

For illustrative purposes only. This sample contains terms representative of a basic Research Collaboration Agreement that includes material transfer provisions, but any such agreement may be subject to change.

Research Collaboration Agreement

This Research Collaboration Agreement (the “**Agreement**”), effective as of _____, 20__ (the “**Effective Date**”), is entered into by and between President and Fellows of Harvard College, a charitable corporation of Massachusetts having an office at Richard A. and Susan F. Smith Campus Center, Suite 727, 1350 Massachusetts Avenue, Cambridge, Massachusetts 02138 (“**Harvard**”), and _____, a _____ corporation, having an office at _____ (“**Company**”). Harvard and Company each shall be referred to herein as a “**Party**” and together as the “**Parties**.”

WHEREAS, Harvard and Company each desires to conduct the scientific research described in Exhibit A hereto; and

WHEREAS, Harvard and Company believe that collaborating with each other in the performance of such research will be of mutual benefit, will further the instructional and research objectives of Harvard and will foster the development of scientific knowledge;

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth herein, Harvard and Company agree as follows:

1. Definitions.

Whenever used in this Agreement with an initial capital letter, the terms defined in this Article 1, whether used in the singular or the plural, shall have the meanings specified below.

1.1. “Calendar Quarter” shall mean each of the periods of three (3) consecutive calendar months ending on March 31, June 30, September 30 and December 31 during the Term.

1.2. “Collaboration Materials” shall have the meaning set forth in Section 2.5 hereto.

1.3. “Company Invention” shall mean any Invention for which each inventor is a member of the Company Team.

1.4. “Company Materials” shall have the meaning set forth in Section 2.3 hereto.

1.5. “Company Patent Rights” shall mean any patents and patent applications that claim any Company Invention, in each case solely to the extent the claims are directed to the subject matter of such Company Invention.

1.6. **“Company Principal Investigator”** shall mean _____, or such other principal investigator who may replace _____ pursuant to Section 2.2.

1.7. **“Company Results”** shall mean Results generated by the Company Team.

1.8. **“Company Team”** shall mean the Company Principal Investigator and those technicians, scientists and/or other individuals working on behalf of Company under [his/her] direction on the Research.

1.9. **“Harvard Invention”** shall mean any Invention for which each inventor is a member of the Harvard Team.

1.10. **“Harvard Materials”** shall have the meaning set forth in Section 2.4 hereto.

1.11. **“Harvard Patent Rights”** shall mean any patents and patent applications that claim any Harvard Invention, in each case solely to the extent the claims are directed to the subject matter of such Harvard Invention.

1.12. **“Harvard Principal Investigator”** shall mean _____, or such other principal investigator who may replace _____ pursuant to Section 2.2.

1.13. **“Harvard Results”** shall mean Results generated by the Harvard Team.

1.14. **“Harvard Team”** shall mean the Harvard Principal Investigator and those faculty members, research fellows, students, technicians, scientists and/or other individuals working on behalf of Harvard under [his/her] direction on the Research.

1.15. **“Invention”** shall mean any patentable invention that is conceived and reduced to practice in the performance of the Research during the Term.

1.16. **“Joint Invention”** shall mean any Invention for which one or more inventors are members of the Company Team and one or more inventors are members of the Harvard Team.

1.17. **“Joint Patent Rights”** shall mean any patents and patent applications that claim any Joint Invention, in each case solely to the extent the claims are directed to the subject matter of such Joint Invention.

1.18. “Materials” shall mean any Harvard Materials, Company Materials and/or Collaboration Materials, as the case may be.

1.19. “Principal Investigators” shall mean the Company Principal Investigator and the Harvard Principal Investigator.

1.20. “Research” shall mean the research actually conducted during the Term by the Company Team and/or Harvard Team under the terms of this Agreement in accordance with the Research Plan.

1.21. “Research Plan” shall mean the research plan attached hereto as Exhibit A, which sets forth the research to be performed by the Company Team and Harvard Team under the direction of their respective Principal Investigators during the Term.

1.22. “Results” shall mean all data, compositions, methods, processes, analyses, formulae and information generated in the performance of the Research, but excluding Inventions.

1.23. “Term” shall have the meaning set forth in Section 9.1.

