

EXHIBIT A*

COLLABORATIVE RESEARCH AGREEMENT

This **COLLABORATIVE RESEARCH AGREEMENT** (the “Agreement”) is made as of the ____ day of _____, 2020 (the “Effective Date”) by and between _____, a Pennsylvania nonprofit corporation (“Research Institute”) and _____, a corporation organized under the laws of _____ (“Collaborator”) (collectively “the Parties”).

RECITALS

A. _____, a principal investigator and employee of Research Institute, is performing research in the field of _____.

B. Collaborator is interested in and desires to support such research in accordance with the terms and conditions of this Agreement.

C. The research and development program contemplated by this Agreement is of mutual interest to Collaborator and Research Institute and furthers the educational, scholarship and research objectives of Research Institute as a nonprofit, tax-exempt research institution.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE 1 - DEFINITIONS

The following terms, as used herein, shall have the following meanings:

1.1 “**Confidential Information**” means: (i) the Inventions, (ii) any information or material in tangible form that is marked as “confidential” or “proprietary” by the furnishing party at the time it is delivered to the receiving party, and (iii) information that is furnished orally if the furnishing party identifies such information as confidential or proprietary when it is disclosed and promptly confirms such designation in writing after such disclosure.

1.2 “**Collaborative Research**” means the research and development programs as more fully described in Exhibit A to this Agreement, which may be modified by the Parties in writing from time to time.

**Please note the superseding terms and conditions referenced in the footnotes ¹⁻³ that are applicable only to PRC Members which are state institutions of the Commonwealth of PA.*

¹ *Research Institute shall mean a state institution of the Commonwealth of Pennsylvania.*

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1.3 “Collaborator Background Intellectual Property” means any information, data, Material (as defined below), tangible materials, inventions, processes, method, results, techniques, technologies, software, patents, copyrights, know-how or other items patentable, copyrightable, or otherwise that are (i) owned or controlled by Collaborator as of the Effective Date, and/or (ii) made available by Collaborator hereunder for the performance of the Collaborative Research.

1.4 “Collaborator Invention(s)” means Inventions determined to be made solely by the Collaborator, or other inventors owing a duty to assign to Collaborator, during the performance of the Collaborative Research.

1.5 “Invention(s)” means all patentable inventions conceived and/or reduced to practice solely in the performance of the Collaborative Research and otherwise not obligated to a third party. Inventions include all United States and foreign patent applications claiming said patentable inventions, including any divisional, continuation, continuation-in-part (to the extent that the claims are directed to said patentable inventions), and foreign equivalents thereof, as well as any patents issued thereon or reissues or reexaminations thereof. Inventorship of all Inventions shall be determined in accordance with U.S. patent law. Ownership shall follow inventorship. Inventions shall exclude the Collaborator Background Intellectual Property, Research Institute Background Intellectual Property and Research Results.

1.6 “Joint Invention(s)” means Inventions determined to be made jointly by the Principal Investigator and other inventors owing a duty to assign to Research Institute and by employees of Collaborator and other inventors owing a duty to assign to Collaborator, in the performance of the Collaborative Research.

1.7 “Material” means Collaborator’s _____ together with any structural analogues, including metabolites, degradation products, prodrugs, racemates, isomers, non-salts, salts, esters, polymorphs, solvates, crystalline forms and radiolabeled derivatives of such compounds; and any other structural analogues of any of the foregoing.

1.8 “Material Invention(s)” means Inventions that are modifications, derivatives of or tangible improvements to the Material.

1.9 “Principal Investigator” means the individual designated in accordance with Section 2.2 hereof.

1.10 “Research Results” means all data, information, processes, methods, results, techniques, technologies and technical specifications generated in the performance of the Collaborative Research during the term of this Agreement. Research Results shall exclude the Collaborator Background Intellectual Property, Inventions and Research Institute Background Intellectual Property.

1.11 “Research Institute Background Intellectual Property” means any information, data, tangible materials, inventions, processes, methods, results, techniques, technologies, software, patents, copyrights, know-how or other items patentable, copyrightable or otherwise

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that are (i) owned or controlled by Research Institute as of the Effective Date, and/or (ii) made available by Research Institute hereunder for the performance of the Collaborative Research.

