

SPONSORED RESEARCH AGREEMENT

Texas Southern University, with principal business address at 3100 Cleburne Street, Houston, TX 77004 (“*University*”) and _____ [sponsor name], a _____ [organization status, e.g., corporation or government agency] with principal business address at ____ [location] (“*Sponsor*”) (each individually a “*Party*” or collectively the “*Parties*”), takes effect on the last date signed below (“*Effective Date*”).

Background:

- Sponsor _____ [describe Sponsor’s function relating to use of technology related to the agreement, e.g., manufactures or licenses products or services] making use of certain intellectual property covering ____ [describe technology] that has use for ____ [describe technology’s function].
- University and Sponsor have a mutual interest in ____ [describe applicable common objectives].
- University has research facilities and situations that allow investigation and study of ____ [describe applicable University capabilities] (“*Research*”) as described in Exhibit I (attached and incorporated into the Agreement).
- Both Parties consider it necessary and desirable to perform Research.

Agreement:

The Parties agree as follows;

- I. **Evaluation.** “*Principal Investigator*” means a University employee who supervises the Research.” Sponsor engages University as an independent contractor to perform the Research. University designates ____ [PI name] as Principal Investigator, with assistance from any appropriate and required associate or colleague at University. Sponsor is entitled to request University to appoint any successor Principal Investigator, subject to University’s consent, which the University must not unreasonably withhold.
- II. **Research.** Because University has approved Research according to University’s policy, any change to Research must be according to University’s policy and the Parties’ written amendment to this Agreement as set forth below in Section V.
- III. **Award.** Sponsor must pay University a fee of _____ and NO/100 DOLLARS (\$_____) for expenses and other related costs incurred for the Research. This fee, as shown for information only by approximate expense category in Exhibit II (attached and incorporated into this Agreement) is payable in ____ [number] equal installments of _____ and NO/100 DOLLARS (\$_____) each by Sponsor to University. The first installment is due within thirty days of this Agreement’s signature date. Each later installment is due and payable on or before _____ [deadline].
- IV. **Basic Term.** “*Term*” means a period beginning with the Effective Date and continuing ____ [number] months, unless earlier terminated. But Section VIII’s (Confidentiality) provisions remain in effect after any termination. The Parties upon written amendment are entitled to extend this Agreement from time to time.

V. **Termination.**

- A. **By Default.** If a Party defaults any material Agreement obligation and fails to remedy the default within thirty days after receiving written default notice, the other Party retains an option to terminate this Agreement by giving written termination notice.
- B. **For Convenience.** Each party has a right to terminate this Agreement in whole or in part in writing for its convenience, but must give the other party not less than thirty days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon effecting any termination for convenience, Sponsor equitably must adjust any price or cost for which Sponsor has chosen to compensate University in this Agreement.
- C. **Allowable Costs.** This Agreement's termination does not affect any Party's right or obligation that accrued before the effective termination date. Subject to any maximum amount specified in Section III (Award), the above equitable adjustment must provide for payment to University for any price or cost under the Agreement, including:
 - 1. any service rendered and expense incurred before the termination; and
 - 2. any termination settlement cost that University reasonably incurs relating to any commitment that has become firm before the termination.

VI. **Survivorship.** Articles VII (Inventions and Patents), VIII (Confidentiality), IX (Publication Rights), X (Publicity) and XV (Indemnification) survive any expiration or termination of this Agreement.

VII. **Invention and Patents.** This Section applies only to any matter not covered in a separate license agreement.

A. **Characterization.**

- 1. ***Scope.*** "*Invention*" means any discovery, concept or idea – irrespective of whether patentable or copyrightable – that:
 - a. arises out of work performed and funded under the Agreement;
 - b. is conceived and reduced to practice during the Term; and
 - c. includes without limitation any process, method, software, formula, technique, composition of matter, device, improvement or related know-how.
- 2. ***Ownership.*** The Parties jointly own – without accounting - any Invention made jointly by each Party's respective employees or agents. Sponsor solely owns any invention that made solely by Sponsor's employees or agents.

B. **Notice.** If any Invention is made either solely by University's employees or agents or jointly by the Parties' respective employees or agents, each applicable Party must notify the other Party within fifteen days after identifying the Invention. Within fifteen days of receiving the other Party's Invention notice, a Party must exert its best reasonable efforts to cooperate with the other Party to investigate, evaluate and determine to both Parties' satisfaction the Inventions' rights disposition including whether, by whom and where any patent application must be filed.

