

EVALUATIVE TESTING AGREEMENT BETWEEN

THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW YORK

AND

COMPANY

Made this _____ day of _____ 20____ (“Effective Date”) between THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW YORK, a nonprofit, educational corporation existing under the laws of the State of New York, with an office located at Office of Sponsored Programs, Stony Brook, New York 11794-3362 at Stony Brook University, hereinafter referred to as the "FOUNDATION" and _____, existing under the laws of the State of _____, with its principal offices located at _____, hereinafter referred to as "COMPANY".

WITNESSETH:

WHEREAS, the project contemplated by this Evaluative Testing Agreement, hereinafter referred to as the “AGREEMENT” is of mutual interest and benefit to FOUNDATION and COMPANY, will further the instructional and research objectives of the FOUNDATION in a manner consistent with its status as a nonprofit, tax-exempt, educational institution, and may provide benefits for both COMPANY and FOUNDATION through inventions, improvements, and/or discoveries, and

WHEREAS, COMPANY desires to retain the FOUNDATION to perform the services as below set forth, hereinafter referred to as the “PROJECT”, and

WHEREAS, the FOUNDATION has available the personnel and facilities needed to provide such services,

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

1. **Scope of Work**

The FOUNDATION agrees to conduct and carry out in a professional and competent manner, as an independent contractor, in accordance with Foundation’s policies, applicable laws and regulations, all the work and services as set forth in Exhibit A, which is attached to and made a part of this AGREEMENT. The PROJECT will be supervised by _____, (“Principal Investigator”), an employee at FOUNDATION, with assistance from associates and colleagues as required.

If for any reason the Principal Investigator is unable or unwilling to continue the PROJECT and/or the responsibilities required to carry out this AGREEMENT, the parties shall negotiate in good faith the continuance of the PROJECT and/or this AGREEMENT. However, if another investigator, who is satisfactory to both parties, cannot be agreed upon, either party may terminate this AGREEMENT in accordance with Article 14 by giving written notice to the other party of such termination.

2. Compensation

(a) COMPANY shall pay the FOUNDATION \$_____ for the PROJECT expenses and other related costs .

This amount shown by approximate category of expenses in Exhibit B attached hereto for information only, is payable in _____ installments in the amount of \$_____.00 each. The first payment is payable within 30 days of the Effective Date and the final payment will be due upon completion of the study.

(b) An interest penalty of 1.5% per month will be added to the total invoice amount of payment if not received within forty-five (45) days of the invoice date.

3. Protected Information

a) The parties acknowledge that they may possess certain proprietary or confidential information which may be utilized in performance of the PROJECT. "PROTECTED INFORMATION" shall mean all such proprietary or confidential information provided by the disclosing party in writing and marked "confidential", or disclosed orally, summarized in writing and marked "confidential" and transmitted to the non-disclosing party within 30 days of oral disclosure. PROTECTED INFORMATION will only be disclosed to the employees, consultants and students (if applicable) who require the same to fulfill the purposes of the research. The receiving party shall protect the disclosing party's PROTECTED INFORMATION with the same standard of care with which the receiving party treats its own PROTECTED INFORMATION. PROTECTED INFORMATION shall be used by the receiving party only within the scope of this AGREEMENT. Each party shall, for a period of three (3) years after the termination or expiration of this AGREEMENT, maintain the same level of care to prevent the disclosure of a party's PROTECTED INFORMATION, unless otherwise required by law.

b) Neither party shall be liable for disclosure or use of the information of the other party if said information was:

- 1) known by the receiving party at the time it was acquired from the disclosing party;
- 2) already generally available to the public, or subsequently becomes so available without default of the receiving party;
- 3) received by a party to this AGREEMENT from a third party who did not acquire it directly or independently from a party to this AGREEMENT in confidence;
- 4) independently developed by the receiving party without the use or reliance on PROTECTED INFORMATION or;
- 5) required to be disclosed by law provided that the disclosing party shall give advance, written notice to the other party of the compelled disclosure.

Other provisions of this AGREEMENT notwithstanding, this Article shall remain in effect for a period of three (3) years from the effective date of this AGREEMENT.

4. Use of Name

The parties agree not to use the name and any logotypes or symbols of the other party in any sales promotion, advertising or in any other form of publicity without the express written permission of the

other party. However, this provision is not intended to restrict either party from disclosing the existence and nature of this AGREEMENT, or from including its existence in the routine reporting of the party's activities.

5. **Publication**

The FOUNDATION shall be to free to publish papers consistent with protection of proprietary information of COMPANY and/or patentable rights which arise from work conducted under this AGREEMENT. No less than thirty (30) days prior to dissemination or publication, FOUNDATION shall provide the COMPANY with a copy of any proposed manuscript or oral presentation for identification and protection of COMPANY'S PROTECTED INFORMATION. If FOUNDATION does not receive a written response from COMPANY within thirty (30) days, FOUNDATION may proceed with publication and/or release of information as proposed. COMPANY may require an additional thirty (30) day delay in publication in order to coordinate the filing of any invention disclosure. In no event shall this delay exceed a total of sixty (60) days without mutual written agreement by both parties.

6. **Rights in Data and Patents**

"Data" is defined as all data and results arising from this performance of work. All Data shall be promptly and fully disclosed by FOUNDATION and/or Principal Investigator to COMPANY upon completion of the PROJECT.

All Data arising from performance of work shall be the sole property of FOUNDATION.

FOUNDATION hereby grants COMPANY a non-exclusive, royalty free, worldwide license, to use all such Data for internal research purposes and to make, have made, use, sell, and offer for sale.

All patent applications, patents and protected information belonging to COMPANY prior to commencement of the PROJECT is owned by the COMPANY including any Inventions representing a reduction to a practice of a COMPANY'S prior conception as expressed in the PROJECT or other written records of COMPANY, the know-how evident thereto, shall be the exclusive property of COMPANY ("Sponsor IP").

With the exception of the Sponsor IP, the parties will retain title to any patent or other intellectual property rights in Inventions made solely by their respective personnel using their respective facilities in the course of performing the work. Inventions made jointly by FOUNDATION and COMPANY shall be jointly owned by the parties.

To the extent that COMPANY wishes to obtain an exclusive license, FOUNDATION does hereby grant to COMPANY an exclusive option to acquire an exclusive, worldwide royalty-bearing license to any Invention in which FOUNDATION has an ownership interest as a result of the PROJECT. COMPANY shall indicate its intention to exercise its option to license by notifying FOUNDATION in writing within ninety (90) days of each invention's disclosure to COMPANY. If COMPANY decides to exercise its option, the terms shall be negotiated in good faith within one hundred twenty (120) days of the date the option is exercised, or within such time as the parties may mutually agree in writing.

7. **Disclaimer of Warranties**

ANY AND ALL RESULTS OF THE PROJECT, DATA REPORTS, OR OTHER MATERIALS PROVIDED BY FOUNDATION UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" BASIS. FOUNDATION MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES WITH RESPECT TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROJECT RESULTS, DATA, REPORTS, OR ANY OTHER MATERIALS. FOUNDATION MAKES NO WARRANTIES OF ANY KIND WITH RESPECT TO FREEDOM FROM PATENT, TRADEMARK, COPYRIGHT OR TRADE SECRET INFRINGEMENT ARISING FROM THE USE OF THE PROJECT RESULTS, DATA, REPORTS, OR OTHER MATERIALS PROVIDED HEREUNDER. FOUNDATION SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES SUFFERED BY COMPANY OR ANY OTHER PARTY RESULTING FROM THE PROJECT OR THE USE OF ANY PROJECT RESULTS, DATA, REPORTS, OR OTHER MATERIALS.

8. **Return of Compounds\Devices**

Upon completion of this contract, all unused materials that are furnished by COMPANY shall be returned to COMPANY.

9. **Notices**

All notices, demands, and other communications hereunder, with the exception of technical information, shall be delivered personally to the party to which it is addressed, or mailed to such party by registered or certified mail, return receipt requested, with postage thereon fully prepaid.

Said notices shall be delivered to the appropriate financial, administrative and/or technical party(ies) as identified in Exhibit B, unless notice of change of address is provided in writing to the other.

Any notices, demands, and other communications so mailed shall be deemed to have been received by the addressee seven (7) days after the time and date of its being so mailed.

10. **Waivers**

No waiver of any term, provision, or condition of this AGREEMENT, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such term, provision, or condition of any other term, provision, or condition of this AGREEMENT.

11. **Modifications and Changes**

This AGREEMENT may be changed, amended, modified, extended, or terminated by mutual consent provided that such consent shall be in writing and executed by the parties hereto prior to the time such change shall take effect.