2. Research.

2.1. Performance of Research. The Parties shall use good faith efforts to perform the Research in accordance with the Research Plan; however, neither Party makes any warranties or representations regarding completion of the Research or the achievement of any particular results.

2.2. Principal Investigators. The part of the Research to be performed by Harvard will be directed and supervised by the Harvard Principal Investigator, who shall have primary responsibility for the performance of such Research. The part of the Research to be performed by Company will be directed and supervised by the Company Principal Investigator, who shall have primary responsibility for the performance of such Research. The Principal Investigators shall maintain regular contact with each other, at least monthly, and shall facilitate the coordination of the Parties’ activities under the Research Plan. Company may replace the named Company Principal Investigator upon prior written notice to Harvard. If the Harvard Principal Investigator ceases to supervise the Research for any reason, Harvard will notify Company promptly and may endeavor to find a substitute acceptable to Company. If Harvard declines or is unable to find a substitute acceptable to Company within sixty (60) days after the Harvard Principal Investigator ceases to supervise the Research, Company may terminate this Agreement immediately upon written notice to Harvard.

2.3. Company Materials. During the Research, Company may transfer the materials specified in Exhibit [B] to Harvard. Such materials together with all progeny and unmodified derivatives thereof shall be deemed “**Company Materials**” for purposes of this Agreement.

Company shall retain all right, title and interest, including, but not limited to, intellectual property rights, in and to Company Materials. Harvard shall use Company Materials solely for the purpose of performing the Research. Company Materials shall not be used in humans or for testing of humans for any purpose. Harvard shall not sell or transfer Company Materials to any other person or entity without Company's prior written consent. Harvard shall comply with all applicable laws and regulations in the use of Company Materials. Company's transfer of the Company Materials to Harvard shall not constitute a sale thereof or a grant, option or license under any patent or other rights owned or controlled by Company. Unless otherwise agreed to by Company in writing, within thirty (30) days after the earlier of completion of the Research or termination of this Agreement, Harvard shall destroy any Company Materials in its possession or control.

2.4 Harvard Materials. During the Research, Harvard may transfer the materials specified in Exhibit [B] to Company. Such materials together with all progeny, derivatives and modifications thereof, [including, without limitation, the offspring of any cross-breeding of such materials with genetically modified strains and any materials derived from such offspring, such as cells, cell lines, tissues, sperm, blood proteins and other components thereof,] whether made by Harvard or Company, shall be deemed "**Harvard Materials**" for purposes of this Agreement. Harvard shall retain all right, title and interest, including, but not limited to, intellectual property rights, in and to Harvard Materials. Company shall use Harvard Materials solely for the purpose of performing the Research. Harvard Materials shall not be used in humans or for testing of humans for any purpose. [Company shall not reverse engineer Harvard Materials or undertake any additional analyses thereof, chemical or biological, including, without limitation, any attempt to determine the composition, formula, structure or properties of Harvard Materials, without the express written permission of Harvard.] Company shall not sell or transfer Harvard Materials to any other person or entity without Harvard's prior written consent. Company shall comply with all applicable laws and regulations in the use of Harvard Materials. Harvard's transfer of the Harvard Materials to Company shall not constitute a sale thereof or a grant, option or license under any patent or other rights owned or controlled by Harvard. Unless otherwise agreed to by Harvard in writing, within thirty (30) days after the earlier of completion of the Research or termination of this Agreement, Company shall destroy any Harvard Materials in its possession or control.

2.5 Collaboration Materials. Section 2.3 and Section 2.4 notwithstanding, all materials created by Harvard and/or Company during the performance of the Research that constitute or incorporate a combination of Harvard Materials and Company Materials shall be deemed "**Collaboration Materials**" for purposes of this Agreement. Each party shall use any Collaboration Materials solely for the purpose of performing the Research. Neither party shall sell or transfer any Collaboration Materials to any other person or entity without first receiving the other party's prior written consent. Each party shall comply with all applicable laws and regulations in the use of any Collaboration Materials. Neither party shall use any Collaboration Materials in research that is subject to consulting or licensing obligations to any for-profit entity. Unless otherwise mutually agreed in writing, within thirty (30) days of the earlier of completion

of the Research or termination of this Agreement, each party shall destroy any Collaboration Materials in its possession or control.

