**RESEARCH AGREEEMENT**

**Between**

**The University of Southern Mississippi**

**And**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

v.10.16.14

This Agreement is between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter referred to as “SPONSOR”, a

corporation organized and existing under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ with its corporate address being \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and the University of Southern Mississippi, a governmental entity of the State of Mississippi, hereinafter referred to as “USM”, for and on behalf of its [Department/Center/Institute] with its address at 118 College Drive #5116,

Hattiesburg, Mississippi 39406. SPONSOR and USM are collectively referred to as the “parties.”

WHEREAS, SPONSOR desires to engage with USM in certain, specific research activities.

WHEREAS, USM is interested in and has expertise in the research area.

WHEREAS, both parties desire to collaborate on the defined line of research.

**I. TERMS**

1. **Term of Contract.** This agreement shall not be effective unless and until both parties have executed this agreement. The effective date of this agreement shall be the date of last signature. The period of performance is from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The project period may be changed by mutual consent of the parties by written amendment to this agreement.

1. **Scope of Work**. USM will perform the work as described Addendum A, (insert PI NAME), a USM faculty member, will supervise all work to be performed under the terms of this Agreement. In the event the USM faculty member is unable or unwilling to continue with this project, the parties will attempt to find a mutually acceptable substitute. In the event a mutually acceptable substitute is not found, the Agreement may be terminated in accordance with Article W.
2. **Payment**. Both parties agree this is a fixed price agreement. SPONSOR shall pay to USM $(amount) according to the following schedule:

Upon invoice following execution of this Agreement: ($amount)

Remaining payment schedule: ($amount and payment dates)

OR

Both parties agree this is a cost reimburseable agreement, with costs not to exceed $(amount). USM shall invoice SPONSOR monthly for costs incurred in support of the project.

Invoices shall be sent to:

(Insert SPONSOR’s billing address)

Payment shall be sent to:

(USM payment address)

1. **Publicity**. SPONSOR shall not use the names, logos, trademarks, or any other mark or image considered by USM to be identified with or protected by USM, or those of any of the institution's employees or former employees, or any adaptation thereof, in any advertising, promotional or sales literature without prior written consent being obtained from the USM University Counsel and the Vice President for Research, in each case, except that SPONSOR may state that SPONSOR has engaged USM to perform research for the SPONSOR under this Agreement.

**E.** Title to any equipment purchased by USM in the performance of this research project will remain with USM and will be free of all claims, liens, or encumbrances of the SPONSOR.

**II. CONDITIONS**

**A. Availability of Funds.** It is expressly understood and agreed that the obligation of USM to proceed under this agreement is conditioned upon the availability and receipt of funds by USM to specifically perform the obligations set forth for USM under this agreement.

**B. No USM Funding.** It is expressly understood and agreed that the obligation of USM to proceed under this agreement is conditioned upon the receipt by USM of funds or other mutually agreed upon consideration from SPONSOR to specifically perform the obligations set forth for USM under this agreement. No USM funds are obligated for payment or disbursement or envisioned as being encumbered under this agreement to any party at any time.

**C. Representation Regarding Contingent Fees and Gratuities.** SPONSOR represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. Further, SPONSOR represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in state law.

**D. Authority to Contract.** SPONSOR warrants (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and is in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind, and (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

**E. Disputes.** The parties agree that any and all disputes between the parties to this agreement may, if mutually agreeable to both parties, be subjected to voluntary mediation and that such disputes are subject to final resolution if said voluntary mediation efforts result in a written resolution agreement executed by both parties.

**F. Failure to Enforce.** The failure by either party at any time to enforce the provisions of this agreement shall not be construed as a waiver of any such provision. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of either party to enforce the provision at any time in accordance with its terms.

**G. Indemnification.** SPONSOR and its officers shall indemnify, defend, save and hold harmless, protect, and exonerate the State of Mississippi, the Board of Trustees of State Institutions of Higher Learning, USM, and each of their officers, agents, employees, and representatives, both in their official and in their individual capacities from and against all claims, demands, liabilities, suits, actions, damages, losses and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, attorneys’ fees, arising out of or caused by SPONSOR and its’ partners, principals, officers, agents, employees and representatives

related to actions or inactions of SPONSOR, its partners, principals, officers, agents, employees and representatives. In USM’s sole discretion, SPONSOR may be allowed to control the defense of any such claim, suit, etc., but in such an event, SPONSOR shall use legal counsel acceptable to USM. SPONSOR shall be solely responsible for all costs and/or expenses associated with such defense and USM shall be entitled to participate in said defense. SPONSOR shall not settle any claim, suits, etc., without USM’s written concurrence, which concurrence USM shall not unreasonably withhold.

