

RESEARCH AGREEMENT

THIS RESEARCH AGREEMENT ("Agreement") is entered into on (DATE) by and between (SPONSOR'S NAME AND ADDRESS) ("Sponsor") and the University of Rochester ("Rochester"), a non-profit educational institution and a body having corporate powers under the laws of the State of New York of the United States of America with business offices located at 518 Hylan Building, RC Box 270140, Rochester, New York 14627.

RECITALS

Rochester, through the Department () in the School of (), has valuable experience, and skill, and ability in (RESEARCH TITLE).

Sponsor desires to have Rochester undertake a research project in accordance with the scope of work described in Exhibit A, Statement of Work.

The research program contemplated by this Agreement is of mutual interest and benefit to Rochester and Sponsor, and will further Rochester's instructional and research objectives in a manner consistent with its status as a non-profit, tax exempt educational institution.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto hereby agree as follows:

1. STATEMENT OF WORK. Rochester agrees to use its reasonable efforts to perform the research project described in Exhibit A ("the Research"), which Exhibit is incorporated herein. Access to work carried on in Rochester's laboratories in the course of the Research shall be entirely under the control of Rochester personnel.

2. KEY PERSONNEL.
 - (A) The following individuals are identified as key personnel for the performance of the Research at Rochester:
 1. (Name), Principal Investigator
 2. (Name), Other
 3. (Name), Other

 - (B) In the event that the Principal Investigator becomes unable or unwilling to continue the Research and a mutually acceptable substitute is not available, Rochester or Sponsor shall have the option to terminate the Research in accordance with the termination terms herein.

3. PERIOD OF PERFORMANCE. This Agreement is effective for the period (DATE) through (DATE) and may be extended only by written agreement of the parties.

4. REIMBURSEMENT OF COSTS. Rochester shall be reimbursed by the Sponsor for all direct and indirect costs incurred in connection with the Research up to the amount of \$_____.as

more fully set forth herein (Budget attached as Exhibit B).. Rochester shall not be obligated to expend funds in excess of those provided under this Agreement to conduct the Research.

PAYMENT TERMS (*ORPA must select one of the following options*)

Option A: This is fixed price agreement. Upon execution of this Agreement, Rochester will submit an invoice for full payment due within thirty (30) days from receipt of the invoice.

Option B: This is a fixed price agreement. Upon execution of this Agreement, Rochester will submit invoices for payment due within thirty (30) days from receipt of the invoice in accordance with the following schedule:

60% due upon execution of this Agreement;
30% due _____ days from the start date of the project;
10% due upon receipt of all deliverables.

Option C: This is a cost-reimbursable agreement. Rochester will submit quarterly (or monthly) invoices based on actual expenditures pursuant to the budget outlined in Exhibit B. Invoices will be due within 30 days of receipt.

Checks shall be made payable to the University of Rochester and shall be sent to:

University of Rochester
Research Accounting and Costing Standards
1325 Mt. Hope Avenue
University Towne House, Suite 260
Rochester, New York 14620

For purposes of identification, each payment shall include the title of the Research and the name of the Principal Investigator.

5. EQUIPMENT. Rochester may be required to purchase equipment or the components thereof for its own use in connection with the Research. Title to any such equipment purchased or manufactured in the performance of the work funded in connection with this Agreement shall vest in Rochester.
6. INTELLECTUAL PROPERTY.
 - (A) Inventorship of inventions conceived during the course of performing research under this Agreement ("Inventions") will be determined in accordance with U.S. Patent laws and ownership shall follow inventorship. Rochester represents that all of its employees who may be involved in the Research have agreed to assign to Rochester all rights to Inventions, technology and software developed under this Agreement.
 - (B) Patents - Rochester and Sponsor shall promptly provide in confidence a complete written disclosure to each other of any Invention first conceived or discovered in the performance

of the work funded under this Agreement. If requested by Sponsor in writing within thirty (30) days of the complete written disclosure, Rochester shall, at Sponsor's request and expense, pursue and obtain patent protection for a Rochester Invention in consultation with Sponsor. If Sponsor requests that Rochester pursue protection on any such Invention, and so long as Sponsor continues to pay patent costs for such Invention, Sponsor shall have a one hundred eighty (180) day period from the date that Rochester files for patent protection for the Rochester Invention or from the filing date of a Joint Invention, to negotiate the terms of a license agreement and Rochester and Sponsor agree to negotiate these license terms in good faith. During this period, Rochester will not offer a commercial license to any other party.

