

## COLLABORATOR RESEARCH AGREEMENT

This Collaborative Research Agreement ("Agreement") is made by and between The Trustees of the University of Pennsylvania, a Pennsylvania nonprofit corporation ("Institution"), with offices located at Office of Research Services, Franklin Building, Room P221, 3451 Walnut Street, Philadelphia, PA 19104-6205, and \_\_\_\_\_ a corporation organized and existing under the laws of ("Collaborator"), having a place of business at \_\_\_\_\_.

This Agreement is effective as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date").

### RECITALS

Institution and Collaborator are entering into this Agreement since Collaborator desires to collaborate in the research of Dr. \_\_\_\_\_ of Institution's School of \_\_\_\_\_ in certain specific areas. Collaborator desires to collaborate in such research conducted by Institution in accordance with the terms and conditions of this Agreement. The research program contemplated by this Agreement is of mutual interest to Collaborator and Institution and furthers the educational, scholarship and research objectives of Institution as a nonprofit, tax-exempt, educational institution, and may benefit both Collaborator and Institution through the creation or discovery of new inventions.

In consideration of the promises and mutual covenants contained herein, and intending to be legally bound hereby, the parties hereto agree as follows:

### 1. DEFINITIONS

1.1 "Collaborator Intellectual Property" means all patentable inventions conceived and reduced to practice in the conduct of the Collaborative Research solely by the Collaborator or other inventors owing a duty to assign to Collaborator during the performance of this Agreement. It also includes all United States and foreign patent applications claiming said patentable inventions, including any divisional, continuation, continuation-in-part (to the extent that the claims are directed to said patentable inventions), and foreign equivalents thereof, as well as any patents issued thereon or reissues or reexaminations thereof. Collaborator Intellectual Property also includes all significant copyrightable software created in the conduct of the Collaborative Research during the term of this Agreement by employees of Collaborator.

1.2 "Collaborator Investigator" means \_\_\_\_\_ who has agreed to serve as Collaborator Investigator for the Collaborative Research and shall be Collaborator's liaison with Principal Investigator for the Collaborative Research.

1.3 "Collaborative Research" means the research program described in Attachment A to this Agreement.

1.4 "Joint Intellectual Property" means all patentable inventions conceived and reduced to practice in the conduct of the Collaborative Research jointly by the Principal Investigator or other inventors owing a duty to assign to Institution and by employees of Collaborator during the performance of this Agreement. It also includes all United States and foreign patent applications claiming said patentable inventions, including any divisional, continuation, continuation-in-part (to the extent that the claims are directed to said patentable inventions), and foreign equivalents thereof, as well as any patents issued thereon or reissues or reexaminations thereof. Joint Intellectual Property also includes all significant copyrightable software jointly created in the conduct of the Collaborative Research during the term of this Agreement.

1.5 "Institution Intellectual Property" means all patentable inventions conceived and reduced to practice in the conduct of the Collaborative Research during the term of this Agreement, including all United States and foreign patent applications claiming said patentable inventions, including any divisional, continuation, continuation-in-part (to the extent that the claims are directed to said patentable inventions), and foreign equivalents thereof, as well as any patents issued thereon or reissues or reexaminations thereof. Institution Intellectual Property also includes all significant copyrightable software created in the conduct of the Collaborative Research during the term of this Agreement by the Principal Investigator or other inventors owing a duty to assign to Institution.

1.6 "Principal Investigator" means \_\_\_\_\_ who has agreed to serve as faculty investigator for the Collaborative Research and shall be responsible for the conduct, supervision and administration of the Collaborative Research.

1.7 "Research Results" means all data and information which are generated in the performance of the Collaborative Research during the term of this Agreement. Research Results expressly excludes Collaborator Intellectual Property, Joint Intellectual Property and Institution Intellectual Property.

## **2. COLLABORATOR RESEARCH**

2.1 Both parties shall commence the Collaborative Research after the Effective Date of this Agreement and shall use good faith efforts to conduct such Collaborative Research substantially in accordance with the terms and conditions of this Agreement. Collaborator acknowledges that Institution and the Principal Investigator shall have the freedom to conduct and supervise the Collaborative Research in a manner consistent with Institution's educational and research missions.

