Memorandum of Understanding  
between  
The University of Southern Mississippi  
And  
[COMPANY]

This Agreement, effective as of the date of execution by both parties, is made by and between University of Southern Mississippi, a governmental entity of the State of Mississippi, (“USM”), for an on behalf of its [Department/Center/Institute] with offices located in Hattiesburg, MS and [COMPANY], with offices located at [____________________] (the “COMPANY”).

WHEREAS, the above identified parties, because of their diverse capabilities, have determined that they would benefit from an arrangement between their respective organizations to develop and implement the best management and technical approach to a project entitled, [PROJECT NAME] (hereinafter referred to as the “Project”), conducted by [USM PI] of USM and [COMPANY PI] of COMPANY (the “Principal Investigators”).

WHEREAS, the parties have agreed in principle to the responsibilities for work to be performed by the parties on the Project as set forth in the attached Exhibit A hereof; and

WHEREAS, each party desires to enjoy the benefits of the other party's capabilities in areas of work which are not independently and currently available within the respective organizations;

NOW, THEREFORE, the parties hereto agree as follows:

1. Scope of Work, Cost and Term.
   a. Work Plan. The parties will collaborate in accordance with the scope of work set forth in Exhibit A; said work to be performed by the parties in accordance with the schedule, cost and term specified in Exhibit A.
   b. Funding. Each party shall bear its own costs with respect to work performed by its employees
   c. Term. The period of performance of this Agreement shall begin upon approval of the Work Plan prepared in accordance with Paragraph 1.a. and continue for the term specified in Exhibit A unless sooner terminated in accordance with this Agreement.

2. Intellectual Property

As used herein, “Intellectual Property” means individually and collectively all inventions, improvements, or discoveries and all works of authorship, excluding articles, dissertations, theses, and books, which are generated in the performance of the Project during the Term. Invention (the “Invention”) means any invention conceived or reduced to practice as part of and during the Project.

   a. Title. Each party shall retain title to Inventions and other Intellectual Property developed by their respective employees. In the event that employees of more than one party make an Invention, the Invention shall be jointly owned by the parties employing the inventors. Inventorship shall be determined in accordance with U.S. Patent, Trademark, or Copyright laws.
   b. Disclosure. The parties agree to disclose to each other, in writing, each and every Invention, which may be patentable or otherwise protectable under the United States patent laws in Title 35, United States Code. The parties acknowledge that they will
disclose Invention(s) to each other within three (3) months after their respective inventor(s) first disclose the Invention in writing to person(s) responsible for patent matters of the disclosing Party. All written disclosures of such Inventions shall contain: (i) sufficient detail of the Invention to enable a person of ordinary skill in the art to understand the Invention, (ii) identification of any statutory bars, and (iii) shall be marked confidential.

c. **Patent Prosecution - Inventions.** Each party, at its cost and expense, may apply for, acquire and maintain in the United States and in other countries as necessary forms of patents or protection registrations, or other intellectual property rights covering Inventions developed solely by their respective employees.

d. **Patent Prosecution – Joint Inventions.** The parties shall consult regarding preparation and filing of United States and foreign patent applications for jointly owned Inventions. The party designated to file an application will provide the other, on a confidential basis, a copy of any such application filed and any documents received or filed during prosecution thereof with the opportunity to comment thereon. The parties will cooperate in obtaining execution of any necessary documents by their employees.

e. **Collaborative Use.** Each party hereto may use Intellectual Property of the other non-exclusively and without compensation but only as required in connection with research or development activities for this Project including inclusion in Project reports and proposals for continued funding of this Project through additional phases.

f. **Government Rights.** Intellectual Property developed by USM is subject to all applicable laws and regulations, including Public Laws 96-517 and 98-620 and implementing regulations including 35 USC §§200-211. Accordingly, USM shall include a statement in any patent application fully identifying such government right; and USM acknowledges that the United States Government has the right to a worldwide, non-exclusive, royalty-free license to practice any patent arising from USM owned Intellectual Property, notwithstanding anything in this Agreement to the contrary. In addition, Inventions that are subject to a non-exclusive royalty-free license to the United States government shall be manufactured substantially in the United States.

