

APPENDIX C

Grant Agreement between and the Massachusetts Life Sciences Center

This Grant Agreement, with an effective date of September 1, 2009 between Massachusetts Life Sciences Center (“MLSC”) and (“Grantee”) incorporates by reference the General Terms and Conditions attached hereto (collectively, this Grant Agreement and the General Terms and Conditions are referred to herein as the “Agreement”). Capitalized terms used and not otherwise defined in this Grant Agreement shall have the meanings ascribed to such terms in the General Term and Conditions. In the event of any conflict between this Grant Agreement and the General Terms and Conditions, this Grant Agreement shall govern.

Whereas, MLSC is offering financial assistance in the form of matching grants to entities which have submitted a request for funding consistent with the statutory goals set forth in M.G.L. c. 23I, and the MLSC’s New Investigator Research Matching Grants Program.

Whereas, Grantee, a with a principal place of business c/o has submitted an application for funding for research into (the “Project”); and

Whereas, MLSC’s Board of Directors approved the release of funds to Grantee for the Project on , 2009;

Now therefore, pursuant to the terms and conditions of the Agreement and this Grant Agreement, MLSC and Grantee agree as follows:

1. Performance of the Work

- a) The Grantee shall perform the work in accordance with the Project Plan (“Project Plan”) and the Project Budget (“Project Budget”), both of which are included in the applicable Grant Application approved by the MLSC.
- b) Both MLSC and Grantee shall designate a respective Project Manager to support effective communication between MLSC and the Grantee and to report on the Project’s progress.
- c) The Grantee is solely responsible for all Project decisions, the preparation of all plans and specifications, and for developing the Project in accordance with the Project Plan.

2. Term

The term of this Grant Agreement shall commence September 1, 2009, and shall expire on August 31, 2011.

3. Project Personnel

- a) Both MLSC and Grantee have designated the following Persons to serve as Project Manager to support effective communication between MLSC and the Grantee and to report on the Project’s progress.

For MLSC: Beth Nicklas, bnicklas@masslifesciences.com, 617-686-4672

For Grantee:

- b) Each party will endeavor to maintain the continuity of its respective Project personnel.

4. Deliverables

Grantee shall provide MLSC with the following Deliverables:

Semi-annual Progress Reports. Grantee shall provide MLSC with semi-annual progress reports on March 31st and September 30th of each year during the term of the grant which highlight project activities, accomplished milestones and preliminary results.

Comprehensive Final Project and Financial Report. Upon conclusion of the Project, Grantee shall provide MLSC with a final report that includes an analysis of the results, findings and recommendations of Project efforts, including technical difficulties, errors, recommendations for modifications and next steps in the research and to secure additional funding. Such report shall also include a complete accounting of the use of the Grant Funds and supporting schedules along with the invoice for the final payment.

Except as otherwise provided herein, or as expressly limited in the approved Project Plan, Grantee hereby grants to MLSC a non-exclusive, fully-paid, royalty-free, worldwide, license and right to use (including, without limitation, to produce summaries, case studies, and similar information resources), reproduce, modify, disseminate, and create derivative works of, display, and transmit (in any manner, method, or media) any materials prepared or produced as deliverables for the Project, including, without limitation, all work product, reports, databases, plans, specifications, analyses, and any other information and materials developed or produced in connection with the Project for the MLSC's own educational and non-commercial purposes.

5. Other Requirements

- a) *Program Evaluation.* The Grantee agrees to support MLSC's program evaluation and case study activities, and MLSC's goal to disseminate information regarding Grantee's experiences. To this end, the Grantee agrees that its key personnel and contractors working on the Project will be available at reasonable times with advance notice to be interviewed by MLSC or its authorized representatives for purposes of program evaluation or case study development.
- b) *Cost Sharing/Matching Requirements.* As a condition of the Grant, Grantee is required to provide evidence sufficient to MLSC in the sole exercise of its discretion of matching funds on a ratio of at least a "1 to 1" to the Grant from the Grantee (the "Match Requirement"). One hundred percent (100%) of the cost share must be in the form of cash, the indirect cost rate is capped at twenty percent (20%) of direct costs, and equipment costs are limited to twenty-five percent (25%) of total project costs. The amount of the Match Requirement is set forth in the Project Budget. Grantees shall maintain records of all Project costs that are claimed by the Grantee as being its contribution to cost sharing/matching requirements, as well as records of cost sharing from other parties. Such records are subject to audit.

6. The Grant

The Grantee shall be compensated on a cost-reimbursement basis for direct (and where applicable, indirect) costs incurred in the performance of the Project Plan and as set forth in the Project Budget. The foregoing notwithstanding, MLSC's share of the costs incurred shall not exceed the amount set forth in the Project Budget. In executing this Grant Agreement, Grantee acknowledges and agrees that its receipt of the Grant does not create any rights or preferences for Grantee to receive subsequent funding from MLSC for any purpose.

