

COLLABORATIVE RESEARCH AGREEMENT

THIS AGREEMENT is made as of _____, ___ by and between the University of Rochester, an educational institution chartered by the State of New York and having its principal place of business at 601 Elmwood Avenue, Box OTT, Rochester, New York 14642 ("University") and _____, a **[state of incorporation]** corporation having its principal place of business at _____ ("Collaborator").

WHEREAS, University and Collaborator desire to perform certain research work and are willing to **[have certain employees directly collaborate] [and/or] [provide University with access to proprietary research data and materials][receive from University certain proprietary data and research materials];**

WHEREAS, the performance of collaborative research is consistent with the instructional, scholarship and research objectives of University;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, University and Collaborator agree as follows:

1. DEFINITIONS

As used in this Agreement, capitalized terms have the meanings given them below or elsewhere in this Agreement:

1.1. Research Materials means those experimental materials and data one party may provide the other in connection with and as stated in the Research Program.

1.2. Research Program means the research program set forth in Exhibit A.

1.3. Research Program Invention will mean any invention, discovery, work of authorship, software, information or data, patentable or unpatentable, that is conceived, discovered and reduced to practice in performance of the Research Program.

1.4. Confidential Information means Collaborator owned confidential scientific, business or financial data or information which will be clearly marked as such in writing provided that such information:

1.4.1. is not publicly known or available from other sources who are not under a confidentiality obligation to the source of the information;

- 1.4.2. has not been made available by its owners to others without a confidentiality obligation;
- 1.4.3. is not already known by or available to the receiving party without a confidentiality obligation;
- 1.4.4. is not independently developed by the receiving party;
- 1.4.5. does not relate to potential hazards or cautionary warnings associated with the performance of the Research Program of the Agreement or is not required to be disclosed under operation of law.

2. RESEARCH PROGRAM

2.1. Research Efforts. Provided Collaborator performs all its obligations under this Agreement, University will use its reasonable efforts to conduct those activities for which it is responsible under the Research Program.

2.2. University Principal Investigator. The conduct of University's activities under the Research Program will be under the direction of _____ ("University's Principal Investigator").

2.3. Collaborator's Principal Investigator. The conduct of Collaborator's activities under the Research Program will be under the direction of _____ ("Collaborator's Principal Investigator").

2.4. Use of Research Materials. Any Research Materials of one party transferred to the other in connection with the Research Program may only be used as stated in the Research Program. Unless the parties agree otherwise, Research Materials are to be considered the "Confidential Information" of the party providing them.

2.5. Reporting. The parties will generally keep one another informed of the results of the work performed in connection with the Research Program, principally through their respective Principal Investigators. In addition, the parties' respective Principal Investigators will meet and provide reports as stated in the Research Program.

2.6. Changes to the Research Program. During the course of the Research Program, either or both of the Principal Investigators may find it advantageous to modify the Research Program. Any modifications will be documented and formalized in a written amendment to this Agreement and any such amendment will become effective only if signed by an authorized representative of both parties to this Agreement.

2.7. University Purposes; Use of Facilities; No Guarantee of Results. Collaborator acknowledges that the primary mission of University is education and the advancement of

knowledge; and, consequently, the Research Program will be performed in a manner best suited to carry out that mission. Specifically, University's Principal Investigator will determine the manner of performance of University's part in the Research Program and University does not represent or warrant that the Research Program will be successful in any way or that any specific results will be obtained.

2.8. Similar Research. Nothing in this Agreement will be construed to limit the freedom of University or its researchers who are participants under this Agreement, from engaging in similar research made under other grants, contracts, or research agreements with parties other than Collaborator.

3. CONFIDENTIAL INFORMATION

3.1. Either party's acceptance and use of any confidential information supplied by the other party in the course of the Research Program will be subject to the following:

- 3.1.1. To be considered Confidential Information, all written information (including Research Materials) must be marked or designated in writing as **CONFIDENTIAL** by the party providing the information, and oral communications must be reduced to writing within thirty (30) days of the initial communication of the information and such writing must be marked or designated in writing as **CONFIDENTIAL** and provided to the other party's Principal Investigator.
- 3.1.2. The Principal Investigator(s) will use reasonable efforts to limit the exchange of Confidential Information.
- 3.1.3. Where the Principal Investigator(s) does accept such information as confidential, s/he agrees to use the same degree of care to prevent the unauthorized use, dissemination, or publication of the Confidential Information, without the express written permission of the providing party.
- 3.1.4. The Principal Investigator's (s') obligation to hold Confidential Information in confidence expires three (3) years after the termination or expiration of this Agreement.

