**SPONSORED RESEARCH AGREEMENT NO. UTAUS-FA\_\_\_\_\_\_\_\_**

**Between**

**THE UNIVERSITY OF TEXAS AT AUSTIN**

**And**

**\_\_\_\_\_\_\_\_\_\_**

This Sponsored Research Agreement (“Agreement”) is made by and between The University of Texas at Austin, Austin, Texas (“University”), an institution of higher education created by the Constitution and laws of the State of Texas under The University of Texas System (“System”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_ corporation with its principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Sponsor”). University and Sponsor shall be referred to herein individually as a “Party” and collectively as the “Parties.”.

**RECITALS**

A. Sponsor desires that University perform certain research work hereinafter described and is willing to advance funds to sponsor such research;

B. Sponsor desires to obtain certain rights to patents and technology developed during the course of such research with a view to profitable com­mercialization of such patents and technology for the Sponsor’s benefit; and

C. University is willing to perform such research and to grant rights to such patents and technology;

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the University and Sponsor agree as follows:

**1. EFFECTIVE DATE AND TERM**This Agreement shall be effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(the “Effective Date”). The research shall be performed from the Effective Date through and including \_\_\_ [enter end date] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Term”). The Term of this Agreement may be extended at no increase in cost to Sponsor by amendment to this Agreement or through written approval from Sponsor’s Authorized Representative.

**2. RESEARCH PROGRAM**

2.1 University will use reasonable efforts to conduct the research as described in Attachment A (“Research Program”), incorporated herein by this reference, and will furnish the facilities necessary to carry out said Research Program. The Research Program will be under the direction of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Principal Investigator”), or his or her successor as mutually agreed to by the Parties and will be con­ducted by the Principal Investigator at the University.

2.2 Sponsor understands that University’s primary mission is education and advancement of knowledge with benefit to society, and consequently the Research Program will be designed to carry out that mission. The manner of performance of the Research Program shall be determined by the Principal Investigator. University does not guarantee specific results and the Research Program will be conducted only on a reasonable efforts basis.

2.3 Sponsor understands that University may be involved in similar re­search on behalf of itself and others. University shall be free to continue such research provided it is conducted separately from the Research Program and Sponsor shall not gain any rights via this Agreement to such other research.

2.4 University does not guarantee that any patent rights will result from the Research Program, that the scope of any patent rights obtained will cover Sponsor’s commercial interests, or that any such patent rights will be free of dominance by other patents, including those based upon inventions made by other inventors in The University of Texas System.

2.5 In the event that physical deliverables or samples are exchanged between the Parties, such exchanges shall be made pursuant to the provisions of Attachment C, Materials Transfer, attached hereto and made a part hereof by this reference.

**3. FIXED PRICE**

3.1 As consideration for the performance by University of its obligations under this Agreement, Sponsor will pay the University the fixed price of $\_\_\_\_\_\_\_\_ U.S. Dollars. The invoice shall be sent to Sponsor at the below address:

Attn:

Phone:

E-mail:

Payments in U.S. Dollars shall be made as follows:

|  |  |
| --- | --- |
| **Payment Due Date** | **Payment Amount** |
| Upon Sponsor’s execution of the Agreement | $ USD |
| Enter Date | $ USD |
| Enter Date | $ USD |
| **Total:** | **$00 USD** |

Payments shall be wired to University within thirty (30) days following Sponsor’s receipt of a University invoice, in accordance with the following electronic payment information.

Payee Name: The University of Texas at Austin

Tax ID: 74-6000203

**INCOMING WIRE TRANSFER INSTRUCTIONS**

BANK NAME: Frost Bank

BANK ADDRESS: 100 W. Houston St., San Antonio, TX 78205

SWIFT ID: FRSTUS44

TELEX: 166955 FRSTBK

ABA ROUTING NUMBER: 114000093 ACCOUNT NUMBER: 59-1055275

ACCOUNT NAME: University of Texas at Austin – Master Concentration ACCOUNT TYPE: Checking