3. Costs and Expenses.

3.1. Company agrees to pay Harvard the total amount of _____ United States dollars (\$_____) which shall be payable upon receipt of the invoice from Harvard for such amount. Harvard shall issue the invoice to Company within thirty (30) days of Effective Date, which invoice shall be in the form set forth in Exhibit () hereto.

3.2. Harvard shall not be obligated to incur costs or expend funds to conduct the Research in excess of the total amount paid by Company under Section 3 of this Agreement.

3.3. Harvard will provide Company with a fixed-price invoice prior to each scheduled payment; provided that Harvard's failure to do so will not relieve Company from its obligation to make the corresponding payment, but instead will entitle Company to delay the due date of such payment until the date that is thirty (30) days after the date of Harvard's invoice. All payments due under this Agreement will be paid in United States dollars and will be without deduction or withholding of any kind. To the extent that any terms or conditions of any purchase order issued by Company in connection with Harvard's invoices under this Section 3 conflict with the terms and conditions of this Agreement, the terms and conditions of this Agreement will prevail and govern.

4. Results.

4.1. Reports; Use. Each Party shall provide the other with reports summarizing its Results, no less frequently than once each calendar quarter. After each such exchange, the Parties shall meet either in person or by teleconference to review the Results. Within sixty (60) days after the earlier of the completion of the Research or the termination of this Agreement, each Party will provide the other with a final report summarizing its Results. Subject to Articles 7 and 8 of this Agreement, each Party shall have the right to use the other Party's Results for internal research purposes only.

4.2. Confidentiality. Without regard to the marking requirement described in Section 7.1 or the disclosure mechanism described in Section 7.2 and subject to the exceptions set forth in Section 7.1 (i) – (iv), each Party (a) shall treat as Confidential Information (as otherwise defined in Section 7.1) of the other Party the contents of any report provided to it under Section 4.1 that discloses Results generated solely by the other Party and (b) shall treat as Confidential Information of the Parties jointly the contents of any report provided to it under Section 4.1 that discloses Results generated jointly by the Parties until publication of such joint Results in accordance with Article 8 (except that patent filings in accordance with Section 5.4.2 shall be permitted).

5. Inventions.

5.1. Inventorship. Inventorship of Inventions shall be determined in accordance with United States patent law.

5.2 Ownership. The entire right, title and interest in and to all Company Inventions shall be owned solely by Company. The entire right, title and interest in and to all Harvard Inventions shall be owned solely by Harvard. The entire right, title and interest in and to all Joint Inventions shall be owned jointly by Company and Harvard. Subject to Section 5.4.2.2 and 6.2, Company and Harvard each shall have the full right in any jurisdiction to grant licenses under its interest in Joint Patent Rights without any obligation to seek the consent of the other or to account for any profits made as a result of any such license.

5.3. Disclosure. Harvard shall notify Company, promptly and in writing, of any Invention with respect to which its Office of Technology Development has received a written invention disclosure form and (in the case of Harvard Inventions and Joint Inventions) filed a patent application; provided, however, that Harvard may elect to notify Company prior to filing. Company shall notify Harvard, promptly and in writing, of any Invention of which it becomes aware and (in the case of Company Inventions) for which it has filed a patent application; provided, however, that Company may elect to notify Harvard prior to filing. Without regard to the marking requirement described in Section 7.1 or the disclosure mechanism described in Section 7.2, and subject to the exceptions set forth in Section 7.1 (i) – (iv), each Party (a) shall treat as Confidential Information of the other Party the contents of any notice provided to it under this Section 5.3 that discloses an Invention owned solely by the other Party and (b) shall treat as Confidential Information of the Parties jointly the contents of any notice provided to it under this Section 5.3 that discloses a Joint Invention until publication of such Joint Invention in accordance with Article 8 (except that patent filings in accordance with Section 5.4.2 shall be permitted).

5.4. Patent Filing and Prosecution.

5.4.1. Sole Inventions. Company shall be responsible, at its sole expense and discretion, for the preparation, filing, prosecution and maintenance of Company Patent Rights. Harvard shall be responsible, at its sole expense and discretion, for the preparation, filing, prosecution and maintenance of Harvard Patent Rights.

