

## MODEL CONSULTING AGREEMENT

*The text in italics is explanatory and should be replaced or removed in any final agreement.*

This Agreement is made as of [date] between [name of company] (the “Company”) and [name of investigator] (the “Consultant”), an [investigator rank] at The Rockefeller University (the “University”). The Company is engaged in scientific research in [describe area in which the investigator will consult, preferably as narrow as possible to allow the investigator to potentially consult in other fields] (the “Field”). The Consultant has extensive experience in the Field, and the Company seeks to benefit from the Consultant’s expertise by retaining the Consultant as a consultant. The Consultant wishes to perform consulting services in the Field for the Company. Accordingly, the Company and the Consultant agree as follows:

### 1. Services.

(a) The Consultant shall provide [advice] [consulting services] to the Company with respect to matters related to the Field. The Consultant shall be engaged by the Company as a consultant for the exchange of ideas only and shall not direct or conduct research for or on behalf of the Company.

*The Consultant’s services may be more specifically described in the agreement. They may include: (i) serving on the Company’s scientific advisory board and attending scientific advisory board meetings; (ii) providing scientific advice regarding the Company’s product lines, the general direction of its research program, recruitment of personnel, and techniques used in research in the Field; and (iii) generally advising the Company in its efforts to produce, develop, and market products in the Field.*

(b) Upon request by the Company, and at times mutually agreed upon by the Company and the Consultant, the Consultant shall devote up to [number] days annually to providing consulting services to the Company pursuant to this Agreement.

*Please review the time that will be required under the agreement in light of (i) any pre-existing non-University commitments, and (ii) the University’s Policy on Conflict of Commitment which requires that no more than 52 days per year be devoted to external activities so long as an investigator’s University work is not adversely affected.*

(c) The Company acknowledges that the Consultant is employed by The Rockefeller University and Consultant's obligations to the University supersede any and all provisions of this Agreement.

*The policies include, but are not limited to, conflict of interest, conflict of commitment, and intellectual property.*

## 2. Compensation.

As full consideration for the consulting services provided by the Consultant, the Company shall pay to the Consultant the amount of \$[amount] annually, payable in [semi-annual, quarterly, monthly] installments of \$[amount], beginning on [date]. In addition to the foregoing amount, the Company shall promptly reimburse the Consultant for all reasonable expenses incurred by the Consultant in providing consulting services under this Agreement, including travel to meetings [specify mode of travel].

*The consulting agreement should clearly state the amount of all compensation to be received, including compensation in the form of shares of stock or stock options or their equivalent. Exercising stock options may incur tax consequences, even if the shares are not sold. Both legal and tax advice are strongly advised in deciding on participation in a stock option agreement.*

## 3. Competition.

*Many companies include provisions pursuant to which the Consultant agrees not to provide consulting services to any third party in the Field. An investigator should consider whether a non-competition provision would conflict with any consulting agreement to which the investigator is already bound or would be too restrictive of the investigator's right to enter into other consulting agreements. Following are two examples of acceptable non-competition provisions. If the company does not propose using a non-competition provision, paragraph 3(a) may be omitted but, in that event, paragraph 3(b) should be inserted elsewhere in the agreement.*

### Alternative A

*(where the investigator has no other consulting relationships)*

(a) The Consultant represents to the Company that the Consultant does not have any agreement to provide consulting services to any other party, firm, or company in the [type of business, e.g. pharmaceutical] industry on matters relating to the Field, and will not enter into any such agreement during the term of this Agreement.

(b) The Company acknowledges and agrees, however, that nothing in this Agreement shall affect the Consultant's obligations in connection with research on behalf of the University.

Alternative B

*(where the investigator already has other consulting relationships)*

(a) The Consultant represents to the Company that the Consultant does not have any agreement to provide consulting services to any other party, firm, or company in the [*type of business, e.g. pharmaceutical*] industry on matters relating to the Field, except for the agreement(s) dated as of [*date(s)*] between the Consultant and [*name(s) of other company or companies*]. During the term of this Agreement, the Consultant shall not consult for any entity in the [*type of business, e.g. pharmaceutical*] industry other than the Company and [*name(s) of other company or companies*] on matters relating to the Field.

