

CLIENT CONSULTING AGREEMENT FOR BIOTHERAPIES CORPORATE MEMBERSHIP

This consulting agreement (“**Agreement**”) is made by and between the entity whose name and contact information are set forth on the AABB Biotherapies Corporate Membership Application submitted herewith and Agreement (“**Client**”) and the Consulting Services Division of the American Association of Blood Banks, dba Association for the Advancement of Blood & Biotherapies (“**AABB**”), with its principal place of business at 4550 Montgomery Ave., Suite 700, North Tower, Bethesda, Maryland 20814, (each a “**Party**” and collectively the “**Parties**”). This Agreement is effective as of the date Client signed the AABB Biotherapies Corporate Membership Application and Agreement (“**Effective Date**”), which incorporates this Agreement as though fully set forth therein.

WHEREAS, AABB Consulting Services provides managerial and technical assistance and expertise to blood collection facilities, hospitals, transfusion services, cord cell facilities, tissue storage and distribution facilities and clinical laboratories worldwide. AABB desires to provide to Client certain consulting services pursuant to the terms of this Agreement; and

WHEREAS, Client has applied for an AABB Biotherapies Corporate Membership, effective for one year; and

WHEREAS, Client desires to engage AABB for certain services pursuant to the terms of this Agreement;

NOW THEREFORE, in consideration of the mutual promises, conditions, and covenants set forth below, the Parties agree as follows:

1. **Scope of Services.** “**Services**” means the services to be provided by AABB to Client as further described in one or more statement(s) of work (“**SOW**”), each of which is incorporated as if fully set forth herein.

Services performed pursuant to a SOW shall be governed by the terms and conditions of this Agreement. AABB and Client shall negotiate in good faith to mutually agree upon a SOW. AABB shall have no obligation to provide Services unless and until both Parties have executed the SOW describing the Services. Any additions or other modifications to the scopes of Services shall be agreed upon by the Parties in advance and in one or more subsequent SOWs, or other writing describing the changes to the Services and any associated Fees and signed by both Parties.

AABB Consultants who are qualified by education, training and/or experience shall be selected by AABB to perform the work. Upon request, Client will have the opportunity to approve the individual(s) who will perform the work.

In the event of a conflict between the terms of this Agreement and the terms of an SOW or other documents executed by both Parties, the terms of this Agreement shall govern unless the SOW or other document specifically states that they shall govern over specific Agreement terms.

2. **Fees for Services and Reimbursement of Expenses.** A benefit of the AABB Biotherapies Corporate Membership Program is customized Consulting Services to be provided during the one-year term of Client's Membership valued at up to \$10,000.00 ("**Retainer**") for Fees.

Payments owed by Client to AABB for the provision of Services ("**Fees**") are as set forth in the applicable SOW(s). Client shall be invoiced for all Fees; however, the first \$10,000.00 in Fees shall be credited to Client. AABB will not provide any credit to Client for any portion of the Retainer that is not used within the one-year Membership Term.

Client shall pay any undisputed portion of each invoice within thirty (30) days of the invoice date. If there is a bona fide dispute regarding all or part of an invoice, Client shall notify AABB in writing as soon as practicable, but no later than 30 days from the date of invoice. The Parties shall work together in good faith to resolve any such disputes in a timely manner. Invoices paid after that due date are subject to a charge of one and one-half percent (1.5%) per month on the balance due.

Client shall reimburse AABB within 30 days of invoice, for all reasonable expenses incurred by AABB in connection with the performance of Services under this Agreement including, but not limited to, photocopying, long distance telephone, fax, postage, and travel-related expenses (airfare, hotel, rental car, meals, etc.). The Retainer may be used to offset Fees only; Client is responsible for all expenses and shall be solely responsible for timely payment of any and all applicable taxes.

3. **Insurance.** Each Party shall, throughout the term of this Agreement, maintain in full force and effect from a third party that is rated "A-" or better in Best's Insurance Guide, or otherwise acceptable to the other Party, the types and amounts of insurance coverage for its operations as are typical and reasonably prudent in its industry, including but not limited to, general commercial liability insurance.