7. Payments and Invoices

The Grantee shall follow Generally Accepted Accounting Principles ("GAAP") as well as any applicable accounting standards related to the Grantee's receipt of other federal or state funds. If there is not an applicable standard for Grantee, Grantee shall follow Part 31 of the Federal Acquisition Regulations.

- a) *Allowable Charges.* The definition of Allowable Charges shall be governed by the cost principles contained in the OMB Circulars applicable to the Grantee and/or its subcontractors. The categories of expenses may include:
 - i. *Direct Costs.* The Grantee shall be reimbursed for direct costs incurred in the performance of the Project Plan and as specified on a line item of the Project Budget, as follows:
 1. *Direct Labor and Fringe Benefits:* the costs of salary and fringe benefits for services performed by Grantee's employees under the terms of this Agreement at the rates applicable at the time the services were performed;

2. Subcontractors/Consultants: services provided by Grantee's subcontractors/ consultants, if any, as set forth in the Project Budget;
 3. Direct Materials: the cost of materials used to undertake the Project, as set forth in the Project Budget;
 4. Other Direct Costs: the cost of other direct materials, services and insurance as set forth in the Project Budget. (e.g., postage, telephone, publications, graphics, etc.); and
 5. Travel: the reasonable and necessary costs incurred for travel, lodging, meals and incidental expenses, as set forth in the Project Budget. Reimbursement for the use of personal vehicles shall be limited to the Internal Revenue Service business standard mileage rate.
- ii. Indirect Costs. The Grantee shall be reimbursed for such indirect costs as set forth in the Project Budget.
- b) *Budget Adjustments.* The foregoing notwithstanding, the parties acknowledge that the costs listed in the Project Budget are estimated. Therefore, Grantee may shift funds between the line items associated with each category, provided however that the aggregate amount for each category of costs as set forth in the Project Budget is not exceeded. Additionally, Grantee may, with the prior written permission of the MLSC Project Manager, shift funds between each category. The total amount of the Project Budget shall not be increased.
- c) *Payment Terms and Retainage.* MLSC shall pay the Grantee the first Quarterly Grant Payment within forty-five (45) days after receipt of a properly documented invoice, unless MLSC should determine that any such payment or any part thereof is otherwise not properly payable pursuant to the terms of this Agreement or the Project Budget. The foregoing notwithstanding, the MLSC shall retain twenty-five percent (25%) of the final year's budget until receipt of an acceptable Final Comprehensive Report and Final Financial Report.
- d) *Invoices*
- i. Invoices shall be addressed to the MLSC Project Manager set forth in Section 3(a) above.
 - ii. Grantee may submit invoices using the template provided by the MLSC. The invoice shall set forth total Project costs incurred. These shall be broken down into MLSC's funding share and, if applicable, Grantee's cost-share. They shall be in a format consistent with the cost categories set forth in the Project Budget. Invoices shall provide reasonable documentation to provide evidence of costs incurred, including:
 - *Direct Labor and Fringe Benefits:* for each employee, the name, title, and number of hours worked or, if supported by an appropriate allocation methodology, the percentage of effort expended, the calculation for determining the cost of fringe benefits; and
 - *Direct Costs/Travel:* all direct costs and travel expenses shall be itemized on the invoice and supported by documentation such as vendor invoices, travel vouchers, expense receipts or other documentation as required by MLSC.

8. Insurance

In the event Grantee is a public agency (as defined in Chapter 7, Section 39A of the Massachusetts General Laws), then MLSC agrees that Grantee may self insure to the extent permitted by law as though Grantee were the insurer under all insurance required for its activities under this Grant Agreement. Grantee hereby waives all offsets and defenses that it may otherwise have with respect to the insurance required to be maintained hereunder. The grant of the right to self insure is subject to the requirements that (i) Grantee's contractors and subcontractors carry insurance of the types and levels required for their activities under this Grant Agreement; (ii) that such insurance shall name MLSC, and such other entities as MLSC may request, as additional insureds, and (iii) no settlement or payment, for any claim or loss, injury or damage or other matter as to which MLSC may be charged with an obligation to make any payment or reimbursement, shall be made by Grantee without the written approval of MLSC.

In the event Grantee is not a public agency (as defined in Chapter 7, Section 39A of the Massachusetts General Laws), then Grantee shall obtain and maintain in effect through the term of this Grant Agreement appropriate insurance coverage for its activities under this Grant Agreement, including, but not limited to, the following:

- a) *Liability Insurance.* Comprehensive broad form general liability insurance which includes coverage for premises and operations, including products (except manufacturer's products) and completed operations, and contractual liability coverage of Grantee's indemnification obligations under this Grant Agreement for the mutual benefit of the MLSC and Grantee and naming the MLSC as an additional insured on a primary basis against claims for personal injury, death or property damage arising out of or in connection with Grantee's activities under the Grant Agreement with primary plus excess coverage limits of not less than \$10,000,000 per occurrence and \$5,000,000 for damage to property. The policies shall include coverage for claims made by one insured against another; and coverage provided under these policies of insurance shall be primary, over and above any other policy held by the MLSC.
- b) *All Risk Property Insurance.* All risk physical damage property insurance, insuring (i) Grantee's laboratory and other premises, and (ii) any of Grantee's personal property at such premises (including without limitation, inventory, trade fixtures, floor coverings and furniture) against all risk of direct physical loss or damage as may from time to time be included within the definition of an "All Risk Insurance Policy" with extended broad form coverage, including without limitation, loss or damage by fire, lightning, windstorm, hail, explosion, riot and civil commotion, or from vehicles, breakdown of boilers, machinery and electrical equipment, and such other risks as the MLSC may reasonably designate. The insurance also shall cover increased costs of construction, demolition and debris removal coverage, and contingent liability arising out of the enforcement of building laws and ordinances governing repair and reconstruction. Such insurance shall be in an amount equal to the full replacement cost of the insured property.
- c) *Workers' Compensation Insurance.* Workers' compensation insurance as required by applicable law, and employers' liability insurance with minimum limits of \$1,000,000. Grantee shall require its contractors and consultants to carry workers' compensation as required by applicable law.
- d) *Comprehensive Automobile Liability Insurance.* Automobile insurance in accordance with applicable law for bodily injury and property damage in the combined single limit of \$5,000,000 covering all owned, hired and non-owned vehicles.

Each policy of insurance required herein shall (a) be in a form and with a company that is authorized to do business in the Commonwealth of Massachusetts having an A.M. Best rating of A-VI or better; (b) (other than the worker's compensation and employers' liability policies) name the MLSC and the Covered Persons as additional insureds on a primary basis; (c) provide that it shall not be altered or cancelled by the insurer during its term without first giving at least thirty (30) days' prior written notice to the MLSC; (d) provide that any act or omission of Grantee or the MLSC shall not prejudice the rights of the MLSC as a party insured under said policy; and (e) be subject to a commercially reasonable deductible in an amount generally maintained by companies of similar size, which amount shall be subject to the MLSC's written approval and shall be stated on the policy or certificate of insurance.

Prior to disbursement of any funds under the Grant Agreement, Grantee shall submit evidence of each policy of insurance required hereunder to the MLSC, and Grantee shall deliver to the MLSC not less than thirty (30) days prior to the expiration of any then-current policy, notice of such expiration, and evidence of renewal or replacement of such policy in replacement thereof. Upon request, Grantee shall deliver copies of such insurance policies to the MLSC. Grantee acknowledges that the minimum insurance limits and types established herein may become inadequate during the term of this Grant Agreement, and Grantee agrees that within thirty (30) days after receiving written notice from the MLSC, Grantee shall provide such increased limits or types of insurance to levels that the MLSC may reasonably require. In the event Grantee carries limits of insurance higher than those required under the terms of this Grant Agreement, such higher limits shall be applicable to the MLSC in addition to Grantee. If the MLSC has specifically approved a request from a Grantee to modify any of the insurance obligations set forth in this Section 8, including a request that the Grantee to self-insure, or be covered under a self-insurance program operated by another entity, for some or all of the

liabilities described above, any such modifications must be specifically noted in an addendum attached hereto.

The carrying of any of the insurance required hereunder shall not be interpreted as relieving the Grantee of any responsibility to MLSC. The Grantee shall assist and cooperate with any insurance company in the adjustment or litigation of all claims arising under this Grant Agreement. The Grantee shall give prompt notice to MLSC of all losses, damages, or injuries to any person or third persons of which the Grantee has notice which may in any way be related to the work or for which a claim might be made against Grantee or MLSC. The Grantee shall promptly report to MLSC all such claims of which the Grantee has notice, whether related to matters insured or uninsured. No settlement or payment, for any claim or loss, injury or damage or other matter as to which MLSC may be charged with an obligation to make any payment or reimbursement, shall be made by the Grantee without the written approval of MLSC.

9. Affirmation of Warranties and Certifications

Grantee hereby represents and warrants that, as of the date of this Grant Agreement, all of the representations, warranties and certifications of Grantee set forth in the General Terms and Conditions are true and correct and Grantee is in compliance with all of Grantee's obligations under the General Terms and Conditions and each other Grant Agreement between MLSC and Grantee.

10. Amendments, Entire Agreement and Attachments

All conditions, covenants, duties and obligations contained in this Grant Agreement may be amended only through a written amendment signed by the Grantee and MLSC. Except for the General Terms and Conditions (Attachment A), MLSC's Policy Regarding the Public Records Law and Disclosure of Information (Attachment B), the Project Plan and Project Budget which are included in Participant's grant application, which are hereby incorporated herein by reference, the parties understand and agree that this Grant Agreement supersedes all other verbal and written agreements and negotiations by the parties regarding the Project set forth herein.

11. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

PARTICIPANT'S AUTHORIZED SIGNATORY: _____
(signature)

Print Name: _____

Title: _____

Date: _____

Full Legal Organization:

Tax Identification Number:

Address:

Telephone:

FAX:

E-Mail Address:

MASSACHUSETTS LIFE SCIENCES CENTER

ATTACHMENT A: GENERAL TERMS AND CONDITIONS

The following General Terms and Conditions are issued by the Massachusetts Life Sciences Center, an independent public instrumentality of the Commonwealth of Massachusetts, established pursuant to Massachusetts General Laws Chapter 23I, Section 3 (“MLSC,” as further defined in Section 1, below). *Any changes or electronic alterations to the official version of this form shall be void.* Participants shall be bound by these General Terms and Conditions upon execution and submission to MLSC. These General Terms and Conditions will be incorporated by reference into any Grant Agreement for any financial assistance award executed by the Participant and MLSC.

1. Definitions

“Agreement” means these General Terms and Conditions and all Grant Agreements entered into hereunder and all other referenced attachments hereto and thereto, as the same may be amended from time to time in accordance with the terms of these General Terms and Conditions.

“Commonwealth” means the Commonwealth of Massachusetts (and its political subdivisions or agents where the context so requires).

“Deliverable” means any tangible product to be delivered as an element of performance under a Grant Agreement.

“Grant” means the funding awarded by MLSC’s Board of Directors as set forth in the applicable Grant Agreement.

“Grant Agreement” means the documentation that sets forth the Grant awarded, the specifics of the Project for which the Grant was awarded and additional terms and conditions for the application and use of such Grant funds, including the Project Plan and Budget.

“General Counsel” means MLSC’s General Counsel, or, in the event that no Person holds such title at the time in question, such other legal counsel to MLSC as MLSC’s President and CEO or Board may designate.

“Governmental Authority” means any national or federal government, any state or other political subdivision thereof, and any other Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“MLSC” means the Massachusetts Life Sciences Center, and any of its subsidiaries, subdivisions or affiliates, and the successors or assigns thereof.

“Participant” means any individual, corporation, limited liability company, partnership or other legal entity with the power to undertake the duties hereunder (each a “Person”) who has sought funding or other financial support from, or has submitted one or more proposals for projects to, MLSC and has been awarded such financial support or funding under any of MLSC’s programs or initiatives as in effect from time to time, including the New Investigator Research Matching Grants Program.

“Project” means services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the MLSC, programs provided or other commitments authorized under a Grant Agreement.

“Project Budget” means the costs associated with the tasks set forth in the Project Plan which shall be reimbursed by MLSC pursuant to the terms and conditions of this Agreement and the applicable Grant Agreement.

“Project Manager” means the individual, set forth in the applicable Grant Agreement, employed or otherwise engaged by MLSC and by Participant, respectively who shall have primary responsibility for managing the Project.

“Project Plan” means the proposal approved by the MLSC as set forth in the applicable Grant Application.

“Public Records Law” means the Massachusetts Public Records Act, M.G.L. Chapter 66, and any successor thereto, as affected by Chapter 23I, Section 3(l).

2. Term and Termination

- a) The effective start date of performance under a Grant Agreement shall be the date such Grant Agreement has been executed by an authorized signatory of the Participant and MLSC, unless another start date is referenced in the Grant Agreement.
- b) This Agreement may be terminated by either MLSC or Participant at any time for a breach of any term of the Agreement.
- c) MLSC may terminate this Agreement in the event of loss of availability of sufficient funds for the purposes of this Agreement or in the event of an unforeseen public emergency or other change of law mandating immediate MLSC action inconsistent with performing its obligations under this Agreement.
- d) MLSC may terminate this Agreement at any time if the Board of Directors of the MLSC deems such termination to be in the best interests of the MLSC and its mission.

3. Payments and Compensation

The Participant shall only be compensated for costs incurred for performance of the project plan and shall be disbursed based on a “cost reimbursement” basis with appropriate retainage, as determined by MLSC under the circumstances in accordance with the specific terms and conditions of the applicable Grant Agreement. Acceptance by the Participant of any payment or partial payment, shall in each instance operate as a release and discharge of MLSC from claims, liabilities or other obligations relating to MLSC’s disbursement of funds for the performance of the Grant Agreement. In the event of termination, Participant shall only be compensated for allowable charges and commitments incurred prior to notice of termination, with the exception of any items reasonably usable without loss to the Participant on its other work.

4. Insurance

Specific requirements for insurance shall be set forth in the applicable Grant Agreement.