1.12 “Research Institute Invention(s)” means Inventions determined to be made solely by the Principal Investigator, or other inventors owing a duty to assign to Research Institute, during the performance of the Collaborative Research.

ARTICLE 2 - COLLABORATIVE RESEARCH

2.1 Statement of Work. The parties undertake to conduct the Collaborative Research with funds made available by Collaborator. The parties shall furnish the appropriate personnel, materials, services, facilities and equipment for the performance of the Collaborative Research, consistent with the Collaborative Research. Research Institute is under no obligation to fund any of the Collaborative Research.

2.2 Participation of Principal Investigator.

(a) Dr. _____ shall serve as the Principal Investigator for the Collaborative Research and shall be responsible for the administration and supervision of the Collaborative Research.

(b) If the services of the Principal Investigator become unavailable to Research Institute for any reason, Research Institute shall be entitled to designate another member of its scientific staff who is agreeable to both parties to serve as the Principal Investigator of the Collaborative Research. If a substitute Principal Investigator has not been designated within sixty (60) days after the original Principal Investigator ceases his or her services under this Agreement, either party may terminate this Agreement upon written notice thereof to the other party.

ARTICLE 3 - PERIOD OF PERFORMANCE

3.1 Term. The initial term of the Collaborative Research shall begin as of the Effective Date and shall end on the first anniversary hereof, unless terminated sooner pursuant to Section 8.1 hereof. This Agreement may be extended or renewed only by written agreement of both parties.

ARTICLE 4 - FUNDING, ETC.

4.1 Funding. Collaborator shall pay Research Institute the amounts listed in budget(s) attached to this Agreement as Exhibit B, as may be amended from time to time, in accordance with the payment schedule listed in such Exhibits. Collaborator shall make each payment by check made payable to “Research Institute” and mailed to:

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Attn: Director of Finance. Each payment shall clearly identify the Principal Investigator and reference this Agreement.

4.2 Record Keeping and Reports to Collaborator. Principal Investigator and Collaborator shall maintain records of the Research Results and shall provide each other with reports of the progress and results of the Collaborative Research upon a mutually agreeable schedule. Research Institute shall maintain records of the use of the funds provided by Collaborator and shall make such records available to Collaborator upon reasonable prior written notice during Research Institute's regular business hours, but not more frequently than each anniversary of the Effective Date.

4.3 Equipment. Title to any equipment, instruments, laboratory animals or any other materials purchased, built or manufactured by Research Institute or the Principal Investigator in the performance of the Collaborative Research shall vest solely in Research Institute and any such equipment, instruments, animals or materials shall be and remain the property of Research Institute following expiration or termination of the Collaborative Research.

4.4 Tangible Research Materials. Each Party may provide tangible research materials to the other Party for the performance of the Collaborative Research, under the terms of the material transfer agreement attached to this Agreement as Exhibit C. Such tangible research as specifically described in the Exhibits. Such materials shall remain the sole property of the furnishing party and shall (i) only be used by the receiving party in performance of the Collaborative Research, (ii) not be used by the receiving party in commercial research except in the performance of the Collaborative Research, (iii) not be used by the receiving Party in humans, and (iv) not be transferred by the receiving Party to any third party without the express prior written consent of the furnishing Party.

4.5 Research Results. Both Parties shall have the right to use the Research Results disclosed to the other Party for any reasonable purpose subject to the terms and conditions of this Agreement. Each Party shall need to obtain a license from the other party to use the Research Results of the other Party if such use would infringe any copyright or any claim of a patent application or issued patent owned by the other Party.

ARTICLE 5 - INVENTIONS, OPTION TO LICENSE, ETC.

5.1 Notice of Invention. Research Institute shall promptly provide to Collaborator a written disclosure of each and every Research Institute Invention and Joint Invention reasonably considered patentable. Collaborator shall promptly provide to Research Institute's Office of Business Development a written disclosure of each and every Joint Invention reasonably considered patentable. Collaborator shall advise Research Institute in writing, no later than thirty (30) days after receipt of such disclosure, whether it requests Research Institute to file and prosecute patent applications related to such Joint Invention and/or Research Institute Invention at its sole expense. If Collaborator does not request Research Institute to file and prosecute such patent applications, Research Institute may proceed with such preparation and prosecution at its own cost and expenses, but such patent applications shall be excluded from Collaborator's

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option under Section 5.3 hereof.