2.2 If the services of the Principal Investigator become unavailable to Institution for any reason, Institution shall be entitled to designate another member of its faculty who is acceptable to Collaborator to serve as the Principal Investigator of the Collaborative Research. If a substitute Principal Investigator has not been designated within sixty (60) days after the original Principal Investigator ceases his or her services under this Agreement, either party may terminate this Agreement upon written notice thereof to the other party, subject to the provisions of Article 9.

2.3 If the services of the Collaborator Investigator become unavailable to Collaborator for any reason, Collaborator shall be entitled to designate another employee who is acceptable to Institution to serve as the Collaborator Investigator of the Collaborative Research. If a substitute Collaborator Investigator has not been designated within sixty (60) days after the original Collaborator Investigator ceases his or her services under this Agreement, either party may terminate this Agreement upon written notice thereof to the other party, subject to the provisions of Article 9.

## **3. TERM OF AGREEMENT**

3.1 The initial term of this Agreement shall begin on the Effective Date of this Agreement and shall end on \_\_\_\_\_ unless terminated sooner pursuant to Sections 2.2 or 9.1 hereof. This Agreement may be extended or renewed only by mutual written agreement executed by duly authorized representatives of the parties.

## **4. COST OF RESEARCH**

4.1 Collaborator and Institution shall be responsible for their own costs and expenses incurred in performing the Collaborative Research. Institution may provide test materials to Collaborator in accordance with the Material Transfer Agreement in Attachment C. Collaborator shall provide testing facilities and necessary resources to evaluate the Materials provided by Institution.

4.2 Title to any equipment, laboratory animals, or any other materials made or acquired under this Agreement shall vest in Institution, and such equipment, animals, or materials shall remain the property of Institution following termination of this Agreement.

## **5. RECORDS AND REPORTS**

5.1 Principal Investigator and Collaborator shall maintain records of the results of the Collaborative Research and shall provide each other with reports of the progress and results of the Collaborative Research in accordance with Attachment A.

## **6. RIGHTS IN RESEARCH RESULTS AND REPORTS**

6.1 Both parties shall have the right to use Research Results disclosed to the other party in records and reports for any reasonable purpose. Each party shall need to obtain a license to use Research Results from the other party if such use would infringe any copyright or any claim of a patent application or issued patent owned by the other party.

6.2 Both parties hereby grant the other party a royalty-free, nontransferable, non-exclusive right to copy reproduce and distribute any research reports furnished to the other party under this Agreement. Neither party may charge fees for said research reports, use said research reports for advertising or promotional activities, or alter or modify said research reports without the prior written permission of the other party.

## **7. INTELLECTUAL PROPERTY**

7.1 Institution shall retain all right, title and interest in and to the Institution Intellectual Property and any patents, copyrights, software and tangible research materials and other intellectual property related thereto.

7.2 Both parties shall own all right, title and interest in and to the Joint Intellectual Property and any patent, copyrights, software and tangible research materials and other intellectual property related thereto.

7.3 Principal Investigator shall provide Institution and Collaborator a written disclosure of any Institution Intellectual Property or Joint Intellectual Property reasonably considered patentable. Collaborator shall advise Institution in writing, no later than thirty (30) days after receipt of such disclosure, whether it requests Institution to file and prosecute patent applications related to such Institution Intellectual Property. If Collaborator does not request Institution to file and prosecute such patent applications, Institution may proceed with such preparation and prosecution at its own cost and expense; but such patent applications shall be excluded from Collaborator's option under Section 7.6 hereof. The parties shall agree on a case by case basis the prosecution of any Joint Intellectual Property reasonably considered patentable.

7.4 Institution shall control the preparation and prosecution of all patent applications and the maintenance of all patents related to Institution Intellectual Property. With regard to any patent applications filed at the request and expense of Collaborator, Institution will consult with Collaborator on patent prosecution. Collaborator shall reimburse Institution upon receipt of invoice for all documented expenses incurred in connection with the filing and prosecution of the patent applications and maintenance of the patents that Collaborator has requested Institution to prosecute under Section 7.3 hereof.

