Consulting Agreement

THIS AGREEMENT IS INTENDED TO SERVE AS AN EXAMPLE OF STANDARD TERMS FOR CONSULTING ARRANGEMENTS. THESE TERMS MAY BE SUBJECT TO NEGOTATION BETWEEN THE COMPANY AND THE CONSULTANT. OFTEN, THE COMPANY MAY REQUIRE THE USE OF ITS OWN FORM WHICH MAY HAVE TERMS THAT DIFFER FROM THOSE PRESENTED HERE. FACULTY MEMBERS ARE ENCOURAGED TO CONSULT WITH PROFESSIONAL ADVISORS IF THEY ARE UNSURE ABOUT THE TERMS BEING NEGOTIATED WITH THE COMPANY.

This Agreement is entered into effective as of _____, 20__, between [COMPANY NAME and address] (hereinafter "COMPANY") and [NAME and address] (hereinafter “CONSULTANT.”)

WHEREAS, the Company is engaged in research, development and commercialization of certain technology and wished to engage CONSULTANT to advise COMPANY on matters relating to the field of [Specify with detail the field of research for the consulting services to be provide under the agreement.] (hereinafter "Field") under the following terms and conditions:

1. Consulting and Advisory Activities. CONSULTANT's responsibilities shall include, without limitation, the following activities (hereinafter collectively referred to as "Services"):

[Describe consulting services in detail. Such services can be detailed for a specific period of time, with provisions to update the services for ensuing time periods. Services should not include directing or conducting research for or on behalf of the Company without prior disclosure of such activity to the department chair]

The Services may be performed via telephone and other forms of remote correspondence, and may include meetings with personnel and other consultants at times and locations to be mutually agreed upon. In each instance, CONSULTANT shall perform the Services only upon COMPANY's request and after the scope of the Services has been approved by COMPANY. The COMPANY and CONSULTANT acknowledge and agree that such Service will not exceed an average of one day per week.

CONSULTANT represents and warrants that at the time of execution of this Agreement, the terms of this Agreement are not inconsistent with any other contractual or legal obligations CONSULTANT may have or with the policies of any institution or company with which CONSULTANT is associated.

2. Compensation. In consideration for CONSULTANT's services hereunder, COMPANY shall pay CONSULTANT as follows: [Detail terms of compensation: monthly, per hour? to include stock? Detail process of how expenses will be reimbursed?]

Payment shall be made within thirty five (30) days after COMPANY's receipt of an invoice of services and expenses, along with the submission of appropriate vouchers and receipts as may be reasonably necessary to substantiate CONSULTANT's expenses. Any income taxes levied on payments to be made to CONSULTANT hereunder shall be exclusively borne by CONSULTANT.

CONSULTANT shall not be paid vacation, holiday or sick time during the term of Agreement. In the event of an early termination of the Agreement COMPANY shall pay CONSULTANT for the Services performed and expenses incurred through the date of termination.

3. Term and Termination. This Agreement shall be effective upon the date set forth in the first paragraph of this Agreement and continue until _____[termination date].

This Agreement may be extended by written agreement signed by the parties. Either party may terminate this Agreement with or without cause upon giving thirty (30) days prior written notice to the other party. Termination or expiration of this Agreement shall not affect any rights or obligations which have accrued prior thereto or in connection therewith.

4. CONSULTANT Obligations to the University of Rochester.

   a. The parties acknowledge that the University of Rochester is not a party to this Agreement and that this Agreement is a private contract between CONSULTANT and COMPANY. UR will exercise no authority or control over CONSULTANT in his/her performance of his/her Services hereunder. As such, CONSULTANT and COMPANY agree that the University of Rochester, it's Schools, Departments, Divisions and Centers, and Strong Memorial Hospital and its affiliates (hereinafter individually and collectively "UR") have no liability or responsibility to either party under this Agreement. The CONSULTANT's contact information, including office address, e-mail address and telephone number at UR may be identified in this Agreement for the purpose of convenient communication between COMPANY and CONSULTANT and does not in any way alter the fact that this is a private agreement between COMPANY and CONSULTANT.