5.4.2. Joint Inventions.

5.4.2.1. Harvard shall be responsible for the preparation, filing, prosecution and maintenance of Joint Patent Rights; provided, however, that Harvard may elect to waive such right on a case-by-case basis, in which case Harvard shall notify Company promptly in writing and Company shall have the right, but not the obligation, to take responsibility for such Joint Patent Rights at its own expense. The responsible Party shall: (a) use independent patent counsel reasonably acceptable to the other Party and instruct such patent counsel to furnish the other Party with copies of all correspondence relating to Joint Patent

Rights from all patent offices, as well as copies of all proposed responses to such correspondence in time for the other Party to review and comment on such responses; (b) give the other Party an opportunity to review the text of each patent application before filing; (c) consult with the other Party with respect thereto; (d) supply the other Party with a copy of the application as filed, together with notice of its filing date and serial number; and (e) keep the other Party advised of the status of actual and prospective patent filings. The responsible Party shall give the other Party the opportunity to provide comments on and make requests of the responsible Party concerning the preparation, filing, prosecution and maintenance of Joint Patent Rights, and shall consider such comments and requests in good faith.

5.4.2.2. Company shall reimburse Harvard for all documented, out-of-pocket expenses incurred by Harvard pursuant to Section 5.4.2.1 within thirty (30) days after the date of each invoice from Harvard therefor. If Company decides that it does not wish to pay for the prosecution or maintenance of Joint Patent Rights in a particular country, Company shall provide Harvard with prompt written notice of such election. Upon Harvard's receipt of such notice, Company shall be released from its obligation to reimburse Harvard for the expenses incurred thereafter, provided, that expenses authorized prior to the receipt by Harvard of such notice shall be deemed incurred prior to the notice as to such Joint Patent Rights. In the event of Company's election hereunder to no longer pay for prosecution or maintenance of any Joint Patent Rights, Company thereafter shall have the right to practice the subject matter of such Joint Patent Rights only for internal research purposes, and Company's rights under Sections 5.2 and 6.2 with respect to such Joint Patent Rights shall expire.

5.5. No License or Grant of Rights. Except as expressly provided in Article 6, nothing in this Agreement shall be construed to confer any ownership interest, license or other rights upon a Party by implication, estoppel or otherwise as to any technology, intellectual property rights, products or biological materials of the other Party or any other entity.

6. Intellectual Property.

6.1. Grant. With respect to each Invention, Harvard hereby grants to Company an option to negotiate in good faith with Harvard (an "Option") for a non-exclusive or an exclusive (at Company's discretion), royalty-bearing, worldwide license under Harvard's interest in Harvard Patent Rights and Joint Patent Rights to develop, make, have made, offer for sale, sell, have sold and import products in [a field or fields to be agreed upon by the Parties] on terms that are commercially reasonable to the industry; provided, however, that no such license will include any grant of exclusive rights that would be inconsistent with the National Institutes of Health's Principles and Guidelines for Recipients of NIH Research Grants and Contracts on Obtaining and Disseminating Biomedical Research Resources, as published at 64 Fed. Reg. 72090, and as may be amended from time to time.

6.2. Activation; Patent Costs. If Company would like to activate an Option for an Invention, it must provide Harvard with written notice of such decision within thirty (30) days after Harvard's disclosure to Company of the relevant Invention under Section 5.3 (the "Option

Activation Period”). If Company activates an Option during the relevant Option Activation Period, it shall reimburse Harvard for all documented, out-of-pocket costs relating to the preparation, filing, prosecution and maintenance of the relevant Harvard Patent Rights and Joint Patent Rights incurred by Harvard prior to activation of the Option, as well as those incurred during the Option Exercise Period and Negotiation Period. Harvard shall submit periodic invoices and Company shall make payment within thirty (30) days after the date of each such invoice.

6.3. Exercise. If Company would like to exercise an Option for an Invention that it has activated under Section 6.2, it must provide Harvard with written notice of such decision within sixty (60) days after expiration or termination of the Term (the “Option Exercise Period”). If Company exercises an Option within the Option Exercise Period, it shall have ninety (90) days after such exercise within which to execute a license agreement (the “Negotiation Period”); provided, that the Negotiation Period may be extended by mutual agreement of the Parties.

