We greatly appreciate and would like to acknowledge the work of Patrick L. Taylor, former Deputy General Counsel in the Office of General Counsel at Children's Hospital Boston (CHB) who created the models and guidance documents provided below for CHB.

[HMS SUGGESTED MODEL]
INDUSTRY-ACADEMIC CONSULTING AGREEMENT

This Agreement is made this _____ day of _____, 200__, by and between ___ _____ (the "Company"), a corporation organized and existing under the laws of the _____, and _____ _____ (the "Consultant"), an employee and faculty member of Harvard Medical School, an educational institution and charitable corporation located in Boston, Massachusetts ("HMS").

WHEREAS, the Consultant, as a member of the faculty at Harvard Medical School ("HMS"), is permitted to perform limited consulting services for companies, subject to the terms of Consultant's employment relationship with HMS/HSDM and the applicable policies and procedures of Harvard University and HMS/HSDM;

WHEREAS, the Company desires that the Consultant provide advice and assistance to the Company in his or her area of expertise; and

WHEREAS, the Consultant desires to provide such advice and assistance to the Company under the terms and conditions of this Agreement;

NOW, THEREFORE, the Company and the Consultant hereby agree as follows:

1. Consulting Services

(a) Subject to the terms and conditions of this Agreement, the Company hereby retains Consultant as a consultant and technical advisor to perform the consulting services specifically set out in Exhibit A attached to this Agreement and made a part hereof (hereafter referred to as the "Services"), as said Exhibit may be amended in writing from time to time, and Consultant agrees, subject to the terms and conditions of this Agreement, render such Services during the term of this Agreement. Such services shall be limited to the area of expertise described in Exhibit A (the "Field"), as amended in writing from time to time. Consultant shall render services hereunder at such times and places as shall be mutually agreed by Company and Consultant. Consultant's commitment hereunder shall not exceed _____days per _____.

(b) It is understood that the purpose of the Consulting is to provide periodic review and advice relevant to certain Company matters, and that neither Consultant nor Company will benefit if Consultant provides inaccurate advice or commentary based on insufficient information. To that end, Company shall provide Consultant, in advance of meetings, with accurate, unbiased and sufficient information for him to review the subject matter thereof, and shall promptly provide further information that Consultant reasonably deems relevant to forming any pertinent conclusions relevant to the matter for discussion. It is expressly understood that Consultant has

no fiduciary obligation to Company, but instead a contractual one described by the terms of this Agreement; that Consultant's role is to provide independent advice uninfluenced by commercial concerns; and that service as a Consultant does not require him to be an advocate for Company or its products in any forum, public or private. Company expressly agrees that under no circumstances will this role be compromised or inaccurately represented.

2. Compensation and reimbursement.

In consideration of the services to be provided by Consultant to the Company hereunder, the Company shall pay to Consultant $ _____. In addition, the Company shall reimburse Consultant for reasonable travel and other expenses Consultant incurs in connection with performing the Services. To obtain reimbursement, Consultant shall submit to the President of the Company, or his or her designee, an invoice describing services rendered and expenses incurred under this Agreement. Company shall provide any documentation requirements and any travel policy restrictions to consultant in writing in advance, or be foreclosed from relying on such requirements and restrictions to deny reimbursement. The Company shall pay to Consultant invoiced amounts within thirty (30) days after the date of invoice. Company will accommodate Consultant's request to arrange, at Company's expense, for all of Consultant's travel and accommodations in connection with such meetings if they occur outside the Boston metropolitan area.

3. Independent contractor status.

The parties agree that this Agreement creates an independent contractor relationship, not an employment relationship. The Consultant acknowledges and agrees that the Company will not provide the Consultant with any employee benefits, including without limitation any employee stock purchase plan, social security, unemployment, medical, or pension payments, and that income tax withholding is Consultant's responsibility. In addition, the parties acknowledge that neither party has, or shall be deemed to have, the authority to bind the other party.

4. Indemnification

Notwithstanding any other term of this Agreement, Company shall indemnify, defend and hold harmless Consultant, and HMS, its corporate affiliates, current or future directors, trustees, officers, faculty, medical and professional staff, employees, students and agents and their respective successors, heirs and assigns (the "Indemnitees"), against any claim, liability, cost, damage, deficiency, loss, expense or obligation of any kind or nature (including without limitation reasonable attorneys' fees and other costs and expenses of litigation) incurred by or imposed upon the Indemnitees or any one of them in connection with any claims, suits, actions, demands or judgments arising out of this Agreement (including, but not limited to, actions in the form of tort, warranty, or strict liability).