5. Publicity

- a) The Participant shall collaborate with MLSC on any press releases, events, signs and to plan for any news conference concerning the Project (collectively, “PR”). In any media produced by Participant, Participant will not represent that positions taken or advanced by it represent the opinion or position of MLSC. Participant may not issue, participate in, or contribute to any PR without prior notice to the MLSC and reference to the MLSC as a source of funding support.
- b) Unless otherwise agreed to by MLSC in the terms and conditions of the Grant Agreement, the Participant agrees that MLSC shall have the unrestricted right to make use of and disseminate, in whole or in part, all work products, reports, and other information produced in the course of the Project, and to use the information therein contained to produce summaries, case studies or similar information resources for the MLSC’s own educational and non-commercial purposes.
- c) All publications, posters, articles, presentations or other public displays of the results of the Project shall prominently display that the Project was funded by a grant from the Massachusetts Life Sciences Center.

6. Assignment and Subcontracting

- a) The Participant shall not assign or in any way transfer any interest in this Grant or the Agreement

including subcontracting any services without the prior written consent of MLSC, except as otherwise included in the Participant's Project Plan and Project Budget.

- b) The Participant will procure services from any subcontractors approved pursuant to Section 6(a) above, by using commercially responsible procurement mechanisms, and, where specifically required in the Grant Agreement, using competitive procurement procedures. Furthermore, the Participant is required to notify MLSC in the event that it intends to or has entered into an agreement to use the Grant to pay for goods or services with a related party. For purposes of this agreement, a "related party" means any person or entity directly or indirectly Controlling, Controlled by or under Common Control with the Participant. As used herein, "Control" (including the correlative meanings of the terms "Controlling", "Controlled by" and "under Common Control with"), as used with respect to any person or entity, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such person or entity whether through ownership of voting securities, by contract or otherwise. To the extent such goods or services obtained from a related party are properly identified in the Project Budget, and the related party status is clearly disclosed and is not objected to by MLSC, Participant may use the Grant to pay for such goods or service.

7. Non-Exclusion from Governmental Programs

The Participant represents and warrants that the Participant and, to the extent applicable, any related party, and Persons that will work on any Project:

- a) are not and will not be during the term hereof debarred, suspended, declared ineligible, or excluded by any department or agency of the Commonwealth or of the United States;
- b) have not been and will not during the term hereof be convicted of fraud or another criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) transaction or contract under a public transaction, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c) are not presently and will not for the duration of the term be indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Section (8)(b) above; and
- d) have not had and will not during the term hereof have one or more agreements with a governmental entity (Federal, State or local) terminated for cause or default.

8. Ethical Conduct Policy and Enforcement

The Participant agrees that the Grant is subject to the Participant having in place on or before the date that Participant enters into a Grant Agreement with the MLSC appropriate policies and measures to ensure that the Participant handles the Grant responsibly and ethically and that the opportunity for improper personal financial or other gain on the part of the Participant, its employees and consultants, and any other persons with whom they may collaborate regarding any Project is minimized, and that limit the potential for research results to be tainted by possible personal financial or other gain.

The Participant hereby represents that it has no intention of using the Grant towards its (or his or her, as the case may be) or any of its (or his or her, as the case may be) employees', collaborators' or affiliates' improper personal financial or other gain. The Participant covenants to deliver a written copy of the aforementioned policies to MLSC upon request and to enforce such policies diligently during the term hereof.

9. Safety

For the entire term hereof, the Participant agrees to meet the requirements of all applicable Federal, State and local laws, regulations and ordinances regarding health and safety standards and for

establishing and implementing necessary measures to minimize the risk of injury or illness to any and all Persons engaged in activities related to the Grant.

For the entire term hereof, the Participant further agrees to comply with the provisions of all applicable Federal, State and local laws, regulations and ordinances regarding public safety, protection from and prevention of terrorism and crime, and protection of the environment.

10. Payment of Debt and Taxes

The Participant represents that the Participant is not delinquent in the payment of any debt or other obligation owed by the Participant to the Commonwealth and covenants that the Participant shall timely pay any debt or other obligation that the Participant owes or may come to owe to the Commonwealth during the term hereof.

The Participant represents that there are no taxes owed by the Participant to the Commonwealth on the date hereof, other than such taxes as are being protested by the Participant under and in accordance with applicable law, and Participant covenants to pay in a timely fashion all taxes that become due from the Participant to the Commonwealth during the term hereof.

11. Confidentiality and Privacy

The Participant agrees to take all appropriate actions to protect the confidentiality of information about and the privacy of individuals participating in any Project and to comply with the provisions of all applicable Federal, State or local laws, regulations and ordinances regarding confidentiality and privacy of such information.

12. Investigations and Trials Involving New Drug or Device

The Participant agrees to comply with all applicable Federal, State and local laws, regulations and ordinances, including but not limited to the pertinent regulations of the Food and Drug Administration, in any investigations and trials involving new drugs, combination of drugs, or one or more devices, that the Participant may engage in, directly or indirectly, and which may in any manner whatsoever be related to the Grant.

13. Animal Welfare

The Participant agrees to comply with all applicable Federal, State and local laws, regulations and ordinances regarding the welfare and humane treatment of animals in the treatment of any live, vertebrate animal used or intended for use in connection with any Project.