5.2 Prosecution of Patents.

(a) Research Institute shall be responsible for and shall control the preparation, prosecution and maintenance of all patents and patent applications related to Joint Inventions and Research Institute Inventions, excluding Material Inventions (the “Patent(s)”). With regard to any Patents filed at the request and expense of Collaborator, Research Institute will consult with Collaborator on patent prosecution and Research Institute shall instruct patent counsel to copy Collaborator on patent office correspondence related to such Patents. Collaborator shall reimburse Research Institute upon receipt of invoice for all documented expenses incurred in connection with the filing, prosecution and maintenance of the Patents that Collaborator has requested Research Institute to prosecute under Section 5.1. hereof.

(b) Collaborator shall be responsible for and shall control the preparation, prosecution and maintenance of all patents and patent applications related to Material Inventions, excluding Inventions that are not Material Inventions (the “Material Patent(s)”). With regard to any Material Patents filed by and at the expense of Collaborator, Collaborator will copy Research Institute on all correspondence related to such Material Patents.

(c) The filing and prosecution of copyright, trademark and other intellectual property protections related to the Inventions shall be subject to the provisions of this Section 5.2.

(d) Each party shall cooperate with the other party to execute all lawful papers and instruments and to make all rightful oaths and declarations as may be necessary in the preparation and prosecution of all Patents and Material Patents and other filings.

5.3 Option and Non-Exclusive License.

(a) In consideration of Collaborator’s participation in the Collaborative Research and payment for patent expenses as provided for in Section 5.2, Research Institute grants to Collaborator a first option to negotiate an exclusive, world-wide, sublicensable license on commercially reasonable terms to practice Research Institute’s interest in the Patents and Material Patents. Research Institute and Collaborator will negotiate in good faith to determine the terms of a license agreement as to each Patent and Material Patent for which Collaborator has agreed to make payment for patent expenses as provided for in Sections 5.1 and 5.2, if any. If Collaborator and Research Institute fail to execute a license agreement within six (6) months after the end of the term of the Agreement or if Collaborator fails to make payment for patent expenses as provided for in Section 5.2, Research Institute shall be free to license Research Institute’s interest in the Patents and Material Patents to any party upon such terms as Research Institute deems appropriate, without any further obligation to Collaborator.

(b) In consideration of Collaborator providing Material and payment for patent expenses as provided for in Section 5.2., Research Institute grants to Collaborator a non-exclusive, worldwide, royalty-free license to practice Research Institute’s ownership interest in

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the Material Patents.

5.4 Retained Rights. Any option or license granted to Collaborator pursuant to Section 5.3 hereof shall be subject to Research Institute's right to use, and permit other non-profit organizations to use, Research Institute's interest in the Research Institute Background Intellectual Property, Inventions, Patents and Material Patents for educational and research purposes and to the rights of the United States government reserved under Public Laws 96-517, 97-256 and 98-620, codified at 35 U.S.C. 200-212, and any regulations issued thereunder.

ARTICLE 6 - CONFIDENTIALITY AND PUBLICATION

6.1 Confidentiality.

(a) The receiving party shall maintain in confidence and shall not disclose to any third party the furnishing party's Confidential Information received pursuant to this Agreement, without the prior written consent of the furnishing party. The foregoing obligation of confidentiality shall not apply to:

(i) information that is known to the receiving party or independently developed by the receiving party prior to the time of disclosure by the furnishing party, in each case, to the extent evidenced by written records promptly disclosed to the furnishing party upon receipt of the Confidential Information;

(ii) information disclosed to the receiving party by a third party that has a right to make such disclosure;

(iii) information that becomes patented, published or otherwise part of the public domain as a result of acts by the furnishing party or a third party obtaining such information as a matter of right; or

(iv) information that is required to be disclosed by order of the U.S. Food and Drug Administration, Securities and Exchange Commission, or similar authority or a court of competent jurisdiction, provided that the parties shall use their best efforts to obtain confidential treatment of such information by the agency or court.

