

*Please Note – Georgia State has provided this template agreement as a courtesy to our industry partners; no single template can account for the wide variety of research projects in which the university may engage. The terms and conditions of any research agreement will be impacted by the specific details of the project, the intent of the parties, and our negotiations. If the proposed research involves human subjects, additional terms and conditions will apply.*

## **GSURF RESEARCH AGREEMENT**

THIS RESEARCH AGREEMENT (“Agreement”) made this \_\_\_ day of \_\_\_\_\_ 20\_\_\_ (“Effective Date”), by and between the Georgia State University Research Foundation, Inc. (“GSURF”), with a principal place of business at 58 Edgewood Avenue NE, 3rd Floor, Atlanta, Georgia 30303, and \_\_\_\_\_ with a principal place of business at \_\_\_\_\_ (hereinafter “Sponsor”). GSURF and Sponsor are hereinafter sometimes referred to each as a “party” and collectively as the “parties”.

### **RECITAL**

WHEREAS, GSURF is a Georgia non-profit corporation and cooperative organization of Georgia State University (“GSU”) established to receive grants and research agreements from external funding sources and which owns and controls intellectual property on behalf of GSU (GSURF and GSU collectively hereinafter referred to as “Institution”);

WHEREAS, Sponsor desires to fund a research project to be performed at GSU under the supervision of \_\_\_\_\_ (“Principal Investigator”);

WHEREAS, GSURF has the authority to enter into contracts, the performance of which will be subcontracted to GSU; and

WHEREAS, the research project is of mutual interest and benefit to the Institution and Sponsor and will further the instructional, research and public service objectives of the Institution in a manner consistent with its status as a non-profit, tax-exempt, educational institution.

NOW THEREFORE, in consideration of the mutual covenants and promises herein, GSURF and Sponsor agree as follows:

1. **Research Project**
  - a. GSURF may subcontract the performance of the research project described in **Attachment A – Scope of Work** (the “Project”) to GSU.
  - b. Institution will use its own facilities and its reasonable efforts to conduct the Project.
  - c. The manner of performance of the Project shall be determined solely by the Principal Investigator. The Institution does not guarantee specific results.

- d. In the event that the Principal Investigator becomes unable or unwilling to continue the Project, and a mutually acceptable substitute is not available, Sponsor may terminate this Agreement upon sixty (60) days prior written notice to GSURF.
- e. Sponsor understands that Institution as a research university may be involved in similar research on behalf of itself and others. Institution shall be free to continue such research provided that it is conducted separately from the Project, and Sponsor shall not gain any rights via this Agreement to other research.
- f. GSURF does not guarantee that any intellectual property will result from the Project or that any resulting intellectual property will be free of dominance by others' rights.

2. Compensation

- a. In consideration of the services performed pursuant to this Agreement, Sponsor shall pay GSURF an amount not to exceed \$*[insert agreed upon total project budget amount]*, as set forth in **Attachment B – Budget**, and which shall be paid as follows: *[insert agreed upon payment terms/schedule]*. Payments should be sent to the following address.

Georgia State University Research Foundation, Inc.  
P.O. Box 3999  
Atlanta, Georgia 30302-3999

- b. GSURF will invoice Sponsor according to the terms agreed to in Section 2.a. Sponsor shall pay invoices within thirty (30) days from the date of the invoice.
- c. GSURF shall be allowed to re-budget funds without prior written approval from Sponsor so long as such re-budgeting does not result in a modification to the Project and/or a change in the payments under this Agreement.
- d. GSURF shall retain title to all equipment purchased and/or fabricated by it with funds provided by Sponsor under this Agreement.
- e. The agreement is *[choose fixed price or cost reimbursable as applicable]*.
- f. If at any time GSURF determines that it will require additional funds for the completion of the Project, it shall notify Sponsor and provide an estimate of the additional amount necessary to complete the Project. Sponsor shall not be liable for any costs in excess of the amount set forth in Project Budget unless set forth in a written amendment to this Agreement signed by the authorized representatives of the Parties.
- g. Tax Payments. Sponsor acknowledges that GSURF is a non-profit entity and not subject to tax. All payments made to GSURF under this Agreement shall be made free and clear of any tax, withholding or other governmental charge or levy (other than taxes imposed on the net income of GSURF), all such non-excluded amounts being "Taxes." Should Sponsor be obligated by law to withhold any Taxes on such payments, the payment due hereunder shall be increased such that after the withholding