REFERENCE: UT contact person name & phone, and Agreement Number

For questions, please contact cash management at 512-232-2106 or e-mail address: [oa.cml](mailto:oa.cmlocal@austin.utexas.edu)[ocal@austin.utexas.edu](mailto:ocal@austin.utexas.edu)

Within one working day after wire payment, Sponsor shall send an email to University, confirming that payment has been made. A copy of the wire payment information shall be attached, and the email sent to:

Office of Accounting, OSP - SPAA

The University of Texas at Austin

[spaa@austin.utexas.edu](mailto:spaa@austin.utexas.edu)

3.2 University shall retain title to all equipment purchased and/or fabricated by it with funds provided by Sponsor under this Agreement.

**4. CONSULTATION AND REPORTS**

4.1 Sponsor’s designated representative (“Designated Representative”) for consultation and communications with the Principal Investigator shall be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or such other person as Sponsor may from time to time designate in writing to University and the Principal Investigator.

4.2 During the Term of the Agreement, Sponsor’s representatives may consult informally with University’s representatives regarding the project, both personally and by telephone. Access to work carried on in University laboratories in the course of these investigations shall be entirely under the control of University personnel but shall be made available on a reasonable basis.

4.3 The Principal Investigator will provide brief oral report(s) each year as agreed to by the Principal Investigator and Sponsor’s Designated Representative, in addition to the reports and/or deliverables described in Attachment A.

**5. PUBLICITY**

5.1 Neither Party will use the name, trade name, trademark or other designation of the other Party in connection with any products, promotion, or advertising, without the prior written permission of the other Party. However, nothing in this Article is intended to restrict either Party from disclosing the existence of and nature of this Agreement (including the name of the other Party) or from including the existence of and nature of this Agreement in the routine reporting of its activities.

5.2 University shall have the right to acknowledge Sponsor’s support of the investigations under this Agreement in scientific or academic publications, within proposals to federal government agencies and in other scientific communications, without Sponsor’s prior approval.

**6. PUBLICATION AND ACADEMIC RIGHTS**

6.1 Without limiting Sponsor’s rights under Section 4.3, documents containing results of the Research Program shall be treated as confidential and proprietary by the Parties until reviewed by the Sponsor pursuant to this Section. University and the Principal Investigator shall have the right, at its discretion, to make or permit to be made scholarly disclosures of the results of the project, including without limitation, publication in scholarly journals, presentations at academic and other conferences, disclosures to University and non-University scholars, and disclosures in grant and funding applications, except for Sponsor’s confidential information (“Confidential Information”) as may be furnished to University pursuant to a separate nondisclosure agreement executed by the Parties. University will furnish Sponsor with a copy or notice of any publication in any scholarly journal or conference presentation that includes a report of the results of the project at least twenty (20) days prior to submission for publication (“Review Period”). Upon written notification by Sponsor within the Review Period, University agrees to delete any of Sponsor’s Confidential Information that appears in the publication. If it is determined that a patent application should be filed, University will delay publishing such proposed publication for a maximum of an additional thirty (30) days in order to protect the potential patentability of any invention described therein.

6.2 It is understood that the University investigators may discuss the research ideas and published results under this Agreement with other investigators and shall exercise reasonable efforts to maintain Sponsor’s Confidential Information furnished to University pursuant to a nondisclosure agreement executed by the Parties. In the event any joint inventions result, University shall grant to Sponsor the rights outlined in Article 7 to this Agreement, to the extent these are not in conflict with obligations to another party as a result of the involve­ment of the other investigator(s). In this latter case, University shall, in good faith, exercise reasonable efforts to enable Sponsor to obtain rights to the joint invention.

**7. PATENTS, COPYRIGHTS AND TECHNOLOGY RIGHTS**

7.1 Inventorship and ownership of patentable developments or discoveries invented in the performance of this Agreement (“Subject Inventions”) will be determined in accordance with applicable U.S. Patent Law and University policy.

7.2 To the extent that University will have the legal right to do so, and provided Sponsor pays all costs as set forth in Article 7.3, Sponsor will have a time-limited first right to negotiate a license to the University’s interest in any Subject Invention.