g. **License Rights – USM Inventions.** In recognition of COMPANY’s contribution to this Project, COMPANY shall be entitled to negotiate a royalty-bearing exclusive or non-exclusive license to USM owned Inventions. COMPANY’s right to such license is subject to the negotiation of reasonable terms and conditions with COMPANY within one (1) year following the expiration of this Agreement, both Parties agreeing to undertake such negotiations in good faith.

h. **License Rights – Joint Inventions.** Both COMPANY and USM shall be entitled to license, assign, sub-license and exploit jointly owned Inventions with no accounting to each other or any third party provided, however that COMPANY shall be entitled to negotiate a royalty-bearing exclusive or non-exclusive license to USM’s interest in Joint Inventions. COMPANY’s right to such license is subject to the negotiation of reasonable terms and conditions between USM and COMPANY within one (1) year following the expiration of this Agreement, both Parties agreeing to undertake such negotiations in good faith.

3. **Background Intellectual Property.**

a. “Background Intellectual Property” means property and the legal right therein of either or both parties developed before or independent of this Agreement including inventions, patent applications, patents, copyrights, trademarks, mask works, trade secrets and any information embodying proprietary data such as technical data and computer software.
b. 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 by express mutual agreement.

4. **Control of Work.** USM's Principal Investigator(s) shall be responsible for the conduct of the work by USM. Control of work conducted by USM will rest entirely with USM. However, it is agreed that USM, through its Principal Investigator, will maintain ongoing communication with the Principal Investigator for the COMPANY. The frequency and nature of these communications will be mutually defined by USM's Principal Investigator and the COMPANY's Principal Investigator.

Neither Parties' Principal Investigator is authorized to change any element of this contract. All changes shall be consummated by formal written amendment signed by the authorized signatory of both parties to this contract.

5. **Publications.** The Principal Investigator(s) shall have the right to publish or otherwise publicly disclose information gained in the course of the work conducted by USM on the Project, provided, however, that no COMPANY Confidential Information, as hereinafter defined, shall be published and that COMPANY Intellectual Property shall not be compromised.

6. **Confidentiality.**

Anything in this Agreement to the contrary notwithstanding, any and all knowledge, know-how, practices, processes, or other information (hereinafter referred to as "Confidential Information") disclosed in writing and clearly marked as Confidential Information shall be received and maintained by the receiving party in confidence to a standard as that party protects its own information of like importance and shall not be disclosed to any third party to the extent allowed by law. Furthermore, said Confidential Information shall not be used for any purpose other than those purposes specified in this Agreement. The party may disclose Confidential Information requiring access thereto for the purposes of this Agreement provided, however, that prior to making any such disclosures each such employee shall be apprised of the duty and obligation to maintain Confidential Information in confidence and not to use such information for any purpose other than in accordance with the terms and conditions of this Agreement.

Nothing contained herein will in any way restrict or impair either party's right to use, disclose, or otherwise deal with any Confidential Information which:

a. was in the receiving party's possession or was known to it prior to its receipt from the disclosing party;

b. is independently developed by the receiving party without the utilization of Confidential Information of the disclosing party;

c. is or becomes public knowledge without fault of the receiving party.

d. is or becomes available on an unrestricted basis to the receiving party from a source other than the disclosing party;

e. becomes available on an unrestricted basis to a third party from the disclosing party or from someone acting under its control; or

f. is publicly disclosed (i.e. not under adequate protective order) by the receiving party under an order of a court or government agency, provided that the receiving party provides prior written notification to the disclosing party of such obligation and the opportunity to oppose such order;
g. is ordered to be released by a court of competent jurisdiction or otherwise required to be released by law.

The above obligations for Confidential Information shall be in effect for a period of three (3) years from the termination of the agreement.

