****

**RESEARCH COLLABORATION AGREEMENT**

**BETWEEN**

## UNIVERSITI SAINS MALAYSIA

### **AND**

**AAA**

RESEARCH COLLABORATION ON \*\*\*

**RESEARCH COLLABORATION AGREEMENT**

**THIS RESEARCH COLLABORATION AGREEMENT** is made this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20 (hereinafter referred to as “Agreement”);

**BETWEEN**

**UNIVERSITI SAINS MALAYSIA,** a public institution of higher learning established under the Universities and University Colleges Act 1971, which for the purpose of this Agreement is represented by its \*\*\* , with its main campus at 11800 USM, Pulau Pinang (hereinafter referred to as “USM”) of the first part;

**AND**

**AAA (Company no. \*\*\* ),** a **\*\*\*** and having its business address at **\*\*\*** (hereinafter referred to as “AAA”) of the second part.

(USM and AAA shall hereinafter be collectively referred to as “Parties” and individually as “Party”, where the context so requires)

**WHEREAS**

1. USM is Malaysia’s premier research university which strives to enhance and strengthen its educational programs and has taken various initiatives to complement its educational excellence. With its research and teaching facilities, experience, and a multi-disciplinary team of experts from among its staff members, USM has entered into various collaborative arrangements with other parties in its efforts to enhance its research content and strengthen its industrial networking.
2. AAA is a **\*\*\***.
3. USM and AAA are of the view that there are synergistic benefits to be derived for the Parties in this collaboration through sharing and further developing the knowledge and expertise of both Parties in relation to the Project (as hereinafter defined).
4. USMand AAA are desirous of formalizing this research collaboration by entering into this Agreement subject to the terms and conditions as stipulated herein.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

1. **DEFINITIONS AND INTERPRETATIONS**

1.1 In this Agreement, unless the context otherwise requires, the following terms shall have the following meaning:-

“**Background Intellectual Property**” means the pre-existing and/or background Intellectual Property owned or developed by USM or AAA independently, with no facilities, contribution, involvement or support by the other Party as to its development and any Intellectual Property developed outside the scope of this Agreement.

“**Confidential Information**” means any and all technical and non-technical information including patent, copyright, trade secret, know-how and proprietary information, techniques, sketches, drawings, diagrams, methods, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae related to a technology or invention, and includes, without limitation, its respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing manufacturing, customer list, business forecasts, sales and merchandising and marketing plans and information designated in writing to be confidential or by its nature intended to be for the sole knowledge of the receiving party or if orally given in the circumstances of confidence or confirmed promptly in writing as having been disclosed as confidential or proprietary for the purpose of this Agreement; that is conveyed by the disclosing party to the receiving party, in written, oral, digital, magnetic, photographic and/or whatsoever forms.

**“Effective Date”** means the date appearing at the beginning of this Agreement.

**“Force Majeure”** means events or circumstances beyond the reasonable control of either Party including but not limited to strikes, lock-outs or other labour disputes, civil commotion, war, act of terrorism, radiation of contamination from nuclear leak or combustion, epidemics, pandemics, embargoes, flood, earthquake, tsunamis and acts of God.

“**Intellectual Property**” means

1. Inventions; manner, method or process of manufacture; method or principle of construction; or design; plan, drawing or design; or scientific, technical or engineering information or document;
2. Improvement, modification or development of any of the foregoing;
3. Patent, application for a patent, right to apply for a patent or similar rights for or in respect of any intellectual Property referred to in paragraph (a) or (b);
4. Trade secret, know-how, confidential information or right of secrecy or confidentiality in respect of any information or document or other intellectual Property referred to in paragraph (a) or (b);
5. Copyright or other rights in the nature of copyright subsisting in any works or other subject matter referred to in paragraph (a) or (b);
6. Registered and unregistered trademark, registered design, application for registration of a design, right to apply for registration of a design or similar rights for or in respect of any work referred to in paragraph (a) or (b);
7. Any Intellectual Property in addition to the above which falls within the definition of intellectual property rights contained in Article 2 of the World Intellectual Property Organisation Convention of July 1967; and
8. Any other rights arising from intellectual activities in the scientific, literary or artistic fields,

Whether vested before or after the date of this Agreement and whether existing in Malaysia or otherwise and for the duration of the rights; and

“**New Intellectual Property**” means the Intellectual Property jointly conceived, created, developed, improved or reduced to practice or writing by the Parties hereto as a result of the Project.

“**Project**” means the research collaboration project contemplated herein titled ‘**\*\*\*** ‘ as particularly described in Schedule Ahereto.