7.5 Principal Investigator shall provide Institution and Collaborator a written disclosure of any copyrightable software created in the conduct of the Collaborative Research during the term of this Agreement that Principal Investigator reasonably considers to be scientifically valuable.

7.6 In consideration of Collaborator's participation in the Collaborative Research and payment for intellectual property expenses as provided for in Section 7.4, Institution grants Collaborator a first option to negotiate to acquire a license on commercially reasonable terms to practice Institution Intellectual Property and/or Institution's interest in Joint Intellectual Property. Institution and Collaborator will negotiate in good faith to determine the terms of a license agreement as to each item of Institution Intellectual Property or Joint Intellectual Property for which Collaborator has agreed to make payment for intellectual property expenses as provided for in Section 7.4, if any. If Collaborator and Institution fail to execute a license agreement within six (6) months after disclosure of the Institution Intellectual Property or Joint Intellectual Property to Collaborator or if Collaborator fails to make payment for intellectual property expenses as provided for in Section 7.4, Institution shall be free to license the Institution Intellectual Property or Joint Intellectual Property to any party upon such terms as Institution deems appropriate, without any further obligation to Collaborator.

7.7 Any license granted to Collaborator pursuant to Section 7.6 hereof shall be subject to Institution's right to use and permit other non-profit organizations to use Institution Intellectual Property or Joint Intellectual Property for educational and research purposes and, if applicable, to the rights of the United States government reserved under Public Laws 96-517, 97-256 and 98-620, codified at 35 U.S.C. 200-212, and any regulations issued thereunder.

## **8. CONFIDENTIALITY, PUBLICATION, USE OF NAME**

8.1 Institution shall not be obligated to accept any confidential information from Collaborator. If Collaborator desires to furnish any confidential information to the Principal Investigator, Collaborator may request the Principal Investigator to sign the "Agreement between Collaborator and Principal Investigator Concerning Collaborator's Confidential Information" that is attached as Attachment B. Institution bears no responsibility for maintaining the confidentiality of any confidential information of Collaborator provided under such an individual agreement.

8.2 In order to preserve the patentability of Institution Intellectual Property or Joint Intellectual Property, Collaborator shall maintain Institution Intellectual Property or Joint Intellectual Property and information provided pursuant to the Collaborative Research (whether oral or written) as confidential and shall not disclose such information to any third party until the publication of such information by the Principal Investigator or until Institution provides Collaborator with written verification that all desirable patentable inventions have been protected, whichever occurs sooner.

8.3 Institution shall be free to publish, present or otherwise disclose Research Results or other information and material resulting from the Collaborative Research for any purpose. Institution shall furnish the Collaborator with a copy of any proposed publication or presentation at least thirty (30) days in advance of the submission of said proposed publication in order for Collaborator to review and comment on said proposed publication.

8.4 Institution shall not use Collaborator's name without Collaborator's prior written consent except that Institution may acknowledge Collaborator's participation in this Collaborative Research and any scientific contributions in scientific publications and in listings of sponsored research projects. Collaborator shall not use Institution's name, mark or symbol, or the name of any trustee, officer, faculty member, student or employee thereof, without Institution's prior written consent.

## **9. TERMINATION**

9.1 In addition to the termination right set forth in Section 2.2 hereof, either party may terminate this Agreement effective upon written notice to the other party, if the other party breaches any of the terms or conditions of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof. In the event of an incurable breach, the non-breaching party may terminate this Agreement effective immediately upon written notice to the breaching party.

9.2 In the event of termination of this Agreement prior to its stated term whether for breach or for any other reason whatsoever, Institution shall be entitled to retain from the payments made by Collaborator prior to termination Institution's reasonable costs of concluding the work in progress. Allowable costs include, without limitation, all costs or noncancellable commitments incurred prior to the receipt, or issuance, by Institution of the notice of termination, and the full cost of each employee, student and faculty member supported hereunder through the end of such commitments. In the event of termination, Institution shall submit a final report of all costs incurred and all funds received under this Agreement within ninety (90) days after the effective termination date. The report shall be accompanied by a check in the amount of any excess of funds advanced over costs and allowable commitments incurred. In case of a deficit of funds, Collaborator shall pay Institution the amount needed to cover costs and allowable commitments incurred by Institution under this Agreement.

