work” means the form attached hereto as Exhibit A and which is incorporated herein in its entirety by this reference.
- 1.13 “USC Project Intellectual Property” means all Project Intellectual Property made by USC personnel.

2. GENERAL CONTACT INFORMATION

USC:

Research

Principal Investigator Name
Department
School

University Southern California

address
tel#
fax#
email

Administration

Contact Name
Title

Dept. of Contracts
and Grants,
University of
Southern California

address
tel#
fax#
email

Sponsor:

Technical/Scientific

Contact Name
Title
address
tel#
fax#
email

Administration

Contact Name
Title
address
tel#
fax#
email

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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 or 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) Sponsor owns the Sponsor Supplied Material or has a license to the Sponsor Supplied Material allowing Sponsor to provide the it to USC, 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 or violates any agreement between Sponsor and 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 not exceed <\$ 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

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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 upon thirty (30) days prior written notice to the other party if either party determines, in its discretion, that Project is no longer academically, technically or commercially feasible. Upon receipt of such notice of termination, USC shall exert its reasonable efforts to limit or terminate any outstanding financial commitments for which Sponsor is to be liable. Sponsor shall reimburse USC for all costs incurred by it for the Project, including without limitation, all Noncancellable Obligations.
- 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 through the date of 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 through 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 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

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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 or if orally disclosed, reduced to writing by disclosing party within thirty (30) days of disclosure (“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. Except as required by law or with permission from disclosing party, receiving party will not disclose Confidential Information for a period of one (1) year from the end of this Agreement, except in furtherance of this Agreement.

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; (d) is required to be disclosed by law; or (e) is independently developed by or for the receiving party without benefit of Confidential Information received from the disclosing party as shown by written records.

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- 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 Ownership. All rights, title and interest to USC Project Intellectual Property shall belong to USC. All rights, title and interest to Sponsor Project Intellectual Property shall belong to Sponsor. All rights, title and interest to Joint Project Intellectual Property shall belong jointly to USC and Sponsor. Determination of inventorship of Project Intellectual Property shall be made in accordance with the rules of inventorship under United States patent law.
- 10.2 Notification. USC will notify Sponsor in writing of any USC Project Intellectual Property or Joint Project Intellectual Property after a written invention disclosure is received by the USC Stevens Institute for Innovation. Sponsor will notify USC in writing of any Joint Project Intellectual Property promptly after it receives a written disclosure thereof.

11. RIGHTS IN PROJECT INTELLECTUAL PROPERTY; PATENTING

- 11.1 Right to Negotiate Exclusive License. Sponsor has a time-limited right to negotiate an exclusive, worldwide, royalty-bearing license to USC's interest in USC Project Intellectual Property and Joint Project Intellectual Property in accordance with this Section 11. If Sponsor wishes to negotiate a license, it must notify USC in writing within sixty (60) days following USC's written disclosure of USC Project Intellectual Property pursuant to Section 10.2 or either party's disclosure of Joint Intellectual Property to the other party ("Election Period"). If Sponsor timely notifies USC that it wishes to negotiate a license, USC and Sponsor will negotiate in good faith to reach agreement on and execute a license agreement within ninety (90) days after Sponsor's notice ("Negotiation Period"). In any such exclusive license, USC will reserve for itself, and other non-profit research institutions, a royalty-free, irrevocable license to make and use the USC Project Intellectual Property or Joint Project Intellectual Property for research, educational and clinical research purposes. If Sponsor does not exercise its right to negotiate a license during the Election Period or the parties fail to execute a license agreement prior to the end of the Negotiation Period, then USC shall be free to exploit or license its interests in the USC Project Intellectual Property or Joint Project Intellectual Property without further obligation to Sponsor.

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- 11.2 Joint Project Intellectual Property. If Sponsor does not exclusively license USC's interests in any Joint Project Intellectual Property, the parties shall upon the request of either party negotiate in good faith to reach agreement on the joint management of such Joint Project Intellectual Property, including the patenting and commercialization thereof. In the absence of the parties entering into such an agreement, each party may exploit or license its own interest in the Joint Project Intellectual Property without accounting to the other and either party may apply for patent protection, provided that all such applications must be joint and the filing party will bear all costs and will include the non-filing party on all communications with the patent office.
- 11.3 Patenting and Patent Expenses. USC shall have the right to prepare, file, prosecute and maintain patent applications and patents for any Inventions included in the USC Project Intellectual Property. In the event Sponsor elects to exercise its right to negotiate an exclusive license to USC Project Intellectual Property or Joint Intellectual Property or otherwise requests that USC file a patent application on any USC Project Intellectual Property, Sponsor shall be obligated to pay all patent expenses within 30 days of invoice. If Sponsor is delinquent in the payment of patent expenses, USC may in its sole discretion terminate negotiations of any exclusive license under Section 11.1 and/or abandon or allow to lapse any patent application.
- 11.4 No Rights Granted in Pre-existing or Other Intellectual Property. Nothing contained in this Agreement shall be deemed by implication, estoppel or otherwise to grant Sponsor any rights in any Inventions, Copyrightable Material, improvements, discoveries, trade secrets, data or know-how conceived or made (a) prior to the Effective Date which are owned or controlled by USC and may be used in performance of a Project or (b) after the Effective Date of this Agreement and not made in the performance of a Project.

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 USC intends to conduct the project as fundamental research under the export regulations and thus prefers to receive no material from Sponsor that is both technical data under the applicable export regulation and to be treated as Sponsor's Confidential Information ("Export Controlled Proprietary Information"). To the extent that any such Export Controlled Proprietary Information is needed to conduct the research, Sponsor shall not provide any Export Controlled Proprietary Information to USC until a plan, for receipt of the Export Controlled Proprietary Information, is developed between USC and Sponsor. Prior to providing USC any Export Controlled Proprietary Information, Sponsor shall contact USC's authorized representative (identified in Section 2 of

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this Agreement) and they shall develop a plan for receipt of the Export Controlled Proprietary Information. If the parties are unable to develop an acceptable plan to both parties, USC reserves the right to not receive the Export Controlled Proprietary Information.

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, or 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,

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(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.

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- 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, Title*
with a copy to:

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, Title*

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 an authorized signatory of 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

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written agreements or understandings. This Agreement supersedes any prior oral or written agreement or understanding between the parties.

- 16.10 No agreement signed by personnel of either party in an individual capacity shall serve to alter or amend the terms of this Agreement. In the event of a conflict between the terms of such other agreement and this Agreement, the terms of this Agreement shall prevail.
- 16.11 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.
- 16.12 Both parties have had their legal counsel review, or have had the opportunity for legal counsel to review, this Agreement.

[SIGNATURE PAGE TO FOLLOW]

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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 _____

PRINCIPAL INVESTIGATOR

I have read and understand my obligations under this Agreement.

By _____

Name _____

**DRAFT
EXHIBIT A
STATEMENT OF WORK**

1. DESCRIPTION OF PROJECT

2. DELIVERABLES

3. REPORTS

**DRAFT
EXHIBIT B**

BUDGET

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