SBIR or STTR PROGRAM

SUBAWARD AGREEMENT

Between

[COMPANY NAME]

and

THE UNIVERSITY OF FLORIDA BOARD OF TRUSTEES

THIS Agreement, having an Effective Date of the last signature date set forth below, is made by and between [COMPANY NAME], a corporation having its principal place of business at [ADDRESS] ("Company") and the UNIVERSITY OF FLORIDA BOARD OF TRUSTEES, with offices and place of business at 207 Grinter Hall, Gainesville, FL 32611-5500 ("University”), collectively referred to as the “Parties” and individually as a “Party.”

Company received funding from the [Prime Agency] (“Sponsor”) in an SBIR award / STTR award (choose one), entitled “ ” (“Prime Award”), with an ID No.: , CFDA No.: . A copy of the Prime Award is attached as Attachment 3.

Company identified specific tasks, which are described under Article I below, which it desires University to perform, and University is available and qualified to perform these tasks. In consideration of the promises and the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I - Scope of Work

University agrees to use its best efforts to perform the work outlined in Attachment 1 (“Scope of Work”).

ARTICLE II - Period of Performance

The period of performance begins on Effective Date / \_\_\_\_\_\_\_\_\_\_\_\_\_ (Start Date) (choose one) and ends on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (End Date) unless extended by written mutual agreement of the Parties or is terminated in accordance with the provisions of Article XIV. University shall notify Company, as soon as possible, of any reason that might contribute to the failure to perform within the specified performance period, even if such reason is beyond the control and without fault or negligence of University.

ARTICLE III - Payment, Records, and Billing Instructions

1. Total Funding. Company has received written prior approval from Sponsor to provide a subaward to University. For the performance of the Scope of Work, Company shall pay University a maximum amount of $\_\_\_\_\_\_\_\_\_ USD If reimbursable payment schedule add [according to the budget that is presented in Attachment 2.].
2. Payments.

[Please remove guidance note before sending to Company: Please complete per our examples for guidance \_ specific to this project\_ determine at this point whether Company payment to University is Fixed Price or Cost Reimbursable.]

This agreement is payable on a Fixed Price basis.

□ Lump sum Payments: Company’s first payment of $\_\_\_\_\_\_\_\_\_\_USD is due within thirty days from the signing of this contract. [Ideally, the final payment may be no more than 10% of the total.] The balance shall be paid in accordance with the following schedule:

Date Amount $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_USD

Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Amount $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_USD

Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Amount $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_USD

Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Amount $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_USD (Final)

□ Lump sum Payments Per Deliverable: as defined within Attachment as milestone deliverables with associated Lump sum payment for each deliverable.

□ Other:

OR

This agreement is: Cost Reimbursable

□ $\_\_\_\_\_\_\_\_, US Dollars upon signing and $\_\_\_\_\_\_\_\_, every thereafter – with the final invoice representative of total actual expenditures. Company will pay remaining balance due based on the report of actual expenditures to date minus Company prior payments. If an overpayment has occurred, University will remit any overpayment at that time.

□ Invoice no more frequently than monthly for actual costs incurred.

□ Other:

This Agreement is subject to 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as in effect on the effective date of this Subcontract. Additionally, this Agreement is subject to all other applicable laws and regulations of the United States that apply to assistance instruments without regard of whether they are specifically referenced herein.

1. Should a payment become forty-five (45) days past due, University reserves the right to stop work until payment is received. Checks shall be made payable to University of Florida and mailed to:

Contracts Grants

P.O. Box 24736

New York, NY 10087-4736

**Overnight/Courier Address**:

JPMorgan Chase-Lockbox Processing

Attn. Contracts Grants 24736

4 Chase Metrotech Center

7th Floor East

Brooklyn, NY 11245

To remit payment via ACH, submit a request for banking information to cgrevenue@admin.ufl.edu

ARTICLE IV – Notices and Designated Representatives

The Parties shall provide notices for this Agreement in writing by email, recognized national overnight courier or registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

|  |  |
| --- | --- |
| If to Company: Administrative:[COMPANY FISCAL CONTACT][Line 2][Line 3][Line 4] [Line 5] Technical Matters:[COMPANY TECHNICAL REPRESENTATIVE][Address][Phone Number][Email] | If to University: Administrative:Division of Sponsored Programs University of Florida207 Grinter HallGainesville, FL 32611-5500(352) 392-9267ufawards@ufl.edu Technical Matters: [PRINCIPAL INVESTIGATOR][Address][Phone Number][Email] |

ARTICLE V - Reports

University will submit the reports described in the Scope of Work in a timely manner. The format of the reports will be agreed to by the Designated Technical Representatives.