14. Nondiscrimination

The Participant agrees to comply with all applicable Federal and State laws, regulations and ordinances promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, sexual orientation, or for exercising any rights afforded by law.

15. Indemnification

To the fullest extent permitted by law, Participant shall indemnify and hold harmless, and defend with counsel reasonably acceptable to the Covered Person or Persons being defended, the Commonwealth, MLSC, and each of their respective agents, officers, directors and employees (together with the Commonwealth and MLSC, the "Covered Persons") from and against any and all liability, loss, claims, damages, fines, penalties, costs and expenses (including attorneys' fees), judgments and awards (collectively, "Damages") sustained, incurred or suffered by or imposed upon

any Covered Person resulting from (i) any breach of this Agreement or false representation of Participant under this Agreement, or (ii) any negligent acts or omissions or reckless, wrongful or intentional misconduct of Participant. Without limiting the foregoing, Participant shall indemnify and hold harmless each Covered Person against any and all Damages that may arise out of or are imposed because of the failure to comply with the provisions of applicable law by Participant or any of its agents, officers, directors, employees, contractors or subcontractors. The foregoing notwithstanding, (i) Participant shall not be liable for any Damages sustained, incurred or suffered by or imposed upon any Covered Person resulting solely from any negligent act or omission or reckless misconduct of MLSC, and (ii) except for liability for death or personal injury caused by the negligence or willful misconduct of the Participant or for claims of infringement of a third party's intellectual property by Participant, the aggregate liability of Participant under this Agreement shall not exceed the greater of the amount of the Grant or the amount recovered under any applicable insurance coverage. The obligations herein shall survive termination of this Agreement.

16. Public Records

As a quasi-public entity, MLSC is subject to the Massachusetts Public Records Law (set forth at Massachusetts General Laws Chapter 66 and as referenced in Chapter 23I) and thus documents and other materials made or received by MLSC and/or its employees may be subject to public disclosure. All information received by MLSC shall be deemed to be subject to public disclosure, except as otherwise provided in the procedures set forth in Attachment B to the Grant Agreement. Participant acknowledges, understands and agrees that, by entering into the Grant Agreement with MLSC, the procedures set forth in Attachment B are applicable to any documents submitted by Participant to MLSC, including but not limited to any acknowledgements set forth therein, and that Participant shall be bound by these procedures.

17. Audit

Participant shall maintain in a true and accurate manner and in accordance with generally accepted accounting principles, complete and accurate books and records as would normally be examined by an independent certified public accountant pursuant to generally accepted auditing standards in performing a separate audit or examination of Participant's Grant receipts and Project Budget. Such books and records shall contain records of Participant's pertinent activity under the Grant Agreement in a form consistent with good accounting practice which may include, without limitation, electronic media compatible with computers available to the MLSC, computer generated hard copies or legible microfiche or microfilm copies. Such books and records shall be maintained in a form consistent with generally accepted accounting practices. Upon seven (7) calendar days notice from MLSC, all such books and records shall be made available, as Participant shall elect by written notice to MLSC given within such seven (7) calendar day period, either at the Participant's offices or at the offices of the MLSC, for inspection by MLSC or through its duly authorized representatives at any time for up to seven (7) years after the calendar year to which such books and records pertain, whether or not the term of the Grant Agreement has expired or been earlier terminated; provided, however, that if prior to the expiration of such seven (7) year period, any audit, review or investigation is commenced by the MLSC, or any claim is made or litigation is commenced relating to any Grant Agreement by the MLSC, such books and records shall continue to be maintained by Participant, and MLSC shall continue to have the right to inspect such books and records in the manner stated above, until the audit, claim or litigation is finally resolved (including the determination of any and all appeals or the expiration of time for an appeal), whether or not the Grant Agreement has expired or been earlier terminated. Failure to provide the MLSC with the books, records and data as the MLSC determines in its reasonable discretion to be necessary or convenient in connection with its review or audit hereof will constitute a default of the Grant Agreement. In the event that the MLSC determines, in its reasonable discretion, that any allocation of Grant funds to costs permitted to be funded by a Grant are not supported or substantiated by such books and records, Participant shall reimburse MLSC for all such amounts. The right to inspect shall include the right to photocopy said books, records and data as the MLSC determines in its discretion to be necessary or convenient in connection with its review or audit thereof. Any such inspection at the Participant's offices will be conducted during reasonable business hours and in such a manner and at such time as to not unduly interfere with the conduct of Participant's operations. In the event such books and records cannot be made available at the Participants' offices or at the offices of the MLSC, then Participant shall pay for all reasonable