In the event Sponsor does not request that Rochester pursue patent protection within the thirty (30) day period after the complete written disclosure of the Invention, Rochester may file at its own expense and Sponsor shall have no further rights to that patent application or that Invention.

- (C) Technology Other than Patented Technology - All rights in technology (such as tangible materials, works of authorship, software or data) created in the performance of the Research by personnel of Rochester shall be owned by Rochester. Upon receipt of a written description or sample of such technology, Sponsor shall have a one hundred twenty (120) day period to negotiate the terms of a license agreement and Rochester agrees to negotiate these license terms in good faith. During this period, Rochester will not offer a commercial license to any other party.
- (D) License Terms - Any license granted shall be subject to Rochester's intellectual property policies and Rochester's agreement with other sponsors of research and providers of research materials. Such license shall provide:
1. for Sponsor (and its sublicensees, if any) to exert its best efforts to introduce products and services utilizing the licensed technology into public use as rapidly as practicable;
 2. for a royalty that is usual and customary in the trade;
 3. for termination in the event Sponsor has not introduced licensed products or services into public use, or is not actively seeking to do so, within a time period acceptable to Rochester;
 4. for indemnity terms acceptable to Rochester;
 5. for Rochester to retain a nonexclusive license, with the right to grant licenses to non-profit and academic institutions, for non-commercial research purposes only;
 6. that the license shall be subject, when research is funded by the United States government to rights retained by the government in accordance with P.L. 96-517, as amended by P.L. 98-620, and when such funding is NIH funding, Rochester's obligations regarding the *NIH Guidelines for Obtaining and Disseminating Biomedical Research Resources*, including, but not limited to, the obligation to ensure that research tools will be available to academic research community on reasonable terms.

7. PUBLICATION. Rochester agrees to provide Sponsor, in confidence, with an advanced copy of any publication resulting from the Research not less than thirty (30) days prior to the submission to a journal or any other public disclosure. At the request of the Sponsor, Rochester agrees to delay the publication for a period of sixty (60) days from the date the publication was originally provided to the Sponsor for the filing of any relevant patent applications. In addition, Rochester agrees to remove any Confidential Information of the Sponsor.
8. CONFIDENTIALITY.
- (A) Unless otherwise required by law, Rochester will exercise reasonable effort to maintain in confidence proprietary or trade-secret information disclosed or submitted to Rochester by the Sponsor which is designated in writing as confidential information at the time of disclosure ("Confidential Information").
- (B) Confidential Information does not include information which:
1. was known to Rochester prior to the disclosure hereunder;
 2. was received from a third party not under an obligation of confidence to Rochester;
 3. is in the public domain at the time of disclosure hereunder or subsequently entered the public domain without the fault of the recipient;
 4. is independently known prior to receipt thereof or is discovered independently by an employee or student of Rochester who had no access to the information supplied by the Sponsor under this Agreement; or
 5. is required to be disclosed by law.
- (C) Rochester retains the right to refuse to accept any such information, which is not considered to be essential to the completion of the Research. The obligations of confidentiality under this paragraph shall survive and continue for three (3) years after the termination of this Agreement.
9. REPORTS. Rochester shall furnish Sponsor letter reports during the term of this Agreement summarizing the work conducted no less frequently than annually. A final report setting forth the accomplishments and significant research findings shall be prepared by Rochester and submitted to the Sponsor within ninety (90) days of the expiration of the Agreement. During the term of this Agreement, representatives of Rochester will meet with representatives of Sponsor upon Sponsor's request at times and places mutually agreed upon to discuss the progress of the Research.
10. TERMINATION. This Agreement may be terminated by either party at any time upon the receipt of sixty (60) days written notice to the other party except as specifically provided in paragraphs numbered 13, 14 and 15. In addition, if Sponsor fails to make any payment required hereunder, this agreement shall terminate on the tenth day after Rochester mails notice of such failure, unless payment is received before such tenth day. Rochester may also terminate immediately if circumstances beyond its control prevent continuation of the Research. Upon notification, Rochester shall proceed in an orderly fashion to limit or terminate any outstanding

