

MATERIAL TESTING AGREEMENT

This Agreement is made and entered into this (date)day of 1998, by and between (company) (SPONSOR) with a principal office located at (address) and the University of Rochester with a principal office located at 518 Hylan Bldg., Box 270140, Rochester, New York, 14627 (UR) under the direction of (INVESTIGATOR).

WHEREAS, UR is the operator of clinical laboratories which perform various tests and examinations of material for the purpose of providing information for the diagnosis, prevention or treatment of disease or the assessment of medical conditions; and

WHEREAS, SPONSOR desires to obtain the services of UR on the terms and conditions set fourth herein; and

WHEREAS, SPONSOR and UR desire to provide a full statement of their respective rights, obligations, and duties in connection with the performance of services hereunder;

WHEREAS, this Agreement is of mutual interest to SPONSOR and UR, and is consistent with the objectives of education, clinical training and research of UR as a nonprofit, tax-exempt educational institution.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

1. UR'S SERVICES

1.1 Upon receipt of samples, UR shall conduct analysis and provide SPONSOR with analytical reports in accordance with the assay protocols. UR will not modify or change said protocols without the prior written consent of SPONSOR.

1.2 UR will maintain adequate records so as to allow SPONSOR to conduct an audit of testing services relative to the Statement of Work as set forth in Exhibit A, attached and hereby incorporated into this Agreement. SPONSOR shall advise UR in writing of any special or unusual record keeping needs for its study and UR will use its best efforts to accommodate SPONSOR's requirements. UR agrees to maintain said records in confidence in accordance with applicable laws, rules, and regulations.

2. FEES

2.1 The total cost of analytical services conducted in connection with this Agreement shall be and shall not exceed this amount without prior, written approval of SPONSOR. This amount represents the total cost for analytical services per assay of as set forth in Exhibit B, attached and hereby incorporated into this Agreement. A minimum payment of is guaranteed with the execution of this Agreement. If additional assays are required for this Agreement, UR agrees to charge no more than the per assay cost set forth in Exhibit B. In the event that retesting of the sample is required

through no fault of SPONSOR, the additional cost to retest the sample shall be borne by UR. In the event that retesting of the sample is required through no fault of UR, the additional cost to retest the sample shall be borne by SPONSOR.

2.2 UR shall invoice SPONSOR monthly for testing performed during that month. All invoices submitted by UR shall identify the services rendered by test, quantity of test and testing date. SPONSOR shall remit payment to UR within 30 days after receipt of UR's invoice. Checks shall be made payable to the University of Rochester.

3. INDEMNIFICATION AND INSURANCE

3.1 UR agrees to defend, indemnify and hold SPONSOR harmless from any loss, claim of damage, or liability involving the sole negligent acts of an employee of UR arising out of or in connection with this Agreement, except to the extent such loss, claim of damage, or liability arises in whole from the sole negligence of SPONSOR.

3.2 SPONSOR agrees to indemnify, defend, and hold harmless UR and its employees and students from any loss, claim of damage, or liability of any kind involving the sole negligent acts of an employee of SPONSOR arising out of or in connection with this Agreement, except to the extent that such loss, claim of damage, or liability arises in whole from the sole negligence of UR.

3.3 The obligations set forth in the above provisions shall survive termination of this Agreement.

4. TERM AND TERMINATION

4.1 The terms of this Agreement shall commence on or about (date), and shall conclude on (date), unless otherwise terminated as provided herein.

4.2 Either party may immediately terminate this Agreement upon 30 days written notice to the other party.

4.3 Upon the termination of this Agreement, this Agreement shall be and become of no further force or effect whatsoever and each of the parties hereto shall be relieved and discharged therefrom except that SPONSOR and UR shall perform fully any obligation under this Agreement relating to an event occurring or circumstances existing prior to the date of termination. This provision shall not apply to the provisions of Section 3.

4.4 Upon termination of this Agreement, UR will be paid for all expenses incurred through the termination date and any non-cancelable commitments.

5. NOTICES

SPONSOR for SPONSOR's review prior to publication. SPONSOR shall have the right only to make modifications to the draft publication to ensure the accuracy of any references to SPONSOR, its trademarks, tradenames or technical information relating to its products or materials.

9. INDEPENDENT CONTRACTOR

UR is performing the services and duties required hereunder as an independent contractor and not as an employee, agent, partner of or joint venturer with SPONSOR.

10. FORCE MAJEURE

No party to this Agreement shall be liable for failure to perform any duty or obligation that said party may have under this Agreement where such failure has been occasioned by any act of God, fire, strike, inevitable accident, war or any cause outside the reasonable control of the party who had the duty to perform.

11. SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the parties shall, if possible, agree on a legal, valid and enforceable substitute provision which is as similar in effect to the deleted provision as possible. The remaining portion of this Agreement not declared illegal, invalid or unenforceable shall, in any event, remain valid and effective for the term remaining unless the provision found illegal, invalid or unenforceable goes to the essence of this Agreement.

12. WARRANTIES

UR makes NO WARRANTIES, EXPRESS, OR IMPLIED, CONCERNING THE RESULT OF THIS STUDY OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF SUCH RESULTS. UR shall not be liable for any direct, consequential, or other damages suffered by SPONSOR or any others as a result of this Agreement.

IN WITNESS WHEREOF, SPONSOR and UR have duly executed this Agreement on the first day written above.

Sponsor

University of Rochester

By: _____

By: _____

Gunta J. Lidars

Title: _____

Title: Director _____

Date: _____

Date: _____

By: _____
Investigator

Date: _____