

For illustrative purposes only. This sample contains terms representative of a Material Evaluation Agreement, but any such agreement may be subject to change.

MATERIAL EVALUATION AGREEMENT

Effective as of _____ (the "Effective Date")

This Material Evaluation Agreement (this "Agreement") is by and between _____, having offices at _____ ("Company") and President and Fellows of Harvard College, a Massachusetts educational institution, having offices at Richard A. and Susan F. Smith Campus Center, Suite 727E, 1350 Massachusetts Avenue, Cambridge, MA 02138 ("Harvard"). This Agreement sets forth the terms and conditions under which Dr. _____ ("Scientist"), a researcher at Harvard, will provide certain Materials (as defined below) to Company for testing and possibly will provide certain related Confidential Information (as defined below). The parties hereto, intending to be legally bound, hereby agree as follows:

1. As soon as practicable after the Effective Date of this Agreement, Harvard, through Scientist, will provide Company with certain materials as further described in Exhibit A. Such materials, together with any derivatives, progeny, replications, modifications or improvements thereof, are referred to herein as the "Materials." Scientist may also provide Company with certain Confidential Information.
2. The Materials and Confidential Information are provided to Company solely for its use in performing the tests described in Exhibit B (the "Evaluation") for the sole purpose of enabling the parties to mutually evaluate the possibility of entering into a business or research relationship with each other with respect thereto (the "Purpose"). Company agrees that it will not use the Materials or Confidential Information other than in the Evaluation for the Purpose. Company shall not provide the Materials or Confidential Information to any third party and shall ensure that the Materials and Confidential Information remain under Company's immediate and direct control. Company will not modify nor analyze the Materials in any way, or otherwise attempt to determine the chemical composition, formula, structure, or properties of the Materials, without Harvard's written permission. The Materials are provided to Company for use only in in vitro experiments. **THE MATERIALS SHALL NOT BE USED IN HUMANS.**
3. All rights, title and interest in and to the Materials and Confidential Information shall be owned solely and exclusively by Harvard. Company acknowledges that the Materials and/or Confidential Information are or may be covered by patents and/or patent applications. Except as provided in this Agreement, no express or implied licenses or other rights are provided to Company under any patents, patent applications or other intellectual property rights of Harvard. Nothing in this Agreement shall be construed to restrict Harvard's right to make, use or license the Materials and Confidential Information or to distribute the Materials or disclose the Confidential Information to other commercial and noncommercial entities. The provision of the Materials or Confidential Information to Company in no way prevents or restricts Harvard's or Scientist's right to publish any document relating to the Materials or Confidential Information. In addition, this Agreement does not create, and shall under no circumstances be construed or interpreted as creating, an obligation on the part of

Harvard to grant any license under any patent, trade secret, or other intellectual property right to Company.

4. No later than the earlier of thirty (30) days after (a) completion of the Evaluation or (b) expiration of this Agreement, whichever occurs first, Company shall provide Harvard, through Scientist, with a written report setting forth all results and data with respect to the Materials that were generated by or on behalf of Company in the performance of the Evaluation (the "Results"). Company shall keep such Results in strict confidence and shall use the Results solely for the Purpose. Harvard may use such Results for any and all purposes.

5. Company promptly shall notify Harvard of any inventions concerning the Materials generated by it in the performance of the Evaluation that are conceived or reduced to practice by Company either solely or jointly with the Scientist or other Harvard researchers ("Inventions"). Company agrees to assign, and hereby assigns to Harvard, all rights, title and interest in and to Inventions. Ownership of all other inventions (i.e., inventions other than Inventions) shall follow inventorship, with inventorship determined in accordance with U.S. patent law. Company will, at Harvard's expense, sign and deliver to Harvard any documents and take reasonable actions that are needed or desirable in order to confirm Harvard's title in the Inventions.