and actual costs incurred by the MLSC in inspecting and auditing such books and records, including but not limited to travel, lodging and subsistence costs. Except as set forth in the prior sentence, MLSC shall be responsible for its own expenses in conducting the audit. MLSC shall further have the right, upon reasonable written notice to Participant, to cause an audit to be made of the books and records of Participant and its assignees and agents which relate to any Project to determine the correctness of the allocation of Grant funds to permissible costs by Participant hereunder. If, as a result of such audit conducted within any of the time periods permitted by this section, whether or not the Grant Agreement has expired or been earlier terminated, it is established that Grant funds have been applied impermissibly, Participant shall forthwith, upon written demand from MLSC, repay to MLSC all amounts impermissibly applied, plus interest on such amount for each day from the date of receipt of such Grant funds until payment has been received by MLSC, at ten percent per annum, as well as any costs and expenses incurred by MLSC in seeking the return of such amounts, including MLSC's attorneys' fees. The Participant's obligations under this subsection shall survive the expiration or earlier termination of the Grant Agreement, to the extent provided herein.

18. Conflict of Interest

Participant acknowledges that all MLSC employees are subject to the Massachusetts Conflict of Interest statute, set forth at Massachusetts General Laws Chapter 268A. Participant shall take no actions in contravention of the Conflict of Interest statute or the conflict of interest policies of the MLSC.

19. Lobbying

No Grant funds may be used to pay for or otherwise support any activities intended to influence any matter pending before the Massachusetts General Court or for activities covered by the law and regulations governing "legislative agents" or "executive agents" set forth in the Massachusetts Lobbying Law, M.G.L. Ch. 3, §39.

20. Choice of Law

This Agreement shall be construed under, and governed by, the laws of the Commonwealth of Massachusetts, without giving effect to its conflict of laws principles. The Participant agrees to bring any Federal or State legal proceedings arising under this Grant in which the Commonwealth or MLSC is a party in a court of competent jurisdiction within the Commonwealth of Massachusetts. This Section shall not be construed to limit any other legal rights of the parties.

21. Force Majeure

Neither party shall be liable to the other, or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or of a public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. Dates or times of performance including the Term of this Agreement may be extended to account for delays excused by this Section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.

22. Waivers

Conditions, covenants, duties and obligations contained in this Agreement may be waived only by written agreement between the parties. Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the remedies available to that party.

23. Notice

Any notice hereunder shall be in writing and shall be sent either (i) by facsimile, (ii) by courier, or (iii) by first class mail, postage, prepaid, addressed to the Project Personnel listed below (or to such other address as a party may provide by notice to the party pursuant to this Section 23), and shall be

effective (i) if dispatched by facsimile and delivery is electronically confirmed by said media, the day such electronic confirmation is received, (ii) if sent by courier, one business day after dispatch, (iii) if sent by first class mail, five business days after its date of posting. All communications to MLSC shall be delivered to the following address, or sent by facsimile to the following number:

Massachusetts Life Sciences Center
Attn: Robert Sepucha, General Counsel
1000 Winter Street
Waltham, MA 02451-1450
617-694-7514 (direct dial)

All communications to Participant shall be mailed or delivered to the address, or sent by facsimile to the number set forth below:

Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by MLSC.

24. Compliance with Laws

In addition to related provisions of other Sections of this Agreement, Participant and any permitted subcontractors shall fully comply with all applicable laws and regulations of the Commonwealth, Federal government and any applicable local authorities in conducting any business in any way associated with this Agreement.

25. Headings

Headings used in this Agreement are for convenience only and shall not be used in the interpretation of the provisions of this Agreement.

Attachment B

The Massachusetts Life Sciences Center

Policy Re: the Public Records Law and Disclosure of Information

The Massachusetts Life Sciences Center (MLSC) is subject to the requirements of the Massachusetts Records Law, M.G.L. c. 66 (the "Public Records Law"), which governs the retention, disclosure, disposition and archiving of public records. For purposes of the Public Records Law, "public records" include all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by MLSC. As a result, most information submitted to MLSC by a grant applicant, recipient grantee, respondent to a request for response (including, but not limited to an RFQ, RFP and RFI), contractor, or any other party (collectively the "Submitting Party") is subject to public disclosure as set forth in the Public Records Law.

"Public records" do not include certain materials or data which fall within one of the specifically enumerated exemptions set forth in the Public Records Law or in other statutes, including MLSC's enabling act, M.G.L. Chapter 23I, Section 3(l). The Chapter 23I exemption specifically applies to documentary materials or data made or received by MLSC that consists of trade secrets or commercial or financial information regarding the operation of any business conducted by the Submitting Party, or regarding the competitive position of such Submitting Party in a particular field of endeavor (the "Intellectual Property Exemption").

It is MLSC's expectation that the overwhelming percentage of documents it receives and that it needs to receive in order to perform its statutory mandate from an Submitting Party will not contain any information that would fall within one of the exemptions and would warrant an assertion by MLSC of an exemption from the Public Records Law. Applicants/Participants should therefore take care in determining which documents they submit to MLSC, and should assume that all documents submitted to MLSC are subject to public disclosure, except to the extent provided herein.