1.2 Any monetary references shall mean the Malaysian currency unless otherwise stated.

1.3 Any word (including a word defined or given a special meaning) denoting the singular shall include the plural and vice versa.

1.4 Any word denoting one gender only shall include each other gender.

1.5 A reference to a person shall include a corporation as well as a natural person.

1.6 A reference to a Schedule is a reference to a Schedule to this Agreement.

**2. COMMENCEMENT & TERM**

Regardless of the diverse dates the Parties may have signed this Agreement, this Agreement shall be effective for a period of **\*\*\***( **\*\*\*** ) years/months from the Effective Date, unless subsequent time extensions, supplement, continuation, or renewal is mutually agreed upon in writing by the Parties.

1. **ROLES AND RESPONSIBILITIES OF THE PARTIES**

In consideration of the covenants herein and subject to the terms of this Agreement and all applicable laws, the Parties shall carry out their respective roles and responsibilities in accordance with the provisions of this Agreement and within the scope of responsibilities as set out below.

3.1 USM’s Roles and Responsibilities

1. **\*\*\***
2. **\*\*\***
3. **\*\*\***

3.2 AAA ’s Roles and Responsibilities

1. **\*\*\***
2. **\*\*\***
3. **\*\*\***

3.3 The Parties’ Joint Responsibilities *(if any)*

1. **\*\*\***
2. **\*\*\***
3. **\*\*\***
4. **RESEARCHERS**

4.1 The researcher directing USM’s activities for the Project shall be **\*\*\*** (hereinafter referred to as “USM Researcher”) and the USM Researcher may be assisted by other researcher(s) as appointed by USM (hereinafter referred to as “USM Co-Researcher”). In the event the USM Researcher and/or the USM Co-Researcher is unable to serve for the Project, USM shall be entitled to nominate an alternate researcher to act as USM Researcher and/or USM Co-Researcher to carry out USM’s roles and responsibilities under this Agreement.

4.2 AAA shall designate **\*\*\*** as AAA’s researcher (hereinafter referred to as “AAA Researcher”) to carry out AAA’s roles and responsibilities under this Agreement.

4.3 The Parties agree that the USM Researcher shall act as the principal researcher for the Project.

1. **INTELLECTUAL PROPERTY**

5.1 The Parties recognize and agree that all rights, titles and interests over the Background Intellectual Property of either Party and used to produce any product which forms the New Intellectual Property, are the separate property of the relevant Party and are not affected by this Agreement, and neither Party shall have any claims to or rights in the other Party’s Background Intellectual Property.

5.2 Any New Intellectual Property resulting from the Project shall be promptly disclosed in writing to the other Party. The Parties shall hold such disclosure on a confidential basis and neither Party shall disclose the information to any third party without the written consent of the other Party.

5.3 All rights, titles and interests over the New Intellectual Property shall be jointly owned by USM and AAA and the proportion of ownership shall be based on the actual contribution of the respective Parties to the Project.

5.4 In the event USM and AAA intend to commercialize the New Intellectual Property, the Parties agree that a separate agreement shall be entered into between USM and AAA in relation to the commercialization.

5.5 Nothing contained in this Agreement shall be deemed to grant to either Party either directly or indirectly or by implication, estoppels or otherwise any license under any patents, patent applications or other proprietary interest over any Background Intellectual Property of either Party.

5.6 The Parties agree that USMshall retain the right to use the results of the Project for research, development and educational purposes subject to confidentiality and publication provisions of this Agreement.

**6. PROGRESS REPORTS**

6.1 The Parties through their respective researchers shall furnish to the other Party written reports as to the progress of works carried out for the Project from time to time.

6.2 Each Party shall respond promptly to any queries from the other Party from time to time in respect of the progress of the works in relation to the Project and any other matters in relation thereto by such means as are agreed from time to time by the Parties hereto.

**7. CONFIDENTIALITY**

7.1 Neither Party shall at any time publish or disclose to any third party, the contents of this Agreement or any Confidential Information of the other Party, acquired pursuant to this Agreement without the written consent of the other Party. This provision shall not apply to Confidential Information that –

(a) is already known by the receiving Party prior to receipt from the disclosing Party; or

(b) is or becomes part of the public domain and widely available other than by breach of the obligations of the receiving Party; or

(c) is independently developed by the receiving Party; or

(d) is lawfully received by the receiving Party from a third party; or

(e) is required to be disclosed by operation of law and if the receiving Party is required to disclose under this clause, the receiving Party shall, if possible, disclose only to the minimum required to comply with the law.