7.3 University shall promptly disclose to Sponsor any Subject Inventions. Sponsor shall hold this disclosure on a confidential basis and will not disclose the information to any third party without the prior written consent of University. Within thirty (30) days of receipt of disclosure Sponsor will notify University in writing whether or not it elects to secure a license to University’s interest in the disclosed Subject Invention (“Election Period”). Sponsor will then have ninety (90) days from the date of its notice of election to conclude such license agreement with University (“Negotiation Period”). Said license will contain reasonable terms, will require diligent performance by Sponsor for the timely commercial development and early marketing of all Subject Inventions subject to the license, and will include Sponsor's obligation to reimburse University's patent costs for all Subject Inventions subject to the license. University may file patent applications at its own discretion and expense or at the written request of the Sponsor at Sponsor’s expense. If such license negotiation is not concluded within the Negotiation Period or if Sponsor does not notify University of its wish to secure a license within the Election Period, neither Party will have any further obligation to the other with respect to University’s interest in the Subject Invention and the rights to such Subject Invention will be disposed of in accordance with University’s policies. In all cases, University reserves for itself a royalty-free, irrevocable license to make and use such Subject Inventions for its own research and educational purposes.

7.4 Nothing in this Agreement is or shall be construed as conferring by implication, estoppel, or otherwise any license or rights under any patents or other rights of the University.

7.5 Copyright in original works of authorship, including computer software, first created and fixed in a tangible medium of expression by University in the performance of this Agreement will vest in University. At Sponsor’s request and to the extent that University has the legal right to do so, University will grant to Sponsor a license to University’s interest in such works on reasonable terms and conditions, as the Parties mutually agree in a separate writing.

7.6 University Background Intellectual Property (“BIP”) means intellectual property and the legal rights therein (including, but not limited to, inventions, patent applications, patents, copyrights, and any information embodying proprietary data such as technical data and computer software) owned or controlled by University and which was developed or created by Principal Investigator(s) before the Effective Date of the Research Program and necessary for the full exercise of all intellectual property resulting from the Research Program. Any such BIP is listed in the Identification of Background Intellectual Property form, attached hereto as Attachment B and made a part hereof. The Parties agree that nothing in this Agreement grants either Party any rights to any background intellectual property of the other Party created before the Effective Date of the Agreement. If Sponsor determines that any BIP or other background intellectual property owned solely by University is essential to the use of any foreground intellectual property, then University, in good faith, agrees to provide a license to Sponsor on a nondiscriminatory and reasonable royalty basis, to the extent that University is legally able to do so.

**8. LIABILITY**

8.1 Sponsor agrees to indemnify and hold harmless System, University, their Regents, officers, agents and employees from any liability, loss or damage they may suffer as a result of claims, demands, costs or judgments against them arising out of the activities to be carried out pursuant to the obligations of this Agreement, including but not limited to the use by Sponsor of the results obtained from the activities performed by University under this Agreement; provided, however, that the following is excluded from Sponsor’s obligation to indemnify and hold harmless:

(a) the negligent failure of University to substantially comply with any applicable FDA or other governmental requirements; or

(b) the negligence or willful malfeasance of any Regent, officer, agent or employee of University or System.

8.2 Both Parties agree that upon receipt of a notice of claim or action arising out of the activities to be carried out pursuant to the Research Program, the Party receiving such notice will notify the other Party promptly. Sponsor agrees, at its own expense, to provide attorneys to defend against any actions brought or filed against University, System, their Regents, officers, agents and/or employees with respect to the subject of the indemnity contained herein, whether such claims or actions are rightfully brought or filed; and subject to the statutory duty of the Texas Attorney General, University agrees to cooperate with Sponsor in the defense of such claim or action.

**9. INDEPENDENT CONTRACTOR**

For the purposes of this Agreement and all research to be provided hereunder, the Parties shall be, and shall be deemed to be, independent contractors and not agents or employees of the other Party. Neither Party shall have authority to make any statements, representations nor commitments of any kind, or to take any action which shall be binding on the other Party, except as may be expressly provided for herein or authorized in writing.