(b) The receiving party will take all reasonable steps to protect the furnishing party's Confidential Information with the same degree of care the receiving party uses to protect its own confidential or proprietary information. Without limiting the foregoing, Collaborator shall ensure that all of its employees having access to the Confidential Information of Research Institute are obligated in writing to abide by Collaborator's obligations hereunder.

(c) Notwithstanding any of the foregoing, Research Institute shall not be obligated to accept any Confidential Information of Collaborator hereunder.

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6.2 Publication.

(a) Collaborator acknowledges that the basic objective of research and development activities at Research Institute is the generation of new knowledge and its expeditious dissemination. To further that objective, Research Institute retains the right, at its discretion, to demonstrate, publish or publicize a description of the results of the Collaborative Research or any Inventions or Material Inventions, subject to the provisions of subsection (b) below.

(b) Should Research Institute desire to disclose publicly, in writing or by oral presentation, the results of the Collaborative Research or any Invention or Material Inventions for which a patent application has not been filed, Research Institute shall notify Collaborator in writing of its intention at least thirty (30) days before such disclosure. Research Institute shall include with such notice a description of the oral presentation or, in the case of a manuscript or other proposed written disclosure, a current draft of such written disclosure. Collaborator may request Research Institute, no later than thirty (30) days following the receipt of Research Institute's notice, to file a patent application, copyright or other filing related to such Invention and/or to redact Confidential Information from such publication. All such filings shall be subject to the provisions of Section 5.2 of this Agreement. Upon receipt of such request, Research Institute shall arrange for a short delay in publication, not to exceed thirty (30) days, to permit filing of a patent or other application by Research Institute, or if Research Institute declines to file such application, to permit Collaborator to make such a filing.

6.3 Use of Name. Collaborator shall not directly or indirectly use Research Institute's name, or the name of any trustee, manager, officer or employee thereof, without Research Institute's prior written consent, except that Collaborator may include an accurate description of the terms of this Agreement to the extent required under federal or state securities or other disclosure laws.

6.4 Injunctive Relief. Because damages at law may be an inadequate remedy for breach of any of the covenants, promises and agreements contained in Section 6.1 hereof, Research Institute may be entitled to injunctive relief in any state or federal court located within the Eastern District of Pennsylvania, including specific performance or an order enjoining the breaching party from any threatened or actual breach of such covenants, promises or agreements. Collaborator hereby waives any objection it may have to the personal jurisdiction or venue of any such court with respect to any such action. The rights set forth in this Section 6.4 shall be in addition to any other rights which Research Institute may have at law or in equity.

2. Injunctive Relief. Because damages at law may be an inadequate remedy for breach of any of the covenants, promises and agreements contained in Section 6.1 hereof, Research Institute may be entitled to injunctive relief. Collaborator hereby waives any objection it may have to the personal jurisdiction or venue of any such court with respect to any such action. The rights set forth in this Section 6.4 shall be in addition to any other rights which Research Institute may have at law or in equity.

ARTICLE 7 - DISCLAIMERS, ETC.

7.1 No Warranties. RESEARCH INSTITUTE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES WITH RESPECT TO THE CONDUCT, COMPLETION, SUCCESS OR PARTICULAR RESULTS OF THE COLLABORATIVE RESEARCH, OR THE CONDITION OF ANY RESEARCH RESULTS, INVENTION(S), MATERIAL INVENTION(S), PATENTS, MATERIAL PATENTS, RESEARCH INSTITUTE BACKGROUND INTELLECTUAL PROPERTY OR ANY PRODUCT(S) DERIVED THEREFROM, WHETHER TANGIBLE OR INTANGIBLE, CONCEIVED, DISCOVERED OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE COLLABORATIVE RESEARCH OR ANY SUCH RESEARCH RESULTS, INVENTIONS, MATERIAL INVENTIONS, PATENTS, MATERIAL PATENTS, RESEARCH INSTITUTE BACKGROUND INTELLECTUAL PROPERTY OR ANY PRODUCTS DERIVED THEREFROM. RESEARCH INSTITUTE SHALL NOT BE LIABLE FOR ANY DIRECT, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES SUFFERED BY COLLABORATOR OR ANY OTHER PERSON RESULTING FROM THE COLLABORATIVE RESEARCH OR THE USE OF ANY SUCH RESEARCH RESULTS, INVENTIONS, MATERIALS, MATERIAL INVENTIONS, PATENTS, MATERIAL PATENTS, BACKGROUND INTELLECTUAL PROPERTY OR ANY PRODUCT DERIVED THEREFROM.

