Memorandum of Understanding

Smithbucklin Corporation and Auburn University Page 5

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 I.

RESEARCH PROJECTS

I.I.

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

(I) 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.

I.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.

I.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.

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[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

The Principal Investigator must also provide additional information as requested.

Problem Category: Export Controls

Common Problems: Sponsor will or may provide export controlled information

Preferred Language: ["(If receiving export-controlled info):\n“It is Auburn’s policy to remain fully in compliance at all times with all U.S. export control regulations, including but not limited to the Export Administration Regulations; International Traffic in Arms Regulations; and embargo sanctions under the Office of Foreign Assets Control (OFAC).\tTherefore, in the event that SPONSOR wishes to provide export controlled data or information to Auburn during the course of activity under this Agreement, SPONSOR must first notify Auburn of its intention to provide this data at least thirty (30) days in advance of actually providing this data or information and provide the Export Control classification of such data under the ITAR or EAR. Auburn will then determine whether Auburn can accept such data, as well as the conditions for such receipt if agreed upon. Auburn will then communicate this determination back to SPONSOR within seven (7) days of such determination.”\n \n(If not receiving export-controlled info):\n“It is Auburn's policy to remain fully in compliance at all times with all U.S. export control regulations, including but not limited to the Export Administration Regulations; International Traffic in Arms Regulations; and embargo sanctions under the Office of Foreign Assets Control (OFAC). No export controlled information will be provided to Auburn by the SPONSOR.”"]

Why: If we accept export control language, we are no longer operating in a Fundamental research environment so we would not have the exclusion to export controls.

1st response to Sponsor: add the following statement: "Therefore, in the event that SPONSOR wishes to provide export controlled data or information to Auburn during the course of activity under this Agreement, SPONSOR must first notify Auburn of its intention to provide this data at least thirty (30) days in advance of actually providing this data or information and provide the Export Control classification of such data under the ITAR or EAR. Auburn will then determine whether Auburn can accept such data, as well as the conditions for such receipt if agreed upon. Auburn will then communicate this determination back to SPONSOR within seven (7) days of such determination.”

Confidence: 0.22576484600261607

[END POTENTIAL PROBLEMATIC LANGUAGE]

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(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.

I.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.

I.5.

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[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Project Changes.

Problem Category: Personnel

Common Problems: UNIVERSITY shall use its best efforts to ensure that there are no changes in the person of the project director.

Preferred Language: ["Auburn has the personnel and facilities necessary to complete the Project. Auburn will undertake the Project through its Department of: \*\*\*. Auburn's Principal Investigator for the Project is: \*\*\*."]

Why: The word "best" has legal implications in contract law. A court could hold that a party subject to an efforts provision was obligated to make efforts out of proportion to the benefits to it under the contract in question.

1st response to Sponsor: change to reasonable

Confidence: 0.3351757433279261

[END POTENTIAL PROBLEMATIC LANGUAGE]

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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.I.

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.

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[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Terms of Payment.

Problem Category: Confidential Information

Common Problems: the terms of the agreement are also confidential

Preferred Language: ['Should it be necessary for either party to receive the other’s confidential Information, the disclosing party agrees to disclose such information in writing and marked “confidential”, or if given orally, reduced to writing and clearly marked as confidential within 30 days of the oral disclosure. The receiving party agrees to safeguard the disclosing party’s confidential material to the same extent it safeguards its own for a period of three (3) years from the end date or termination of this Agreement. Confidential Information does not include (a) information which is now or hereafter becomes a part of the public domain; (b) information known to the receiving party before disclosure to it by the disclosing party hereunder as evidenced by its records; (c) information given to the receiving party by a third party having a right to disclose the same; or (d) information which the receiving party is compelled to disclose by judicial or administrative process, or by other mandatory requirements of law.\nEach Party will retain all Project Invention disclosures submitted in confidence and will not disclose them to third parties. Either party will be relieved of this obligation only when this information becomes publicly available through no fault of the other party.']

Why: Undersirable. Becomes an administrative burden

1st response to Sponsor: None

Confidence: 0.2605556710562624

[END POTENTIAL PROBLEMATIC LANGUAGE]

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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.I 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:

(I) 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.