4. PUBLICITY

Neither party will identify the other in any products, publicity, promotion, promotional advertising, or other promotional materials to be disseminated to the public, or use any trademark, service mark, trade name, logo, or symbol that is representative of a party or its entities, whether registered or not, or use the name, title, likeness, or statement of the other party's faculty member, employee, or student, without University's prior written consent. Any

use of a party's name shall be limited to statements of fact and shall not imply endorsement of products or services.

5. PUBLICATION

5.1. The basic objective of research activities at University is the generation of new knowledge and its expeditious dissemination for the public's benefit. Collaborator will provide all reasonable cooperation with University in meeting this objective.

5.2. As a matter of basic academic policy, University retains the right at its discretion to publish freely any results of the Research Program. Principal Investigator agrees to provide Collaborator a copy of any manuscript at the time it is submitted for publication. Collaborator may review the manuscript:

- 5.2.1. To ascertain whether Collaborator's Confidential Information would be disclosed by the publication;
- 5.2.2. To identify any potentially patentable Research Program Invention so that appropriate steps may be taken to protect such Research Program Invention; and
- 5.2.3. To confirm that the privacy rights of individuals are adequately protected.

Collaborator will provide comments, if any, within thirty (30) days of receipt of manuscript.

5.3. University will give Collaborator the option of receiving an acknowledgment in such publication.

6. INTELLECTUAL PROPERTY RIGHTS

6.1. Ownership of Research Program Inventions. Research Program Inventions conceived, discovered and reduced to practice by University, or its employees, agents or students will be owned by University. Research Program Inventions conceived, discovered and reduced to practice by Collaborator, or its employees, or agents, will be owned by Collaborator (Collectively, "Sole Inventions"). Research Program Inventions conceived, discovered and reduced to practice by at least one employee, agent, or student of each of University and Collaborator will be owned by University and Collaborator, without any obligation to account to one another ("Joint Inventions"). Inventorship will be determined according to the principles of United States patent law. Neither party shall make any claim to the other party's Sole Inventions.

6.2. Pre-Existing Rights. Except to the limited extent required to perform a party's obligations under this Agreement, neither party receives any right, title, or interest in or to any Research Materials provided to it by the other party or any technology, works or inventions of

the other party that are not Research Program Inventions, or any patent, copyright, trade secret or other proprietary rights in any of the foregoing.

6.3. Patents will mean those United States and foreign patents and patent applications including any continuation, reissue, or renewal thereof, or substitute therefor, and the patents that may be issued thereon, relating to any patentable Research Program Invention.

6.4. Patent Prosecution and Expenses. Unless the parties agree in writing otherwise, the filing, prosecution, defense and maintenance of all Patents for Joint Inventions will be conducted jointly in the name of both parties and controlled by them jointly, acting reasonably and in good faith.

6.5. Licensing. Each party reserves the right to license its interest in its Sole Inventions or Joint Inventions, and neither party shall have any right to compensation in connection with any such license granted by the other

6.6. Rights Subject to Federal Patent Policy. To the extent that any Research Program Invention has been partially funded by the Federal government, the assignment of title or the granting of any license above is subject to the rights of the Federal government and federal law set forth in 35 U.S.C. §§ 200 et. seq., as amended, and the regulations promulgated thereunder, as amended, or any successor statutes or regulations (the "Federal Patent Policy"). Any right granted in this Agreement greater than that permitted under the Federal Patent Policy will be modified as may be required to conform to the provisions of the Federal Patent Policy.

7. INDEMNIFICATION

7.1 As used herein, "Claim" includes but is not limited to every phase of any lawsuit, loss, claim, damage or liability for death, illness or personal injury of any person (including employees of University or Collaborator), for property damage, and/or for infringement of patents, trade secrets, or other rights of a third party. This indemnity shall not be deemed excess coverage to any insurance or self-insurance University may have covering Claim.

7.2 Collaborator hereby waives any Claim against University, and agrees to indemnify, defend, and hold harmless University, and their trustees, directors, employees, agents or students from any Claim arising out of or connected with this Agreement or the work done under this Agreement, except to the extent such Claim is due to their negligence or willful misconduct. University shall promptly notify Collaborator of any such Claim and shall cooperate with Collaborator and its insurance carrier in the defense of the Claim.

7.3 University hereby waives any Claim against Collaborator, and agrees to indemnify, defend, and hold harmless Collaborator, and their trustees, directors, employees, agents or students from any Claim arising out of or connected with this Agreement or the work done under this Agreement, except to the extent such Claim is due to their negligence or willful

misconduct. Collaborator shall promptly notify University of any such Claim and shall cooperate with University and its insurance carrier in the defense of the Claim.

7.4 Collaborator's indemnity shall not be limited by the amount of Collaborator's insurance.

7.5 University and Collaborator agree that the Research under this Agreement is limited to animal and in vitro use and that no human subjects will be used.