7.2 Indemnity. Collaborator will defend, indemnify and hold Research Institute, the Principal Investigator, and any of Research Institute's trustees, officers, directors, employees and agents (hereinafter referred to collectively as the "Indemnified Persons") harmless against any and all liability, loss, damage, claim or expense (including attorney's fees) (collectively the "Indemnified Losses") arising out of or in connection with this Agreement, including without limitation, Indemnified Losses resulting from Collaborator's breach of this Agreement or any use or other disposition by Collaborator, its employees, affiliates, contractors, vendors, licensees or agents of the results of the Collaborative Research, or any Inventions, Material Inventions, materials or products derived therefrom. Collaborator agrees to pay promptly to the Indemnified Persons the amount of all Indemnified Losses to which the foregoing indemnity relates. The indemnification rights of the Indemnified Persons contained herein are in addition to all rights which the Indemnified Persons may have at law or in equity or otherwise.

ARTICLE 8 - TERMINATION

8.1 Termination.

(a) In addition to the termination right set forth in Section 2.2(b) hereof, either party may terminate this Agreement effective upon written notice to the other party, if the other party breaches the terms of this Agreement, including the payment schedule in the Exhibits, and fails to cure such a breach within thirty (30) days after receiving notice thereof.

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(b) Research Institute may terminate this Agreement if Collaborator becomes insolvent or voluntary or involuntary proceedings by or against Collaborator are instituted in bankruptcy or under any insolvency law, or a receiver or custodian is appointed for Collaborator, or proceedings are instituted by or against Collaborator for corporate reorganization or the dissolution of Collaborator, which proceedings, if involuntary, shall not have been dismissed within sixty (60) days after the date of filing, or Collaborator makes an assignment for the benefit of creditors, or substantially all of the assets of the Collaborator are seized or attached and not released within sixty (60) days thereafter.

(c) In addition, either party may terminate this Agreement for any reason upon ninety (90) days prior written notice to the other party.

8.2 Effect of Termination. In the event of termination of this Agreement prior to its stated term whether for breach or for any other reason whatsoever, Research Institute shall be entitled to retain from the payments made by Collaborator prior to termination Research Institute's reasonable costs of concluding the work in progress. Allowable costs include, without limitation, all costs of noncancellable commitments incurred prior to the receipt of or issuance by Research Institute of the notice of termination. In the event of termination, Research Institute shall submit a final report of all costs incurred and all funds received under this Agreement within sixty (60) days after the effective termination date.

8.3 Survival. Expiration or termination of this Agreement shall not affect the rights and obligations of the parties accrued prior to expiration or termination hereof. The provisions of Articles 5, 6 and 7 and Sections 4.3, 4.4, 4.5, 8.2, 8.3, 9.1, 9.5, 9.9 and 9.11 shall survive expiration or termination of this Agreement.

ARTICLE 9 - ADDITIONAL PROVISIONS

9.1 Independent Contractor. Nothing herein shall be deemed to establish a relationship of principal and agent between Research Institute and Collaborator, nor any of their agents or employees for any purpose whatsoever. This Agreement shall not be construed as constituting Research Institute and Collaborator as partners, or as creating any other form of legal association or arrangement which would impose liability upon one party for the act or failure to act of the other party.

9.2 Independent Research. This Agreement shall not be construed to limit the freedom of individuals participating in the Collaborative Research to engage in any other research.

9.3 Nondiscrimination. Research Institute and Collaborator shall not discriminate against any employee or applicant for employment because of race, color, sex, sexual or affectational preference, age, religion, national or ethnic origin, or handicap.