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[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

TERMS AND CONDITIONS

3.I.

Problem Category: Confidential Information

Common Problems: the terms of the agreement are also confidential

Preferred Language: ['Should it be necessary for either party to receive the other’s confidential Information, the disclosing party agrees to disclose such information in writing and marked “confidential”, or if given orally, reduced to writing and clearly marked as confidential within 30 days of the oral disclosure. The receiving party agrees to safeguard the disclosing party’s confidential material to the same extent it safeguards its own for a period of three (3) years from the end date or termination of this Agreement. Confidential Information does not include (a) information which is now or hereafter becomes a part of the public domain; (b) information known to the receiving party before disclosure to it by the disclosing party hereunder as evidenced by its records; (c) information given to the receiving party by a third party having a right to disclose the same; or (d) information which the receiving party is compelled to disclose by judicial or administrative process, or by other mandatory requirements of law.\nEach Party will retain all Project Invention disclosures submitted in confidence and will not disclose them to third parties. Either party will be relieved of this obligation only when this information becomes publicly available through no fault of the other party.']

Why: Undersirable. Becomes an administrative burden

1st response to Sponsor: None

Confidence: 0.2605556710562624

[END POTENTIAL PROBLEMATIC LANGUAGE]

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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.I(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.I(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.

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[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Ownership.

Problem Category: Equipment

Common Problems: sponsor retains ownership of equipment provided or purchased

Preferred Language: ['Title to equipment provided under this Agreement, or purchased or made by Auburn in the performance of the Research will vest with Auburn']

Why: Auburn wants it

1st response to Sponsor: ask to have it vest with Auburn

Confidence: 0.3032160644503863

[END POTENTIAL PROBLEMATIC LANGUAGE]

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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.

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[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Liability; Indemnification and Insurance.

Problem Category: Limitation of Liability

Common Problems: Hold Harmless / Indemnification

Preferred Language: ['AUBURN SHALL NOT BE LIABLE TO SPONSOR FOR INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, INCIDENTAL OR OTHER DAMAGES (INCLUDING LOST REVENUE, PROFITS, USE, DATA OR OTHER ECONOMIC LOSS OR DAMAGE) HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY (WHETHER FOR BREACH OR IN TORT, INCLUDING NEGLIGENCE) ARISING FROM, RELATED TO, OR CONNECTED WITH SPONSOR’S USE OF RESEARCH DATA, RESULTS, INVENTIONS, COPYRIGHTABLE WORKS, TANGIBLE RESEARCH PROPERTY, OR ANY OTHER RESEARCH RESULTS PROVIDED BY INSTITUTION, EVEN IF SPONSOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.\n']

Why: None

1st response to Sponsor: None

Confidence: 0.20199309249791833

[END POTENTIAL PROBLEMATIC LANGUAGE]

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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.

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[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Termination.

Problem Category: Termination

Common Problems: they want a hard stop date for reimbursements if there is an early termination

Preferred Language: ['Expiration. This Agreement will expire at the end of the Research Term, unless terminated prior to such date in accordance with this Section 11 or extended by written agreement of the parties.\n\nThis Agreement may be terminated by either party for a breach of any of the terms herein. Upon written notification, the breaching party shall have 30 days to cure such breach. If such breach is not cured, the non-breaching party may deliver a Notice of Termination to the breaching party terminating the Agreement. For a breach of non-payment of support by Sponsor, Auburn is under no obligation to continue work on the Project. During such non-payment period and/or a termination of this Agreement for a non-payment breach, Auburn is under no obligation to conform to any of the Agreement terms herein, except Section 10 (Confidential Information) and Section 12 (Publicity).\nEither party may terminate performance of the Project in whole or in part if it is in the best interest of either party. The terminating party shall deliver a Notice of Termination specifying the basis of the termination, extent of termination and effective date. Auburn will be paid for all services delivered and all non-cancelable commitments made prior to the date of termination. In the event that only a portion of effort is terminated, Auburn shall work diligently to continue all other efforts that remain active.\t']

Why: we routinely have non-cancelable commitments such as purchase orders that are not returnable/refundable, grad students who get paid quarterly, etc.

