**COOPERATIVE AGREEMENT**

**between**

**UNIVERSITY of AMERICAN STATE**

**and**

**CompanyABC, LLC**

This Agreement (“Agreement”), effective the date, between the Board of Regents for the University of American State System, acting for and on behalf of the University of American State (“UAS”) and CompanyABC, LLC, a limited liability company organized and existing under the laws of the State of State and having a principal place of business at address (“COMPANYABC”), is entered into for the purpose of allocating between the parties certain rights relating to a PFI project [ADD NSF PROPOSAL NUMBER] (“Project”) to be carried out by UAS and COMPANYABC under a funding agreement that may be awarded by the National Science Foundation (NSF) to UAS to fund a proposal entitled “Title” submitted by UAS on or about date (“Proposal”). UAS and COMPANYABC are hereinafter sometimes referred to individually as a “Party” and collectively as the “Parties”.

**1. Applicability of this Agreement**

(a) This Agreement shall be applicable only to matters relating to the Project.

(b) If a funding agreement for the Project is awarded to UAS based upon the Proposal, UAS will make a subaward to COMPANYABC in accordance with the funding agreement, the Proposal, and this Agreement. If the terms of such funding agreement appear to be inconsistent with the provisions of this Agreement, the Parties will attempt in good faith to resolve any such inconsistencies. However, if such resolution is not achieved within a reasonable period, UAS shall not be obligated to make a subaward to COMPANYABC and COMPANYABC shall not be obligated to accept the subaward. If a subaward is made by UAS and accepted by COMPANYABC (“COMPANYABC Subaward”), this Agreement shall not be deemed to contradict the terms of such subaward or of the funding agreement awarded by NSF to UAS except on the grounds of fraud, misrepresentation, or mistake, but shall be considered to resolve ambiguities in the terms of the COMPANYABC Subaward.

(c) The provisions of this Agreement shall apply to any and all consultants, subcontractors, independent contractors, or other individuals employed by COMPANYABC for the purposes of the Project.

**2. Background Intellectual Property**

(a) "Background Intellectual Property" means property and the legal rights therein of a Party 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 specifically provided hereunder.

(c) The following Background Intellectual Property of COMPANYABC may be used nonexclusively and without compensation by UAS in connection with the performance of the Project:

Nanoscale manufacturing processes of unobtainium

(d) The following Background Intellectual Property of UAS may be used nonexclusively and without compensation by COMPANYABC in connection with the performance by COMPANYABC of the Project: PATENT RIGHTS, LICENSED PROCESS, and LICENSOR KNOW-HOW, as such terms are defined in that certain license agreement entered into effective date between UAS and COMPANYABC (the “License Agreement”). These rights are granted to COMPANYABC pursuant to the nonexclusive, non-assignable license reserved to UAS under the License Agreement to make, use, and otherwise utilize the PATENT RIGHTS, LICENSED PROCESS, and LICENSOR KNOW-HOW for educational and research purposes.

**3. Project Intellectual Property**

(a) "Project Intellectual Property" means the legal rights relating to inventions (including Subject Inventions as defined in 37 CFR Part 401), patent applications, patents, copyrights, trademarks, mask works, trade secrets and any other legally protectable information, including computer software, first made or generated during the performance of this Agreement.

(b) COMPANYABC will promptly notify UAS in writing of all Project Intellectual Property made or generated by COMPANYABC in connection with the performance of the Project.

(c) UAS shall own all right, title, and interest in and to Project Intellectual Property made or generated by COMPANYABC, subject to the rights of the United States Government therein. COMPANYABC agrees to execute appropriate documents upon the request of UAS for the purpose of evidencing and effectuating UAS’s ownership of Project Intellectual Property and to enable UAS, in its sole discretion, to obtain patent or other protection for Project Intellectual Property.

(d) UAS will notify COMPANYABC in writing of Project Intellectual Property made or generated by UAS within thirty (30) days after a written disclosure of such intellectual property is received by UAS’s Technology Transfer Office.

(e) COMPANYABC may nonexclusively and without compensation use Project Intellectual Property owned by UAS in connection with COMPANYABC’s performance of the Project.

**4. Option**

(a) UAS hereby grants to COMPANYABC an option to acquire a commercial license, under the terms and conditions of the License Agreement, to the Project Intellectual Property (“Optioned IP”). The period during which COMPANYABC may exercise the Option as to any particular Optioned IP (“Option Period”) shall commence, with regard to Project Intellectual Property developed by COMPANYABC, on the date COMPANYABC notifies UAS of such Project Intellectual Property, and with regard to Project Intellectual Property developed by UAS, on the date UAS notifies COMPANYABC of such Project Intellectual Property, and shall terminate on the first-to-occur of the following: (i) the expiration of six (6) calendar months from the first day of the Option Period; or (ii) termination of expiration of this Agreement; or (iii) proper exercise by COMPANYABC of its Option relative to such Project Intellectual Property.