**10. TERMINATION**

10.1 The Research Program shall be performed during the Term as described above, unless sooner terminated in accordance with the provisions of this Article 10.

10.2 Either University or Sponsor may terminate this Agreement by giving sixty (60) days written notice to the other. Sponsor will pay University actual direct costs, research operating costs and noncancelable commitments incurred prior to the effective date of termination and fair close-out related costs. If the total of such costs is less than the total funds advanced, the balance will be returned to Sponsor. In all instances, the total cost to Sponsor in the event of termination shall not exceed the total fixed price specified in Article 3.

10.3 Termination or cancellation of this Agreement shall not affect the rights and obligations of the Parties accrued prior to termination. Any provisions of this Agreement which by their nature extend beyond termination shall survive such termination.

**11. ATTACHMENTS**

Attachments A, B and C are incorporated and made a part of this Agreement for all purposes.

**12. USE OF HUMAN SUBJECTS (if applicable)**

12.1 University will conduct all research in accordance with Federal Wide Assurance #2030, written protocol, applicable law, and University’s ethical standards. In the event a research participant has a research related injury neither University nor the Sponsor are responsible for any resulting medical care.

12.2 During and for a period of at least two years after completion of the study, the Sponsor must promptly report to the Principal Investigator any information that could:

1. Affect the safety of the participants
2. Affect the willingness of research participants to continue participation
3. Influence the conduct of the study
4. Alter the University Institutional Review Board’s (“IRB”) approval for the study

12.3 In the event research findings indicate that current and past participants are at increased risk that was not anticipated at the time of the study design, the Principal Investigator, in accordance with both University IRB Policy and Procedures and the informed consent agreement, will immediately inform research participants of risk alteration.

**13. TAXES**

The Fixed Price due University under this Agreement shall be without reduction for any past, present or future taxes, fees, imposts, duties, levies, fines, or charges, by whatever other name, imposed by any institution, government entity or functional equivalent of a government entity (“Taxes”), other than the United States of America, for University’s performance of this Agreement.  Sponsor agrees to reimburse University for any Taxes paid in conjunction with its performance under this Agreement within 30 days of invoicing for the same.

14. DISPUTE RESOLUTION

14.1 Each Party agrees that any dispute between the Parties relating to this Agreement will first be submitted in writing to a panel of two senior officials of Sponsor and University, who shall promptly confer in an effort to resolve such dispute through good faith consultation and negotiation. Each Party's executives shall be identified by notice to the other Party, and may be changed at any time thereafter also by notice to such other Party. Any decisions of the executives of each Party shall be final and binding on the Parties. In the event the executives of each Party are unable to resolve any dispute within thirty (30) days from the first date of consultation, either Party may then refer such dispute to mediation in accordance with this Section.

14.2 If any disputes, controversies, or differences cannot be settled within thirty (30) days from the first date of consultation between the executives of each Party, such disputes, controversies, or differences shall be submitted to a panel of mediators, knowledgeable with the rules of the International Centre for Dispute Resolution® (ICDR), within forty-five (45) days thereafter to work with the executives to resolve their differences utilizing non-binding mediation. Neither party shall unreasonably withhold consent to the selection of a single independent mediator (impartial to both Parties). The mediation shall be held in Travis County, Texas. The Parties shall share equally the costs of mediation. This mediation is a compromise negotiation for the purposes of an alternative dispute resolution procedure acceptable to both Parties. If, after non-binding mediation occurs, the dispute is not resolved, the Parties are free to exercise all other legal and equitable rights.

**15. GENERAL**

15.1 This Agreement may not be assigned by either Party without the prior written consent of the other Party; provided, however, that subject to the approval of University, Sponsor may assign this Agreement to any purchaser or transferee of all or substantially all of Sponsor’s assets or stock upon prior written notice to University; provided, however, that such assignee shall have expressly assumed all of the obligations and liabilities of Sponsor under this Agreement, and provided, further that, University may assign its right to receive payments hereunder.