   b. COMPANY and CONSULTANT recognize that CONSULTANT's primary duty as a full-time UR employee is to UR. COMPANY and

CONSULTANT also agree that UR policies and CONSULTANT's obligations to UR shall control and be given priority in the event a conflict arises between such policies and obligations and CONSULTANT'S performance of Services under this Agreement. Nothing in this Agreement shall in any way restrict CONSULTANT's ability to conduct academic research and other academic activities at, through, or on behalf of UR during or at any time after the term of this Agreement so long as such activities do not breach the terms of this Agreement.

c. CONSULTANT shall not use the facilities, equipment, materials, funds, or resources owned or administered by UR, or located on any of the premises thereof; or engage or employ students, post-doctoral fellows or similar researchers, or any other employee of UR, to provide services under this Agreement. CONSULTANT shall not disclose under this Agreement: (a) information that is proprietary to UR and not generally available to the public other than through formal institutional transactions; or (b) unpublished results of, or data from, research or clinical activity conducted at, by, or on behalf of UR.

d. With the limited exception of citing CONSULTANT's faculty title (subject to the conditions outlined below), COMPANY and its affiliates will not use the names, likenesses, or logos of UR in any of their fund-raising or investment documents, publications, websites, advertisements, press releases, or marketing and promotional materials.

5. <u>Confidential Information</u>

a. CONSULTANT may disclose to COMPANY any information that CONSULTANT would normally freely disclose to other members of the scientific community at large; however, CONSULTANT shall not disclose to COMPANY information that is proprietary to UR and is not generally available to the public.

b. With respect to any technical or business information of the COMPANY of a proprietary or confidential nature which is marked or otherwise identified in writing as confidential, which CONSULTANT may obtain from COMPANY in the performance of the Services hereunder or which is developed by CONSULTANT as a direct result of CONSULTANT's Services hereunder (all of such technical and business information being referred to hereinafter as "Company Information"), it is understood that unless disclosure or use of Company Information is specifically permitted by the

COMPANY, CONSULTANT will for a period of three (3) years from the date of disclosure hereunder (i) treat Company Information as confidential; (ii) not use any Company Information except as and to the extent necessary for the performance of the Services hereunder; and (iii) not disclose any Company Information to any third party. CONSULTANT retains the right to refuse to accept any Company Information that he/she believes may adversely affect or interfere with his/her work for UR.

c. Upon termination of this Agreement, COMPANY may request that CONSULTANT return or destroy all Company Information.

d. Consultant's obligations set forth in this Section 5 shall not apply with respect to any portion of the Company Information that (i) was in the public domain at the time it was communicated to CONSULTANT under this Agreement; (ii) entered the public domain through no breach of this Agreement by CONSULTANT, subsequent to the time it was communicated to CONSULTANT under this Agreement; (iii) was in CONSULTANT's possession, and, to the best of CONSULTANT's knowledge, free of any obligation of confidence at the time it was communicated to CONSULTANT; (iv) was rightfully communicated to CONSULTANT free of any obligation of confidence subsequent to the time it was communicated to CONSULTANT under this Agreement; (v) was developed by CONSULTANT independently of and without reference to any information communicated to CONSULTANT under this Agreement; and (vi) is required to be disclosed in response to a valid order by a court or other governmental body, or as otherwise required by law.

6. Publications. CONSULTANT shall not publish, nor submit for publication, any work directly arising out of the provision of the Services provided hereunder without prior written approval from COMPANY. Nothing in this agreement shall be construed as prohibiting or otherwise limiting CONSULTANT's ability to publish, submit for publication, or otherwise disclose the results of CONSULTANT's activities as a faculty member of UR, during or at any time after the term of this Agreement, even if such activities are related to the Field described, and Services provided, hereunder.