6.4. Terms. Each license agreement shall include, without limitation, (a) in the case of an exclusive license, terms consistent with the provisions of 35 USC §§ 200-212 and 37 CFR § 401 et seq., and a reservation of the rights of Harvard and other not-for-profit research organizations to practice the subject matter of the licensed Harvard Patent Rights and Joint Patent Rights for research, teaching and other educational purposes only, (b) indemnity, insurance, limitations on liability, patent cost reimbursement and other provisions customary to patent and technology licenses normally granted by Harvard, and (c) commercially reasonable due diligence obligations for the development and commercialization of products or processes covered by the relevant Harvard Patent Rights and/or Joint Patent Rights.

6.5. Expiration. With respect to each Invention, if Company (a) does not activate its Option during the relevant Option Activation Period, (b) provides written notice to Harvard, no less than sixty (60) days prior to the date on which any pending action needs to be taken to preserve the relevant Harvard Patent Rights and/or Joint Patent Rights, that it waives its Option in whole or in part, (c) activates its Option during the relevant Option Activation Period but does not exercise the Option during the Option Exercise Period or (d) exercises its Option during the Option Exercise Period and the parties fail to reach agreement on terms and conditions of a license agreement within the Negotiation Period, then Company’s rights under this Article 6 with respect to such Invention shall expire.

7. Confidential Information.

7.1. Definition. “Confidential Information” shall mean all information that is marked as confidential (or, if disclosed orally or in intangible form, that is summarized in a writing that is marked as confidential and delivered to the recipient within thirty (30) days after disclosure) and that is disclosed (a) by or on behalf of Harvard (including by any member of the Harvard Team) to Company hereunder or (b) by or on behalf of Company (including by any member of the Company Team) to the Harvard Principal Investigator hereunder. Notwithstanding the above, the obligations set forth in Sections 7.3 and 8.2 shall not apply to Confidential

Information to the extent that it: (i) was known to the recipient at the time it was disclosed, other than by previous disclosure by or on behalf of the discloser, as evidenced by written records at the time of disclosure; (ii) is at the time of disclosure or later becomes publicly known under circumstances involving no breach of this Agreement; (iii) is lawfully and in good faith made available to the recipient by a third party who is not subject to obligations of confidentiality to the discloser with respect to such information; or (iv) is independently developed by the recipient without the use of or reference to Confidential Information, as demonstrated by documentary evidence.

7.2. Disclosure Limitation. Pursuant to Harvard policy, the Harvard Principal Investigator is not supposed to receive information that is subject to confidentiality obligations if doing so would affect [his/her] ability to publish research results or the ability of other scholars to replicate the published results. Accordingly, Company agrees to disclose information it deems confidential to the Harvard Principal Investigator only if (a) it first notifies the Harvard Principal Investigator of the nature of such information and (b) the Harvard Principal Investigator, in [his/her] sole discretion, notifies Company that [he/she] wishes to accept the specified information, or a portion thereof. For clarity, the obligations set forth in Section 7.3 and 8.2 shall only apply to Company Confidential Information accepted by the Harvard Principal Investigator in accordance with this Section 7.2.

7.3. Obligations. Company and the Harvard Principal Investigator each agree that, without the prior written consent of Harvard (in the case of Company being the recipient) or Company (in the case of the Harvard Principal Investigator being the recipient) in each case, during the term of this Agreement, and for five (5) years thereafter, it/[he/she] (a) will not disclose Confidential Information that it/[he/she] has received hereunder to any third party and (b) will not use Confidential Information that it/[he/she] has received hereunder except for the purposes of performing the Research and, in the case of Company, evaluating whether to exercise an option under Article 6 of this Agreement. Company and the Harvard Principal Investigator each shall treat Confidential Information that it/[he/she] has received hereunder with the same degree of confidentiality as it/[he/she] treats its/[his/her] own confidential and proprietary information, but in all events no less than a reasonable degree of confidentiality. Company and the Harvard Principal Investigator each may disclose Confidential Information that it/[he/she] has received hereunder only to members of the Company Team or Harvard Team, respectively, who have a need to know such information for the purposes specified above and who agree to protect such Confidential Information in accordance with the terms set forth in this Agreement.