7. Notices: Any notice or other communication pursuant to this Agreement shall be sufficiently made or given on the date of mailing if sent to such party by certified, first class mail, postage prepaid, addressed to it at its address below or as it shall designate by written notice given to the other party:

For disclosure of Inventions pursuant to paragraph 2

USM: UNIVERSITY OF SOUTHERN MISSISSIPPI
Office of Technology Development
Chase C. Kasper
118 College Drive #5012
Hattiesburg, MS 39406

COMPANY: ________________________________________________
________________________________________________________
________________________________________________________

For all other Matters

USM: UNIVERSITY OF SOUTHERN MISSISSIPPI
Office of the Vice President for Research
Gordon C. Cannon
118 College Drive #5116
Hattiesburg, MS 39406

COMPANY: ________________________________________________
________________________________________________________
________________________________________________________

8. Termination.

This agreement shall terminate upon failure of the parties to reach agreement in accordance with paragraph 1. Either Party upon thirty (30) days written notice to the other party may terminate the agreement. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. This agreement will otherwise terminate upon the completion of the Project or as may be specified in Exhibit A.

9. General:

a. Choice of Law. This Agreement is governed by and construed in accordance with the laws of the State of Mississippi, United States of America, excluding any choice of law rules which may direct the application of the laws of another jurisdiction. The parties agree that venue for any claim or other matter arising under this Agreement is in the Twelfth Circuit Court, Forrest County, State of Mississippi, or the United States District Court for the Southern District of Mississippi.

b. Independent Contractor. The relationship of parties shall be that of an independent
contractor. None of the provisions of this agreement are intended to create, nor shall they be construed to create an agency, partnership, or joint venture of employer/employee relationship between the parties.

c. **Waiver, Amendment.** No waiver, amendment or modification of this Agreement shall be effective unless made in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced.

d. **Headings.** The captions or headings in this Agreement do not form a part of this Agreement, but rather are included for convenience.

e. **Export Controls.** It is understood that USM is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities, and that its obligations hereunder are contingent on compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances by Licensee that Licensee shall not transfer data or commodities to certain foreign countries without prior approval of such agency. USM neither represents that a license shall not be required nor that, if required, it shall be issued.

f. **Public Records.** Notwithstanding any provision to the contrary contained herein, it is recognized that USM is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act, Mississippi Code Annotated §25-61-1, et seq., as amended. If a public records request is made for any Information provided to USM pursuant to this agreement, USM shall promptly notify the disclosing Party of such request. The disclosing Party shall promptly institute appropriate legal proceedings to protect its Information. No Party to this agreement shall be liable to the other Party for disclosures of Information required by Court order or required by law.

g. **Disputes.** Any dispute concerning a question of fact arising under this contract shall be resolved in the following manner: In the event of disagreement, the USM and the COMPANY shall present their position in detail to the other party in writing, and both the USM and the COMPANY hereby agree to negotiate in good faith to effect an equitable voluntary settlement.

h. **Assignment.** This Agreement may not be assigned, in whole or in part, by either party hereto without the prior written consent of the other party.

i. **Entire Agreement.** All the terms and conditions of this Agreement are embodied herein and no other terms or conditions shall be considered a part hereof unless expressly agreed upon in writing. This agreement constitutes the entire agreement between the parties concerning the subject matter hereof. All prior written agreements respecting the subject matter hereof are void.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date herein above indicated.

**UNIVERSITY OF SOUTHERN MISSISSIPPI**

Gordon C. Cannon
Vice President for Research

**COMPANY**

[SIGNATORY NAME]
[TITLE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date herein above indicated.
EXHIBIT A to the Memorandum of Understanding between
UNIVERSITY OF SOUTHERN MISSISSIPPI
And
[COMPANY]

COMPANY Roles and Responsibilities

[ITEMIZED LIST OF ROLES AND RESPONSIBILITIES]

USM Roles and Responsibilities

[ITEMIZED LIST OF ROLES AND RESPONSIBILITIES]