of the appropriate amount GSURF receives the amount that would have been paid but for the Taxes withheld. Should GSURF be obligated to pay such Taxes, and such Taxes were not satisfied by way of withholding, Sponsor shall promptly reimburse GSURF for such payment, in an amount such that after the payment of the Taxes, GSURF has received the same amount that it would have received had such Taxes not been payable.

3. Publicity. Sponsor shall not use the name of GSURF or Georgia State University (“GSU”), the Board of Regents of the University System of Georgia, or any person performing the Project, in any publicity, advertising, or news release without the prior written approval of an authorized representative of GSURF. GSURF shall not use the name of Sponsor or any employee of Sponsor in any publicity, advertising, or news release, without the prior written approval of Sponsor. As an exception to the foregoing, GSURF shall have the right to i) acknowledge in scientific publications and presentations the support provided by Sponsor for the research performed under this Agreement, and ii) reference the Sponsor and existence of this Agreement, but not the details of the Agreement, if required to do so as part of a reporting obligation, and (iii) otherwise publish and disclose information about any Project subject to the limitations in Sections 5 and 6 herein.
4. Reports and Conferences. During the time period during which the Project is being performed, GSURF agrees to make representatives of the persons performing the Project available to meet with representatives of Sponsor at times mutually agreed upon to discuss the Project. GSURF agrees to have a final written report of the Project submitted to Sponsor no later than forty-five (45) days after the earlier of the termination of this Agreement or the completion of the Project.
5. Publication and Academic Rights.
  - a. Sponsor recognizes that a primary objective of research conducted by Institution is the generation and dissemination of knowledge to benefit the public. The results of the Project may be publishable and the parties agree that the Principal Investigator and other persons performing the Project shall be permitted to present at symposia and professional meetings and to publish in journals, theses, or dissertations, or otherwise of their own choosing. In order that Sponsor may (i) assess the patentability of any invention described in the material, and (ii) review the material for Confidential Information provided by the Sponsor, GSURF will submit any proposed publication materials to Sponsor for review and comment at least thirty (30) days prior to planned submission of such proposed publication. Sponsor will notify GSURF within thirty (30) days of receipt of such materials whether they (i) describe any Invention(s) subject to the parties’ rights under Sections 7 and 8 or (ii) contain Sponsor Confidential Information. Upon notice, GSURF shall remove Sponsor Confidential Information from the proposed publication and may agree to delay submission of the publication for up to thirty (30) days to allow for the parties to seek patent protection for such invention or discovery. In all cases, GSURF shall have the final authority to determine the scope and content of any publications.

- b. The Principal Investigator and other persons performing the Project may discuss the Project with other individuals for scientific or research purposes but shall not reveal Sponsor's Confidential Information (as defined in Section 6).
  - c. Should the parties agree that Sponsor will lead publication efforts, Sponsor agrees to (i) determine authorship of such publication in accordance with generally accepted principles for scholarly publications, (ii) provide Institution an opportunity to review and comment in advance of publication similar to that given to Sponsor in 5.a. above, and (iii) refer to Institution as a research location in any publication.
6. Confidential Information. The parties may wish to disclose confidential information to each other in connection with work contemplated by this Agreement ("Confidential Information") which shall be in writing and marked "Confidential." If Confidential Information is disclosed orally, it must be identified as confidential at the time of disclosure, and shall thereafter be reduced to writing within thirty (30) days, and clearly marked as "Confidential." To the extent permitted by law, each party will use reasonable efforts to prevent the disclosure of the other party's Confidential Information to third parties for a period of three (3) years from receipt, provided that the recipient party's obligation shall not apply to information that:
- i. is already in the recipient party's possession at the time of disclosure;
  - ii. is or later becomes part of the public domain through no fault of the recipient party;
  - iii. is received from a third party having no obligation of confidentiality to the disclosing party;
  - iv. is independently developed by the recipient party; or
  - v. is required by law or regulation to be disclosed.