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9.4 Force Majeure. Neither party shall be liable for any failure to perform as required by this Agreement to the extent such failure to perform is due to circumstances reasonably beyond such party's control, including, without limitation, labor disturbances or labor disputes of any kind, accidents, failure of any governmental required for full performance, civil disorders or commotions, acts of god, energy or other conservation measures imposed by law or regulation, explosions, failure of utilities, mechanical breakdowns, material shortages, disease, or other such occurrences.

9.5 Notices. Any notice under this Agreement shall be sufficiently given if sent in writing by prepaid first class, certified or registered mail, return receipt requested, addressed as follows:

If to Research Institute:

with a copy to:

If to Collaborator:

9.6 Severability. Any of the provisions of this Agreement which are determined to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability in such jurisdiction, without rendering invalid or unenforceable the remaining provisions hereof or affecting the validity or unenforceability of any of the terms of this Agreement in any other jurisdiction and the invalid or unenforceable provision shall be modified to the extent required to be enforceable.

9.7 No Waiver. A waiver by either party of a breach or violation of any provision of this Agreement will not constitute or be construed as a waiver of any subsequent breach or violation of that provision or as a waiver of any breach or violation of any other provision of this Agreement.

9.8 Headings. The headings and captions used in this Agreement are for convenience of reference only and shall not affect its construction or interpretation.

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9.9 No Third Party Benefits. Nothing in this Agreement, express or implied, is intended to confer on any person other than the parties hereto or their permitted assigns, any benefits, rights or remedies.

9.10 Assignment. No rights hereunder may be assigned by Collaborator, directly or by merger or other operation of law, without the express prior written consent of Research Institute. Any prohibited assignment of this Agreement of the rights hereunder shall be null and void. No assignment shall relieve Collaborator of responsibility for the performance of any accrued obligations which it has prior to such assignment. This Agreement shall inure to the benefit of permitted assigns of Collaborator.

9.11 Governing Law.

9.11.1 In the case of any dispute, claim, question or disagreement arising out of or relating to this Agreement, or the parties' activities hereunder, including any question regarding the existence, validity or termination of this Agreement, the parties shall use all reasonable efforts to settle such dispute, claim, question or disagreement by amicable agreement, including by escalation to the Chief Executive Officer of Research Institute and the Chief Executive Officer of Collaborator, if necessary, prior to commencement of litigation.

9.11.2 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to conflict of law principles.

9.11.3 Each party irrevocably (i) submits to the exclusive jurisdiction of the United States District Court for the Eastern District of Pennsylvania or a local court sitting in the city of Philadelphia, Pennsylvania (collectively "Courts") for purposes of any action, suit or other proceeding relating to or arising out of this Agreement, (ii) agrees not to raise any objection at any time to the laying or maintaining of the venue of any such action, suit or other proceeding in any of the Courts, (iii) waives any claim that such action, suit or other proceeding has been brought in an inconvenient forum, and (iv) waives the right to object, with respect to such action, suit or other proceeding, that such Courts do not have any jurisdiction over such party.

9.12 Entire Agreement. This Agreement embodies the entire understanding between the parties relating to the subject matter hereof and supersedes all prior understandings and agreements, whether written or oral. This Agreement may not be varied except by a written document signed by duly authorized representatives of both parties.

9.13 Counterparts. This Agreement shall become binding when any one or more counterparts hereof, individually or taken together, shall bear the signatures of Research Institute and Collaborator. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original as against the party whose signature appears thereon, but all of which taken together shall constitute but one and the same instrument.

³ 9.11.3 is intentionally omitted.

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IN WITNESS WHEREOF, the duly authorized representatives of the parties hereby execute this Agreement as of the dates below.

RESEARCH INSTITUTE

COLLABORATOR

By: _____
Name:
Title:

By: _____
Name:
Title:

Date: _____

Date: _____

Approved for Form and Legality:

University Legal Counsel

Office of Attorney General

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COLLABORATIVE RESEARCH AGREEMENT

Exhibit A

Project Start Date:
Project End Date:

Exhibit B

Budget

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COLLABORATIVE RESEARCH AGREEMENT

Exhibit C

Materials Transfer Agreement