9.3 Termination of this Agreement shall not affect the rights and obligations of the parties accrued prior to termination hereof. The provisions of Article 4, entitled Cost of Research; Article 6, entitled Collaborator's Rights in Research Results and Reports; Article 7, entitled Intellectual Property; Article 8 entitled Confidentiality, Publication, Use of Name, Article 10, entitled Disclaimer of Warranties, Indemnification; and Article 11, entitled Additional Provisions, shall survive such termination.

## **10. DISCLAIMER OF WARRANTIES, INDEMNIFICATION**

10.1 INSTITUTION MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES WITH RESPECT TO THE CONDUCT, COMPLETION, SUCCESS OR PARTICULAR RESULTS OF THE COLLABORATIVE RESEARCH, OR THE CONDITION, OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE COLLABORATIVE RESEARCH OR ANY INSTITUTION INTELLECTUAL PROPERTY OR JOINT INTELLECTUAL PROPERTY OR RESEARCH RESULTS OR THAT USE OF THE INSTITUTION INTELLECTUAL PROPERTY OR JOINT INTELLECTUAL PROPERTY OR RESEARCH RESULTS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT OF A THIRD PARTY. INSTITUTION SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES SUFFERED BY COLLABORATOR OR ANY OTHER PERSON RESULTING FROM THE COLLABORATIVE RESEARCH OR THE USE OF ANY INSTITUTION INTELLECTUAL PROPERTY OR JOINT INTELLECTUAL PROPERTY, ANY RESEARCH RESULTS OR ANY PRODUCTS RESULTING THEREFROM.

10.2 Collaborator shall defend, indemnify and hold harmless Institution, the Principal Investigator and any of Institution's faculty, students, employees, trustees, officers, affiliates and agents (hereinafter referred to collectively as the "Indemnified Persons") from and against any and all liability, claims, lawsuits, losses, damages, costs or expenses (including attorneys' fees), which the Indemnified Persons may hereafter incur, or be required to pay as a result of Collaborator's use of the results of Collaborative Research or any Institution Intellectual Property, Joint Intellectual Property or Research Results or as a result of any breach of this Agreement or any act or omission of Collaborator, its employees, affiliates, contractors, licensees or agents. Institution shall notify Collaborator upon learning of the institution or threatened institution of any such liability, claims, lawsuits, losses, damages, costs and expenses and Institution shall cooperate with Collaborator in every proper way in the defense or settlement thereof at

Collaborator's request and expense. Collaborator shall not dispose or settle any claim admitting liability on the part of the Institution without Institution's prior written consent.

## 11. ADDITIONAL PROVISIONS

11.1 No rights hereunder may be assigned by Collaborator, directly or by merger or other operation of law, without the express written consent of Institution. Any prohibited assignment of this Agreement or the rights hereunder shall be null and void. No assignment shall relieve Collaborator of responsibility for the performance of any accrued obligations, which it has prior to such assignment.

11.2 A waiver by either party of a breach or violation of any provision of this Agreement will not constitute or be construed as a waiver of any subsequent breach or violation of that provision or as a waiver of any breach or violation of any other provision of this Agreement.

11.3 Nothing herein shall be deemed to establish a relationship of principal and agent between Institution and Collaborator, nor any of their agents or employees, nor shall this Agreement be construed as creating any form of legal association or arrangement which would impose liability upon one party for the act or failure to act of the other party. Nothing in this Agreement, express or implied, is intended to confer on any person other than the parties hereto or their permitted assigns, any benefits, rights or remedies.