(b) The Company acknowledges and agrees, however, that nothing in this Agreement shall affect the Consultant's obligations in connection with research on behalf of the University.

4. Confidentiality.

(a) The Consultant may disclose to the Company any information that the Consultant would normally freely disclose to other members of the scientific community at large, whether by publication, by presentation at seminars, or in informal scientific discussions. However, the Consultant shall not disclose to the Company information that is proprietary to the University and is not generally available to the public other than through formal technology transfer procedures.

(b) In providing consulting services to the Company pursuant to this Agreement, the Consultant may acquire information that pertains to the Company's products, processes, equipment, programs, developments, or plans and that is both (i) disclosed or made known by the Company to the Consultant and (ii) identified as "proprietary" by the Company at any time ("Proprietary Information"). The Consultant agrees not to disclose any Proprietary Information to third parties or to use any Proprietary Information for any purpose other than performance of consulting services pursuant to this Agreement, without the prior written consent of the Company.

(c) Proprietary Information subject to paragraph 4(b) does not include information that: (i) is or later becomes available to the public through no breach of this Agreement by the Consultant; (ii) is obtained by the Consultant from a third party who had the legal right to disclose the information to the Consultant; (iii) is already in the possession of the Consultant on the date this Agreement becomes effective; or (iv) is required to be disclosed by law, government regulation, or court order. In addition, Proprietary Information subject to paragraph 4(b) does not include information generated by the Consultant, alone or with others, unless the information (I) is generated solely as a direct result of the performance of consulting services under this Agreement and (II) has not been developed in the course of the Consultant's activities as a University employee.

#### 5. Return of Materials.

The Consultant agrees, following the termination of this Agreement or upon earlier request by the Company, to promptly return all drawings, tracings, and written materials in the Consultant's possession and (i) supplied by the Company in conjunction with the Consultant's consulting services under this Agreement, or (ii) generated by the Consultant in the performance of consulting services under this Agreement and not generated in the course of the Consultant's activities as a University employee.

#### 6. Intellectual Property.

*The agreement should ensure that the Company can have no influence on the direction of University research or the distribution of effort among University research projects, no rights by reason of the agreement to University research or intellectual property, no right to prevent or limit publication of University research or intellectual property, and no advantage of any sort in bidding to purchase intellectual property arising from University research.*

(a) Subject to the terms of paragraph 6(b), below, the Consultant hereby assigns to the Company any right, title, and interest [he/she] may have in any invention, discovery, improvement, or other intellectual property which (i) the Consultant, alone or with others, develops solely as a direct result of performing consulting services for the Company under this Agreement and (ii) is not developed in the course of Consultant's activities as a University employee. Any intellectual property assignable to the Company pursuant to the preceding

sentence is hereinafter referred to as “Company Intellectual Property.” Upon the request of the Company, the Consultant shall execute such further assignments, documents, and other instruments as may be necessary to assign Company Intellectual Property to the Company and to assist the Company in applying for, obtaining and enforcing patents or other rights in the United States and in any foreign country with respect to any Company Intellectual Property. The Company will bear the cost of preparation of all patent or other applications and assignments, and the cost of obtaining and enforcing all patents and other rights to Company Intellectual Property.

(b) The Company shall have no rights by reason of this Agreement in any publication, invention, discovery, improvement, or other intellectual property whatsoever, whether or not publishable, patentable, or copyrightable, which is conceived or reduced to practice in whole or in part, using the facilities, equipment or funds of the University. The Company also acknowledges and agrees that it will enjoy no priority or advantage as a result of the consultancy created by this Agreement in gaining access, whether by license or otherwise, to any proprietary information or intellectual property that arises from any research undertaken by the Consultant in [*his/her*] capacity as an employee of the University.

#### 7. Defense and Indemnification.

The Company agrees, at its sole expense, to defend the Consultant, the University, its trustees, officers, students, faculty, employees and agents (“Indemnitees”) against, and to indemnify and hold the Indemnitees harmless from, any liability, claim, judgment, cost, expense, damage, deficiency, loss, or obligation, of any kind or nature (including without limitation reasonable attorneys’ fees and other costs and expenses of defense) relating to a claim or suit by a third party against the Indemnitees, either arising from this Agreement, the Consultant’s performance of services for the Company under this Agreement, or any Company products or services related to the Consultant’s performance of services under this Agreement.