In the event that information is required to be disclosed pursuant to subsection (v), the party required to make disclosure shall notify the other to allow the party to assert whatever exclusions or exemptions may be available to it under such law or regulation.

7. Patents and Copyrights.

a. Definitions.

"Background Intellectual Property" means any Invention(s), intellectual property rights (including patent applications, patents, extensions, trademarks, copyrights and/or rights in non-public information), results, or data (i) owned by a party prior to the Effective Date, or (ii) developed, invented, created, generated, collected, or obtained by a party independent of the Project performed pursuant to this Agreement and without reliance upon or use of the other party's Confidential Information.

"Invention(s)" means any improvement, design, invention, or discovery that is or may be patentable or otherwise protectable under applicable US laws, including copyrightable works.

“Project Invention(s)” means any Invention(s) that are conceived, created, and reduced to practice resulting from the Project.

- b. Except as needed to conduct the Project during the Term, no rights or licenses to either party’s Background Intellectual Property are transferred or granted as part of this Agreement.
  - c. All right and title to Project Invention(s) made solely by employees of Sponsor shall belong to Sponsor and such Inventions shall not be subject to the terms and conditions of this Agreement. All right and title to Project Invention(s) made solely by one or more employees of Institution or made using Institution facilities (“Institution Project Invention(s)”) shall belong to GSURF. All right and title to Project Invention(s) made jointly by one or more employees of the Institution and Sponsor (“Joint Project Invention(s)”) shall be owned jointly between GSURF and Sponsor.
  - d. Upon receipt by its Office of Technology Transfer & Commercialization, GSU will promptly and fully disclose in writing to Sponsor any Institution Project Invention(s) or Joint Project Invention(s). Sponsor shall promptly and fully disclose to Institution any Joint Project Invention(s) as it is made aware. Sponsor may at its discretion request GSURF file patent applications covering Institution Project Invention(s) or Joint Invention(s) and Sponsor shall reimburse GSURF for all costs associated with the preparation, prosecution, and maintenance of such patent applications. GSURF shall keep Sponsor informed as the prosecution and maintenance of the patent applications and shall provide or cause counsel to provide Sponsor with copies of related patent correspondence. Inventorship shall be determined in accordance with US patent law and ownership of such patent applications shall follow inventorship. If Sponsor, (i) elects not to request GSURF to file for patent protection, or (ii) at any time fails to make timely reimbursement for costs associated with maintaining and prosecuting a patent application for which it requested GSURF to file, then GSURF shall have a right, but no obligation to pursue protection or continue prosecution and maintenance for any Institution Project Invention(s) or Joint Project Invention(s) at its own discretion and with no obligations to Sponsor.
  - e. GSU investigators, including the Principal Investigator, own copyright in their scholarly works. Scholarly works resulting from the Project are not subject to the terms of this Section.
8. Grant of Rights. Provided Sponsor has paid GSURF the full costs associated with the Project and subject to the preexisting rights of any third party, including without limitation the US government, GSURF grants to Sponsor, (i) a non-exclusive license to use GSURF’s rights in any Project Invention(s) for internal research and development purposes, and (ii) an option to negotiate, at its discretion a non-exclusive or exclusive license for commercial purposes in the Sponsor’s field of business. Such option shall extend from the date Sponsor is notified of a Project Invention by GSURF and extend for six (6) months (the “Option Period”). Sponsor may execute its option at any time during the Option Period by providing

written notice to GSURF and the parties will then negotiate in good faith a non-exclusive or exclusive license agreement (as applicable) for up to six (6) months (the "Negotiation Period"). If the parties are unable to reach a definitive agreement by the completion of the Negotiation Period, then subject to the non-exclusive license granted in (i) above, GSURF shall be free to license its rights in the Project Invention(s) with no further obligations to Sponsor. In all cases, GSURF reserves a right on behalf of Institution and their research collaborators to use Project Invention(s) for research, academic, and scholarly purposes.