commitments and/or to conclude the research. All costs associated with termination shall be allowable, including non-cancelable commitments incurred prior to receipt of termination notice and all expenses which have not been reimbursed to Rochester by Sponsor. In the event of termination, Rochester shall submit to Sponsor a final financial report in accordance with Paragraph 4 of this Agreement. Any costs and commitments incurred in excess of funds provided will be invoiced to Sponsor and will be payable by Sponsor within thirty (30) days. Termination or expiration of this Agreement will not affect either party's rights and duties under Paragraphs 4, 6,7, 8 or 14 hereof.

11. NOTICES. Any notices given under this Agreement shall be in writing and delivered by certified or registered return receipt mail, postage prepaid, or by facsimile addressed to the parties as follows:

For Sponsor:

Name: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

For Rochester:

Director
Office of Research and Project Administration

518 Hylan Building
RC Box 270140

Rochester, New York 14627

(585) 275-4031 (Telephone)

(585) 275-9492 (Facsimile)

12. PUBLICITY. Neither party shall use the name, tradenames or trademarks of the other party or the other party's employees in connection with any products, promotion, or advertising without the prior written permission of an authorized representative of the other party. The foregoing shall not, however, preclude any legally required disclosure, reports generated in the normal course of business, or acknowledgement of sponsorship as required by the guidelines of an academic organization.
13. WARRANTIES. ROCHESTER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE RESEARCH OR ANY INVENTION(S) OR PRODUCT(S), WHETHER TANGIBLE OR INTANGIBLE, CONCEIVED, DISCOVERED OR DEVELOPED UNDER THIS AGREEMENT; OR THE NON-INFRINGEMENT, OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR ANY SUCH INVENTION OR PRODUCT. Sponsor acknowledges that the Research is a scientific undertaking and consequently, Rochester will not guarantee any particular outcome
14. USE OF RESEARCH RESULTS AND LIABILITY. Sponsor agrees to hold harmless, indemnify and defend Rochester from all liabilities, demands, damages, expenses and losses arising out of use, sale or other disposition by the Sponsor, or by any party acting on behalf of or under authorization from the Sponsor of the use of the Research results or of products made by

use of the results of the Research performed hereunder. The provisions of this paragraph shall survive termination.

Rochester shall not be liable for any direct, consequential, or other damages suffered by any licensee or any others resulting from the use of the Research or any such invention or product. The provisions of this paragraph shall survive termination of this Agreement.

15. INSURANCE. Sponsor will procure and maintain during the term of this Agreement comprehensive liability and product liability insurance to the full amount of Sponsor insurance limits, but in no event less than \$3,000,000 per occurrence, with a reputable and financially secure insurance carrier. The insurance will include Rochester, its trustees, directors, employees, agents and students as additional insureds with respect to this Agreement. This insurance will be written to cover claims incurred, discovered, or made during or after the expiration of this Agreement.

(16A and B are optional clauses for Clinical Research Agreements-If deleted indicate Paragraph 16 as RESERVED).

16. COMPLIANCE.

- (A) COMPLIANCE WITH FRAUD AND ABUSE LAWS. Sponsor represents and warrants that neither it, nor any of its officers, directors, shareholders holding a fifty percent or greater equity interest in Sponsor, employees and agents:

have been excluded from participation in any of the Government Health Programs of the Private Health Plans (an "Exclusion");

1. have been indicted for, convicted of or pled guilty or nolo contendere to any felony or misdemeanor related to the practice of a health care profession, the Fraud and Abuse Laws or controlled substances (a "Criminal Conviction");
2. have had a civil monetary penalty assessed against them (including monies paid through a settlement process) for presenting a false or fraudulent claim to any of the Government Health Programs (a "Civil Monetary Assessment"); or
3. are now or have ever been under investigation by any government agency for conduct which might result in any of the above (a "Government Investigation").