In the event that an Submitting Party wishes to submit certain documents to MLSC and believes such a document or documents, or portions thereof, may be proprietary in nature and may fall within the parameters of the Intellectual Property Exemption and/or some other applicable exemption from disclosure under the Public Records Law, the following policy and procedures shall apply:

1. At the time of the Submitting Party's initial submission of documents to MLSC, the Submitting Party's must provide a cover letter, addressed to MLSC's Board of Directors and General Counsel indicating that it is submitting documents which it believes are exempt from public disclosure, including a description of the specific exemption(s) that the Submitting Party contends is/are applicable to the submitted materials, a precise description of the type and magnitude of harm that would result in the event of the documents' disclosure, and a specific start date and end date within which the claimed exemption applies. If different exemptions, harms and/or dates apply to different documents, it is the Submitting Party's responsibility and obligation to provide detailed explanations for each such document.
2. At the time of the Submitting Party's initial submission of documents to MLSC, the Submitting Party must also clearly and unambiguously identify each and every such document that it contends is subject to an exemption from public disclosure as "Sensitive Information." It is the Submitting Party's responsibility and obligation to ensure that all such documents are sufficiently identified as "Sensitive Information," and Submitting Party's designation must be placed in a prominent location on the face of each and every document that it contends is exempt from disclosure under the Public Records Act.

Information submitted to MLSC in any form other than a hard copy document will not be subject to the procedures set forth in this Attachment. For example, information submitted by e-mail, facsimile and/or verbally will not be subject to these procedures and may be disclosed at any time without notice to the Submitting Party.

3. By submitting a grant application, request for response, or any other act that involves the submission of information to MLSC, the Submitting Party certifies, acknowledges and agrees that MLSC's receipt of documents designated by Submitting Party as "Sensitive Information" does not represent a finding by MLSC that such documents fall within the Intellectual Property Exemption or any other exemption

to the Public Records Act, or that the documents are otherwise exempt from disclosure under the Public Records Act, and (b) MLSC is not liable under any circumstances for the subsequent disclosure of any information submitted to MLSC by the Submitting Party, whether or not such documents are designated as "Sensitive Information" or MLSC was negligent in disclosing such documents.

4. In the event that MLSC receives an inquiry or request for information submitted by a Submitting Party, MLSC shall produce all responsive information not designated as Sensitive Information as provided herein without notice to the Submitting Party. In the event that the inquiry or request includes documents that the Submitting Party has previously designated as "Sensitive Information" in strict accordance with this Policy, the inquiring party shall be notified in writing that one or more of the documents it has requested has been designated by the Submitting Party as "Sensitive Information", and, if not already submitted, that a formal, written public records request must be submitted by the requesting party to MLSC's Board of Directors and General Counsel for a determination of whether the subject documents are exempt from disclosure.
5. Upon the Board's and General Counsel's receipt of a formal, written public records request for information that encompass documents previously designated by Submitting Party as "Sensitive Information", the Submitting Party shall be notified in writing of MLSC's receipt of the public records request, and MLSC may, but shall not be required to provide Submitting Party an opportunity to present MLSC with information and/or legal arguments concerning the applicability of the Intellectual Property Exemption or some other exemption to the subject documents.

The Board and or General Counsel are the sole authorities within MLSC for making determinations on the applicability and/or assertion of an exemption to the Public Records Act. No employee of MLSC (other than the General Counsel, if one is then appointed and serving as such) has any authority to address issues concerning the status of "Sensitive Information" or to bind MLSC in any manner concerning MLSC's treatment and disclosure of such documents.

Furthermore, the potential applicability of an exemption to the disclosure of documents designated by the Submitting Party as "Sensitive Information" shall not require MLSC to assert such an exemption. MLSC's Board and legal counsel retain the sole discretion and authority to assert an exemption.

6. MLSC shall provide the requesting party and Submitting Party with written notice of its determination that the subject documents are either exempt or not exempt from disclosure.
7. In the event the requesting party pursues a review of MLSC's determination that the documents are exempt from disclosure and the Supervisor of Public Records concludes that the subject documents are not exempt from disclosure and orders MLSC to disclose such documents to the requester, MLSC shall notify the Submitting Party in writing prior to the disclosure of any such documents.
8. In the event that MLSC determines that the subject documents are not exempt from disclosure or the Board and General Counsel determines that, under the circumstances and in their discretion, MLSC shall not assert an exemption, MLSC shall notify the Submitting Party in writing prior to the disclosure of any such documents.

The Submitting Party's submission of documentation to MLSC shall require a signed certification that Submitting Party acknowledges, understands and agrees with the applicability of the foregoing procedures to any documents submitted to MLSC by Submitting Party at any time, including but not limited to the acknowledgements set forth herein, and that Submitting Party shall be bound by these procedures.

All documents submitted by Submitting Party, whether designated as "Sensitive Information" or not, are not returnable to Submitting Party.

The MLSC reserves the right to change this policy at any time.