11.4 Notices, statements, reports and other communications under this Agreement shall be in writing and shall be deemed to have been received as of the date dispatched if sent by public overnight courier (e.g., Federal Express) and addressed as follows:

If to Institution:

Office of Research Services  
University of Pennsylvania  
P221 Franklin Building  
3451 Walnut Street  
Philadelphia, PA 19104-6205  
Attn.: Executive Director

If to Principal Investigator:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Collaborator:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11.5 This Agreement shall be construed and governed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to conflict of law provisions. The parties hereby submit to the exclusive jurisdiction of and venue in any state or federal courts located within the Eastern District of Pennsylvania with respect to any and all disputes concerning the subject of this Agreement.

11.6 Institution and Collaborator shall not discriminate against any employee or applicant for employment because of race, color, sex, sexual or affectional preference, age, religion, national or ethnic origin, handicap, or because he or she is a disabled veteran or veteran of the Vietnam Era.

11.7 Neither party shall be liable for any failure to perform as required by this Agreement to the extent such failure to perform is due to circumstances reasonably beyond such party's control, including, without limitation, labor disturbances or labor disputes of any kind, accidents, failure of any governmental approval required for full performance, civil disorders or commotions, terrorism, acts of aggression, acts of God, energy or other conservation measures imposed by law or regulation, explosions, failure of utilities, mechanical breakdowns, material shortages, disease, or other such occurrences.

11.8 Collaborator shall comply with all laws, regulations and other legal requirements applicable to Collaborator in connection with this Agreement, including but not limited to any legal requirements applicable to Collaborator's use of the results of the Collaborative Research or any Institution Intellectual Property or Joint Intellectual Property or Research Results and laws controlling the export of technical data, computer software, laboratory prototypes, and all other export controlled commodities.

11.9 This Agreement embodies the entire understanding between the parties relating to the subject matter hereof and supersedes all prior understandings and agreements, whether written or oral. This Agreement may not be varied except by a written document signed by duly authorized representatives of both parties.

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereby execute this Agreement as of the date first written above.

The Trustees of the  
University of Pennsylvania

[Collaborator]

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

I have read and agreed to the responsibilities of the Principal Investigator:

By: \_\_\_\_\_

Date: \_\_\_\_\_

Attachment A

Summary of Collaborative Research

1) Work Scope

2) Details of Program - See Appendix

Principal Investigator:

1) Name:

2) Phone Number:

Representative of Collaborator:

1) Name:

2) Phone Number:

Period of Performance:

Report Schedule:

Final report within thirty (30) days after termination

## Attachment B

### Collaborator Confidential Information

The free publication and dissemination of research results and information is an essential and long-standing policy of the University of Pennsylvania ("Institution"). Because of the negative impact confidentiality obligations can have on the educational mission of the Institution and the free communication of research results, the Institution does not undertake to keep proprietary information provided by a commercial Collaborator confidential. Under certain circumstances, however, the Institution recognizes that an Institution principal investigator (the "Principal Investigator") during a collaborative research program may desire to receive confidential and proprietary information of the commercial collaborator ("Collaborator") that the Principal Investigator considers essential for the conduct of the research program. Accordingly, the Institution will permit the Principal Investigator to accept confidential information of a collaborator under the terms and conditions of the agreement between the collaborator and Principal Investigator stated below.

#### Agreement between Collaborator and Principal Investigator Concerning Collaborator Confidential Information

In connection with research to be conducted at the University of Pennsylvania in participation with [Insert name of research collaborator] ("Collaborator") and relating to [Insert brief description of the research] (the "Collaborative Research"), Collaborator desires to provide [Insert name of Principal Investigator] ("Principal Investigator") with certain information that Collaborator considers confidential.