- (B) COMPLIANCE WITH HIPAA. Sponsor acknowledges that Rochester is a "Covered Entity" within the meaning of the Health Insurance Portability and Assurance Act ("HIPAA") and that information may be exchanged under the terms of this Agreement that would constitute "protected health information" ("PHI") as that term is used in HIPAA. Therefore, in connection with PHI, Sponsor agrees that: a) it may not use or disclose such information other than in connection with this Agreement; and b) it may not disclose such information in a manner that would violate the proposed regulations under HIPAA if such disclosure were done by Rochester. Sponsor agrees to adopt appropriate

safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement and to report to Rochester any use or disclosure of PHI in violation of this Agreement of which it becomes aware as soon as reasonably practicable. Sponsor agrees that that if any portion of its obligations under this Agreement are performed through a subcontractor or agent that the subcontractor or agent must agree to the same restrictions and conditions that apply to the Sponsor with respect to PHI. Sponsor must make PHI available pursuant to section 164.514(a) ("Right of access for inspection or copying") of the proposed privacy regulations pursuant to HIPAA. In connection with this obligation, Sponsor agrees to make its internal practices, books and records relating to the use and disclosure of PHI available to Health and Human Services Administration for the purpose of determining compliance with the privacy regulations. Sponsor agrees that upon termination of this Agreement, Sponsor will return or destroy all PHI received from Rochester and will not retain copies of such information.

17. FORCE MAJEURE. Rochester shall not be liable for any failure to perform as required by this Agreement, to the extent such failure to perform is caused by any reason beyond Rochester's control, or by reason of any of the following occurrences: labor disturbances or labor disputes of any kind, accidents, failure of any governmental approval required for full performance, civil disorders or commotion's, acts of aggression, floods, earthquakes, acts of God, energy or other conservation measures, explosion, failure of utilities, mechanical breakdowns, material shortages, disease, or other such occurrences.
18. ASSIGNMENT. Neither party shall assign its rights or duties under this Agreement to another without the prior express written consent of the other party; provided, however, that Sponsor may assign this Agreement to a successor in ownership of all or substantially all its business assets. Such successor shall expressly assume in writing the obligation to perform in accordance with the terms and conditions of this Agreement. Any other purported assignment shall be void.
19. SEVERABILITY. In the event a court of competent jurisdiction holds any provision of this Agreement to be invalid, such holding shall have no effect on the remaining provisions of this Agreement, and they shall continue in full force and effect.
20. INDEPENDENT CONTRACTOR. Each party shall be deemed to be an independent contractor of the other party, and neither shall be considered an agent, employee, joint venture or partner of the other. Neither party shall have authority to make warranties or representations or enter agreements on behalf of the other, nor shall either party be bound by the acts, statements or conduct of the other.
21. INDEPENDENT INQUIRY. Nothing in this Agreement shall be construed to limit the freedom of researchers who are participants in this Agreement, whether paid under this Agreement, or not, from engaging in similar research inquiries made independently under other grants, contracts or agreements with parties other than the Sponsor.
22. HEADINGS. The paragraph headings herein are for convenience only and shall not affect the construction or interpretation of this Agreement.

23. ENTIRE AGREEMENT CHANGES. This Agreement and its appendices contain the entire agreement between the parties, and supersede any prior or contemporaneous representations or agreements, written or oral regarding the subject matter thereof. No amendments or changes to this Agreement shall be effective unless made in writing and signed by authorized representatives of Rochester and Sponsor. All correspondence regarding terms of this Agreement shall be sent as specified in Paragraph 11.
24. GOVERNING LAW. This Agreement shall be governed by the laws of the State of New York as adjudicated by a court of competent jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate by proper persons thereunto duly authorized.

(Sponsor's Name)

University of Rochester

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A
STATEMENT OF WORK

EXHIBIT B
BUDGET