9. Liability. Sponsor agrees to indemnify and hold harmless GSURF, GSU, the Board of Regents of the University System of Georgia, the Principal Investigator and others involved in the Project from any liability, loss or damage (including, but not limited to, legal expenses and attorneys' fees) that may be suffered as a result of claims, demands, costs or judgments against them arising out of the activities to be carried out pursuant to the obligations of this Agreement, including but not limited to (i) the use by Sponsor of the results obtained from the activities performed by Institution, and (ii) any right or license granted to Sponsor.
10. Independent Contractor. For the purposes of this Agreement and all services to be provided hereunder, the parties shall be, and shall be deemed to be, independent contractors and not agents or employees of the other party. Neither party shall have authority to make any statements, representations, or commitments of any kind or to take any action which shall be binding on the other party, except as may be expressly provided herein or authorized in writing.
11. Term and Termination.
  - a. The term of this Agreement shall commence on \_\_\_\_\_, 20\_\_ and terminate on \_\_\_\_\_. 20\_\_. This Agreement may be renewed under mutually agreeable terms and conditions which are agreed to in writing by both parties.
  - b. Either party may terminate this Agreement for any reason upon ninety (90) days prior written notice to the other.
  - c. In the event that either party shall be in default of its material obligations under this Agreement and shall fail to remedy such default within sixty (60) days after receipt of written notice thereof, this Agreement shall terminate upon expiration of the sixty (60) day period.
  - d. Termination or cancellation of this Agreement shall not affect the rights and obligations of the parties accrued prior to termination. Upon termination, Sponsor shall pay GSURF for all services properly rendered, monies properly expended, and non-cancelable commitments by the GSURF through the date of termination.
  - e. If the Project involves human subjects, GSURF may terminate this Agreement upon oral notice (promptly followed by written notice) to Sponsor if Institution

determines that termination of the Project is necessary for the safety of the Project subjects.

f. Any provisions of this Agreement which by their nature extend beyond termination shall survive such termination.

12. Notice. All notices to a party hereunder shall be sent by hand delivery, private shipping service (e.g. FedEx or UPS) with delivery confirmation, or certified or registered U.S. mail with delivery confirmation, to the address of such party as indicated below. All notices shall be deemed effective only upon receipt. Any notice given by registered or certified mail, return receipt requested, addressed in the case of GSURF to:

Georgia State University Research Foundation, Inc.  
Attn: University Research Services and Administration  
P. O. Box 3999  
Atlanta, Georgia 30302-3999

With copy to:

Georgia State University  
Office of Legal Affairs  
Attn: University Counsel  
P.O. Box 3987  
Atlanta, GA 30302-3987

Notices given by courier or other express service shall be addressed in the case of GSURF to:

Georgia State University Research Foundation, Inc.  
Attn: University Research Services & Administration  
58 Edgewood Avenue NE,  
3rd Floor  
Atlanta, Georgia 30303

With copy to:

Georgia State University  
Office of Legal Affairs  
Attn: University Counsel  
100 Auburn Ave. NE, Suite 315  
Atlanta, GA 30303

or in the case of Sponsor to:

Programmatic Contact:  
Name:  
Address:  
Phone:

Email:

Administrative Contact (Contractual):

Name:

Address:

Phone:

Email:

Financial Contact (Invoicing):

Name:

Address:

Phone:

Email:

or at such other addresses as may be given from time to time in accordance with the terms of this notice provision.