1. For purposes of this Agreement, "Confidential Information" means only confidential information of Collaborator related to the Collaborative Research that is disclosed to the Principal Investigator by Collaborator in writing and conspicuously marked as confidential and proprietary at the time of disclosure, or, if disclosed visually or orally, is stated to be confidential and proprietary at the time of disclosure and confirmed by a written summary describing the information in reasonable detail delivered by Collaborator to Principal Investigator within seven (7) days after disclosure. Notwithstanding anything to the contrary contained in this Agreement or the markings on any document disclosed by Collaborator, Confidential Information does not include:
  - (a) information that is reasonably required by scientific standards for publication of the Collaborative Research, or any information that is necessary for other scholars to verify the results of the Collaborative Research;
  - (b) information that is in the public domain at the time Collaborator discloses it to Principal Investigator or that thereafter enters the public domain through no fault of Principal Investigator;
  - (c) information that was known to Principal Investigator or to Institution before the date Collaborator discloses it to Principal Investigator, or that becomes known to Principal Investigator or the Institution through a third party having an apparent bona fide right to disclose the information;
  - (d) information that is independently developed by Institution personnel;
  - (e) information that is disclosed by Principal Investigator or Institution in accordance with the terms of Collaborator's written approval;
  - (f) information that is required to be disclosed for compliance with any Federal, state or local law or regulation, or required to be disclosed by a court of law or governmental authority.

2. The Principal Investigator retains the right to refuse to accept any Confidential Information that the Principal Investigator does not consider to be essential to the performance of the Collaborative Research or that the Principal Investigator believes to be improperly designated as Confidential Information.
3. In the event the Principal Investigator does accept any Confidential Information, for a period of three (3) years after Principal Investigator's acceptance of Confidential Information, Principal Investigator agrees to use efforts no less than those Principal Investigator employs with respect to Principal Investigator's own confidential information:
  - (a) not to disclose the Confidential Information to third parties without Collaborator's consent to such disclosure; and
  - (b) to use the Confidential Information only in furtherance of the Collaborative Research.
4. Collaborator specifically acknowledges its understanding that the Principal Investigator's efforts hereunder will not necessarily conform to prevailing commercial standards for the protection of confidential and proprietary information. Collaborator expressly agrees that Institution shall not be liable for any disclosure of Collaborator's Confidential Information.
5. This Agreement sets forth the entire understanding of Collaborator and Principal Investigator with respect to the subject matter hereof, supersedes any prior agreement between Collaborator and Principal Investigator, and there are no other understandings or agreements, written or oral, between them relating to such subject matter. The Agreement may not be changed or supplemented in any way except by a written agreement duly executed by both Collaborator and Principal Investigator and approved by Institution. This Agreement shall be governed by, enforced, and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to its principles of conflict of laws.

Collaborator

Principal Investigator

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Attachment C

### Materials Transfer Agreement

The Trustees of the University of Pennsylvania agree to provide certain research substances and know-how (hereinafter "Materials", as further described below), for research purposes only, under the following conditions:

1. The parties to this Agreement are: The Trustees of the University of Pennsylvania (hereinafter "Institution"), on behalf of Dr. Provider, (hereinafter "Principal Investigator") and Collaborator (hereinafter "Recipient") on behalf of Dr. Recipient PI.

2. Materials covered by this Agreement include: (a) those described in Exhibit A provided by Principal Investigator at Principal Investigator's sole discretion; (b) any related biological material and associated know-how and data provided by Principal Investigator; and (c) any substance that is replicated or derived therefrom. The Materials are considered proprietary to Institution. Institution shall be free, in its sole discretion, to distribute the Materials to others and to use the Materials for its own purposes.

3. The site at which the Materials research may be conducted is Recipient's facility. Recipient shall not distribute or release the Materials to any person other than laboratory personnel under Recipient's direct supervision. Recipient shall ensure that no one will be allowed to take or send these Materials to any location other than Recipient's facility.

4. This Agreement and the transfer of Materials are for Recipient's use of the Materials solely for research described in Attachment A. Recipient agrees that nothing herein shall be deemed to grant any right under any Institution patents. The Materials will not be used in research that is subject to consulting or licensing obligations to any third party, other than obligations to the U.S. government resulting from research that is funded by the U.S. government.

5. Recipient agrees to use the Materials in compliance with all laws and regulations, including but not limited to current EPA, FDA, USDA, and NIH guidelines. The Materials are supplied solely for research purposes, for use in animals and/or in vitro. THE MATERIALS WILL NOT BE USED IN HUMANS.