1st response to Sponsor: get the language "non-cancelable commitments" added

Confidence: 0.2789425453258252

[END POTENTIAL PROBLEMATIC LANGUAGE]

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(a) Smithbucklin may terminate an RCA with 30 days’ written notice if:

(I) 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:

(I) 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.I.

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.I.

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[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Compliance with Law.

Problem Category: Govering Law

Common Problems: other states/countries for law

Preferred Language: ['The validity and interpretation of this Agreement and the legal relationship of the parties, will be governed by and construed in accordance with the laws of the State of Alabama without regard to conflict of law rules or principles. Exclusive jurisdiction shall be in the State of Alabama.']

Why: As an instrumentality of the State of Alabama, Auburn University is granted sovereign immunity under Article I, Section 14 of the Alabama Constitution, and under the 11th Amendment to the United States Consitutions. Auburn University does not have the authority to waive its sovereign immunity. Further, Alabama Code makes it clear that the exclusive venue for any claim for damages against Auburn must be the Alabama State Board of Adjustment, which exists to resolve all claims against the State or any of its institutions, arising out of any contract to which its institutions are parties, where there is claimed a legal or moral obligation resting on the state.” Because of this, Auburn cannot agree to be subjected to the legal process of any jurisdiction other than the State of Alabama.

1st response to Sponsor: Revise the agreement to the preferred language

Confidence: 0.26055567105626243

[END POTENTIAL PROBLEMATIC LANGUAGE]

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[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

General Compliance.

Problem Category: Insurance

Common Problems: Commercial General Liability

Preferred Language: []

Why: None

1st response to Sponsor: Auburn University is has a self-insured fund equivalent to that of comprehensive general liability insurance coverage for bodily injury liability and property damage with limits of at least $1,000,000 for each occurrence.

Confidence: 0.2605556710562624

[END POTENTIAL PROBLEMATIC LANGUAGE]

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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.

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[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

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

Problem Category: Assignment

Common Problems: UNIVERSITY shall not be entitled to assign or otherwise transfer its rights and/or obligations under this Agreement in whole or in part to any third party without the prior written consent of SPONSOR.

Preferred Language: ['Neither party may assign this Agreement without the prior written consent of the other party. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.']

Why: would not allow us to hire consultants, vendors, or issue subawards without prior approval

1st response to Sponsor: have it struck

Confidence: 0.415076503287144

[END POTENTIAL PROBLEMATIC LANGUAGE]

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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.

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[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

4.3 Management Agreement Termination.

Problem Category: Hiring Sponsor Employees

Common Problems: University agrees not to solicit vendor’s employees for positions with the University during the term of this agreement and for a period of two (2) years subsequent to the termination of this agreement.

Preferred Language: ['none']

Why: This language is never acceptable - it is a deal breaker. It could prevent Auburn from hiring employees who apply through HR, and HR will not be aware of this agreement – meaning such hiring would put Auburn in breach. Further, Alabama law likley prohibits courts from enforcing such a clause

1st response to Sponsor: delete it

Confidence: 0.2716512395696402

[END POTENTIAL PROBLEMATIC LANGUAGE]

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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.

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[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Entire Agreement.

Problem Category: Hiring Sponsor Employees

Common Problems: University agrees not to solicit vendor’s employees for positions with the University during the term of this agreement and for a period of two (2) years subsequent to the termination of this agreement.

Preferred Language: ['none']

Why: This language is never acceptable - it is a deal breaker. It could prevent Auburn from hiring employees who apply through HR, and HR will not be aware of this agreement – meaning such hiring would put Auburn in breach. Further, Alabama law likley prohibits courts from enforcing such a clause

1st response to Sponsor: delete it

Confidence: 0.20608363501393828

[END POTENTIAL PROBLEMATIC LANGUAGE]

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[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

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.