13. Results of Project. Institution will conduct the Project in accordance with generally-accepted professional standards of workmanship and effort at a quality comparable to research performed at major public and private research universities within the United States. Sponsor understands that all research is experimental in nature and that the outcome of the Project is inherently uncertain and unpredictable. Sponsor agrees and acknowledges that Institution has not made and does not make any representation, guarantee or warranty, express or implied, regarding the results of the Project. INSTITUTION MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND HEREBY DISCLAIMS ALL SUCH WARRANTIES AS TO ANY MATTER WHATSOEVER INCLUDING, WITHOUT LIMITATION, WARRANTIES WITH RESPECT TO: (i) THE PROJECT AND ANY RESULTS OF THE PROJECT; (ii) DATA, REPORTS, INFORMATION OR RESEARCH PROVIDED BY EITHER INSTITUTION OR SPONSOR; AND (iii) ANY INVENTION OR PRODUCT, OR OWNERSHIP THEREOF, WHETHER TANGIBLE OR INTANGIBLE, TESTED, CONCEIVED, DISCOVERED, OR DEVELOPED IN THE PROJECT OR IN CONNECTION WITH CONDUCTING THE PROJECT UNDER THIS AGREEMENT.
14. Export Controls.
- a. Each party acknowledges that any information or materials provided by the other under this Agreement may be subject to U.S. export control laws and regulations, including the International Traffic in Arms Regulations (“ITAR”, 22 CFR Chapter 1, Subchapter M, Parts 120-130), Export Administration Regulations (“EAR”, 15 CFR Chapter VII, Subchapter C, Parts 730-774), and Assistance to Foreign Atomic Energy Activities (10 CFR Part 810); each party agrees to comply with all such laws.
  - b. Sponsor acknowledges that GSU is an institution of higher education and has many students, faculty, staff, and visitors who are foreign persons, and that GSU intends to conduct the Project as fundamental research under the export control regulations, such

that the results generated by GSU qualify as “public domain” under ITAR Parts 120.10(a)(5) and 120.11 or “publicly available” under EAR Parts 734.3 (b)(3) and 734.8(a and b). Sponsor will not knowingly disclose, and will use commercially reasonable efforts to prevent disclosure to GSURF or GSU of any information (i) subject to ITAR controls, (ii) in the Commerce Control List of the EAR, or (iii) in Restricted Data or Sensitive Nuclear Technology as set forth in 10 CFR Part 810. If for the purposes of the Project Sponsor intends to disclose export-controlled information to GSURF or GSU, Sponsor will not disclose such information to GSURF or GSU unless and until a plan for transfer, use, dissemination and control of the information has been approved by GSU’s Export Control Officer.

- c. In the event Sponsor inadvertently discloses export-controlled information or breaches this Section, any deadlines contemplated by Attachment A will be adjusted based on the time it takes to address the disclosure.
- d. All notices from Sponsor provided pursuant to this Section shall be given by registered or certified mail, return receipt requested, addressed to:

Georgia State University  
Office of Legal Affairs  
Attention: Export Control Officer  
P.O. Box 3987  
10 Park Place South, Suite 510  
Atlanta, GA 30302-3987

15. Miscellaneous.

- a. This Agreement may not be assigned by either party without the prior written consent of the other party. As an exception to the foregoing, Sponsor’s consent shall not be required for GSURF to assign any or all of its rights and obligations under this Agreement to GSU.
- b. If any provision of this Agreement is held to be unenforceable for any reason, that unenforceability shall not affect the enforceability of any other provision of this Agreement, and the Parties shall negotiate in good faith to substitute an enforceable provision with similar terms.
- c. This Agreement may be executed in two (2) or more counterparts, each of which is deemed an original, but all of which together constitutes one instrument.
- d. The Section and Article headings in this Agreement are for reference only, and shall not affect the interpretation or meaning of any provision of this Agreement.
- e. Unless otherwise specified, this Agreement and its Attachments embody the entire understanding between GSURF and Sponsor with respect to the Project, and any prior or contemporaneous representations, either oral or written, are hereby

superseded. No amendments or changes to this Agreement, including, without limitation, changes to the scope of the Project, period of performance or budget, shall be effective unless made in writing and signed by authorized representatives of the parties.

- f. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Georgia without regard to conflict of law principles. The parties agree that only state and federal courts in Atlanta, Georgia, U.S.A. shall have jurisdiction and venue to hear and decide any controversy or claim between the parties arising under or relating to this Agreement.

[Signature page follows]

DRAFT

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

**Georgia State University  
Research Foundation, Inc.**

**[Sponsor]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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**Attachment A – Scope of Work**

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**Attachment B – Budget and Payment Terms**

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