# AI Annotated Contract Review

MEMORANDUM OF UNDERSTANDING  
  
This Memorandum of Understanding (“Agreement”) is entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_ , between Smithbucklin Corporation (“Smithbucklin”), with principal office address at 16305 Swingley Ridge Road, Suite 120, Chesterfield, MO 63017 and Auburn University (“Cooperator”), with principal office address at 540 Devall Drive, Suite 200, Auburn, AL 36832-5888.

The United Soybean Board (“USB”) funds soybean research under the Soybean Promotion, Research, and Consumer Information Act, 7 USCA §§ 6901-6911 (the “Act”) and the Soybean Promotion and Research Order, 7 CFR Part 1220 (the “Order”).

Smithbucklin administers USB's research program pursuant to a Management Agreement dated September 19, 2022, between Smithbucklin and USB (“Management Agreement”).

USB funds research projects in order to benefit soybean farmers by increasing productivity and promoting the consumption and use of soybeans and soybean products.

This Agreement and all Research Cooperative Agreements reflect USB’s desire to produce and bring to market as soon as possible useful products that emerge from the research projects it funds.

SECTION 1.

RESEARCH PROJECTS  
  
1.1.

Research Cooperative Agreements.

Smithbucklin and the Cooperator will execute a separate Research Cooperative Agreement (“RCA”), in the form provided by Smithbucklin, for each research project funded under this Agreement (each a “Project”).

Cooperator may subcontract with third parties to conduct the research for any Project; provided, that Smithbucklin must approve all such subcontracts involving consideration of $50,000 or more.

(a) Each RCA must  
  
 (1) refer to this Agreement and incorporate its terms therein;  
  
 (2) name the person who will be responsible for conducting the research (the Principal Investigator) for the Project;  
  
(3) include an approved Project proposal with a detailed statement of the Project's objectives, methods, budget and anticipated benefits to soybean farmers; and  
  
 (4) state the amount of funding USB will provide for the Project.

(b) The RCA may include any other terms the parties deem appropriate.

1.2.

Conduct of Projects.

Cooperator will be solely responsible for managing all projects hereunder.

The Principal Investigator must directly supervise the research and will be accountable to the Cooperator.

The Cooperator must provide all equipment and facilities necessary to conduct all projects.

1.3.

Progress Reports.

(a) Unless otherwise provided in an RCA, Principal Investigator must submit to Smithbucklin a written quarterly progress report (in a format and level of detail as directed by Smithbucklin) for work done the previous three months under each RCA.

The Principal Investigator must also provide additional information as requested.

(b) With each quarterly report, Principal Investigator must provide a progress report in lay language suitable for public release using the project report form supplied by Smithbucklin.

Smithbucklin may disclose these progress reports to third parties and the progress report will constitute Principal Investigator's permission to release the information contained therein.

(c) When a research project or this Agreement expires or terminates for any reason, Cooperator must submit to Smithbucklin a final report (in such format and level of detail as directed by Smithbucklin) for each project within 30 days after the termination (or expiration) date.

The final report must include a lay interpretation of the results suitable for public release.

(d) All progress and final summaries provided should be non-proprietary and will be made public; therefore, summaries submitted by Cooperator should not contain confidential information and/or protected Intellectual Property.

Cooperator hereby waives all claims against Smithbucklin and USB for the release of all reports disclosed to the public.

1.4.

On-site Visits.

Smithbucklin or USB or their designated agents may make on-site visits with the Principal Investigator and other appropriate personnel.

The parties will agree on mutually acceptable dates and times for such visits.

1.5.

Project Changes.

Smithbucklin reserves the right to modify, reject, cancel, or stop any and all plans, schedules, or work in progress (collectively, “Change Orders”).

Smithbucklin may give Change Orders either orally or in writing and Cooperator shall take immediate steps to carry them out.

Smithbucklin shall confirm oral Change Orders in writing within 24 hours.

Smithbucklin will hold Cooperator harmless for any Losses, as defined below, arising out of terminating or assigning of a Smithbucklin-approved subcontract at Smithbucklin’s request, except for Losses due to Cooperator’s negligence, willful misconduct or breach of the subcontract.