7. Intellectual Property. ***ALTERNATIVE ONE (recommended for consulting arrangements where the consulting work overlaps with or is substantially related to the work Consultant is performing at the University):*** Title to all inventions and discoveries made by CONSULTANT resulting from Services performed hereunder shall reside in UR; title to all inventions and discoveries made by COMPANY resulting

from the Services performed hereunder shall reside in COMPANY. Title to all inventions and discoveries made jointly by CONSULTANT and COMPANY resulting from the Services provided hereunder shall be owned jointly by UR and COMPANY. Inventorship shall be determined in accordance with U.S. Patent law. The COMPANY and CONSULTANT acknowledge that CONSULTANT has an obligation to disclose to UR all inventions created by him/her as more fully provided in UR's Intellectual Property policy. COMPANY shall have no rights by reason of this Agreement in any publication, invention, discovery or other intellectual property, which is conceived, developed or reduced to practice, in whole or in part, using facilities, equipment or funds of UR or while CONSULTANT was performing work for UR.

[ALTERNATIVE TWO (recommended for consulting arrangements where the consulting work is sufficiently different or separate from the work consulting is performing at the University): Subject to the provisions of this Section 7, CONSULTANT agrees to assign to COMPANY any right, title and interest he/she may have in any invention or discovery which (i) CONSULTANT conceives, develops and reduces to practice solely as a direct result of performing the SERVICES for the COMPANY under this Agreement, and (ii) was not generated, in whole or in part, in the course of CONSULTANT's activities as a UR employee, and is not owned by UR or assignable to UR pursuant to its Intellectual Property policy. The COMPANY and CONSULTANT acknowledge that CONSULTANT has an obligation to disclose to UR all inventions created by him/her as more fully provided in UR's Intellectual Property policy. COMPANY shall have no rights by reason of this Agreement in any publication, invention, discovery or other intellectual property, which is conceived, developed or reduced to practice, in whole or in part, using facilities, equipment or funds of UR or while CONSULTANT was performing work for UR.]

8. Compliance with Laws and Regulations. In the performance of the Services hereunder, CONSULTANT shall comply with all applicable federal, state and local laws, regulations and guidelines. CONSULTANT shall also comply with COMPANY's polices when on COMPANY premises.

9. Limitation of Liability; Indemnification. CONSULTANT shall not be liable to COMPANY for any loss incurred in the performance of his/her Services hereunder unless caused by CONSULTANT's intentional misconduct. COMPANY agrees, at its sole defense, to indemnify and defend CONSULTANT from and against any damages, claims or suits by third parties against CONSULTANT arising from the performance of CONSULTANT's Services hereunder unless caused by CONSULTANT's intentional misconduct.

10. Independent Contractor. CONSULTANT's status under this Agreement is that of an independent contractor. CONSULTANT shall not be deemed an employee, agent, partner or joint venturer of COMPANY for any purpose whatsoever, and CONSULTANT shall have no authority to bind or act on behalf of COMPANY. This Agreement shall not entitle CONSULTANT to participate in any benefit plan or program of COMPANY. CONSULTANT shall be responsible for, and agrees to comply with, obligations under federal and state tax laws for payment of income and, if applicable, self-employment tax.

11. Assignment. Neither party may assign this Agreement or any interest herein, or delegate any of its duties hereunder, to any third party without the other party's prior written consent. Any attempted assignment or delegation without such consent shall be null and void.

12. Debarment. CONSULTANT warrants and represents that CONSULTANT has never been, is not currently, and, during the term of this Agreement, will not become:
    a. An individual who has been debarred by the U.S. Food and Drug Administration ("FDA") pursuant to 21 U.S.C. 335a (a) or (b) ("Debarred Individual") from providing services in any capacity to a person that has an approved or pending drug product application, or an employer, employee or partner of a Debarred Individual or

    b. A corporation, partnership or association that has been debarred by the FDA pursuant to 21 U.S.C. 335a (a) or (b) ("Debarred Entity") from submitting or assisting in the submission of any abbreviated drug application, or an employee, partner, shareholder, member, subsidiary or affiliate of a Debarred Entity.

13. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the respective heirs, representatives, successors and assigns of the parties.

14. Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the matters herein contained and supersedes all previous agreements and undertakings with respect thereto. This agreement may be modified only by written agreement signed by the parties.

This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to its conflicts of laws rules.

COMPANY

By: _____

Date: _____

CONSULTANT

_____

Date: _____