8. Publications.

8.1. [It is [contemplated] [possible] that Harvard and Company will publish the Results jointly.] [Nonetheless, e]ach Party reserves the right to publish its Results separately. Harvard shall provide Company with a copy of any manuscript disclosing Results at least thirty (30) days prior to submission for publication for the purpose of enabling Company to review the manuscript for potentially patentable Inventions with respect to which it wishes to exercise its

option rights under Article 6 and/or for Confidential Information disclosed to the Harvard Principal Investigator in accordance with Article 7. Company shall provide Harvard with a copy of any manuscript disclosing Results at least thirty (30) days prior to submission for publication for the purpose of enabling Harvard to review the manuscript for potentially patentable Joint Inventions with respect to which it would like to file a patent application and/or for Harvard Confidential Information.

8.2. The Party wishing to publish shall delete from its manuscript prior to submission all Confidential Information of the other Party that the other Party identifies and requests the Party wishing to publish to delete within the thirty (30) day period specified in Section 8.1.

8.3. If, during the thirty (30) day period specified in Section 8.1, Company notifies Harvard that a manuscript reveals a potentially patentable Invention for which it wishes to exercise an option pursuant to Article 6, or Harvard notifies Company that a manuscript reveals a potentially patentable Joint Invention with respect to which it would like to file a patent application, the Party wishing to publish shall delay publication for the purpose of enabling a patent application to be filed in accordance with Section 5.4 until the earliest to occur of: (a) a patent application has been filed with respect to such Invention; (b) Harvard's Office of Technology Development and Company have determined that the relevant Invention is not patentable; or (c) thirty (30) days have elapsed from the date of notification under this Section 8.3.

8.4. Notwithstanding anything to the contrary herein, the Parties agree to abide by the policies of journals in which publications will appear as to such matters as the public release or availability of data or biological materials relating to the publication. Proper acknowledgment will be made for the contributions of each party to the Results being published. In addition, to the extent required by applicable journal policies, each party shall use reasonable efforts to make samples of its research materials disclosed in the publication available upon request (supplies permitting) to scientists at non-profit institutions, provided that the recipient scientist agrees in writing that such research materials (a) will be used for research in the recipient scientist's laboratory only, (b) will not be used for any commercial purpose, (c) will not be used for work on human subjects, and (d) will not be distributed to other laboratories. [In addition, each party shall make samples of its Materials (including any Collaboration Materials) disclosed in the publication available upon request (supplies permitting) to scientists at non-profit institutions, provided that the recipient scientist agrees in writing that such Materials (a) will be used for research in the recipient scientist's laboratory only, (b) will not be used for any commercial purpose, (c) will not be used for work on human subjects and (d) will not be distributed to other laboratories.]

9. Term and Termination.

9.1. Term. This Agreement shall commence on the Effective Date and shall remain in effect for a period of [____ () {months} {years}] (the "Term"), unless earlier terminated in accordance with the provisions of this Article 9.

9.2. Loss of Harvard Principal Investigator. In the event that the Harvard Principal Investigator ceases to supervise the Research and Harvard declines or is unable to find a substitute acceptable to Company as provided in Section 2.2, Company may terminate this Agreement in accordance with Section 2.2.

9.3. Termination for Default. In the event that either Party commits a material breach of its obligations under this Agreement and fails to cure that breach within thirty (30) days after receiving a written demand to cure from the non-breaching Party, the non-breaching Party may cease performance under and/or terminate this Agreement immediately upon written notice to the breaching Party.

9.4. Force Majeure. Except for monetary obligations hereunder, neither Party will be responsible for delays resulting from causes beyond its reasonable control, including, without limitation, fire, explosion, flood, war, strike or riot; provided that the non-performing Party uses commercially reasonable efforts to avoid or remove such causes of non-performance and continues performance under this Agreement with reasonable dispatch whenever such causes are removed.