- C. Filing.
1. *Sponsor Consent To Pay Costs*. If the Parties choose to file a patent application, University must prepare and file any appropriate United States or foreign patent application on any Invention. Sponsor must pay any reasonable third party cost to prepare, file and maintain the application or issued patent.
 2. *Sponsor Decision Not To Pay Costs*. If Sponsor notifies University that it does not intend to pay third party patent costs, or if Sponsor does not respond or make an effort to decide with University regarding any rights disposition to an Invention, then:
- D. License. University grants Sponsor an irrevocable option to negotiate and acquire an exclusive, world-wide, royalty-bearing license to any Invention – as well as any patent application, patent, and copyright – for commercial purposes. But Sponsor must pay all reasonable costs and expenses associated with patent and copyright filing, prosecution, issuance and maintenance. Sponsor has sixty days from the Invention’s notice date from University under Section VII.B to give written notice to University exercising this option.
- E. Negotiation. If Sponsor elects to exercise its option to negotiate and acquire a license in the time and manner that Section VII.D provides, the Parties must:
1. enter into good faith negotiations regarding the license’s provisions; and
 2. negotiate any license fee rate or other payment that is fair and reasonable to both Parties.
- F. Alternative Licensee. If the Parties fail - within 180 days after Sponsor notifies University of Sponsor’s option exercise under Section VII.D&E - to obtain a mutually satisfactory arrangement regarding a license under this Section, then:
1. University has a right to enter into any license agreement concerning the same Invention with any third party; and
 2. during the Term, University must not enter into the license agreement with any third party if the provisions generally are not more favorable to the University than the provisions that Sponsor last proposed to University before the above 180 day period expired, unless:
 - a. University has offered the new provisions to Sponsor; and
 - b. Sponsor has:
 - i. refused to accept them; or
 - ii. failed to respond within seven days after receiving the provisions.

VIII. **Confidentiality**. This Section’s requirements remain in force for a three-year period after the Term ends. Despite this Agreement’s confidentiality obligations, nothing in the Agreement prevents University from using - for ordinary research and educational purposes - any information generated under the Agreement.

- A. Nondisclosure. Each Party must hold in confidence any proprietary information that it obtains under the Agreement, and must not use that information without the other Party’s written consent, if the information is:

1. obtained under this Agreement;
 2. related to the Research; and
 3. marked as "CONFIDENTIAL."
- B. **Exclusion.** Nothing in this Section in any ways restricts either Party's right to use, disclose or deal with any information otherwise that can be demonstrated to have been:
1. in the public domain as of the Effective Date or through the Term through no act of a receiving Party;
 2. known to the receiving Party before the Effective Date;
 3. rightfully received under the Agreement by a receiving Party after disclosure from a third party that did not require the receiving Party to hold the information in confidence or limit its use, and that did not acquire it – directly or indirectly – under obligation of confidentiality to the disclosing Party;
 4. required for disclosure to any federal regulatory agency under approval for use; or
 5. independently invented by a receiving Party's research staff who have not had access to any information that a disclosing Party has provided to the receiving Party.
- C. **Unrelated Subject Matter.** Unless permitted under a separate license agreement, nothing in this Agreement gives Sponsor a right to use – for any purpose – University's preexisting confidential information.
- IX. **Publication Rights.** Despite Section IV (Confidentiality), University retains a right to publish any scientific paper relating to any Research. If University chooses to publish, University must notify Sponsor of its intent to publish at least ninety days before publication and must furnish Sponsor a written description of the publication's subject matter in order to permit Sponsor's review and comment.
- X. **Publicity.**
- A. **Sponsor Release.** Sponsor intends periodically to distribute at least one informational release or announcement to the news media regarding the Research's progress. Sponsor must not release any item identifying University or any University employee without University's prior authorized written approval. If University rejects any news release, the Parties must discuss any reason for University's rejection, and endeavor diligently to develop an appropriate informational news release according to accepted academic practices and the Parties' respective policies.
 - B. **University Release.** University must obtain Sponsor's prior authorized written approval if University chooses to distribute any news release pertaining to the Research.
 - C. **Exception.** Sponsor has a right to use University's name when and as required by any applicable law, rule or regulation, or upon University's consent, which University must not unreasonably withhold or delay. This Section's requirements do not prohibit either Party from reporting the Research to any U.S. governmental agency or prohibit Sponsor from identifying University or any

University employee when indicating factually that Sponsor is sponsoring research at University under this Agreement. Sponsor's right to disclose under this paragraph further applies only to any communication that is:

1. associated with Sponsor's financing activities; and
2. (other than any promotion or advertisement) directed to describing or responding to any inquiry concerning Sponsor's business, technology, products, services and associated activities.