7.2 The Parties hereto acknowledge that in the event of any breach of this clause 7 by either Party, the disclosing Party may suffer substantial loss and damage which monetary damages cannot adequately remedy. The Parties acknowledge and agree that the disclosing Party shall be entitled to injunctive and other equitable relief in enforcing the obligations in this clause 7 in addition to all other remedies available to the disclosing Party in law.

**8. RIGHT TO PUBLISH**

8.1 The data and findings derived from the Project, which are of academic importance for the enrichment of knowledge, may be jointly or separately published by the Parties, subject always to the due observance of this provision. The Party intending to publish (hereinafter referred to as the “the Publishing Party”) shall submit the proposed manuscript to the other Party for review and comment prior to submission for publication. The other Party shall have no more than twenty-one (21) days or such extended period as may be agreed by the Parties from the date the other Party being provided with the proposed manuscript, for review of data and information deemed confidential as defined in Clause 7 above relating to confidentiality or patentable items (hereinafter referred to as the “Review Period”).

8.2 If the other Party determines that the proposed manuscript –

(a) contains patentable subject matter, that Party may in writing, require the Publishing Party to delay publication for a period of time not exceeding sixty (60) days for the purpose of filing patent applications; or

(b) contains its Confidential Information, that Party shall inform the Publishing Party accordingly and the Publishing Party shall delete the Confidential Information from the proposed manuscript.

8.3 Notice for any requirement for delay of the publication and/or that the proposed manuscript contains the other Party’s Confidential Information, shall be given to the Publishing Party within the Review Period. If the aforesaid notice is not received by the Publishing Party at the expiry of the Review Period, the Publishing Party shall be free to proceed with the proposed publication.

**9. RELATIONSHIP OF THE PARTIES**

Nothing in this Agreement shall be construed as establishing or creating a partnership or a relationship of master and servant between the Parties hereto or as constituting any party as an agent or representative of the other Party for any purpose or in any manner whatsoever.

**10. TERMINATION**

10.1 If USM or AAA (as the case may be) commits any of the conditions stated below, then, the aggrieved Party shall be entitled to terminate this Agreement by serving a notice to that effect:

10.1.1 Either Party becomes insolvent or is unable to pay its debts when due or admits in writing its inability to pay its debts; or

10.1.2 Either Party enters into any arrangement or composition with its creditors generally, or a receiver or manager is appointed; or

10.1.3 Either Party goes into liquidation or passed a resolution to go into liquidation, otherwise than for the purpose of reconstruction; or

10.1.4 Either Party fails to comply with any of the obligations under this Agreement.

10.2 The notice to terminate in the case of sub-clauses 10.1.1 to 10.1.3 shall not be less than twenty one (21) days written notice. In the case of sub-clause 10.1.4, the non-defaulting Party shall first give a twenty one (21) days’ written notice to the defaulting Party to remedy such default, and where such default is not remedied within that period, the non-defaulting Party shall then give a further twenty one (21) days’ written notice to terminate the Agreement.

10.3 Upon termination of this Agreement, both Parties shall have no obligation to each other save and except for payments still outstanding and payable by AAA to USM, for activities already undertaken prior to the date of such termination.

**11. FORCE MAJEURE**

11.1 None of the Parties shall be held liable for any failure to perform its obligations under this Agreement if the failure results from events of *Force* Majeure.

11.2 The respective obligations of either of the Parties hereunder shall be suspended during the time and to the extent that such Party is prevented from complying therewith by a *Force Majeure* event, provided that such Party shall have given written notice thereof to the other Party, specifying the nature and details of and the probable extent of the delay to the other Party.

11.3 If either Party considers the Force Majeure event to be of such severity or to be continuing for such period of time that it effectively frustrates the original intention of this Agreement, then the Parties may agree that this Agreement be terminated upon mutual Party agreement of the Parties.

11.4 If this Agreement is terminated pursuant to clause 11.3 above, all rights and obligations of the Parties under this Agreement shall forthwith terminate and neither Party shall have any claim against the other Party nor be liable to the other Party save for any rights and liabilities accruing prior to the occurrence of the *Force Majeure* event.

**12. PUBLIC STATEMENT**

Both Parties agree that no public statement shall be made on the Project or in relation to any products, processes or inventions developed as a result of the Project unless approved first by both Parties.

**13. NAME, OFFICIAL EMBLEM AND LOGO**

13.1 Neither Party shall use, nor permit any person or entity to use the name, acronym, official emblem, logo, trade mark (or any variation thereof) or other Intellectual Property (hereinafter referred to as “Brand Materials”) that is/are identified with or belongs to the other Party on any publication, document, paper, audio or visual presentation, or for publicity purposes.