4. **Representations, Covenants, and No Legal Advice.** AABB represents and covenants that: (i) the Services will conform to the requirements contained in the Agreement; (ii) Services rendered under this Agreement will be performed in a timely and professional manner; and (iii) AABB is fully qualified to perform Services. Client represents and covenants that it: (i) shall cooperate with AABB in a professional and timely manner; (ii) shall treat AABB staff and consultants professionally at all times; (iii) shall make senior management available in a timely fashion to AABB to handle quality and other key issues that may arise. AABB will provide no legal advice in connection with its provision of Services under this Agreement. Each Party represents and covenants that it has the authority to enter into and perform the obligations set forth in this Agreement and that it shall comply with all applicable federal, state and local laws in performing its respective obligations under this Agreement.

5. **Equipment and Workspace.** Client agrees to provide AABB with mutually agreed upon workspace that is appropriate to the scope and nature of the SOW. Client shall make available to AABB staff working onsite printer and internet access, as well as ordinary and necessary office supplies.

6. **AABB's Firewall Policy.** AABB has a firewall policy, hereby acknowledged by Client, to help ensure the independence of AABB's accreditation and standards-setting process on the one hand, and the activities of Consulting Services on the other. Client acknowledges that the provision of Services by AABB does not guarantee a successful outcome for Client's current or future accreditation status.

7. **Confidentiality.** "**Confidential Information**" means information, including trade secrets, know-how, proprietary information, formulae, processes, techniques and information relating to the Disclosing Party's past, present and future financial, research and development activities, and information about employees, vendors, licensors, contractors and others, that may be disclosed, whether orally or in writing, to the Receiving Party, or that may be otherwise received or accessed by the Receiving Party in connection with this Agreement, whether transmitted prior to or after the Effective Date. Confidential Information shall either be identified as being confidential or proprietary at the time of disclosure, or shall be information that a reasonable business person would understand to be confidential information. Notwithstanding the foregoing, Confidential Information shall not include information: (i) previously known to the Receiving Party without an obligation of confidentiality; (ii) independently developed by or for the Receiving Party without reference to or use of the Disclosing Party's Confidential Information; (iii) that was lawfully acquired by the Receiving Party from a third party which is not, to the Receiving Party's knowledge, under an obligation of confidence with respect to such information; or (iv) which is or becomes publicly available through no fault of the Receiving Party or by no breach of this Agreement.

Each Party (in such capacity, the "**Receiving Party**") shall hold the Confidential Information of the other Party (in such capacity, the "**Disclosing Party**") in strict confidence, and shall not disclose the Disclosing Party's Confidential Information to others, in whole or in part, without the prior written permission of the other Party or as otherwise provided herein. Each Party represents and agrees that it shall not disclose Confidential Information on other than a need to know basis and then only to: (i) the Receiving Party's employees, officers or agents, engaged in a use permitted under this Agreement and (ii) affiliates of the Receiving Party, provided they shall be restricted in use and subsequent disclosure to the same extent as the Receiving Party. The Receiving Party shall not duplicate any materials containing the Disclosing Party's Confidential Information except in the performance of its obligations under this Agreement.

If the Receiving Party receives a subpoena or other validly issued administrative or judicial order demanding the release of the Disclosing Party's Confidential Information, it shall promptly notify the Disclosing Party of such receipt and tender to it the defense of such demand. After providing such notification, the Receiving Party shall be entitled to comply with such subpoena or other process to the extent permitted by law. However, the Receiving Party shall attempt to disclose such Confidential Information in camera or subject to protective order or on some other non-public basis, and shall abide by the provisions of this Section 7.

The Receiving Party acknowledges that money damages and remedies at law will be inadequate to protect the Disclosing Party against any actual or threatened breach of this Section 7 and, without prejudice to any rights and remedies otherwise available to the Disclosing Party, the Receiving Party agrees to grant specific performance, injunctive relief and other equitable remedies to the Disclosing

Party without proof of actual damages, and the Receiving Party further agrees to waive any requirement for securing or posting of any bond in connection with any such remedy.

8. **Covenant Not To Compete.** Client acknowledges that it will receive Services from AABB's employees, consultants, and agents, and that such Services constitute a significant part of the investment and goodwill of AABB, the preservation of which are essential to the success of AABB, and that AABB has a legitimate interest in restricting Client's ability to take advantage of such goodwill. Accordingly, Client agrees, during the Term and within the twelve (12) months immediately following the Term, not to hire, cause to be employed or hired, entice away, solicit, or establish a business with any current officer, employee, consultant, or agent of AABB, or any other person who was employed or paid by AABB within the past twelve (12) months, or in any manner persuade or attempt to persuade any officer, employee, consultant or agent of AABB to leave or cease performing services for AABB.