A Change Order does not terminate or modify this Agreement.

SECTION 2.

FINANCES  
  
2.1.

Smithbucklin’s Funding Obligation.

If Smithbucklin receives funds from USB designated for a Project, Smithbucklin will pay Cooperator up to the total funding allotted to that Project in an RCA, in accordance with an approved budget and the terms of this Agreement and the RCA.

Smithbucklin has no obligation to pay Cooperator unless and until it receives funds from USB.

Cooperator acknowledges that USB’s budget is subject to USDA approval and that USB and Smithbucklin cannot guarantee that USDA will approve that budget.

If the term of any RCA is longer than one year, the RCA will terminate at the end of the initial year if the applicable funding is not available and/or the funding is not approved by USB for each subsequent year.

In such event, the Secretary or USB may terminate the applicable RCA without incurring the full contract cost.

2.2.

Terms of Payment.

Unless otherwise provided in an RCA, Cooperator may invoice Smithbucklin on a quarterly basis for actual net Project costs and expenses incurred by Cooperator during the term of the RCA in performing its obligations under the RCA in accordance with applicable approved Project budget.

Any expenses incurred by Cooperator prior to the start date of the RCA (as set forth in the RCA) are incurred at Cooperator’s sole risk and neither Smithbucklin nor USB is financially liable if the RCA is not approved.

All invoices shall be submitted online via the Invoice Submission Link.

Cooperator must bill travel and out-of-pocket expenses at net cost, in accordance with Smithbucklin’s expense reimbursement policy.

(b) Unless otherwise provided in an RCA, Smithbucklin will pay undisputed invoices within 30 days of receipt.

Payment is subject to Section 2.1 and Smithbucklin’s timely receipt of Cooperator’s or Principal Investigator’s quarterly reports.

2.3.

Disbursing Funds.

Cooperator may disburse funds in accordance with its applicable procedures, which Cooperator must provide to Smithbucklin or USB as requested for prior approval.

2.4.

Use of Funds.

(a) Budget line transfers in excess of ten percent (10%) of any one key deliverable as identified by the Project Investigator in the approved project proposal attached to each Research Cooperative Agreement as Attachment B, cannot be made without a written request from the Cooperator and the prior written consent of Smithbucklin.

(b) Cooperator and Principal Investigator may use the funds received from USB only as set forth in the approved research Project proposal.

Cooperator must not use funds provided by USB to:  
  
(1) purchase depreciable capital equipment without Smithbucklin’s prior written approval,  
  
 (2) pay institutional overhead,  
  
 (3) pay Principal Investigators' salaries, or  
  
(4) in any manner for the purpose of influencing any legislation and/or action or policy of the United States Government, any foreign or State government, or any political subdivision thereof.

This prohibition does not apply to: (a) educating government officials of information relating to the conduct, implementation, or results of soybean promotion, research, consumer information, and industry information as those terms are defined in the Order (7 C.F.R.

Part 1220); and/or (b) marketing soybeans or soybean related products directly to a foreign government or political subdivision thereof.

Congressional members or delegates may not be admitted to any share or part of this Agreement or to any benefit to arise therefrom, unless it is with a corporation for its general benefit.

Cooperator represents and warrants that it has not employed or retained a person or agency to solicit or secure this Agreement for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or established commercial agencies maintained by Cooperator for the purpose of securing business.

If Cooperator breaches this representation and warranty, in addition to all other contractual or legal rights or remedies that Smithbucklin may have, Smithbucklin may terminate this Agreement or deduct from the total fees and costs, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

2.5.

Financial Reports.

Cooperator must submit a final accounting of expenditures within 60 days after the expiration or termination of each RCA or this Agreement and within 75 days, return to Smithbucklin a signed reconciliation letter supplied by Smithbucklin.

Any unused funds left when a Project ends must be returned to Smithbucklin within 90 days from the agreed upon end date of the Agreement.

2.6.

Subsequent Funding.

Funding approval for subsequent years is contingent upon Cooperator or Principal Investigator providing all progress reports and fulfilling all other obligations under this Agreement and a Research Cooperative Agreement.