5. Intellectual Property

(a) Consultant and HMS understand and acknowledge that Company will be providing access to proprietary and valuable information that Consultant might otherwise not receive. In addition, those parties also understand that should Consultant, in the course of providing Services, invent or participate in inventing modifications or improvements to Company technology, Company

reasonably seeks to secure such improvements for its own use and practice. At the same time, Company understands and acknowledges that Consultant has pre-existing and on-going obligations to HMS and the sponsors of research at HMS (including obligations under grants, contracts, collaborative agreements, and a "participation agreement" assigning to HMS all inventions within the scope of certain policies). These obligations include a duty on the part of Consultant to disclose and assign to HMS any inventions or other proprietary rights arising during the course of such employment and any overlapping consulting arrangements (including this Agreement), and an obligation to ensure that any consulting agreement he enters into is not in conflict with the HMS Policy on Inventions and Intellectual Property or in conflict with other HMS commitments, such as Consultant's obligation to publish research results.

(b) In order to enter into this Agreement with Consultant, Company therefore further acknowledges and agrees that in the event that any conflict should arise between the duties set forth in this Agreement and Consultant's obligations to HMS or sponsors of research at HMS, Consultant shall necessarily notify HMS immediately, and that Consultant's obligations to HMS and sponsors of research at HMS shall take precedence over the terms of this Agreement.

(c) However, the parties agree that it is mutually beneficial that Consultant be able to participate fully in providing Services, as stated herein, without being obligated to constrain her or his comments or contributions based upon the complexities of applying these conflicting obligations to intellectual property ownership. Therefore, in order to reconcile these obligations, and promote Consultant's participation, during the term of this Agreement Consultant shall promptly report and simultaneously disclose to HMS and to the President of Company, or his or her designee, all inventions, improvements, modifications, discoveries, methods and developments, whether patentable or not, made or conceived by Consultant, or by employees or agents of Company under Consultant's direction, during the performance of this Agreement that result directly from Confidential Information provided by Company pursuant to this Agreement and either embody Company technology or are reduced to practice as a modification or improvement to Company technology (hereby designated "Inventions"). Ownership of such Inventions, and any patent rights related thereto, shall reside with HMS, if covered by applicable HMS policies, or otherwise with Company but subject to a mandatory, cost-free license back to Consultant to use the Invention for academic research purposes. If ownership lies with HMS, then, provided such Inventions are not subject to prior conflicting obligations to sponsors of research at HMS, Company shall have an exclusive option, for 120 days following notice of Consultant's disclosure, to negotiate an exclusive world-wide license, on reasonable terms customary for HMS, to use, practice, license and sublicense rights under patents claiming such Inventions within a mutually agreed field of use. (While the parties believe that conflicting obligations to research sponsors are unlikely, it is conceivable that in the course of such sponsored research Inventions useful to Company may emerge; rather than forego disclosing such fortuitous inventions to Company, to the extent permitted by such sponsorship and related agreements Consultant and HMS will endeavor to disclose and license such Inventions pursuant to this Agreement.)

(d) The Consultant acknowledges that the Company does not desire to acquire any trade secrets, know-how, confidential information, or other intellectual property that the Consultant may have acquired from or developed for any third party, including the Institution ("Third-Party IP"). The Company agrees that in the course of providing the Services, the Consultant shall not be required

to use or disclose any Third-Party IP, including without limitation any intellectual property of (i) any former or current employer, (ii) any person for whom the Consultant has performed or currently performs consulting services, or (iii) any other person to whom the Consultant has a legal obligation regarding the use or disclosure of such intellectual property.