6. (a) Recipient shall have no rights in the Materials other than as provided in this Agreement, and at the request of Institution, Recipient will return all unused Materials. It is understood that any and all proprietary rights, including but not limited to patent rights, trademarks, and proprietary rights, in and to the Materials and replications or derivatives of the Materials shall be and remain in Institution, subject to the rights granted herein.

(b) Any inventions created solely by Recipient hereunder shall be owned by Recipient. If Recipient wishes to commercialize a product which contains the Materials, Recipient agrees to contact Institution through its Center for Technology Transfer to determine what ownership interests, if any, Institution may have in such commercial product. Inventorship for such commercial product shall be determined according to US Patent Law. If the use of the Material leads to an invention or discovery (whether or not patentable) relating to the Materials (an "Invention"; in the case of biological Material, Invention includes any progeny or derivatives of, or any modifications to the Materials), Recipient shall promptly inform Institution of such Invention and will grant Institution a royalty-free, non-exclusive, non-sublicenseable license to practice the Invention for any internal, academic research purposes under any right Recipient might acquire.

7. Recipient agrees to maintain for 5 years following the receipt of Materials the confidentiality of any proprietary information respecting the Materials that is marked "confidential" or the like, or that is reasonably understood to be of a confidential nature. Recipient agrees to provide Institution with a copy of any manuscript or abstract disclosing the research with the Materials, prior to submission thereof to a publisher or to any third party, and in any case, not less than forty-five (45) days prior to any public disclosure, for the purpose of protecting proprietary or intellectual property of Institution that might be contained in such information. However, these obligations will not apply to any information that is (a) publicly available or becomes so (other than through the fault of the receiving party), (b) available from a third party without violation of an obligation of nondisclosure to the disclosing party, (c) already known to or is independently developed by the receiving party, in each case to the extent evidenced by written records promptly disclosed to Institution, or (d) disclosed pursuant to prior written consent of the disclosing party or order of a court or governmental authority. In the event of any publication or presentation of Recipient's work using the Materials or information supplied by Institution, Recipient agrees to acknowledge Institution and/or give credit to Institution scientists, as scientifically appropriate, based on any contribution they may have made to the work. Nothing in this Agreement will prevent Recipient from experimenting with, using or commercializing its own or any third party's biological materials.

8. Recipient acknowledges that the Materials are experimental in nature and they are provided WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. PENN MAKES NO REPRESENTATION OR WARRANTY THAT THE USE OF THE MATERIALS WILL NOT INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHTS.

9. In no event shall Institution be liable for any use by Recipient of the Materials. Recipient agrees to defend, indemnify, and hold harmless Institution, its Trustees, officers, employees, faculty, students, and agents from any loss, claim, injury, damage, expense or liability (including attorney's fees), of whatsoever kind or nature, which may arise from or in connection with this Agreement, including but not limited to Recipient's use, handling or storage of the Materials.

10. Recipient shall not use the name of Institution, Principal Investigator, or any of Institution's faculty, staff or students, or a variant of any of the foregoing, for any purpose without the prior written approval of Institution.

11. Recipient shall report to Institution at least once every quarter on Recipient's work utilizing the Materials.

12. Institution shall have the right to terminate this Agreement at any time if: (a) Recipient breaches any of the terms, covenants or conditions of this Agreement; or (b) Recipient becomes insolvent or voluntary or involuntary proceedings by or against Recipient are instituted in bankruptcy or under any insolvency law. Upon termination, Recipient shall immediately return to Institution all unused portions of the Materials.

13. This Agreement is not assignable, whether by operation of law or otherwise, without the prior written consent of Institution. This Agreement is the final, exclusive and entire agreement between the parties relating to its subject matter, and may be changed only by the parties' signed agreement. If any provision is determined to be invalid, illegal or unenforceable, that provision will be deemed amended or stricken (as appropriate) so as to be valid, legal and enforceable. This Agreement will be governed by the laws of the Commonwealth of Pennsylvania.

The Trustees of the  
University of Pennsylvania

Collaborator

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Date)

(Date)

Concurred by:

\_\_\_\_\_  
Dr. Provider

\_\_\_\_\_  
Dr. Recipient PI

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)