If Cooperator or Principal Investigator does not fulfill its obligations, Smithbucklin may terminate this Agreement or funding for a particular Project/RCA.

Smithbucklin and USB have no obligation to fund a Project beyond the period provided in the applicable RCA.

SECTION 3.

TERMS AND CONDITIONS   
  
 3.1.

Record Keeping.

(a) Cooperator must (a) keep accurate records, books, and documents involving transactions relating to the Agreement, including all funds received and spent; (b) retain the records, books and documents for five years after the termination (or expiration) date or final payment under the Agreement, whichever is later; (c) produce said records, books and documents for inspection and audit by a representative of USDA and USB upon request.

(b) The Cooperator must include in all subcontracts mirror-image clauses relating to Reporting and Record Keeping (section 3.1(a)), Travel Expenses (section 2.2(a)), Title of Property (section 3.4), Confidential Information (section 3.3), Prohibition on Influencing Legislation and /or Governmental Policy (section 2.4(b)(4)), and Federal Civil Rights policies (section 4.1(b)).

3.2.

Publication.

(a) The Cooperator may publish Project results in any refereed or peer-reviewed publication; provided that Principal Investigator must provide USB with copies of the manuscript for review and comment at least 30 days before submitting it for publication.

If Cooperator wants to publish in a publication that is not refereed or peer-reviewed, it must obtain USB’s prior written approval.

(b) USB requires open access publication.

Cooperator may request support from USB to pay open access publication fees.

In the event that open access publication is infeasible, Cooperator must request an exemption with justification (e.g., high impact disciplinary journal does not have an open access option).

(c) If Cooperator does not publish results within one year of completing a Project, USB/Smithbucklin may publish the results.

USB/Smithbucklin will give Cooperator an opportunity to review the manuscript prior to publication.

(d) If either party publishes results, such party must properly acknowledge the other party's role in the Project.

Cooperator must identify USB as the funding source for any materials produced or any events or activities conducted under this Agreement.

(e) Cooperator may not use any commercial brands or trade names in published results unless they are essential to describe the research.

USB may not use Cooperator’s name in any way for advertising purposes without Cooperator’s written approval.

(f) All marketing communications prepared by Cooperator or any subcontractor on behalf of USB must comply with USDA’s Marketing Communication Guidelines for Program Advertising, Promotional Material, Research, Social Media and Other Publications.

Cooperator agrees that marketing materials or information developed and released for distribution and/or publication pursuant to this Agreement must be approved by USB and USDA prior to release.

Such materials or information shall be submitted to Smithbucklin at least five (5) business days prior to the date such materials or information are to be released to the public.

Cooperator is responsible for maintaining a copy of USDA pre-approvals for all marketing communication activities for a period of five (5) years beyond the fiscal year of their applicability.

USB will not reimburse Cooperator for any hours and/or out-of-pocket expenses spent on creating marketing communications on behalf of USB that have not been approved by USB and USDA prior to release.

Peer-reviewed research papers or manuscripts (i.e., a proposed peer-reviewed research paper) do not require pre-approval by USB and USDA, but any marketing communication that promotes or amplifies the paper or manuscript regarding USB funded research such as press releases, social media posts, summaries, emails, etc.

must be approved by USB and USDA prior to release to the public.

3.3.

Confidentiality.

Smithbucklin must not disclose to any third party non-public, proprietary information, results, data, manuscripts, or documents provided by Cooperator or Principal Investigator if the documents are marked “Confidential”; provided, that, for avoidance of doubt, this obligation shall not limit in any respect any of Smithbucklin’s or USB’s rights with respect to any Discoveries (as defined below).

Without Smithbucklin’s prior written permission, Cooperator and Principal Investigator may not disclose to any third party any materials or information Smithbucklin or USB provides to either of them (“USB Confidential Information”) and may only use USB Confidential Information to the extent necessary to perform services and comply with their obligations under this Agreement.

This covenant of confidentiality will survive the termination or expiration of this Agreement.