Problem Category: Equitable Remedies

Common Problems: The parties agree that irreparable damage would occur if any provision of this Agreement was not performed in accordance with the terms hereof and that the parties or either of them shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof.

Preferred Language: ['N/A']

Why: As an instrumentality of the State, Auburn falls under the purview of our State Constitution which states in Article I, Section 14 “That the State of Alabama shall never be made a defendant in any court of law or equity.”

1st response to Sponsor: delete

Confidence: 0.26722918823294955

[END POTENTIAL PROBLEMATIC LANGUAGE]

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[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

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

Problem Category: Equitable Remedies

Common Problems: The parties agree that irreparable damage would occur if any provision of this Agreement was not performed in accordance with the terms hereof and that the parties or either of them shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof.

Preferred Language: ['N/A']

Why: As an instrumentality of the State, Auburn falls under the purview of our State Constitution which states in Article I, Section 14 “That the State of Alabama shall never be made a defendant in any court of law or equity.”

1st response to Sponsor: delete

Confidence: 0.2370255450658023

[END POTENTIAL PROBLEMATIC LANGUAGE]

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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.

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[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Governing Law.

Problem Category: Govering Law

Common Problems: other states/countries for law

Preferred Language: ['The validity and interpretation of this Agreement and the legal relationship of the parties, will be governed by and construed in accordance with the laws of the State of Alabama without regard to conflict of law rules or principles. Exclusive jurisdiction shall be in the State of Alabama.']

Why: As an instrumentality of the State of Alabama, Auburn University is granted sovereign immunity under Article I, Section 14 of the Alabama Constitution, and under the 11th Amendment to the United States Consitutions. Auburn University does not have the authority to waive its sovereign immunity. Further, Alabama Code makes it clear that the exclusive venue for any claim for damages against Auburn must be the Alabama State Board of Adjustment, which exists to resolve all claims against the State or any of its institutions, arising out of any contract to which its institutions are parties, where there is claimed a legal or moral obligation resting on the state.” Because of this, Auburn cannot agree to be subjected to the legal process of any jurisdiction other than the State of Alabama.

1st response to Sponsor: Revise the agreement to the preferred language

Confidence: 0.26055567105626243

[END POTENTIAL PROBLEMATIC LANGUAGE]

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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.

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[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

This Agreement may be signed in counterparts.

Problem Category: Confidential Information

Common Problems: the terms of the agreement are also confidential

Preferred Language: ['Should it be necessary for either party to receive the other’s confidential Information, the disclosing party agrees to disclose such information in writing and marked “confidential”, or if given orally, reduced to writing and clearly marked as confidential within 30 days of the oral disclosure. The receiving party agrees to safeguard the disclosing party’s confidential material to the same extent it safeguards its own for a period of three (3) years from the end date or termination of this Agreement. Confidential Information does not include (a) information which is now or hereafter becomes a part of the public domain; (b) information known to the receiving party before disclosure to it by the disclosing party hereunder as evidenced by its records; (c) information given to the receiving party by a third party having a right to disclose the same; or (d) information which the receiving party is compelled to disclose by judicial or administrative process, or by other mandatory requirements of law.\nEach Party will retain all Project Invention disclosures submitted in confidence and will not disclose them to third parties. Either party will be relieved of this obligation only when this information becomes publicly available through no fault of the other party.']

Why: Undersirable. Becomes an administrative burden

1st response to Sponsor: None

Confidence: 0.20199309249791833

[END POTENTIAL PROBLEMATIC LANGUAGE]

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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.

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[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

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

Problem Category: Assignment

Common Problems: It is understood by the Parties that SPONSOR has the right to assign any right or obligation of SPONSOR under this Agreement to any company, and that any right or obligation of SPONSOR under this Agreement may be performed by any company it assigns hereto.

Preferred Language: ['Neither party may assign this Agreement without the prior written consent of the other party. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.']

Why: if any IP is being assigned to the sponsor, this will allow it to be assigned without our knowledge or control.

1st response to Sponsor: have it limited to affiliates, subsidies, or the like

Confidence: 0.25493918780515423

[END POTENTIAL PROBLEMATIC LANGUAGE]

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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

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