ARTICLE VI - Patents and Inventions

1. Company and University shall retain sole ownership of their respective intellectual property owned or controlled as of the Effective Date of this Agreement or conceived outside the performance of this Agreement (“Background Intellectual Property”). Nothing in this Agreement nor any course of dealing between the Parties will be deemed to grant to a Party any license whatsoever (whether express, implied, by estoppels or otherwise) in or to any of the other Party’s Background Intellectual Property.
2. a) All rights and title to all inventions, improvements and/or discoveries, including software, know- how, patent and other intellectual or industrial property conceived and/or made solely by one or more employees or students of University in the performance of this Agreement (“University Invention”), shall belong to University.
	1. All rights and title to all inventions, improvements and/or discoveries, including software, know- how, patent and other intellectual or industrial property conceived and/or made solely by one or more employees or students of Company in the performance of this Agreement (“Company Invention”), shall belong to Company.
	2. All rights and title to all inventions, improvements and/or discoveries, including software, know- how, patent and other intellectual or industrial property conceived and/or made jointly by one or more employees or students of University and one or more employees of Company in the performance of this Agreement (“Joint Invention”), shall belong jointly to the University and Company.
3. Each Party shall promptly notify the other of any inventions, improvements, discoveries, software and the like conceived and/or made during the performance of this Agreement (hereafter "Inventions"). University’s disclosure shall be considered prompt if it is provided promptly after it is disclosed by a University employee to University’s Office of Technology Licensing (“OTL”). Each Party shall retain all Invention disclosures submitted by the other Party in confidence.
4. If Company directs that a patent application or application for other intellectual property protection be filed for a University Invention or a Joint Invention, University shall promptly prepare, file, and prosecute such U.S. and foreign application in University's name. Company shall bear all costs incurred in connection with such preparation, filing, prosecution, and maintenance of U.S. and foreign application(s) directed to said University Invention or Joint Invention. Company shall cooperate with University to assure that such application(s) will cover, to the best of Company's knowledge, all items of commercial interest and importance. While University shall be responsible for making decisions regarding scope and content of application(s) to be filed and prosecution thereof, Company shall be given an opportunity to review and provide input thereto. University shall keep Company advised as to all developments with respect to such application(s) and shall promptly supply to Company copies of all papers received and filed in connection with the prosecution thereof in sufficient time for Company to comment thereon. Within thirty (30) days after University sends an invoice to Company, Company shall reimburse University for all reasonable patent-related expenses incurred by University. Company may elect, upon sixty (60) days’ advance written notice to University, to cease payment of the expenses associated with obtaining or maintaining that patent protection for one or more patent rights in one or more countries. In that event, Company loses all rights under this Agreement with respect to patent rights in those countries.
5. Option Rights. University grants Company a first right to negotiate a worldwide, royalty-bearing, exclusive license to University Inventions or to University’s rights in Joint Inventions (the “Option Right”). Company’s right commences when University notifies Company pursuant to Article IV.3. and expires ninety (90) days later (“Option Period”). Company may exercise the Option Right by written notice to OTL during the Option Period. If Company does not exercise the Option Right during the Option Period, University may license its commercial rights under the relevant Invention to any third parties. If Company exercises the Option Right, OTL and Company shall negotiate in good faith a license agreement with commercially reasonable terms. If the Parties fail to execute a license to University Invention or to University’s rights in Joint Invention within six (6) months after Company’s exercise of the Option Right, University has no further obligation to Company for that Invention.