Notwithstanding the foregoing, Cooperator understands that USB was created pursuant to the Act and the Order and, as a result, all documents, including without limitation this Agreement, in the possession of USB are subject to the Freedom of Information Act, 5 U.S.C.

§ 552 (“FOIA”), and can be accessed by the public pursuant to a properly submitted FOIA request.

Cooperator further understands that USB can assert an exception to FOIA to withhold the distribution of any such document subject to FOIA, but USB cannot guarantee such exception will be granted and, thus, cannot guarantee the confidentiality of such documents, including without limitation this Agreement.

3.4.

Ownership.

Unless otherwise provided in a RCA, ownership of all materials, information, processes, inventions and discoveries produced under this Agreement and their associated intellectual property rights (collectively, “Discoveries”) will be determined as set for in this Section.

Any and all social media and other online accounts and profiles created by Cooperator on behalf of USB in connection with this Agreement (“USB Social Media Accounts”), belong solely to USB.

Each USB Social Media Account includes any and all log-in information, data, passwords, trademarks, and content related to the profile or account, including all followers, subscribers, and contacts.

(a) Cooperator or Principal Investigator must disclose to Smithbucklin each Discovery within 60 days of making it.

Cooperator represents and warrants that (i) each Discovery will be original work; (ii) the Discovery will be complete and accurate; (iii) none of the material furnished by Cooperator has been published previously or developed by any party other than Cooperator, or if previously published or developed by any party other than Cooperator, written permission for ownership by USB has been obtained by Cooperator from all necessary parties, and (iv) the Discovery will not violate any copyright, privacy or other law or be libelous or otherwise injurious or infringe on the rights of others.

(b) USB will own all Discoveries, and Cooperator and Principal Investigator will take all actions and sign all documents and instruments reasonably required to vest in USB all right, title and interest in and to all Discoveries; provided, however, that Cooperator or Principal Investigator may elect to own any Discovery that is or may be patented or otherwise protected under the Title 35 of the United States Code or the Plant Variety Protection Act, as amended (hereinafter, “Subject Inventions”), subject to the following conditions:   
  
Cooperator and Principal Investigator must notify Smithbucklin in writing within 30 days of disclosing a Subject Invention that it elects to own the Subject Invention, and  
  
Cooperator electing rights in the Subject Invention agrees to file a patent application prior to any statutory bar date that may occur due to publication, on sale, or public use, and shall thereafter file corresponding patent applications in other countries in which it wishes to retain title within reasonable times.

(iii) After payment of any patent costs, Cooperator or Principal Investigator must pay USB [50]% of all royalties and other benefits received by Cooperator or Principal Investigator with respect to each Subject Invention that Cooperator or Principal Investigator elects to own; and  
  
(v) Cooperator or Principal Investigator grants USB a nonexclusive, perpetual, irrevocable, royalty free license to practice, use and sublicense each Subject Invention that Cooperator or Principal Investigator elects to own.

USB will relinquish a license to a Subject Invention if Cooperator demonstrates to USB’s sole satisfaction that granting an exclusive license to such Subject Invention to a third party will aid in commercializing the Subject Invention.

If the third-party exclusive license to the Subject Invention terminates for any reason, the license relinquished by USB hereunder will automatically be reinstated and renew.

(c) Cooperator and Principal Investigator must make all reasonable efforts to commercialize Discoveries or to license Discoveries under reasonable terms to third parties who are willing and able to commercialize Discoveries.

If USB reasonably believes that Cooperator or Principal Investigator has not made a good faith effort to commercialize a Discovery within a reasonable time, USB may grant, or cause Cooperator or Principal Investigator to grant, a license to a third party to such Discovery under terms USB deems appropriate.

3.5.

Liability; Indemnification and Insurance.

Cooperator agrees that neither Smithbucklin, USB nor the Secretary shall have any liability for personal or bodily injury or property damage arising in connection with the conduct of any Project hereunder and no funds appropriated by the United States Government shall be used, made available, or sought by any Cooperator to pay any indemnification obligation or to meet any deficiency arising under or relating to this Agreement.