15.2 This Agreement constitutes the entire and only agreement between the Parties relating to the Research Program, and all prior negotiations, representations, agreements and understandings are superseded hereby. The Parties agree that the Agreement was negotiated and agreed to in English and the Parties intend that the English version take precedent over any translated version of the Agreement. The Parties agree that in the event of any conflict or dispute regarding the interpretation of terms, the Parties to this Agreement or any subsequent amendment shall abide by the terms and conditions of the English language version and only the English version will be accepted as the basis for any legal action or litigation.

15.3 No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of the Parties. Terms and conditions which may be set forth (front, reverse, attached or incorporated) in any purchase order issued by Sponsor in connection with this Agreement shall not apply, whether or not the University signs such purchase order, and shall have no legal or other effect on the University, except for informational billing purposes; i.e., reference to purchase order number, address for submission of invoices, or other invoicing items of a similar informational nature.

15.4 Any notice required by this Agreement by Articles 7, 8, or 14 shall be given prepaid, first class, certified mail, return receipt requested, addressed in the case of University to:

The University of Texas System, O.G.C.

201 West 7th Street

Austin, Texas 78701

Attention: Intellectual Property Section

Vice President for Research

The University of Texas at Austin

PO Box 7996, Campus Mail Code: G1400  
Austin, TX 78713

Attention: Technology Licensing Specialist

or in the case of Sponsor to:

[Sponsor]

[Sponsor Address]

Attn:

or at such other addresses as may be given from time to time in accordance with the terms of this notice provision.

Notices and other communications regarding the day-to-day administration and operations of this Agreement, including Articles 1, 10 and 15.1, will be in writing and sent to the attention of the authorized representative for the receiving party indicated below (hereinafter “Authorized Representative”) by certified mail or overnight courier, at following address, with a copy sent to the shown E-mail:

The University of Texas at Austin

Office of Industry Engagement

3925 West Braker Lane, Building 156

Suite 3.370, MC A9300

Austin, TX 78759

Attention: Rebecca Leamon, Associate Director

Phone: (512) 471-3866

E-mail: industry@austin.utexas.edu

with a copy to:

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

The University of Texas at Austin

Department of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Austin, Texas 78712

Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

E-Mail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

or in the case of Sponsor to:

[Sponsor]

[Sponsor Address]

Attn:

Phone:

E-Mail:

15.5 This Agreement shall be governed by, construed, and enforced in accordance with the internal laws of the State of Texas.

15.6 The Parties acknowledge that, because University is an institution of higher education and has many foreign persons who are students, employees and visitors, University conducts its research activities as “fundamental research” under export control regulations (as set forth in ITAR 120.10(5) and 120.11, and EAR 15 C.F.R. 734(b)(3) and 734.7 through 734.11). Sponsor acknowledges that this Agreement and the performance thereof are subject to compliance with any and all applicable United States laws, regulations, or orders, including those that may relate to the export of technical data, and Sponsor agrees to comply with all such laws, regulations and orders, including, if applicable, all requirements of the International Traffic in Arms Regulations and/or the Export Administration Act, as may be amended. Sponsor further agrees that if the export laws are applicable, it will not disclose or re-export any technical data under this Agreement to any countries for which the United States government requires an export license or other supporting documentation at the time of export or transfer, unless Sponsor has obtained prior written authorization from the U.S. Office of Export Control or other authority responsible for such matters.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

**THE UNIVERSITY OF TEXAS AT AUSTIN SPONSOR’S NAME**

By: \_ By:

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

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

Date: ­­­­­ ­­­­­­­ Date:

**ATTACHMENT A**

**To**

**SPONSORED RESEARCH AGREEMENT NO. UTAUS-FA\_\_\_\_\_\_\_\_\_\_\_**

**RESEARCH PROGRAM**

(Paste Copy)

**ATTACHMENT B**

**To**

**SPONSORED RESEARCH AGREEMENT NO. UTAUS-FA\_\_\_\_\_\_\_\_\_\_\_**

**Identification of University Background Intellectual Property (“BIP”) and Restrictions on its Use, Release, or Disclosure**

University’s Principal Investigator hereby asserts the following and identifies the BIP developed by University researchers performing under the Agreement and restrictions that exist on the rights of the entity owning or controlling the BIP to use, release, or disclose the BIP.

|  |  |
| --- | --- |
| BIP \* and party owning or controlling that BIP | Restrictions on BIP\*\*  (If restrictions exist, describe nature of restrictions and third party that holds the rights thereto.)  (If no restrictions exist, state “none”) |
|  |  |

\*BIP means intellectual property and the legal rights therein (including, but not limited to, inventions, patent applications, patents, copyrights, and any information embodying proprietary data such as technical data and computer software) owned or controlled by University and which was developed or created by Principal Investigator(s) before the Effective Date of the Research Program and necessary for the full exercise of all intellectual property resulting from the Research Program.

\*\*Restrictions on BIP may include licenses granted by the owner of the BIP or industrial sponsorship arrangements that allow the Sponsor rights to review publications or to negotiate a license. Indicate whether development was funded either exclusively or partially by a government or non-government source, and list the source. Enter any reason that owner’s ability to grant licenses in the BIP could be restricted. Identify basis of restriction (e.g., rights from a pre-existing agreement, rights in data generated under another contract, limited purpose rights under this or a prior contract, or specifically negotiated licenses).

Printed Name

Title

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ATTACHMENT C**

**To**

**SPONSORED RESEARCH AGREEMENT NO. UTAUS-FA\_\_\_\_\_\_\_\_\_\_\_**

**MATERIALS TRANSFER**

**University Reference No. UTAUS-MTA\_\_\_\_\_\_\_\_\_\_\_**

*For the purpose of interpretation under this Attachment C, the Party transferring the physical research samples or materials described below shall be referred to as the “PROVIDER” and the Party receiving the physical research samples shall be referred to as the “RECIPIENT.”*

The “Material” that is covered by this Agreement includes:

(a) Physical research samples described as \_\_\_\_\_\_\_\_\_\_\_\_\_\_, that were developed by PROVIDER, and

(b) Any associated know-how and data that will be provided by PROVIDER to RECIPIENT.

The Material is proprietary to PROVIDER and cannot be shared with any other institution or company. PROVIDER will be free, in its sole discretion, to distribute the Material to others and to use it for its own purposes.

The PROVIDER agrees to provide RECIPIENT with Materials for the purposes stated herein under the following conditions:

1) The RECIPIENT shall use the Material for the Research Program described under the Agreement.

2) PROVIDER represents that Material is NOT EXPORT CONTROLLED.

3) RECIPIENT shall not distribute, release, or in any way disclose the Material to any person or entity other than laboratory personnel under RECIPIENT’S direct supervision, and RECIPIENT shall ensure that no one will be allowed to take or send Material to any other location, unless written permission is obtained from PROVIDER. This Material is for investigational use only (including, if applicable, in laboratory animals or in vitro experiments). RECIPIENT agrees that the Material will not be used for any other purpose. Neither the Material nor any biological materials treated therewith will be used in human beings.

4) This Agreement and the resulting transfer of Material constitute a license to use the Material solely for use under the Research Program. RECIPIENT agrees that nothing herein shall be deemed to grant to RECIPIENT any rights under any PROVIDER patents or any rights to use the Material for any products or processes for profit-making or commercial purposes.

5) RECIPIENT shall have no rights in the Material other than as provided in the Agreement.

6) The Material is experimental in nature and it is provided AS IS WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED.

7) To the extent authorized by the laws and Constitution of the State of Texas, both Parties accept liability for any use of the Material in regards to any loss, claim, damage or liability, of whatsoever kind of nature, which may arise from or in connection with this Agreement or the use, handling or storage of the Material.

8) PROVIDER and RECIPIENT will use the Material in compliance with all laws, governmental regulations and guidelines applicable to the Material, including any such laws, governmental regulations and guidelines applicable to research with recombinant DNA, and when the Material is used in the United States, RECIPIENT will comply with current National Institutes of Health guidelines.

9) Materials transferred pursuant to this Attachment, shall be exchanged only during the Term of the Agreement.