#### 8. Term and Termination.

(a) Unless terminated earlier under paragraph 8(b), below, this Agreement shall be for a term of [*term*].

(b) Without limiting any rights which either party to this Agreement may have by reason of any default by the other party, each party reserves the right to terminate this Agreement at any time upon thirty (30) days prior written notice to the other party.

(c) Termination of this Agreement, including but not limited to pursuant to paragraph 9(f) below, shall not affect (i) the Company's obligations to recognize the priority of University and University intellectual property rights under paragraph 6(b), above, (ii) the Company's obligations to defend and indemnify the Indemnitees under paragraph 7, above, (iii) the Company's obligation to pay for services previously performed by the Consultant or expenses reasonably incurred by the Consultant for which the Consultant is entitled to reimbursement under paragraph 2, above, or (iv) the Consultant's continuing obligations to the Company under paragraphs 4(b) and 6(a), above.

#### 9. Miscellaneous.

(a) This Agreement shall inure to the benefit of and be binding upon the respective heirs, executors, successors, representatives, and assigns of the parties, as the case may be; provided, however, the obligations hereunder of each party to the other are personal and may not be assigned without the express written consent of such other party.

(b) The relationship created by this Agreement shall be that of independent contractor, and the Consultant shall have no authority to bind or act as agent for the Company or its employees for any purpose.

*If the Company is a California company, the consulting will take place in California, or the Consulting Agreement is governed by California law, please add this sentence:*

*The parties acknowledge that this Agreement is not a contract of employment within the meaning of Section 2750 of the California Labor Code, and the Consultant is not an employee of the Company for any purpose under the California Labor Code.*

(c) The Company may use the Consultant's name, and in doing so may cite the Consultant's relationship with the University, so long as any such usage (i) is limited to reporting factual events or occurrences only, and (ii) is made in a manner that could not reasonably constitute an endorsement of the Company or of any Company program, product or service. However, the Company shall not use the Consultant's name or the University's name in any press release, or quote the Consultant in any company materials, or otherwise use the

Consultant's name or the University's name in a manner not specifically permitted by the preceding sentence, unless in each case the Company obtains in advance the written consent of the University, and, in the case of the use of the Consultant's name, the Consultant's consent as well.

(d) Notice given by one party to the other hereunder shall be in writing and deemed to have been properly given or paid if deposited with the United States Postal Service, registered or certified mail, or sent by overnight mail, addressed as follows:

*[Name and Address of the Company.]*

*[Name and Address of the Consultant.]*

(e) This Agreement supersedes all previous agreements and discussions relating to the subject matters hereof and constitutes the entire agreement between the Company and the Consultant with respect to the subject matters of this Agreement. This Agreement may not be modified in any respect by any verbal statement, representation, or agreement made by any employee, officer, or other representative of the Company, or by any written documents unless it is signed by an officer of the Company and by the Consultant.

(f) If any provision of this Agreement affecting the rights or property of the University is adjudicated to be invalid, unenforceable, contrary to, or prohibited under applicable laws or regulations of any jurisdiction, this Agreement shall terminate as of the date such adjudication is effective. If any other provision of this Agreement is adjudicated to be invalid, unenforceable, contrary to, or prohibited under applicable laws or regulations of any jurisdiction, such provision shall be severed and the remaining provisions shall continue in full force and effect.

(g) The Consultant and the Company acknowledge that (i) the Consultant is entering into this Agreement in *[his/her]* individual capacity and not as an employee or agent of the University, (ii) the University is not a party to this Agreement and has no liability or obligation hereunder, and (iii) the University is an intended third-party beneficiary of this Agreement and certain provisions of this Agreement are for the benefit of the University and are enforceable by the University in its own name.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the date first stated above.

*[Name of Company]*

By: \_\_\_\_\_

Name:

Title:

Date:

\_\_\_\_\_  
*[Name of Consultant]*

Date: