

SPONSORED LABORATORY STUDY AGREEMENT BETWEEN
THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW YORK
AND
SPONSOR

This Agreement is made this _____ day of _____, 20__ (“Effective Date”) by and 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 "SPONSOR", to conduct a laboratory study and evaluation (“Study”).

WITNESSETH:

WHEREAS, the project contemplated by this Sponsored Laboratory Study Agreement, hereinafter referred to as the “AGREEMENT” is of mutual interest and benefit to FOUNDATION and SPONSOR, 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 SPONSOR and FOUNDATION through inventions, improvements, and/or discoveries, and

WHEREAS, SPONSOR desires to retain the FOUNDATION to perform the services as below set forth, hereinafter referred to as the “Study”, 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. **Protocol**

The FOUNDATION agrees to conduct and carry out in a professional and competent manner the Study (“_____”), as an independent contractor, as described in the scope of work attached as Exhibit A, which is attached to and made a part of this AGREEMENT. The Study will be supervised by _____, (“Principal Investigator”), an employee at FOUNDATION, with assistance from associates and colleagues as required.

SPONSOR agrees to engage the services of FOUNDATION to conduct the Study and further agrees to provide at no cost to FOUNDATION the (samples, drugs, materials) for the conduct of the Study.

2. **Compensation**

(a) SPONSOR shall pay the FOUNDATION \$_____ for the Study expenses and other

related costs. This amount, shown by approximate category of expenses in Exhibit B attached hereto is payable in accordance with the schedule set forth below:

(SCHEDULE)

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 Study. "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 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 advertising, sales promotion, or other publicity matter without the prior written approval 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 free to publish papers consistent with protection of proprietary information of SPONSOR and/or patentable rights which arise from the Study. No less than thirty (30) days prior to dissemination or publication, FOUNDATION shall provide the SPONSOR with a copy of any proposed manuscript or oral presentation for identification and protection of SPONSOR'S PROTECTED INFORMATION. If FOUNDATION does not receive a written response from SPONSOR within thirty (30) days, FOUNDATION may proceed with publication and/or release of information as proposed. SPONSOR 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. Patents

A. *Use this language for studies where the protocol is moderately specific, but leaves room for the PI to experiment and interject his or her own ideas, and it requires data analysis that often involves inventive contributions.*

Data. "Data" is defined as all data and results arising from this performance of work. All Data shall be promptly and fully disclosed by University and/or Principal Investigator to SPONSOR. Data directly related to FOUNDATION Inventions are referred to "FOUNDATION Data".

Invention "Invention" shall mean any discovery, concept, idea, new use or the like, whether or not patentable, made during the conduct of the study, and arising directly from the performance of the study, including but not limited to processes, methods, software, tangible research products, formulas and techniques, improvements thereto, and know-how related thereto. Inventorship shall be determined in accordance with U.S. Patent law.

a). SPONSOR shall hold title to all Inventions (including know-how) developed solely by SPONSOR personnel at SPONSOR facilities who are legally obligated to assign rights in inventions to SPONSOR and who are not otherwise legally obligated to assign rights in inventions to FOUNDATION. Said Inventions are hereinafter referred to as "SPONSOR inventions."

b). FOUNDATION shall hold title to all Inventions (including know-how) developed solely by personnel who are legally obligated to assign rights in inventions to the FOUNDATION. Said inventions are hereinafter referred to as "FOUNDATION inventions."

c). No license or other rights in FOUNDATION inventions are given to or received by SPONSOR except as specifically provided for herein.

d). FOUNDATION hereby grants to SPONSOR a 90 day option to acquire an exclusive license to FOUNDATION Inventions. The 90-day period of the option shall commence on the date of disclosure of FOUNDATION Inventions to SPONSOR by FOUNDATION. Should SPONSOR exercise its option under this paragraph, the parties shall negotiate a mutually acceptable license agreement.

e). SPONSOR agrees to reimburse FOUNDATION for all direct costs of patenting new technology developed under this AGREEMENT if SPONSOR acquires rights in said technology.

f). If both SPONSOR and FOUNDATION personnel with the legal obligation to assign rights in inventions to their individual employers develop a joint Invention under this AGREEMENT, the SPONSOR and FOUNDATION shall hold joint title to said invention. SPONSOR shall be entitled to exercise the option and licensing rights set forth above with respect to FOUNDATION'S interest in said joint invention. SPONSOR and FOUNDATION shall share equally all reasonable direct costs of

patenting new technology developed under this AGREEMENT pursuant to this paragraph.

g). All Data arising from performance of work shall be the sole property of FOUNDATION. Sponsor shall have the right to freely utilize Data, other than FOUNDATION Data, resulting from this work for any and all legal purposes. Foundation hereby grants Sponsor a non-exclusive, royalty free, worldwide license, to use Data, other than FOUNDATION Data. FOUNDATION Data will be subject to option terms described above.

B. Use this language for studies where the protocol belongs to the Sponsor and the agreement may grant the Sponsor the right to own intellectual property resulting from the study since the protocol specifies all procedures in detail and leaves no room for the PI to experiment on his or her or interject his/her own ideas.

Data. "Data" is defined as all data and results arising from this performance of work. All Data shall be promptly and fully disclosed by University and/or Principal Investigator to SPONSOR. Data directly related to FOUNDATION Inventions are referred to "FOUNDATION Data".

Invention "Invention" shall mean any discovery, concept, or idea, conceived or reduced to practice, whether or not patentable, made during the conduct of the study, and arising directly from the performance of the study pursuant to this agreement, including but not limited to processes, methods, software, tangible research products, formulas and techniques, improvements thereto, and know-how related thereto.

All Data arising from performance of work shall be the sole property of FOUNDATION. SPONSOR shall have the right to freely utilize such Data resulting from this work for any and all legal purposes FOUNDATION hereby grants SPONSOR a non-exclusive, royalty free, worldwide license, to use all such Data.

All rights, title and interest in and to any Inventions representing a reduction to a practice of a SPONSOR's prior conception as expressed in the Project or other written records of SPONSOR, the know-how evident thereto, and any patent applications and resultant patents derived therefrom shall be the exclusive property of SPONSOR ("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 the performing the work. Inventions made jointly by FOUNDATION and SPONSOR shall be jointly owned by the parties.

To the extent that SPONSOR pays all patent expenses for an Invention, FOUNDATION does hereby grants to SPONSOR an exclusive option to acquire an exclusive, worldwide royalty-bearing license to any Invention in which FOUNDATION has an ownership interest. SPONSOR 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 SPONSOR. If SPONSOR 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 SPONSOR shall be returned to SPONSOR.

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 C, unless notice of change of address is provided in writing to the other.

Exchanges of export controlled information as per Article 17 shall be delivered to:

Susan Gasparo, Assistant Director
Office of Research Compliance
The Research Foundation for the State University of New York
Stony Brook University
Stony Brook, New York 11794-3368

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. **Integration Clause**

This AGREEMENT represents and embodies all the agreements and negotiations between the parties hereto and no oral agreements or correspondence prior to the date of execution of this AGREEMENT shall be held to vary the provisions hereof. Any conflicts between the Study and this AGREEMENT are controlled by this AGREEMENT.

12. **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.

13. Indemnification

SPONSOR 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 SPONSOR, its agents, or employees, pertaining to its activities and obligations under this AGREEMENT, including but not limited to the use by SPONSOR of the results of the Study; provided, however, that the following is excluded from SPONSOR'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.

14. Term and Termination

The term of this AGREEMENT shall be from the Effective Date until the earlier of: (i) completion of the Study as mutually agreed upon the parties, or (ii) _____ months from the date set forth above; provided however that either party may terminate this Agreement by giving thirty (30) days advance notice to the other.

Upon early termination of this Agreement, SPONSOR 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. SPONSOR 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 Study through the end of the semester during which notice of termination is made.

16. Governing Law

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

17. 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.

SPONSOR 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 SPONSOR intends to provide FOUNDATION with export controlled information, SPONSOR will inform FOUNDATION'S Export Controls Assistant Director, as identified in Article 9, in writing thirty (30) days prior to the release of export controlled technology or technical data. SPONSOR agrees not to provide any export controlled information to FOUNDATION without the written agreement of FOUNDATION'S Export Controls Assistant Director.

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 SPONSOR**

By _____ By _____

Title: _____ Title: _____

Date: _____ Date: _____

Exhibit A – SCOPE OF WORK

1. Statement of Project Objectives:

2. Project Start Date:

3. Project Completion Date:

4. Location where the work will be performed:

5. Scope of Lab Study to be Conducted by SBU PI:

6. Sponsor Background Intellectual Property (if known):

7. SBU Background Intellectual Property (if any):

8. Project Reports and Deliverables.

The following written project reports and/or deliverables will be submitted to Sponsor during the Project:

Exhibit B - BUDGET

1. The Budget for the Project will be as set forth below:

2. Payment by Sponsor will be: \$

With payments due on the following schedule:

[Payment schedule]

Exhibit C – PROJECT CONTACTS

FOUNDATION	SPONSOR
<p><i>Administrative Contact</i> Name: Address:</p> <p>Telephone: Fax: Email:</p>	<p><i>Administrative Contact</i> Name: Address:</p> <p>Telephone: Fax: Email:</p>
<p><i>Principal Investigator</i> Name: Address:</p> <p>Telephone: Fax: Email:</p>	<p><i>Technical Contact</i> Name: Address:</p> <p>Telephone: Fax: Email:</p>
<p><i>Financial Contact</i> Name: Address:</p> <p>Telephone: Fax: Email:</p>	<p><i>Financial Contact</i> Name: Address:</p> <p>Telephone: Fax: Email:</p>
<p><i>Authorized Official</i> Name: Address:</p> <p>Telephone: Fax: Email:</p>	<p><i>Authorized Official</i> Name: Address:</p> <p>Telephone: Fax: Email:</p>
<p><i>Export Control</i> Name: Address:</p> <p>Telephone: Fax: Email:</p>	