XI. **Responsibility.** Each Party assumes individual responsibility for any action or omission of its employees, agents and assigns in conjunction with this Agreement.

XII. **Independent Contractor.** Sponsor has no right to direct or control any University activity in performing any Agreement service. University performs each Agreement services only as an independent contractor. Nothing in the Agreement is to be construed to be inconsistent with an independent contracting relationship or status. Under no circumstance is University or any University employee considered to be Sponsor's employee or agent. This Agreement does not constitute or create any joint venture, partnership or formal business organization.

XIII. **Title to Equipment.** University retains title to any equipment that it purchases or fabricates with any fund that Sponsor provides under the Agreement.

XIV. **Indemnification.** To the extent authorized under applicable law, Sponsor will indemnify and hold harmless University, its regents, officers, agents and employees from any liability or loss resulting from any judgment or claim against them arising from any activity to be carried out under this Agreement or Sponsor's use of the Research results. But the following is excluded from Sponsor's obligation to indemnify and hold harmless:

- A. any negligent failure by University to comply with any applicable governmental requirement; or
- B. any negligence, recklessness or willful malfeasance by a regent, officer, agent or employee of University.

XV. **Notices.** For any notice to another party under this Agreement, a party must provide delivery in writing either by hand or by mail, registered or certified postage prepaid with return receipt requested. The party must address any mailed notice to the other party's address as it appears in the Agreement. Any notice delivered personally is considered communicated at the time of actual receipt. Mailed notice is considered communicated three days after mailing. Any notice, statement, payment or report that this Agreement requires must be addressed as follows:

A. If to University:

Office of General Counsel
Texas Southern University
3100 Cleburne
Houston, TX 77004
Attn: General Counsel

B. If to Sponsor:

_____, Inc.

Attn: _____, President

- XVI. **Captions.** This Agreement’s captions or headings are for convenience only and are not considered to be a part – or to affect any construction or interpretation – of any Agreement provision.
- XVII. **Governing Law.** This Agreement is governed and must be interpreted in accordance with the substantive laws of the State of Texas, without regard to any conflict of laws provision, and with applicable laws of the United States of America.
- XVIII. **Counterparts.** This Agreement may be executed in any number of counterparts, of which each is considered to be an original, and all together constituting one instrument.
- XIX. **Miscellaneous.** This Agreement incorporates by reference Exhibit III – Required Contract Clauses.
- XX. **Entire Agreement.** This Agreement, including any attachments, constitutes the entire understanding between Sponsor and University and supersedes each prior or contemporaneous agreement - whether written or oral - between parties. Any oral representation not contained in the Agreement is binding on the parties only if the parties have acknowledged it in writing. The Parties have not entered any warranty, representation, or other agreement in connection with the Agreement’s subject matter unless specifically set forth in the Agreement. Any supplement, amendment, alteration, modification, waiver or termination of this Agreement is binding only if the Parties have entered it in writing.

Signed:

_____ [Sponsor name] **TEXAS SOUTHERN UNIVERSITY**

By: _____

By: _____

Typed Name: _____

Typed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit I
Research Description

Exhibit II
Expense Allotment

Expenses for the Research are distributed as follows:

Salaries (including fringe benefits)	\$
Supplies	
Indirect costs (institutional overhead)	_____
Total	\$ _____

The above expenses are provided for information only. University reserves a right to modify this expense distribution as circumstances require. But total costs must not exceed _____ and total indirect overhead expenses must not exceed _____.