(b) COMPANYABC may exercise its Option with regard to any particular Project Intellectual Property by giving written notice thereof to UAS’s Technology Transfer Office at any time during the Option Period for such Project Intellectual Property when COMPANYABC is not in breach or default of its obligations under the License Agreement or the COMPANYABC Subaward. Such notice (i) shall state specifically that COMPANYABC is exercising its Option, and (ii) shall identify the particular Optioned IP to which the notice applies. Such notice shall constitute an effective exercise of the Option only if, within ten (10) days after the date of such notice, COMPANYABC makes full payment to UAS of any out-of-pocket expenses incurred by UAS in connection with the filing and prosecution of patent application(s) on the Optioned IP that is the subject of the notice; if COMPANYABC fails to make timely payment of such expenses, the attempted exercise of the Option shall have no force and effect.

(c) All applications for patent or other intellectual property protection on Optioned IP shall be in UAS’s name, and UAS shall have the right to make all decisions regarding the scope and content thereof.

(d) UAS may in its sole discretion seek patent or any other intellectual property protection on Optioned IP in any jurisdiction at any time.

(e) During the Option Period, UAS shall keep COMPANYABC advised as to all developments with respect to application(s) for patent or other intellection property protection on Optioned IP and shall promptly supply COMPANYABC with copies of all documents filed with and received from any patent or other governmental office in connection with such application(s). COMPANYABC agrees to cooperate in good faith with UAS in all such matters.

(f) Upon COMPANYABC’s proper exercise of the Option for any particular Optioned IP, UAS and COMPANYABC will enter into an amended and restated License Agreement for the sole purpose of adding such Optioned IP to the PATENT RIGHTS, LICENSED PROCESS, and LICENSOR KNOW-HOW thereunder (as applicable), subject in all respects to the terms and provisions of the License Agreement as so amended and restated.

(g) UAS shall have no further obligation to COMPANYABC under this Agreement with regard to any particular Optioned IP after the Option Period for such Optioned IP has expired with the Option unexercised.

(h) In the absence of a license agreement between UAS and COMPANYABC covering Optioned IP, COMPANYABC agrees that it will not use such Optioned IP for any commercial or non-commercial purpose.

(i) Notwithstanding any provision of this Agreement or of any license agreement between the Parties to the contrary, UAS shall retain a royalty-free, non-exclusive license to use Optioned IP for educational, academic, and research purposes.

**5. Confidentiality; Publication**

(a) Background Intellectual Property of a Party and other proprietary or confidential information of a Party disclosed by that Party to the other in connection with the Project shall be received and held in confidence by the receiving Party and, except with the consent of the disclosing Party or as permitted under a future agreement between the Parties, shall neither be used by the receiving Party nor disclosed by the receiving Party to others. These confidentiality obligations shall not apply to use or disclosure of information by the receiving Party after such information is or becomes known to the public without breach of this provision or is or becomes known to the receiving Party from a source reasonably believed to be independent of the disclosing Party or is developed by or for the receiving Party independently of its disclosure by the disclosing Party. Notwithstanding the foregoing, Project Intellectual Property shall be deemed confidential information of UAS that is disclosed by UAS to COMPANYABC in connection with the Project.

(b) The Parties agree that researchers engaged in the Project on behalf of UAS and/or COMPANYABC will be permitted to present at symposia, national, or regional professional meetings, and to publish in journals, theses or dissertations, or otherwise of their own choosing, methods and results of the Project, provided, however, that both Parties shall have been furnished copies of any proposed publication or presentation at least thirty (30) calendar days in advance of the submission of such proposed publication or presentation to a journal, editor, or other third party.

(c) Each Party shall have thirty (30) calendar days after receipt of said copies to notify the other that the proposed publication or presentation contains the notifying Party’s proprietary or confidential information. The other Party’s researcher(s) shall not, after receipt of such notification, have the right to proceed with planned publication or presentation without first removing the proprietary or confidential information of the notifying Party that was identified in such notification.

**6. Liability and Risk**

(a) UAS represents that it has statutorily prescribed liability insurance coverage for the negligent acts of its officers, employees, and agents while acting within the scope of their employment by UAS, and UAS has no liability insurance policy as such that can extend protection to any other person, including COMPANYABC.