6. Confidential Information

(a) The parties acknowledge that in connection with Consultant's Services, the Company may disclose to Consultant confidential and proprietary information and trade secrets of the Company, and that Consultant may also create such information within the scope and in the course of performing the Services (hereinafter, subject to the exceptions below, "Company Confidential Information"). Such information may take the form of, for example: data concerning scientific discoveries made by the Company; the Company's know-how; the Company's manufacturing strategies and processes; the Company's marketing plans; data from the Company's evaluations in animals and humans; the Company's past, present and future business plans; the Company's strategy for or status of regulatory approval; or the Company's forecasts of sales and sales data. Notwithstanding the above, the Company acknowledges and agrees that none of the information described in this Paragraph 6 (except Confidential Information created by Consultant) will be considered Company Confidential Information for purposes of this Agreement, unless the information is disclosed to Consultant by the Company in writing and is clearly marked as confidential, or, where verbally disclosed to Consultant by the Company, is followed within thirty (30) days of such verbal disclosure by a writing from the Company confirming such disclosure and indicating that such disclosure is confidential.

(b) Subject to the terms and conditions of this Agreement, Consultant hereby agrees that during the term of this Agreement and for a period of three (3) years thereafter: (i) Consultant shall not publicly divulge, disseminate, publish or otherwise disclose any Company Confidential Information without the Company's prior written consent, which consent shall not be unreasonably withheld; and (ii) Consultant shall not use any such Company Confidential Information for any purposes other than consultation with the Company, except that Consultant's use of such information for purely internal academic research, without disclosure outside HMS, shall not be a breach of this Agreement provided that Consultant is not in breach of the Intellectual Property provisions of Paragraph 5 above. Notwithstanding the above, the Company and Consultant acknowledge and agree that the obligations set out in this Paragraph 6 shall not apply to any portion of Company Confidential Information which:

(i) was at the time of disclosure to Consultant part of the public domain by publication or otherwise; or

(ii) became part of the public domain after disclosure to Consultant by publication or otherwise, except by breach of this Agreement; or

(iii) was already properly and lawfully in Consultant's possession at the time it was received from the Company; or

(iv) was or is lawfully received by Consultant from a third party who was under no obligation of confidentiality with respect thereto; or

(v) was or is independently developed by Consultant without reference to Company Confidential Information;

(vi) is required to be disclosed by law, regulation or judicial or administrative process; or

(vii) in the case of information prepared by Consultant, is encompassed within and derived from Consultant's academic and professional commitments to HMS, and/or any other consulting or research engagement, provided that Confidential Information described in this clause (vii) which constitutes Inventions shall be subject to the intellectual property provisions of Section 5 of this Agreement

(c) Notwithstanding any other term of this Agreement, the Company agrees that it shall not disclose to Consultant any information which is Company Confidential Information: (i) except to the extent necessary for Consultant to fulfill Consultant's obligations to the Company under this Agreement; or (ii) unless Consultant has agreed in writing to accept such disclosure. All other information and communications between the Company and Consultant shall be deemed to be provided to Consultant by the Company on a non-confidential basis. The Company also agrees that Consultant may share the terms of this agreement on a confidential basis with its employers, legal and financial advisors, insurers and other third parties who have a legitimate need to know about them, and that Consultant may disclose the existence and general nature of his consulting arrangement with the Company with the University, his colleagues and co-workers, and his collaborators, as well as publishers and audience members at scientific conferences and forums at which Consultant is speaking or presenting, whenever such disclosures are legally or ethically required or appropriate. The Company further agrees that Consultant shall not be liable to the Company or to any third party claiming by or through the Company for any unauthorized disclosure or use of Company Confidential Information which occurs despite Consultant's compliance with Consultant's obligations under this Agreement.

(d) Upon termination of the Agreement, or any other termination of Consultant's services for the Company, all records, drawings, notebooks and other documents pertaining to any Confidential Information of the Company, whether prepared by Consultant or others, and any material, specimens, equipment, tools or other devices owned by the Company then in Consultant's possession, and all copies of any documents, shall be returned to the Company, except Consultant may keep one copy of all documents for his or her files (which copy shall be subject to the confidentiality and non-use requirements set out in this Agreement).