ARTICLE VII - Proprietary or Confidential Information

The party receiving Confidential Information from the other party is referred to as the “Receiving Party,” and the party disclosing Confidential Information to the other party is referred to as the “Disclosing Party”. In order to obtain the protection of this Agreement with respect to Confidential Information, (a) if the Confidential Information is in written form when disclosed, the Disclosing Party must indicate the proprietary nature of such information by an appropriate legend, marking, stamp or other positive identification on the writing delivered to the Receiving Party, and (b) if the Confidential Information is disclosed orally or visually, the Disclosing Party must, within 10 days after disclosure to the Receiving Party, deliver to the Receiving Party a writing containing an adequate description of the oral or visual information which shall indicate the proprietary nature of such information by an appropriate legend, marking, stamp or other positive identification. Should Confidential Information be exchanged under this Agreement, the Receiving Party agrees, absent any special provisions to the contrary, to:

1. use its best efforts to receive and maintain in confidence any and all Confidential Information delivered by the Disclosing Party;
2. use Confidential Information solely for the purpose or purposes for which it was disclosed and for no other purpose whatsoever;
3. disclose Confidential Information to its employees, officers, agents, and representatives only on a need-to-know basis;
4. not release Confidential Information to any third parties; and
5. to dispose of or return Confidential Information to the Disclosing Party when requested or upon expiration or termination of this contract except that notwithstanding the above, the Receiving Party may retain (a) one physical copy to show compliance with the terms of this Agreement or for legal, regulatory and compliance purposes and (b) electronic copies in accordance with its customary electronic record retention and retrieval practices. The period of protection of confidentiality for Confidential Information shall be 3 years from the termination date of this Agreement.

Confidential information does not include any information which:

1. is already in the public domain or which becomes available to the public through no breach of confidentiality by the Receiving Party;
2. was lawfully in Receiving Party’s possession on a non-confidential basis prior to receipt from the discloser;
3. is received by Receiving Party independently on a non-confidential basis from a third party free to lawfully disclose such information to the Receiving Party; or
4. is independently known, developed, or discovered by Receiving Party without use of the Disclosing Party’s Confidential Information;

The release of confidential information by the Receiving Party to satisfy the requirements of federal, state or local laws shall not be a breach of this Agreement.

ARTICLE VIII - Publication

Subject to limitations of Article VII, University shall have the right to publish any information or material resulting from the conduct of the Scope of Work. University shall furnish the Company with a copy of any proposed publication 30 days in advance of the proposed publication date. Company may request University to delay publication for a maximum of an additional 60 days in order to pursue a patent on any Invention described in the manuscript. No delay, however, will be imposed on the filing of any student thesis or dissertation.

ARTICLE IX – Conflict of Interest

[Please remove guidance note before sending to Company: Only applies if PHS Funding – DELETE IF NOT APPLICABLE]

42 CFR Part 50.604 requires that institutions conducting PHS-funded research *"Maintain an up-to-date, written, enforced policy on financial conflicts of interest."* Further, *"If the Institution carries out the PHS-funded research through a subrecipient (e.g., subcontractors or consortium members), the Institution (awardee Institution) must take reasonable steps to ensure that any subrecipient Investigator complies with this subpart by incorporating as part of a written agreement with the subrecipient terms that establish whether the financial conflicts of interest policy of the awardee Institution or that of the subrecipient will apply to the subrecipient's Investigators."*

# University hereby certifies that it has an existing financial conflict of interest policy that complies

**with 42CFR Part 50. PHS policy explicitly exempts SBIR/STTR Phase 1 awards.**

For awards other than SBIR/STTR Phase 1 awards, University shall report any financial conflict of interest to **Sponsor's Designated Administrative Representative**. Any financial conflicts of interest identified shall subsequently be reported to the prime PHS funding agency. Such report shall be made before expenditure of funds authorized in this Agreement and within 45 days of any subsequently identified financial conflict of interest.

ARTICLE X - Changes and Modifications

Any changes to this contract must be made in writing and must be executed by both Parties to indicate acceptance of the modification. Any change that might impact cost, price, or delivery must be agreed to in writing prior to initiation of any work associated with the proposed change.

ARTICLE XI- Assignment and Subcontracts

Neither performance nor payment involving the whole or any part of research effort described under Article I may be assigned, subcontracted, transferred, or otherwise given or imposed on any other Party by University without the prior written consent of the Company.