EXHIBIT III
Required Clauses

The following provisions are incorporated into the parties' existing agreement ("*Agreement*"):

- I. **Alternative Dispute Resolution.** "*Chapter 2260*" means Chapter 2260 of the Texas Government Code.
 - A. **Sponsor Breach Claim.** If Sponsor asserts a contract breach claim under the Agreement, then each party must attempt to resolve the claim using a dispute resolution process set forth in Chapter 2260, as further described below.
 1. ***If Informal Resolution Fails.*** If the parties in the ordinary course of business fail to resolve any Sponsor claim for breach of this Agreement, then the parties must submit the claim to negotiation under Chapter 2260, at subchapter B.
 - a. **Notice to University.** To initiate negotiation, Sponsor must submit a written notice, specifically stating that Sponsor invokes the provisions of Chapter 2260 at subchapter B, directed to the following address:

**General Counsel
Office of General Counsel
Texas Southern University
3100 Cleburne
Houston, Texas 77004.**
 - b. **Other Recipient.** Sponsor also must give a copy of the notice to any person who is entitled to notice under the Agreement otherwise.
 - c. **Compliance.** Sponsor must comply with subchapter B before filing any contested case proceeding under Chapter 2260 at subchapter C.
 2. ***If Subchapter B Fails.*** If the parties fail to resolve each dispute under subparagraph (1) above, then Sponsor's exclusive process to remedy any alleged Agreement breach is a contested case process under Chapter 2260 at subchapter C.
 3. ***Legislative Consent.*** Sponsor must comply with the contested case process under subchapter C before seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. Neither signing this Agreement by University nor any other conduct of any representative of University relating to the Agreement is considered to waive sovereign immunity to suit.
 - B. **Governing Rules.** Chapter 2260's published rules under 22 TAC 501 *et seq.* – as currently effective or at any time later enacted or amended – govern any submission, processing or resolution of Sponsor's claim.
 - C. **Performance Continues.** Neither an event's occurrence nor a claim's pendency constitutes a ground to suspend Sponsor's performance, in whole or in part.

- II. **Assignment.** Because this Agreement is based upon the parties' skill and expertise, a party must obtain the other party's written consent – unless expressly set forth in this Agreement otherwise – before assigning or delegating the Agreement or its obligations.
- III. **Authority.** Each person signing below represents that he or she has the authority to sign this Agreement on behalf of either University or Sponsor.
- IV. **Binding On Successors.** Each covenant, obligation, term, provision or condition in the Agreement applies to - and binds to the benefit of - each party's heirs, administrators, executors, legal representatives, trustees and successors.
- V. **Extent Of Agreement.** Sponsor has no authority at any time to act as an agent for University for any purpose unless expressly set forth in this Agreement.
- VI. **Force Majeure.** "*Force Majeure*" means any fire, earthquake, flood, act of God, strike or other labor disturbance, riot or civil commotion, litigation, terrorism, war or other act of any foreign nation, power of government or government agency or authority, or any other cause like or unlike any cause above-mentioned that is beyond a party's control or authority. If any Force Majeure event or similar casualty renders University unable to conduct any activity or event, then University:
 - A. has a right to terminate this Agreement by written notice after that casualty without liability to Sponsor for any performance; and
 - B. is not responsible for any damages sustained by any premises user, although that user is entitled to either a *pro rata* return of any sum that the user has paid, or any other arrangement mutually accepted by that user and University.
- VII. **Governing Law.** The laws of the State of Texas govern this Agreement's validity and any interpretation of its provisions. Venue for any legal proceeding incident to this Agreement lies in Harris County, Texas.
- VIII. **Legal Construction/Severability.** If any court or other competent tribunal for any reason holds any Agreement provision to be invalid, illegal or unenforceable in any respect, then:
 - A. that holding does not affect any other provision;
 - B. that tribunal must construe this Agreement as if it had never contained the invalid, illegal or unenforceable provision; and
 - C. each Agreement provision is severable.
- IX. **Non-Appropriations.** As a Texas governmental entity, University is excused for all liability for performance if it fails to receive funding from the Texas Legislature for any period during this Agreement's term. University must notify Sponsor in writing within thirty days after learning that the funds will not be available. This Agreement terminates automatically when Sponsor receives that written notice from University.
- X. **Non-Waiver.** No covenant or condition of this Agreement is waived except by a waiving party's written consent. One party's forbearance or indulgence in any regard does not constitute a waiver of a covenant or condition that the other party must perform to which the same may apply. Until the other party completes performance of that covenant or condition, an aggrieved party - despite any forbearance or indulgence - is entitled to invoke any remedy available to it, whether under this Agreement, by law or in equity.

- XI. **Officials Not To Benefit.** No trustee, officer, director, regent, employee, administrator or representative of University has any right to be admitted to any share or part of this Agreement or to any benefit that arises from the Agreement.
- XII. **Exhibit Controlling.** This Exhibit controls upon any conflict between the terms and conditions of the Agreement and this Exhibit.