13.2 Any use of the Brand Materials for the purposes stated in clause 13.1 above shall first obtain the written consent of the other Party and shall comply with all conditions set by the other Party on the use of its Brand Materials.

**14. ASSIGNMENT**

Neither Party shall assign in whole or in part, any of its rights, obligations, interests or benefits hereunder to any third party without the prior written consent of the other Party.

**15. WAIVER**

15.1 The waiver by a Party in respect of any breach of a term of this Agreement by the other Party shall not be deemed to be a waiver in respect of any other term or of any subsequent breach of that term.

15.2 The failure of a Party to enforce at any time any term of this Agreement shall in no way be interpreted as a waiver of such term.

**16. DISPUTE SETTLEMENT AND GOVERNING LAW**

16.1 In the event of a dispute relating to the Project or in the interpretation of this Agreement, the Parties shall first discuss the dispute initially with a view to an amicable settlement.

* 1. If the Parties are unable to agree on any settlement or arrangement, either Party may take the dispute to a court of law.

* 1. This Agreement shall be governed and construed in accordance with the laws of Malaysia.

**17. NOTICES**

17.1 Any notice required to be given pursuant to this Agreement shall be in writing and may be delivered by hand, ordinary mail, prepaid registered post to the addresses as hereinbefore appearing, or faxed or emailed to the Party concerned.

17.2 Any change of address of either Party shall be notified in writing to the other Party.

17.3 Any notice given by post under this clause shall be deemed to have been duly served on the other Party at the expiration of three (3) working days after the date of such posting and production of any official post office receipt showing the time and date of posting shall be conclusive evidence of the time and date of posting.

**18. ENTIRE AGREEMENT**

The terms of the agreement between the Parties are those set out in this Agreement and the Schedules hereto and this Agreement shall supersede all written or oral agreement or understanding made between the Parties prior to the date of this Agreement.

**19. SUCCESSORS-IN-TITLE**

This Agreement shall be binding on the respective heirs, personal representatives, receivers, successors-in-title and permitted assigns of the Parties hereto.

**20. AMENDMENT/MODIFICATION**

Any provision of this Agreement may be amended or modified by mutual consent between the Parties and such amendment/modification shall be in writing and signed by the duly authorised representative of the Parties.

**21. NON-DISCRIMINATION**

USM and AAA agree not to discriminate against any person because of age, sex, national origin, race, ancestry, colour, religious creed disability or handicap, and sexual orientation. Neither institution shall impose criteria for the exchange of staff and students that would violate the principles of non-discrimination.

**22. LANGUAGE OF AGREEMENT**

If this Agreement is translated into another language, both texts would be deemed to be authentic but the English text would prevail in the event of a dispute.

**23. COUNTERPARTS**

This Agreement may be executed in any number of counterparts and each such counterpart shall constitute an original of this Agreement. This Agreement shall not be effective until each Party has executed at least one counterpart.

**24. HEADINGS SCHEDULES AND APPENDICES**

24.1 The headings in this Agreement are included for convenience only and shall neither affect the construction or interpretation of any provision in this Agreement nor affect any of the rights or obligations of the Parties.

24.2 All schedules and appendices annexed hereto shall form part of this Agreement and shall be read, taken and construed as an essential part of this Agreement.

**25. COSTS**

The Parties shall bear their respective legal fees in respect of the preparation of this Agreement but the stamp duty on this Agreement shall be equally borne by the Parties.

**26. E-COMMUNICATION**

The Parties acknowledge and agree that electronic communication is an acceptable method of communicating information between the Parties without having to communicate the same on paper. Any communication and subsequent electronic signature that has been sent or signed in the past, present, or future between the Parties will hold the same force and effect as a document signed and inked on paper.

*[ next page is the signing page ]*

**IN WITNESS WHEREOF** the Parties hereto have caused this Agreement to be signed on the day and year first above written.

|  |  |
| --- | --- |
| SIGNED BY  For and on behalf of  **UNIVERSITI SAINS MALAYSIA**  ……………...............…………………………………..  **PROFESSOR DR. FAISAL RAFIQ MAHAMD ADIKAN**  Vice-Chancellor | SIGNED BY  For and on behalf of  **AAA**  …….…………………………..….................……  **[ name & designation** ] |
| WITNESSED BY:  …………..……………………………………………..…  **[ HoD’s name & designation** **]** | WITNESSED BY  ………………..……………………………………..…  **[ name & designation** ] |

**SCHEDULE A**

[To incorporate detail scope of works ]