Cooperator must indemnify and hold harmless Smithbucklin, USB and the Secretary and their affiliates, members, officers, directors, agents and employees against all losses, liabilities, damages, costs and expenses, including reasonable attorneys' fees (collectively, “Losses”), resulting from all claims, proceedings, actions or investigations (collectively, “Claims”) arising out of or in connection with (i) Cooperator’s conduct of any Project hereunder, (ii) Cooperator’s breach of this Agreement or any RCA, (iii) Cooperator’s or its employees, representatives or agents’ negligent actions or omissions or willful misconduct; or (iv) Cooperator’s or its employees, representatives or agents’ actual or alleged violation of any third party rights or any federal, state or local statute, regulation or rule.

This indemnification obligation will survive expiration or termination of this Agreement.

In addition to the above indemnification obligations, Cooperator agrees to carry insurance of types and coverage amounts necessary to cover reasonably-foreseeable claims which could arise from the work of and services provided by Cooperator under Projects conducted under this Agreement or any RCA.

3.6.

Termination.

(a) Smithbucklin may terminate an RCA with 30 days’ written notice if:  
  
(1) the Principal Investigator dies, is incapacitated for more than 60 days, ceases to participate in the Project for any reason or permanently changes his or her institutional affiliation.

Smithbucklin may not terminate an RCA if a Principal Investigator goes on sabbatical leave so long as the Principal Investigator continues to directly supervise and otherwise fulfill his obligations under the Project during the sabbatical.

(2) circumstances arise that prevent Cooperator or the Principal Investigator from carrying out their obligations under this Agreement or the RCA.

(3) USB does not authorize subsequent funding or USDA does not approve a budget containing funding for the Project that is the subject of the RCA.

(b) Smithbucklin, USB and the Secretary of Agriculture may terminate this Agreement and/or any and all RCAs:   
  
(1) at any time upon 30 days’ notice to Cooperator, and Cooperator will be paid for all work performed under the RCAs prior to the date of termination;   
  
(2) if Cooperator or a Principal Investigator breaches this Agreement or an RCA and fails to cure the breach within 15 days of receiving notice of default from Smithbucklin;  
  
(3) if Cooperator or a Principal Investigator fails to perform the research Project plan in a satisfactory manner and fails to cure the default within 15 days of receiving notice of default from Smithbucklin;   
  
(4) if the Management Agreement terminates;   
  
(5) if the Secretary terminates the Order; or   
  
(6) if USB does not provide funding under this Agreement.

(c) If Smithbucklin issues a termination notice under Section 3.6(a), Smithbucklin will continue to fund the terminated Project(s) until the termination date according to the applicable RCA(s).

Smithbucklin may include a stop work order in the notice.

In that event, Smithbucklin will not be liable for any costs or liabilities incurred after the date of the notice.

At Smithbucklin’s request, Cooperator will cancel or assign to Smithbucklin any applicable Smithbucklin-approved subcontracts.

Smithbucklin will indemnify Cooperator for any losses arising out of the cancellation or assignment of any Smithbucklin-approved subcontract except for losses due to Cooperator’s negligence, willful misconduct or breach of the subcontract.

(d) If Smithbucklin issues a termination notice under Section 3.6(b), Smithbucklin will pay Cooperator for all undisputed expenses incurred prior to the date that Cooperator receives the notice, subject to Section 2.1.

After that date, Smithbucklin will not be liable for any costs or liabilities incurred by Cooperator.

At Smithbucklin’s request, Cooperator will cancel or assign to Smithbucklin any Smithbucklin-approved subcontracts.

Smithbucklin will indemnify Cooperator for any losses arising out of the cancellation or assignment of any Smithbucklin-approved subcontract except for losses due to Cooperator’s negligence, willful misconduct or breach of the subcontract.

(e) Upon expiration or termination of this Agreement, or at any time at Smithbucklin’s request, Cooperator must promptly deliver to Smithbucklin all Discoveries and USB Confidential Information in Cooperator’s possession or control.

(f) Return of USB Property: Upon termination and/or expiration of this Agreement, Cooperator shall deliver to USB within 30 (thirty) days all materials in its possession which belong to USB at Cooperator’s cost.

