

RESEARCH AGREEMENT

THIS AGREEMENT is entered into and effective as of the ____ day of _____ 20__ ("Effective Date") by and between _____, a _____ corporation with offices at _____ ("SPONSOR"); and The University of Tennessee, a public higher education institution and instrumentality of the State of Tennessee, on behalf of its Health Science Center, with offices at 62 S. Dunlap, Suite 300, Memphis, Tennessee 38163 ("the UNIVERSITY").

RECITALS

WHEREAS, the research program contemplated by this Agreement is of mutual interest and benefit to the parties and will further the instructional and research objectives of the UNIVERSITY and the research objectives of SPONSOR in a manner consistent with the UNIVERSITY's status as an educational corporate agency of the State of Tennessee.

NOW, THEREFORE, the parties agree as follows:

1. STATEMENT OF WORK AND PRINCIPAL INVESTIGATOR.

1.1 The UNIVERSITY agrees to use its reasonable efforts to perform the research project ("Project") as set out in the Statement of Work titled, _____, attached hereto and incorporated herein by reference as Appendix A.

1.2 The UNIVERSITY's obligations as stated in Article 1.1 above shall be carried out under the supervision of _____, Principal Investigator. The failure of _____ for any reason to continue to serve as Principal Investigator until the normal conclusion of the Project shall not be considered a breach of this Agreement and shall not subject the UNIVERSITY to any liability. In such case, the UNIVERSITY and SPONSOR shall endeavor to agree upon a successor, and if they fail to agree, either of them may terminate this Agreement without cause upon written notice to the other party.

2. RESEARCH SUPPORT BY SPONSOR.

2.1 The total research support to be provided by SPONSOR is \$ _____. Payments shall be made to the UNIVERSITY by SPONSOR according to the following schedule:

Insert schedule of payments (include non-refundable start-up costs if applicable, applicable overhead, as much as possible up front, and not more than 10% withheld as final payment)

NOTE: Budget should cover FULL cost of research

2.2 Checks shall be made payable to The University of Tennessee and shall be mailed to the following address:

Anthony A. Ferrara, Vice Chancellor for Finance and Operations
UTHSC
62 S. Dunlap, Suite 300
Memphis, TN 38163
901 448-5523
spa@uthsc.edu

2.3 All funds provided by SPONSOR under this Agreement may be used at the discretion of the UNIVERSITY.

3. TERM AND TERMINATION.

3.1 The term of this Agreement shall be from [REDACTED] (Effective Date) through [REDACTED], 20 [REDACTED], unless sooner terminated in accordance with the provisions set out herein. This Agreement may be extended, renewed, or otherwise amended at any time by the mutual written consent of the parties.

3.2 In the event that either the UNIVERSITY or SPONSOR defaults in the due performance of its obligations hereunder or in the event that any representation by either of them proves to be false or incorrect, and such default or breach is not cured within thirty (30) days of written notice thereof, then the party giving such notice may elect to terminate this Agreement by final written notice to the defaulting party. The parties recognize that the results of any particular research project cannot be guaranteed even through the use of the UNIVERSITY's reasonable efforts; therefore, it is specifically agreed that the failure of the UNIVERSITY to achieve specific research results shall not constitute a default or breach of this Agreement.

3.3 Either UNIVERSITY or SPONSOR may terminate this Agreement without cause upon written notification to the other at least thirty (30) days prior to the effective date of termination.

3.4 If the total funds paid by SPONSOR by the date of termination are insufficient to cover the amounts earned in accordance with the budget and commitments incurred by the UNIVERSITY in the performance of the research, SPONSOR shall reimburse the UNIVERSITY for same within thirty (30) days of termination, provided that in no event shall SPONSOR be responsible for any amount in excess of that stated in Article 2.1.

3.5 In the event of termination of this Agreement by the UNIVERSITY for default on the part of SPONSOR, or termination of this Agreement by SPONSOR without cause, the Option granted under Article 7 below shall thereupon terminate automatically.

4. EQUIPMENT.

4.1 Title to any equipment purchased, manufactured, or otherwise acquired in the course of the work under this Agreement shall vest in the UNIVERSITY, notwithstanding any contribution directly or indirectly from SPONSOR.