ARTICLE XII - Mutual Responsibilities

1. Each Party will comply with all applicable governmental laws, ordinances, rules and regulations in the performance of this contract.
2. Without affecting or limiting any other provisions of this contract, it is agreed each Party's obligation under Article VII may survive the expiration of this contract.
3. Each Party to this contract is an independent contractor with each Party solely responsible for its own business expenses and employees including but not limited to salaries, benefits, insurances, withholding, worker compensation and taxes. Employees of either Party shall not be deemed agents, employees or representatives of the other Party.
4. In the execution to this contract, the person whose signatures are set forth are duly authorized to execute the contract and bind the Parties.

ARTICLE XIII - Use of Names

Neither Party shall use the name of the other Party, or their employees or students, in any advertising or promotional material without the prior written approval of the other. Both Parties acknowledge that under Section 1004.22, Florida Statutes, University shall be free to release the title and short description of the Scope of Work, the name of the University Investigator, and the amount and source of funding provided for the Scope of Work, without prior approval of Company.

ARTICLE XIV - Termination

Either Party may terminate this contract at any time if:

1. The other Party materially breaches the terms of this contract; provided that the non-breaching Party shall have given the breaching Party written notice of such breach and the breaching Party shall have failed to cure the same within (30) days after receipt of such notice,
2. There is the loss or departure of key personnel that would jeopardize both the quality and time of performance or would make performance impractical with respect to budget contemplated for this contract, and a mutually acceptable replacement cannot be found,
3. Performance of any part of this contract by a Party is prevented or delayed by reason of Force Majeure and cannot be overcome by reasonable diligence to satisfaction of either Party,
4. The other Party ceases, discontinues or indefinitely suspends its business activities related to the Scope of Work to be provided under this contract, or the other Party voluntarily or involuntarily files for bankruptcy, or
5. Either Party terminates this contract without cause for any reason with 60-days written notice.

In the event of termination, immediate written notice by email, fax, or hard copy shall be given by the party requesting termination to both the technical and administrative contacts of the other Party, which should specify both reason, if any, and the effective date of termination.

Upon notice of termination, University will cease further obligation of funds and will take all reasonable steps to cancel or otherwise reduce outstanding obligations. Company agrees to pay University for either (a) percent of completion or (b) deliverable completed to the date of termination and (c) any non-cancellable obligations on or before the date of termination pursuant to Article III. University will refund any portion of Company advance payments not obligated pursuant to (a) or (b) and (c).

Upon any termination except for Company’s breach of contract, University shall deliver to Company all work completed as of the termination date, materials, including Confidential Information and property belonging to Company in the state they exist as of the date of termination.

ARTICLE XV - Applicable Law

This Agreement and all related documents, including all exhibits attached hereto, are governed by, and construed in accordance with, the laws of the State of Florida, United States of America.

ARTICLE XVI – Export Controls

University 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 U.S. export laws and regulations (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979). Company shall notify University in writing before providing any export controlled information or materials. If known, Company shall also include in its notification the Export Control Classification Number, United States Munitions List Category, or EAR99 designation, as applicable.

ARTICLE XVII - Entire Agreement

This contract is intended by the Parties as a final written expression of their agreement and supersedes and replaces any prior oral or written agreement. Any terms or conditions inconsistent with or in addition to terms and conditions herein contained shall be void and of no effect unless specifically agreed to in writing and signed by both parties.

[Signatures to follow on next page]

IN WITNESS WHEREOF, the Parties hereto have caused their authorized officials to execute this Agreement as of the date(s) set forth below:

# COMPANY NAME UNIVERSITY OF FLORIDA

#  BOARD OF TRUSTEES

# By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# I acknowledge and agree to the terms of Articles I, II, V, VII, and VIII, and I reaffirm that I have assigned to University all of my right, title, and interest in any Invention.

# \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# [NAME OF PRINCIPAL INVESTIGATOR]

# Principal Investigator

# ATTACHMENT 1

# SCOPE OF WORK

# ATTACHMENT 2

# BUDGET

# [may delete this budget page if this agreement is Fixed Price]

# ATTACHMENT 3

# COPY OF PRIME AWARD

# A copy of the Prime Award follows after this page.