**H. No Warranty.** USM makes no representations or warranties, either express or implied, as to any matter including but not limited to the condition or quality of the Deliverables or their merchantability or fitness for a particular purpose. USM will have no liability or responsibility for or regarding any claims, damages or losses arising out of the use by the Sponsor or by any party acting on behalf of or under authorization from the Sponsor of the deliverables, or out of any use, sale or other disposition by the Sponsor or by any party acting on behalf of or under authorization from the Sponsor of any product or technique which is the subject of the research or is created or modified based on the deliverables.

**I. USM Responsibility.** USM shall be responsible for liability resulting from the actions/inactions of its officers, agents, and employees acting within the course and scope of their official duties with USM to the degree and within the parameters permitted under §§11-46-1, et seq., Mississippi Code Annotated of 1972.

**J. Attorneys’ Fees and Expenses.** SPONSOR agrees that in the event SPONSOR defaults in any obligations under this agreement that SPONSOR shall pay to USM all costs and expenses, including, but not limited to, attorneys’ fees incurred by USM in enforcing this agreement.

**K. Intellectual Property.**

a. *Definitions*. 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 research during the Period.

b. *Invention*. Invention, (the “Invention)” means any invention conceived or reduced to practice during the performance of the research agreement during the Contract Period. The parties agree to abide by the applicable United States regulations governing patents and inventions issued by the U.S. Department of Commerce at 37 CFR 401, wherein the rights of the Federal Government are established.

c. *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. Any question of Inventorship shall be determined in accordance with U.S. Patent law under Title 35 of the United States Code.

d. *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 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 sufficient detail of the Invention, identification of any statutory bars and shall be marked confidential.

e*. 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.

f. *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.

g. *License Rights – University Inventions.* In recognition of Sponsor’s contribution to this project, Sponsor shall be entitled to a first-right-to-negotiate a royalty-bearing exclusive license to USM owned Inventions. Sponsor’s right to such license is subject to the negotiation of reasonable terms and conditions with Sponsor within one (1) year following the expiration of the Period of Performance or Termination of this Agreement, whichever comes first

h. *License Rights – Joint Inventions*. Both Sponsor 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 Sponsor shall be entitled to negotiate a royalty-bearing exclusive license to USM’s interest in Joint Inventions. Sponsor’s right to such license is subject to the negotiation of reasonable terms and conditions with Sponsor within one (1) year following the expiration of the Period of Performance or Termination of this Agreement, whichever comes first

i. *Background Intellectual Property*. "Background Intellectual Property" means Intellectual 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. 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 research except as otherwise provided by mutual agreement.

j. *Software*. Where the deliverable, scope or purpose of this agreement is to develop computer software, anything in this agreement to the contrary notwithstanding, the deliverable shall be an executable format of the software and does not include source code. License rights for intellectual property relating to computer software are subject to negotiation.

k. *Other Scholarly Products*. Other than computer software (Subsection J), the Sponsor acknowledges that this contract in no way constitutes a work made for hire as described in the Copyright Act of 1976, 17 USC 101, and as such understands that all written materials, reports, and articles that may result from conduct under this project shall be copyrighted by the USM. Sponsor shall have an unlimited, royalty-free license to use, reproduce, translate or publish such material when submitted to Sponsor as a deliverable under this Agreement, so long as such uses are for its own internal non-commercial, educational and research purposes. USM shall in no way limit the dissemination and/or utilization of such material and data as shall arise from the work performed under the contract.

l. *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. When required by such laws, 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.

**L. USM - Independent Contractor.** USM shall at all times be regarded as and shall be legally considered an independent contractor and neither USM nor its employees shall, under any circumstances, be considered servants, agents or employees of SPONSOR, and SPONSOR shall at no time be legally responsible for any negligence or other wrongdoing by USM, its principals, officers, agents, employees or representatives. SPONSOR shall not be responsible for

any federal or state unemployment tax, federal or state income taxes, Social Security taxes, or any other amounts for the benefit of USM or any of its principals, officers, agents, employees or representatives.

SPONSOR shall not provide to USM, its principals, officers, agents, employees or representatives any employee insurance coverage or other benefits, including, but not limited to, Workers’ Compensation, which are normally provided by SPONSOR to its employees. USM’s personnel shall not be deemed in any way, directly, indirectly, expressly or by implication, to be employees of SPONSOR. Nothing contained in this agreement or otherwise shall be deemed or construed as creating the relationship of principal and agent, partners, joint venturers, or any similar relationship between SPONSOR and USM. At no time shall USM be authorized to do so and at no time shall USM act as an agent for or of SPONSOR.

**M. Equal Employment Opportunity.** SPONSOR represents and understands that USM is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination. SPONSOR agrees that during the term of this agreement that SPONSOR will strictly adhere to this policy in its employment practices and the provision of its services.

**N. Assignment Prohibition.** SPONSOR agrees that it shall not attempt to nor shall it assign this agreement to any party and that any attempt to do so shall be void.