5. PUBLISHING.

5.1 UNIVERSITY reserves to itself and its employees the sole right to publish the results of the Project in whole or in part as they deem appropriate. In order that premature public disclosure of such information does not adversely affect the interests of the parties, the UNIVERSITY shall provide SPONSOR with a copy of each manuscript pertaining to the Project that is intended for publication. SPONSOR may request delay in publication for a period not to exceed ninety (90) days from the date on which SPONSOR receives the manuscript. If SPONSOR does not make a written request for delay in publication within thirty (30) days after receipt of a manuscript, UNIVERSITY shall be free to publish the manuscript at any time after the end of the thirty (30) days. SPONSOR's right to request a delay in publication shall not apply to any thesis or dissertation.

6. CONFIDENTIALITY.

6.1 The UNIVERSITY and SPONSOR recognize that the conduct of a research program may require the transfer of proprietary information between the parties. Accordingly, it is agreed that the acceptance by either of them of the other's proprietary information shall be subject to the following:

A. The term "Confidential Information" as used herein, in the case of documentary information, shall include only that documentary information which is clearly marked as proprietary (or confidential) at the time when it is given to the receiving party. "Confidential Information" which is originally orally disclosed shall include only that information which is identified as being proprietary or confidential at the time of disclosure and confirmed as confidential by written communication sent within a reasonably prompt period of time after it is disclosed to the receiving party.

B. The subject matter of the Confidential Information is to be limited to that which is relative to the research outlined in the Statement of Work under Article 1 above.

C. The receiving party will not publish or otherwise reveal to any third party the Confidential Information (properly designated) of the disclosing party without the disclosing party's written permission, unless the information:

- (1) is already lawfully in the receiving party's possession at the time of receipt from the disclosing party as evidenced by appropriate documentation;
- (2) is or later becomes public through no fault of the receiving party;
- (3) is published by the UNIVERSITY and or its employee(s) in accordance with the provisions of Article 5 above;

both parties, the negotiation period not to exceed six (6) months. Upon the first to occur of (a) termination of the Option by operation of the provisions of Article 3.5 above; or (b) expiration of the Option Period with the Option unexercised; or (c) expiration of the six-month negotiation period without the execution of a commercialization agreement, UNIVERSITY shall have no further obligation to SPONSOR under this Agreement with regard to the Optioned IP. In the absence of a further agreement between UNIVERSITY and SPONSOR, SPONSOR agrees that it will not use the Optioned IP for any commercial or non-commercial purpose.

- G. During the Option Period, UNIVERSITY and SPONSOR will confer concerning the proper protection of the Optioned IP. Within thirty (30) days after receipt of an invoice from UNIVERSITY, SPONSOR shall reimburse UNIVERSITY for all out-of-pocket expenses incurred by UNIVERSITY during the Option Period in the filing, prosecution, and maintenance of United States and foreign patent applications, issued patents, and other forms of intellectual property protection for the Optioned IP, all of which shall be owned by UNIVERSITY.
- H. It is understood and agreed that any rights granted by or to any party by the terms of this Agreement shall in all respects be subject to any rights claimed or restrictions and obligations imposed by the United States government or any agency thereof, whether such rights or restrictions and obligations arise out of federal funding of the underlying research or otherwise.

8. BINDING AGREEMENT.

8.1 This Agreement shall be binding upon and inure to the benefit of each of the parties hereto, their successors and assigns; provided, however, that this Agreement is not assignable or transferable, in whole or in part, by any party without the prior written consent of the other parties. Notwithstanding the foregoing, UNIVERSITY may assign its rights and interest to the University of Tennessee Research Foundation ("UTRF") or a successor in interest to UTRF or the UNIVERSITY without the prior written consent of SPONSOR.

9. LIABILITY/INDEMNIFICATION.

9.1 The UNIVERSITY makes no warranties, either expressed or implied, as to the work to be performed under this Agreement or the Optioned IP. THE UNIVERSITY SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The UNIVERSITY shall not be liable for any direct, consequential, or other damages suffered by SPONSOR or others resulting from the work performed under this Agreement or the Optioned IP.