9. **Ownership of Documents.** The Parties acknowledge and agree that each Party shall retain all right, title and interest in and to any of its existing intellectual property conceived, reduced to practice or otherwise existing prior to the Effective Date, as well as any modifications to such intellectual property (respectively, "**AABB Intellectual Property**" and "**Client Intellectual Property**"), and nothing herein shall be deemed to grant a Party any right or license to the other Party's intellectual property except as expressly set forth herein. For purposes of this Agreement, "intellectual property" shall mean any and all trademarks and copyrights, patent rights, proprietary concepts, methods, techniques, processes and works, and trade secrets. AABB intellectual property shall include any template forms, reports, questionnaires, models or other materials created other than exclusively for Client.

To the extent any Client Intellectual Property is necessary to perform Services, Client hereby grants AABB a non-exclusive, worldwide, fully paid-up, royalty-free license to such existing materials or intellectual property solely for the purpose of providing such Services.

To the extent that any of the deliverables from AABB to Client are prepared exclusively for Client under this Agreement (the "**Exclusive Deliverables**"), such work shall be considered a "work made for hire" for Client. Upon full payment by Client, all rights, title, interest and copyrights in and to all Exclusive Deliverables, shall become the sole and exclusive property of Client; provided however, Exclusive Deliverables shall not constitute an endorsement by AABB or AABB Consulting Services and Client shall not advertise or use Exclusive Deliverables, AABB Materials, or AABB Intellectual Property for advertising or promotional purposes.

To the extent any Exclusive Deliverable includes a portion of AABB's Material or AABB Intellectual Property, AABB hereby grants Client a non-exclusive, worldwide, fully paid-up, royalty-free license to such materials or intellectual property solely for the purpose of using the Exclusive Deliverable.

Ownership of technology, systems processing, computer programming, analytical procedures and approaches, techniques, skills, ideas, models, know-how, non-product specific components of analysis, and other materials employed, developed or obtained by AABB from sources other than Client, or developed by AABB in the course of performance of this Agreement other than exclusively for Client (the "**AABB Materials**") (whether or not pre-existing the Effective Date) shall not be

transferred to Client and shall remain the sole and exclusive property of AABB. Ownership rights shall include, but are not limited to, all rights associated with publication, trade secrets, copyrights, trademarks, patents and confidential information. Nothing herein shall be deemed to prohibit AABB from providing similar services for other entities.

All papers, records, documents, data, reports and other information relating to the affairs and business of Client shall be, and remain at all times, the sole property of Client.

10. **Term and Termination for Cause.** This Agreement shall commence on the Effective Date and shall continue for a period of one (1) year ("**Term**"), unless terminated earlier in accordance with the terms hereof or upon the occurrence of one of the following events: (a) a judicial determination that either Party is insolvent or bankrupt pursuant to the provisions of any state or national insolvency law, or the appointment of a receiver or trustee of the property by reason of either Party's insolvency or inability to pay its debts, or the assignment of substantially all of either Party's property made for the benefit of that Party's creditors; or (b) a breach of this Agreement that is not cured within thirty (30) days after written notice thereof is given to the breaching Party.

11. **Termination for Convenience.** Either Party may terminate this Agreement on thirty (30) days' written notice to the other Party in accordance with Section 18. Upon any termination, Client shall compensate AABB for work performed prior to termination, plus all reasonable costs incurred as a result of termination, regardless of whether or not the work is at a point at which a deliverable is due. Termination, non-renewal or cancellation of any SOW shall not terminate this Agreement automatically, and shall only terminate the rights and obligations specified in writing.

12. **Survival.** All covenants, warranties, ownership, indemnification, and confidentiality obligations contained herein shall survive termination of this Agreement.

13. **Indemnification.** Each Party (as the "**Indemnifying Party**") shall defend, indemnify and hold the other Party and its respective officers, directors, employees, agents, contractors, successors, and assigns (each an "**Indemnified Party**") harmless from and against any and all damages, losses, fines, penalties, costs, and other amounts (including reasonable attorney's fees and expenses) (collectively, "**Losses**") arising from or in connection with any claims, demands, investigations, and causes of actions by third parties (each a "**Claim**") to the extent such Claim is based on or arises from or relates to negligence, gross negligence, fraud, embezzlement, failure to comply with applicable laws or regulations, or intentional misconduct of the Indemnifying Party, its officers, agents, employees, contractors, successors and assigns.