6. Company agrees that, without the prior written consent of Harvard in each case, during the term of this Agreement, and for five (5) years thereafter, it will not disclose Confidential Information (as defined below) to any third party and will use Confidential Information only for the Purpose. Company may disclose the Confidential Information only to those of its employees who have a need to know such information for the Purpose and who are bound by agreements that impose confidentiality and non-use obligations comparable to those set forth in this Agreement. "Confidential Information" means all information designated as confidential or that otherwise should reasonably be construed under the circumstances as being confidential that is disclosed by or on behalf of Harvard, or any of its employees, students or researchers, to Company, except to the extent that such information: (a) was known to Company at the time of disclosure, as shown by written documentation, other than by virtue of a prior confidential disclosure to Company by or on behalf of Harvard or any of its employees, students or researchers; (b) as of the date of disclosure was or is in, or subsequently entered or enters, the public domain, other than by a fault or omission of Company or any of its employees; (c) as of the date of disclosure or thereafter was or is obtained from a third party free from any obligation of confidentiality to Harvard; or (d) as of the date of disclosure or thereafter was or is independently developed by Company without use of or reference to Confidential Information. Confidential Information shall include the Materials, Results and Inventions.

7. The term of this Agreement shall commence on the Effective Date and expire _____ (___) days thereafter unless extended by written agreement of the parties. Upon the expiration of this Agreement, Company promptly shall return the Materials to Harvard at Company's expense and in a manner acceptable to Harvard or, if requested by

Harvard, shall destroy the Materials. Sections 4, 5, 6, 7, 10 and 12 shall survive expiration of this Agreement.

8. Company agrees to use the Materials in a safe manner and in compliance with all applicable federal, state, and local laws and regulations, including National Institute of Health guidelines. The Materials and Confidential Information referenced herein may be subject to regulation by the United States government. Company agrees to comply with all applicable United States laws and regulations, including laws and regulations controlling the export of goods, technology, software, and services. Applicable regulations include, without limitation, the International Traffic in Arms Regulations, the Export Administration Regulations, and the regulations administered by the Office of Foreign Assets Control at the U.S. Department of the Treasury. The transfer of goods, technology, software, or services, including technical data, whether within or outside the U.S., to a foreign person, may require a license from the pertinent agency of the United States Government and/or written assurances by Company to such agency. Company acknowledges that it will take all necessary steps to comply with export regulations, including obtaining export licenses, if necessary.

9. HARVARD MAKES NO REPRESENTATION THAT USE OF THE MATERIALS OR CONFIDENTIAL INFORMATION WILL NOT INFRINGE THE PATENT OR PROPRIETARY RIGHTS OF ANY THIRD PARTY. THE MATERIALS ARE EXPERIMENTAL IN NATURE AND WILL BE USED WITH PRUDENCE AND APPROPRIATE CAUTION, SINCE NOT ALL OF ITS CHARACTERISTICS ARE KNOWN. THE MATERIALS AND CONFIDENTIAL INFORMATION ARE PROVIDED WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

10. In no event shall Harvard be liable for Company's use of the Materials, Confidential Information or Results. 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 based upon, arising out of or otherwise relating to Company's use of the Materials, Confidential Information and Results, except to the extent directly resulting from Harvard's gross negligence or intentional wrongdoing. Harvard agrees to cooperate fully as necessary or as requested by Company to defend against any such action, provided that Company shall reimburse Harvard promptly for any costs and expenses incurred by Harvard in connection with providing such assistance.

11. Company agrees to reimburse Harvard the sum of _____ US Dollars (\$_____.00) solely for the costs of preparation and shipment of the Materials. The foregoing sum shall be paid immediately upon execution of this Agreement.

12. This Agreement, including the exhibits hereto, constitutes the entire agreement, and supersedes all prior or contemporaneous agreements, whether written or oral, among the parties hereto with respect to the subject matter hereof. This Agreement may not be amended or modified, in whole or in part, except by an agreement in writing signed by the parties hereto. Neither party may assign this Agreement, or any of its rights or obligations hereunder, without the prior written consent of the other party, except that consent shall not be required in connection with a sale of all or substantially all of the business or assets of Company and provided that the assignee agrees in writing to be bound by the terms of this Agreement. This Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to conflict of laws provisions.

AGREED AND ACCEPTED:

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

SAMPLE

Exhibit A - Materials

SAMPLE

Exhibit B – Evaluation

SAMPLE