**O. No Third Parties.** There are no other parties to this agreement. No obligations to third parties are provided herein, whether by the express or implied terms and conditions. Neither party shall be liable to any third party based upon this agreement, its terms and conditions, or a party’s actions taken hereunder.

**P. No Other Terms, Conditions, or Understandings.** The parties hereto acknowledge that this Agreement sets forth the entire Agreement and understanding of the parties hereto as to the subject matter hereof and constitutes the full and complete Agreement in this matter by and between the parties hereto, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto. Should SPONSOR issue a purchase order to USM for work performed under this agreement, both parties agree that any purchase order terms preprinted or referenced on a website DO NOT APPLY to the work being performed under this agreement.

**Q. Modifications to Agreement.** This agreement may be modified only by a written amendment authorized by and executed by the parties. No oral statements of any person shall modify or otherwise affect the terms, conditions or specifications stated in this agreement.

**R. Notices.** All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by certified U.S. Mail, postage prepaid, return receipt requested, to the persons at the addresses shown below. The parties agree to notify the other in writing of any change of address.

For SPONSOR: For USM jointly at:

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AND

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**S. Ownership of Documents and Work Papers.** USM shall own all documents, files, reports, work papers and working documents, electronic or otherwise, created by USM in connection with this agreement. Rights to initial publication, formal release or other disclosure of data generated from this research will be retained by USM. Results of this investigation are not to be published by the SPONSOR or others before publication by USM except by written permission from USM.

**T.** **Publications.** USM has the right to use data or results from this research for its own publication, presentation, instructional or noncommercial research objectives provided that the publication, presentation, or use does not disclose any confidential information furnished by SPONSOR under Paragraph U and defined therein. USM agrees that any proposed publication or presentation relating to the research project conducted under this agreement will be submitted to SPONSOR for review at least thirty (30) days prior to submission for publication or presentation to remove Confidential Information. As such, the scope of Confidential Information in this publication context does not include the results arising out of the performance of this Agreement. In the event that the proposed publication or presentation contains patentable subject matter which needs protection, USM will, upon written request from SPONSOR within the initial thirty (30) day review period, delay the publication or presentation for a maximum of an additional ninety (90) days to allow SPONSOR or USM to file a patent application. If SPONSOR does not respond to USM in writing within the thirty (30) day review period, USM is free to proceed with the publication or presentation.

**U. Confidential Information**. "Confidential Information" means information consistent with the purpose stated in Addendum A which is disclosed in any tangible form and is clearly labeled or marked as confidential, proprietary or its equivalent, or information which is disclosed orally or visually, is designated confidential, proprietary or its equivalent at the time of its disclosure and is reduced to writing and clearly marked or labeled as confidential, proprietary or its equivalent within thirty days of disclosure. To the extent allowed by law, the party receiving Confidential Information shall restrict the use of the Confidential Information to the purpose set forth in Addendum A and shall safeguard against disclosure of the Confidential Information to third parties using the same degree of care to prevent disclosure as it uses to protect its own information of like importance, but at least reasonable care. A party may make only the minimum number of copies of any Confidential Information required to carry out the purpose of this Agreement. All proprietary and copyright notices in the original must be affixed to copies or partial copies.

Neither party shall be obligated to maintain any information in confidence or refrain from use if:

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

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

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

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

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

f. The information 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. Ordered to release by a court of competent jurisdiction or otherwise required to release by law.

**V. Severability.** If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement, and to that end the provisions hereof are severable. In such an event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

**W. Termination for Convenience.** USM may, when the interests of USM so require, terminate this agreement in whole or in part for the convenience of USM. Written notice of the same is required to be provided by USM and shall allow no less than 60 days’ notice prior to the effective date of the termination. SPONSOR agrees to pay USM for all properly incurred expenses and noncancellable commitments not to exceed the amount of this Agreement.

**X. Termination for Cause.** Either party may terminate this agreement upon issuance of written notice if the other party fails to perform the obligations to the other party under this agreement. The party issuing such a termination notice may allow 30 days within which the other party may attempt to cure the failure to fulfill its obligations, but such 30 day cure time is not required. SPONSOR agrees to pay USM for all properly incurred expenses and noncancellable commitments not to exceed the amount of this Agreement.

**Y. Applicable Law.** This contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its choice of laws and conflict of laws provisions, and any litigation with respect thereto shall be brought in the courts of Mississippi. SPONSOR shall comply with applicable federal, state, and local laws and regulations.

**Z. 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.

**For SPONSOR by:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of SPONSOR (Printed or Typed)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Authorized Official of SPONSOR (printed or typed)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title (printed or typed)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Date

**For UNIVERSITY OF SOUTHERN MISSISSIPPI by:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Vice President for Research Date

(optional)

Read and Understood:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(PI name) Date

**ADDENDUM A**

**To the**

**RESEARCH AGREEEMENT**

**Between**

**The University of Southern Mississippi**

**And**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

[INSERT “Scope Of Work” referenced in Paragraph I.B.]