7. <u>Publication</u>

Notwithstanding any other provision of this Agreement, Company understands that Consultant has primary professional, academic and ethical obligations arising in connection with Consultant's positions at HMS and that Consultant is subject to policies of those institutions which protect academic freedom and preserve ownership of intellectual property rights. Company agrees that Consultant shall be free to publish within the scope of his or her professional and academic duties with respect to Consultant's participation as a Consultant, provided that Consultant does not reveal Confidential Information. Company therefore agrees that in the course of her or his professional and academic duties, Consultant may discuss such participation at conferences, with colleagues, and with students, residents and fellows as Consultant deems appropriate, without revealing such Confidential Information. In either context, as well as in the scope of his or her

duties under this Agreement, Consultant shall be free to conduct her- or himself without restraint or improper influence, in accordance with HMS and Institutional academic, ethical and publication standards. Solely in order to permit Company an opportunity to determine if Confidential Information or Inventions are therein improperly disclosed, Consultant agrees to use reasonable efforts to (i) provide to Company at least thirty days in advance of submission to a journal any substantially complete manuscript that includes such Confidential Information; (ii) provide notice to Company no later than five working days before submission for publication or to a conference of any substantially final abstract referring to such Confidential Information; and (iii) notify Company thirty days in advance of any conference at which such Confidential Information can foreseeably be revealed. If within that thirty-day period Company requests a delay in publication so that a patent may be filed on Inventions disclosed in the manuscript, Consultant will delay publication for up to an additional sixty days (not to exceed a total of ninety days from the initial submission of a manuscript to Company). Company agrees to hold all such submissions and information in confidence pending publication. Company agrees to notify Consultant promptly if any action is necessary to delete Confidential Information. Company has no other right to request alteration or deletion of any portion of the manuscript or abstract.

8. Term

(a) This Agreement shall remain in effect for a term of one (1) year commencing on the date first written above, unless sooner terminated as hereinafter provided, or unless extended by agreement of the parties and the assent of HMS.

(b) This Agreement may be terminated by either party, with or without cause, upon thirty (30) days prior written notice to the other; provided that if Consultant terminates this Agreement, Consultant shall, in accordance with the terms and conditions hereof, nevertheless wind up in an orderly fashion assignments for the Company which Consultant began prior to the date of notice of termination hereunder.

(c) Upon termination of this Agreement for any reason, Consultant shall be entitled to receive such compensation and reimbursement, if any, accrued under the terms of this Agreement, but unpaid, as of the date Consultant ceases work under this Agreement. In addition, Consultant shall be reimbursed for any noncancellable obligations, any cancellation penalties, and, unless Consultant terminates the agreement without cause, any expenditures reasonably made in order to perform the Services that were to occur had cancellation not occurred.

9. Other Agreements

(a) The Consultant shall use reasonable efforts not to use any facilities, funds, or equipment owned or administered by the Institution in the performance of the Services, except with the prior written consent of the Company and in accordance with all applicable policies of the Institution.

(b) Company shall not use Consultant's name or depiction, or the name, logos, trademarks, or depictions of HMS, or any officer, director, employee, appointee, medical staff member of employee of either, or any adaptation thereof, in any promotional, advertising or marketing literature, or in any other way without the prior written consent of HMS, the individual, or HMS, as appropriate, provided however that in neutral circumstances that do not imply endorsement or advocacy, or otherwise misrepresent the terms of this Agreement or Consultant's role, Company

may accurately state that Consultant is a consultant to Company, and list his or her professional degrees and titles.

(c) No alteration or modification of this Agreement, including Exhibit A hereto, shall be valid unless made in writing and executed by Consultant and the Company and assented to by HMS.

(d) The Consultant and Company mutually represent that to the best of their knowledge neither currently has any agreement with, or any other obligation to, any third party that conflicts with the terms of this Agreement. The parties agree that they shall not intentionally and knowingly enter into any such agreement.

(e) The laws of the Commonwealth of Massachusetts shall govern this Agreement.

(f) Any notice or other communication by one party to the other hereunder shall be in writing and shall be given, and be deemed to have been given, if either hand delivered or mailed, postage prepaid, certified mail (return receipt requested), or transmitted by facsimile, addressed as follows:

If to Consultant:

_____
_____
_____

If to the Company:

_____
_____
_____

(g) The parties acknowledge that the Services are personal in nature, and that from Consultant's perspective the specific identity of the Company, including its leadership, corporate culture, scientific staff and reputation, is material to Consultant's choice to enter into this Agreement.

Therefore the parties expressly agree that no party may assign this Agreement without the written consent of the other.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

_____ _____

[Consultant's Signature] [Date]

[COMPANY]

By: _____

[Company Representative Signature]

Title: _____

Date: _____

Exhibit A- Description of Consulting Activities

Nature of Services:

Field of expertise or inquiry (*define precisely*):