If applicable, USB agrees to assume the contractual obligations assumed by Cooperator under all outstanding agreements approved by USB and entered into by Cooperator pursuant to this Agreement.

SECTION 4.

MISCELLANEOUS PROVISIONS  
  
4.1.

Compliance with Law.

General Compliance.

Cooperator must comply, and must cause its subcontractors to comply, with all applicable federal, state and local statutes, rules and regulations.

Cooperator acknowledges and agrees that, to the extent it enters into one or more subcontractor agreements, such agreements do not and will not relieve Cooperator of its primary responsibility to carry out the terms and conditions of this Agreement in accordance with the Act, the Order, the Regulations and all applicable federal, state and local, statutes, rules and regulations, including USDA policies and AMS Guidelines.

Equal Employment Opportunity.

Without limiting the foregoing, Cooperator agrees that, during the performance of this Agreement, it will not discriminate against any employee or applicant for employment because of race, color, national origin, religion, sex, age, disability, protected genetic information, or reprisal.

Cooperator further agrees that it will fully comply with any and all applicable Federal, State and local equal employment opportunity statutes, ordinances and regulations, including, but not limited to, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, Genetic Information Act of 2008, and the Equal Pay Act of 1963.

Nothing in this section shall require Cooperator to comply with or become liable under any law, ordinances, regulation or rule that does not otherwise apply to it.

4.2.

Assignment.

Cooperator may not assign or otherwise transfer its rights or obligations under this Agreement.

Cooperator may only subcontract specific tasks hereunder to outside parties with prior written approval of Smithbucklin.

Should Smithbucklin approve a subcontractor hereunder, such subcontractor will be subject to the same contractual terms as Cooperator in regard to reporting and record keeping, travel expenses, title of property, confidential information, influencing legislation and/or influencing governmental policy or action, and to comply with all applicable federal, state and local, statutes, rules and regulations, including USDA polices and AMS Guidelines and the Federal Civil Rights laws and policies noted above.

Cooperator will be fully responsible for the quality of all work product produced hereunder and for any subcontractor’s performance or failure to perform hereunder.

4.3 Management Agreement Termination.

Despite any provision to the contrary, Smithbucklin will have no further duties, obligations or liabilities under this Agreement after the date the Management Agreement terminates.

4.4.

Entire Agreement.

This Agreement and each RCA executed hereunder constitutes the entire agreement between the parties with respect to the subject matter hereof and thereof and supersedes any other written or oral agreement between the parties.

The parties may modify this Agreement only in writing signed by both parties and this requirement cannot be waived by oral agreement.

4.5.

Notices.

The parties may deliver notices required by this Agreement personally, by facsimile, overnight courier or first-class mail to the addresses set forth above or to another address a party designates in writing.

Notice will be considered received  
   
(a) on the date delivered or sent by facsimile (with confirmation),  
  
(b) one business day after being sent by overnight carrier,  
  
(c) five days after being sent by first-class mail, or  
  
(d) as of the date indicated on the return receipt if sent by certified mail, return receipt requested.

4.6.

Governing Law.

Missouri law governs this Agreement without regard to conflict of laws principles.

Contractor submits and consents to the personal jurisdiction of any Missouri state court and federal court sitting in Missouri, and agrees to accept service by mail.

4.7.

Counterparts.

This Agreement may be signed in counterparts.

4.8.

Relationship of the Parties.

Cooperator and its agents (including Principal Investigator) are independent contractors and not officers, employees or agents of Smithbucklin, USB, the Secretary, or any department, bureau, agency, commission, officer, or employee of the United States government.

4.9.

Waivers; Severability.

No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

If any term or provision of this Agreement is declared void or contrary to law, the term or provision may be severed from this Agreement to the extent necessary to meet any legal requirement.

The remainder of the Agreement will remain in effect as if the severed term or provision had not been included.

APPROVED BY:  
  
AUBURN UNIVERSITY  
  
  
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Authorized Cooperator Representative Date  
  
SMITHBUCKLIN CORPORATION  
  
  
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Andreas Altemueller Date  
Vice President, St. Louis Operations