Each Party shall notify the other in writing promptly after receipt of a Claim or Claims upon which it intends to base a request for indemnification hereunder; provided however, that the failure or delay to do so shall not relieve the Indemnifying Party of any obligation or liability that it may have to the Indemnified Party, except to the extent that the ability to defend or resolve the Claim is adversely affected thereby. The Indemnifying Party shall provide diligent defense against any Claim with respect to the subject of the indemnity herein. The Indemnifying Party shall not settle any such Claim on terms that include an admission or acknowledgement of fault or liability on the part of the Indemnified Party without reasonable prior written notice (or, if such notice is infeasible, the provision of such notice that is commercially reasonable) to the Indemnified Party. The Indemnified

Party shall have the right to participate in the defense of the Claim and select and obtain representation by separate legal counsel at its own expense.

14. **Limitation of Liability.** In no event shall either Party be liable to the other for any loss of profits, loss of revenues, loss of business or indirect, consequential, exemplary, punitive, special or incidental damages, regardless of the theory of loss, whether based in contract, tort (negligence or strict liability) or otherwise, and regardless of whether such Party was made aware of the potential for such damages or such damages were otherwise foreseeable. In no event shall AABB's liability to Client exceed the amounts paid in Fees by Client, excluding the Retainer amount, to AABB under this Agreement, even if such remedy should fail of its essential purpose.

15. **Safeguarding of Patient Information.** The Parties acknowledge that in the performance of this Agreement, AABB may acquire or have access to medical records or confidential medical information about patients. To the extent that AABB is a “**Business Associate**” of Client and Client is a “Covered Entity” as those terms are defined under the Health Insurance Portability and Accountability Act of 1996, as amended and all related implementing regulations (“**HIPAA**”), and in order to comply with HIPAA, the Parties agree to enter into the Business Associate Agreement set forth in Attachment B to this Agreement, which is incorporated by reference as if fully set forth herein.

16. **Independent Contractor.** AABB is furnishing Services as an independent contractor and nothing herein shall create any association, partnership or joint venture or agency between the Parties hereto or any employer-employee relationship. Each Party is solely responsible for all matters relating to compensation of its employees, including but not limited to compliance with laws governing workers' compensation, Social Security, withholding and payment of any and all federal, state and local personal income taxes, disability insurance, unemployment, and any other taxes for such persons, including any related employer assessment or contributions required by laws, and all other regulations governing such matters, and the payment of all salary, vacation and other employee benefits. Nothing contained in this Agreement shall be construed so as to authorize a Party to act as a general agent, make contracts, commitments, statement or representations on behalf of the other Party.

17. **References to AABB.** Notwithstanding anything to the contrary contained in this Agreement, under no circumstances shall Client reference AABB, this Agreement, or the Services provided pursuant to this Agreement for advertising or promotional purposes.

18. **Notice.** Any notices to be given by either Party under this Agreement shall be through: a reputable national delivery service with acknowledgment of delivery; the United States Postal Service, postage prepaid, certified, return receipt requested; or by facsimile or other electronic transmission upon confirmation of electronic transmission, and addressed to the other Party at the last address applicable for notice provided in writing by such Party. Notice shall be deemed given upon the earlier of actual receipt of the notice, upon confirmation of electronic transmission if sent by facsimile or other electronic transmission or upon seventy-two (72) hours after either deposit in the U.S. Mail or pickup by a reputable national delivery service. A Party may change its address for notice at any time by providing the other Party with prior written notice of the change.

19. **Assignment.** Neither Party shall assign or transfer its rights or duties under this Agreement without the prior express written consent of the other Party. Any transfer or assignment made without such consent shall not relieve the transferor or assignor of its duties or obligations under this Agreement and shall be null and void.
20. **Entire Agreement.** This instrument, along with the AABB Biotherapies Corporate Membership Application and Agreement and any attachments and Statements of Work, contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous representations, warranties, agreements, and understandings, and may not be amended or any provision hereof waived, except in writing signed by the Party against whom enforcement is sought.
21. **Amendment.** This Agreement may be modified only by a written document executed by both Parties.
22. **Severability.** Each paragraph and provision of this Agreement is severable from the entire Agreement, and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.
23. **Governing Law, Jurisdiction and Venue.** This Agreement, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of, or relate to this Agreement, shall be exclusively governed by, and enforced in accordance with, the laws of the State of Maryland. Any lawsuit, claim, or other legal proceeding arising out of or relating to this Agreement shall be brought exclusively in the federal or state courts located in or covering Montgomery County, Maryland, and the Parties agree to submit to the jurisdiction and venue of the state and federal courts located therein.