9.5. Survival. The following provisions, as well as any rights, obligations and duties which by their nature extend beyond the expiration or termination of this Agreement, shall survive the expiration or termination of this Agreement: Article 7 and 9 and Sections 4.2, 5.3, 10.2, 10.3, 10.4 and 10.5. In addition, the provisions of Article 6 shall survive termination of this Agreement as necessary to effectuate the rights of Company, unless Harvard has terminated this Agreement because of a material breach by Company.

9.6. Effect of Termination. Upon termination of this Agreement other than by Harvard due to Company's breach, Company shall pay Harvard the entire amount of any financial commitments incurred by Harvard prior to termination in connection with the Research that cannot be canceled (including, without limitation, graduate student and post-doctoral stipends). In the event of termination by Harvard due to Company's breach, Company's obligation to fund the Research under Article 3 shall survive termination. Upon termination or expiration of this Agreement, Harvard shall retain title to all equipment or material purchased or fabricated by Harvard, the Harvard Principal Investigator or the Harvard Team with funds provided by Company.

10. Miscellaneous.

10.1. Warranty Disclaimer. NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION: RESULTS; THE PERFORMANCE, CONDITION, ORIGINALITY OR ACCURACY OF THE RESEARCH OR MATERIALS; THE AVAILABILITY OF LEGAL PROTECTION FOR INVENTIONS OR ANY OTHER WORK PRODUCT OF THE RESEARCH; OR THE VALIDITY OR ENFORCEABILITY OF ANY

PATENT RIGHTS. ALL MATERIALS PROVIDED HEREUNDER ARE PROVIDED “AS IS,” AND] NEITHER PARTY MAKES ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE FOR ANY RESULTS OR MATERIALS PROVIDED HEREUNDER, OR THAT THE USE OF THE RESULTS OR MATERIALS WILL NOT INFRINGE ANY PATENT RIGHTS OR OTHER INTELLECTUAL PROPERTY RIGHTS.

10.2. Responsibilities and Indemnification. Each Party shall be responsible for its own acts in the performance of the Research, its use of Results, and its use, storage and disposal of any Materials. Notwithstanding the foregoing, Company shall indemnify, defend and hold harmless Harvard and its current and former directors, governing board members, trustees, officers, faculty, medical and professional staff, employees, students, and agents and their respective successors, heirs and assigns from and against any claim, liability, cost, expense, damage, deficiency, loss or obligation of any kind or nature (including, without limitation, reasonable attorneys’ fees and other costs and expenses of litigation) based upon, arising out of, or otherwise relating to Company’s use of Results or Materials, including without limitation any cause of action relating to product liability, except to the extent caused by the gross negligence or willful misconduct of Harvard.

10.3. Limitation of Liability. [Except with respect to Company’s indemnification obligation under Section 10.2, neither Party will be liable to the other with respect to any subject matter of this Agreement under any contract, negligence, strict liability or other legal or equitable theory for (a) any indirect, incidental, consequential or punitive damages or lost profits or (b) cost of procurement of substitute goods, technology or services. Harvard’s aggregate liability for all damages of any kind arising out of or relating to this Agreement or its subject matter shall not exceed the amounts paid to Harvard under this Agreement.

10.4. Use of Names. Except as provided below, Company shall not, and shall ensure that its affiliates shall not, use or register the name “Harvard” (alone or as part of another name) or any logos, seals, insignia or other words, names, symbols or devices that identify Harvard or any Harvard school, unit, division or affiliate (“Harvard Names”) for any purpose except with the prior written approval of, and in accordance with restrictions required by, Harvard. Without limiting the foregoing, Company shall, and shall ensure that its affiliates shall, cease all use of Harvard Names on the termination or expiration of this Agreement except as otherwise approved by Harvard. This restriction shall not apply to any information required by law to be disclosed to any governmental entity.

10.5. Research Partially Funded by Grants. To the extent that any Invention has been partially funded by the federal government (including any of its agencies), this Agreement and the grant of any rights in such Invention is subject to and governed by federal law, such as the provisions of 35 USC §§ 200-212 and all associated implementing regulations, as well as the terms and conditions of any federal grant. To the extent that any Invention has been partially funded by a non-profit organization or state or local agency, this Agreement and the grant of any

rights in such Invention is subject to and governed by the terms and conditions of the applicable research grant.