8. REPRESENTATIONS, WARRANTIES, LIABILITY LIMITS

8.1. NO WARRANTIES. COLLABORATOR ACKNOWLEDGES AND AGREES THAT UNIVERSITY IS AN ACADEMIC RESEARCH INSTITUTION AND THAT THE RESEARCH PROGRAM IS OF AN EXPERIMENTAL NATURE. AS A RESULT, ANY RESULTS OF THE RESEARCH PROGRAM AND ANY RESEARCH MATERIALS ARE PROVIDED AS IS AND WITH ALL FAULTS. UNIVERSITY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE RESULTS OF THE RESEARCH PROGRAM, WHETHER ANY RESULTS WILL OBTAIN, ANY RESEARCH MATERIALS OR ANY INVENTION, PROCESS OR PRODUCT, WHETHER TANGIBLE OR INTANGIBLE, CONCEIVED, DISCOVERED, DEVELOPED OR REDUCED TO PRACTICE UNDER THIS AGREEMENT; OR THE OWNERSHIP, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH, ANY RESEARCH MATERIALS OR ANY SUCH INVENTION OR PRODUCT.

8.2. NO DAMAGES. UNIVERSITY SHALL NOT BE LIABLE FOR ANY DIRECT, CONSEQUENTIAL, OR OTHER DAMAGES SUFFERED BY COLLABORATOR, ANY LICENSEE, OR ANY OTHERS INCLUDING, BUT NOT LIMITED TO, DAMAGES ARISING FROM LOSS OF DATA OR DELAY OR TERMINATION OF THE RESEARCH PROGRAM, OR FROM THE USE OF THE RESULTS OF THE RESEARCH PROGRAM, THE USE OF ANY RESEARCH MATERIALS OR ANY SUCH INVENTION OR PRODUCT. COLLABORATOR ACKNOWLEDGES AND AGREES THAT THIS EXCLUSION AND LIMITATION IS REASONABLE CONSIDERING THE EXPERIMENTAL NATURE OF THE RESEARCH PROGRAM AND THE NATURE AND TERMS OF THE PARTIES' RELATIONSHIP.

9. TERM AND TERMINATION

9.1. Term. This Agreement will remain in effect for [___] [months] [years] from the date first written above unless terminated sooner or extended in writing signed by the parties in accordance with this Agreement

9.2. Termination. Either party may terminate this Agreement upon sixty (60) days written notice.

9.3. Survival. The provisions of Articles 3, 4, 5, 6, 7, 8, 9 and 10 will survive any expiration or termination of this Agreement.

10. GENERAL

10.1. Binding Effect; Assignment. Neither party may assign or delegate its rights or obligations under this Agreement without the express written consent of the other party.

10.2. Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the Research Program, and any and all prior or contemporaneous negotiations, representations, agreements and understandings are superseded hereby. No amendment or change to this Agreement may be made except by means of a written document signed by duly authorized representatives of the parties.

10.3. Notices. Any notice or communication required or permitted to be given hereunder will be in writing and, except as otherwise expressly provided in this agreement, will be deemed given and effective (i) when delivered personally or by fax or (ii) when received if sent by email, overnight courier, or mail:

To University:

To Collaborator:

Director, Office of Technology Transfer
University of Rochester Medical Center
601 Elmwood Ave. Box OTT
Rochester, NY 14642
Telephone No.: 585-784-8850
Facsimile No.: 585-785-8829

10.4. Applicable Law. This Agreement will be construed and enforced in accordance with the laws of the State of New York, United States of America, without regard to any choice or conflict of laws, rule or principle that would result in the application of the laws of any other jurisdiction.

10.5. Headings. Headings included herein are for convenience only, and will not be used to construe this Agreement.

10.6. Relationship of Parties. For the purposes of this Agreement and all services to be provided hereunder, each party will be, and will be deemed to be, an independent contractor and not an agent or employee of the other party. Neither party will have authority to make any statements, representations or commitments of any kind, or to take any action that is binding on the other parties, except as explicitly provided for herein or authorized in writing.

10.7. Severability. If any provision of this Agreement will be found by a court of competent jurisdiction to be void, invalid or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

10.8. Force Majeure. Neither party will be liable for any failure to perform as required by this Agreement, if the failure to perform is caused by circumstances reasonably beyond such party's control, such as labor disturbances or labor disputes of any kind, accidents, failure of any governmental approval required for full performance, civil disorders or commotions, acts of aggression, acts of God, energy or other conservation measures, explosions, failure of utilities, mechanical breakdowns, material shortages, disease, thefts, or other such occurrences.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

UNIVERSITY OF ROCHESTER

By: _____

By: _____

Typed Name: _____

Typed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

I, _____, named as Principal Investigator, acknowledge that I have read this Agreement in its entirety and will use reasonable efforts to uphold my obligations and responsibilities set forth herein:

Signature: _____

Date: _____

Exhibit A

Description of Research Program