12. **Indemnification**

FOUNDATION shall, to the extent authorized under the laws of the State of New York, indemnify and hold COMPANY harmless from liability resulting from the negligent acts or omissions of FOUNDATION, its agents or employees pertaining to the activities to be carried out pursuant to the obligations of this AGREEMENT; provided, however, that FOUNDATION shall not hold COMPANY

harmless from claims arising out of the negligence or willful malfeasance of COMPANY, its officers, agents, or employees, or any person or entity not subject to FOUNDATION'S supervision or control.

COMPANY shall indemnify and hold FOUNDATION, its officers, agents and employees harmless against any and all claims, judgments, demands, damages, liabilities and costs which directly or indirectly result from (optional: a product liability claim based on the use of any Sponsor medical device), or arise in connection with (optional: defects in the design or manufacture of the material/sample/medical device/Study Drug), any negligent act or omission of COMPANY, its agents, or employees, pertaining to its activities and obligations under this AGREEMENT, including but not limited to the use by COMPANY of the results of the PROJECT; provided, however, that the following is excluded from COMPANY'S obligation to indemnify and hold harmless:

- a. the negligent failure of FOUNDATION to substantially comply with any applicable requirements or to adhere to the terms of the PROJECT attached hereto as Exhibit A; or
- b. the negligence or willful malfeasance by an officer, agent, or employee of FOUNDATION.

13. **Term**

The term of this AGREEMENT shall be from the Effective Date until completion of the work described in Exhibit A, unless terminated sooner or extended by mutual agreement of the parties hereto expressed in writing in the manner provided in this AGREEMENT.

14. **Termination**

Either party may terminate the agreement by giving thirty (30) days written notice to the other party. Upon early termination of this AGREEMENT, COMPANY shall be liable for all reasonable costs incurred or obligated by FOUNDATION at the time of such termination, subject to the maximum amount specified in Article 2. COMPANY shall pay FOUNDATION for such costs within 30 days of receipt of an invoice for same. Non-cancellable commitments shall include salary, benefit, and tuition costs for graduate research assistants employed on the PROJECT through the end of the semester during which notice of termination is made.

15. **Governing Law**

Regardless of the place of physical execution, this AGREEMENT shall be construed according to the laws of the State of New York.

16. **Export Controls**

This AGREEMENT shall be subject to all applicable government export and import laws and regulations. The parties agree to comply and reasonably assist the other party, upon request by that party, in complying with all applicable government export and import laws and regulations. The parties acknowledge that they may not directly or indirectly export, re-export, distribute or transfer any technology, information or materials of any value to any nation, individual or entity that is prohibited or restricted by the International Traffic in Arms Regulation (ITAR), the Export Administration Regulations (EAR), the Office of Foreign Assets Controls (OFAC), the United States Department of State's State Sponsors of Terrorism, or by any other United States government agency without first obtaining the appropriate license.

COMPANY confirms that the PROTECTED INFORMATION it discloses does not contain export controlled technology or technical data identified on any US export control list, including but not limited to the Commerce Control List (CCL) at 15 CFR 774 and the US Munitions List (USML) at 22 CFR 121. In the event COMPANY intends to provide FOUNDATION with export controlled information, COMPANY will inform FOUNDATION'S Contracts Administrator in writing thirty (30) days prior to the release of export controlled technology or technical data. COMPANY agrees not to provide any export controlled information to FOUNDATION without the written agreement of FOUNDATION'S Contracts Administrator.

17. **Entire Agreement**

This AGREEMENT, including the attached Exhibit A and B, constitutes the entire and only Agreement between the parties relating to the Study, and all prior negotiations, representations, agreements, and understandings are superseded hereby. No agreements altering or supplementing the terms hereof, including the exhibits attached hereto, may be made except by a written document signed by the duly authorized representatives of the parties.

18. **Order of Precedence**

In the event of any inconsistency between clauses 1-18 of this AGREEMENT, and the attached Exhibit A, the inconsistency should be resolved by giving precedence to clauses 1-18.

IN WITNESS WHEREOF, this AGREEMENT has been duly executed by the parties hereto as of the date hereinabove first written.

**THE RESEARCH FOUNDATION FOR THE
STATE UNIVERSITY OF NEW YORK**

COMPANY

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Read and understood:

Principal Investigator