10.6. Independent Contractors. Company will not have the right to direct or control the activities of Harvard or the Harvard Principal Investigator in performing the Research. Harvard and Company shall act hereunder only as independent contractors, and nothing herein contained shall be construed to be inconsistent with that relationship or status.

10.7. Notices. Any notices to be given hereunder shall be sufficient if signed by the Party giving same and delivered in one of the following manners: (a) hand delivery; (b) certified mail, return receipt requested; (c) expedited delivery via a nationally recognized courier service; or (d) facsimile if the sender retains evidence of successful transmission and if the sender promptly sends the original by ordinary mail, in any event to the following addresses:

If to Company (invoices only):

[_____]
[_____]
Attention: [_____]
Facsimile: [_____]
Email: [_____]
Purchase order number: [_____]

If to Company (other notices):

[_____]
[_____]
Attention: [_____]
Facsimile: [_____]

If to Harvard:

Office of Technology Development
Richard A. and Susan F. Smith Campus Center, Suite 727
1350 Massachusetts Avenue
Cambridge, MA 02138
Attention: Chief Technology Development Officer
Facsimile: (617) 495-9568

By such notice, either Party may change its address for future notices. Notices mailed shall be deemed given on the date postmarked on the envelope. Notices sent by expedited delivery shall be deemed given on the date received by the courier, as indicated on the shipping manifest or waybill. Notices sent by fax shall be deemed given on the date faxed.

10.8. Modification. This Agreement may be amended, modified, superseded or canceled, and any of the terms may be waived, only by a written instrument executed by each

Party or, in the case of waiver, by the Party waiving compliance. A delay or failure by a Party to assert its rights under, including upon any breach or default of, this Agreement shall not be deemed a waiver of such rights. No waiver by either Party of any condition or of the breach of any term contained in this Agreement, whether by conduct, or otherwise, in any one or more instances, shall be deemed to be, or considered as, a further or continuing waiver of any such condition or of the breach of such term or any other term of this Agreement.

10.9. Governing Law and Venue. This Agreement will be governed by, and construed in accordance with, the substantive laws of the Commonwealth of Massachusetts, without giving effect to any choice or conflict of law provision, except that questions affecting the construction and effect of any patent shall be determined by the law of the country in which the patent shall have been granted. Any action, suit or other proceeding arising under or relating to this Agreement (a "Suit") shall be brought in a court of competent jurisdiction in the Commonwealth of Massachusetts, and the Parties hereby consent to the sole jurisdiction of the state and federal courts sitting in the Commonwealth of Massachusetts. Each Party agrees not to raise any objection at any time to the laying or maintaining of the venue of any Suit in any of the specified courts, irrevocably waives any claim that Suit has been brought in any inconvenient forum and further irrevocably waives the right to object, with respect to any Suit, that such court does not have any jurisdiction over such Party.

10.10. Severability. If any provision of this Agreement is or becomes invalid or is ruled invalid by any court of competent jurisdiction or is deemed unenforceable, it is the intention of the Parties that the remainder of this Agreement shall not be affected.

10.11. No Assignment. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto; provided, however that neither Party may assign any of its rights or obligations under this Agreement to any other person or entity without the prior written consent of the other.

10.12. Counterparts. The Parties may execute this Agreement in two or more counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument. Transmission by facsimile or electronic mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart. If by electronic mail, the executed Agreement must be delivered in a .pdf format.

10.13. Entire Agreement. This Agreement is the sole agreement with respect to the subject matter hereof and supersedes all other agreements and understandings between the Parties with respect to the same *{including, in particular, the Confidential Disclosure Agreement entered into by the Parties dated _____}*.

[Signature Page Follows]

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by its duly authorized representative as of the Effective Date.

President and Fellows of Harvard College

[Company]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

I, the undersigned, hereby confirm that I have read the Agreement, that its contents are acceptable to me and that I will act in accordance with its terms, including the provisions of Article 7.

[Harvard Principal Investigator]

EXHIBIT A

Research Plan

[see attached]

SAMPLE

EXHIBIT B

Materials

Company Materials:

Harvard Materials:

SAMPLE

Exhibit __

Form of Harvard Invoice

[See attached]

SAMPLE