9.2 **LIMITATION OF LIABILITY ON BEHALF OF THE UNIVERSITY.** The UNIVERSITY is self-insured under the provisions of the Tennessee Claims Commission Act (T.C.A. 9-8-301 *et seq.*), and its liability to SPONSOR and to third parties for the negligence of the UNIVERSITY and its employees is subject to the tort provisions of that Act. Accordingly, any liability of the UNIVERSITY for any damages, losses, or costs arising out of or related to acts performed by the

UNIVERSITY or its employees under this agreement is governed by the provisions of said Act.

Notwithstanding anything in this agreement to the contrary, any provisions or provisions of this agreement will not apply to the extent that it is (they are) finally determined to violate the laws or Constitution of the State of Tennessee.

9.3 SPONSOR will indemnify UNIVERSITY and their respective trustees, directors, officers, employees and agents and hold them harmless from every loss, cost or damage for judgments, awards or the compromise of any claim arising out of the use of the Optioned IP or the advertisement, manufacture, use or sale of any product or process by SPONSOR, its sublicensees, dealers or customers.

10. EXPORT CONTROL.

10.1 SPONSOR acknowledges that the export of goods and/or technical data from the United States may require some form of export control license from the U.S. Government. SPONSOR agrees that it will not disclose, export or re-export any materials or technical data received under this Agreement to any countries for which the U.S. Government requires an export license, unless the SPONSOR has obtained prior written authorization first from the U.S. agency or authority responsible for such matters. SPONSOR agrees that it is responsible for any fees or expenses associated with obtaining an Export License, if required. UNIVERSITY neither represents that a license shall be required nor that, if required, it shall be issued.

11. HIPAA

The parties agree to comply with HIPAA regulations insofar as they apply to the parties under this Agreement. SPONSOR agrees to use any subject data or Protected Health Information (as defined in HIPAA regulations) only for purposes authorized by the signed subject consent form, authorization, or approved waiver.

12. USE OF HUMAN SUBJECTS/LABORATORY ANIMALS

It is understood that no work involving human subjects or laboratory animals will begin until the project has been approved by the Institutional Review Board or the Institutional Animal Care and Use Committee, respectively.

13. MISCELLANEOUS.

13.1 No party may use the name of another party in any form of publicity, promotion, or advertising without the prior written permission of that party. However, nothing herein is intended to preclude the parties from acknowledging the existence of this agreement or the relationship of the parties in reports of sponsored activity.

13.2 Any communication required or permitted to be given under this Agreement shall be in writing and shall be deemed given upon documented delivery. Otherwise all communications and notices shall be effective on the date of actual receipt by the addressee.

All communications shall be sent to the addresses set forth below or to such other address as a party may designate by advance written notice to the other party(ies).

- A. If to SPONSOR: _____

Tel: _____
Fax: _____
Email: _____

- B. If to UNIVERSITY:

Technical: _____

Tel: _____

- Administrative: UTHSC Research Administration
910 Madison, Suite 823
Memphis, TN 38163
Tel: 901 448-3303
Fax: 901 448-7600

Notwithstanding the foregoing, payments to the UNIVERSITY by SPONSOR shall be addressed as set out in Article 2.2 of this Agreement.

13.3 Each of the parties' relationship to the other parties in the performance of this Agreement is that of an independent contractor.

13.4 This Agreement is made and entered into in the State of Tennessee and its validity and interpretation and the legal relations of the parties shall be governed by the laws of the State of Tennessee.

13.5 This instrument contains the entire and only agreement between and among the parties respecting its subject matter. No modification, renewal, extension, or waiver of any of its provisions shall be binding unless made in writing and signed by the party against whom enforcement is sought.

The remainder of the page is intentionally left blank.

IN WITNESS WHEREOF, signifying their acceptance of and agreement to be bound by the terms and conditions of this Agreement, the signatures of the parties are affixed hereto.

(SPONSOR)

**THE UNIVERSITY OF TENNESSEE
ON BEHALF OF ITS
HEALTH SCIENCE CENTER
(UNIVERSITY)**

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

Appendix A
Statement of Work