(b) Subject to the provisions of local and state laws, including its limits of liability and exclusions therefrom, UAS assumes any and all risks of personal injury and property damage attributable to the negligent acts or omission of UAS, its officers, employees and agents thereof.

(c) COMPANYABC hereby assumes any and all risks of personal injury and property damage attributable to the negligent acts or omissions of COMPANYABC, its officers, employees, and agents thereof. COMPANYABC agrees to indemnify and hold harmless UAS and its governing Board, officers, agents, and employees from any liability, loss, or damage they may suffer as the result of claims, demands, costs, or judgments against them arising out of the activities to be carried out by COMPANYABC pursuant to this Agreement.

**7. Term and Termination**

(a) This Agreement shall commence on the Effective Date, and unless earlier terminated, shall expire on the first-to-occur of (i) receipt by UAS of notice from NSF that it will not fund the proposal; (ii) sixty (60) days after expiration of the COMPANYABC Subaward; or (iii) the effective date of termination by UAS of the COMPANYABC Subaward for breach or default on the part of COMPANYABC; or (d) termination by COMPANYABC of the COMPANYABC Subaward without cause.

(b) In the event that either Party commits any breach of or default of any of the terms or conditions of this Agreement, and does not remedy such default or breach within sixty (60) days after receipt of written notice thereof from the other Party hereto, the Party giving notice may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending notice of termination in writing to the other Party, and such termination shall be effective as of the date of the receipt of such notice.

(c) Neither expiration nor termination of this Agreement for any reason shall affect the rights and obligations of the Parties accrued prior to the effective date of expiration or termination. The provisions of this Agreement regarding ownership of Project Intellectual Property, confidentiality, non-disclosure, assumption of risk, indemnification, publication, and limits of liability shall survive expiration or termination of this Agreement.

**8. Miscellaneous**

(a) This Agreement shall be governed and construed in accordance with the laws of the State of State, notwithstanding any conflict of law provision to the contrary. The forum for any proceeding or suit in law or equity arising from or incident to this Agreement shall be located in the State of State.

(b) This Agreement shall not be assigned by either Party without the prior written consent of the other.

(c) Any agreement to change the terms of this Agreement in any way shall be valid only if the change is made in writing and approved by mutual agreement of authorized representatives of the Parties hereto.

(d) Any notice or other communication required or permitted hereunder (“notice”) shall be in writing and shall be hand-delivered, sent by overnight courier, mailed by certified United States mail, return receipt requested, or sent by email or facsimile, to the address(es) given below or to such other address(es) as the Parties may hereafter specify in writing for the purpose of receiving notice. Notice shall be deemed given and received five (5) days after being deposited with the U.S. Postal Service certified mail (postage prepaid and return receipt requested), or if notice is hand-delivered or sent by overnight courier, upon the date of actual delivery, or if sent by facsimile or email, upon the date the receiving Party acknowledges receipt in writing, by email or otherwise. An email notice shall be given concurrently to up to three (3) email addresses provided hereunder by the recipient Party and the first written acknowledgment of receipt from the recipient Party shall establish the date on which such notice is given. If no email address and/or fax number is provided below for a particular recipient, notice may not be given to that recipient by email or facsimile, as the case may be, unless an email address and/or fax number for such recipient is subsequently specified in writing for the purpose of receiving notice.

 If to UAS: Contact Information

 with a copy to: Board of Regents for the American State University System

 Contact Information

 If to COMPANYABC: Contact Information

(e) This Agreement contains the entire understanding of the Parties and supersedes all prior agreements, arrangements, and understandings relating to the subject matter hereof except for the License Agreement, which shall remain in full force and effect. This Agreement cannot be modified or amended except in writing designated as modifying or amending this Agreement and signed by the persons authorized to execute and sign agreements for the Parties.

(f) This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one Agreement.

(g) The Parties agree that signatures transmitted electronically (including by facsimile) shall be acceptable to bind the Parties and shall not in any way affect this Agreement’s validity.

***(signature page to follow)***

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement on the day and year as noted by their signatures.

**UAS:**

Board of Regents for the American State University System,

acting for and on behalf of American State University

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

Name, Title

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

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

Name, Title

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

**COMPANY ABC:**

CompanyABC, LLC

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

Name, Title

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

**ACKNOWLEDGMENT:**

The signatures of Dr. Jill Doe and Dr. Alex Person, as Principal Investigators, appear below for the sole purpose of acknowledging that they have read the foregoing Agreement and understand their obligations as employees of American State University.

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Name (*date)*

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

Name (*date)*