

Equity Investment Agreement

THIS EQUITY INVESTMENT AGREEMENT (the "Agreement") is dated as of DATE (the "Effective Date") by and between _____, a Delaware business corporation, having an address at _____ ("Company") and Cornell University, a non-profit New York corporation, having an address at Day Hall, Ithaca NY, 14850 ("Cornell").

WHEREAS, Company is developing technologies that it represents are consistent with the educational, research and economic development objectives of Cornell; and

WHEREAS, Company would benefit from a relationship with Cornell and its Kevin M. McGovern Family Center for Venture Development in the Life Sciences, (the "McGovern Center"), whereby the McGovern Center would provide Company with assistance in accessing elements of the McGovern Center's network of public and private commercialization resources (the "McGovern Center Network"); and

WHEREAS, the McGovern Center is willing to provide such assistance, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, the parties covenant and agree as follows:

Article 1. Equity Partner Program

1.1 As a part of its equity partnership with Company, the McGovern Center agrees, from time to time upon the request of Company, to:

(i) Provide Company with timely information that the McGovern Center reasonably believes to be of benefit to Company including information related to capital formation, license of office and/or laboratory space on or near the main campus of Cornell, and various forms of public and private commercial and financial assistance that may be available to Company;

(ii) Provide support to Company in connection with its efforts to raise capital and form strategic alliances consistent with Company's stated mission;

(iii) Serve as a liaison between Company and researchers and clinicians at Cornell; and

(iv) Feature Company as one of Cornell's "Equity Partners" in the McGovern Center-related publicity, and permit Company to identify Cornell as an "Equity Partner" in Company promotional or company background material.

Article 2. Consideration

2.1 In consideration for Cornell's willingness to enter into this Agreement and the services to be rendered to Company hereunder:

(i) Within forty-five (45) days of the execution and delivery of this Agreement Company agrees to issue to Cornell shares of Company voting common stock ("Company Shares"), such number of Company Shares being equivalent to ___% of Company's currently issued and outstanding voting common stock on a fully converted, fully diluted basis.

(ii) Through _____, Company shall, concurrently with any issuance of new Company Shares for the purpose of raising working capital for Company operations, issue to Cornell such number of additional Company Shares as would be necessary to maintain Cornell's percentage share of Company's currently issued and outstanding equity on a fully converted, fully diluted basis. The obligation of Company to issue additional Company Shares to Cornell pursuant to this Section shall: (a) not be required as a result of the issuance of new Company Shares for the purposes of Company acquisitions of assets or businesses or other similar purposes, and (b) terminate upon either (i) a merger between Company and a third party in which Company is not the surviving entity; or (ii) any acquisition of all of Company's assets and liabilities.

(iii) In the event that Company's aggregate expenditures on research and development dedicated to enhancing or developing Cornell technologies exceeds 50% of Company's total research and development expenditures during the period 20__ through 20__, then Company shall, by _____, issue to Cornell additional Company Shares in the same quantity as the original Company Shares issued to Cornell and not increased to reflect additional Company Shares issued for the purposes of raising capital, acquisitions or other similar purposes, except that additional Company Shares shall be issued in an amount equal to the Company Shares issued in accordance with Section 2.1 (ii).

2.2 Within the time periods provided, Company shall deliver, or cause to be delivered, to Cornell a certificate or certificates, registered in Cornell's name, representing all of the Company Shares then required to be issued to Cornell.

Article 3. Confidentiality

3.1 Each party acknowledges that the other party, its subsidiaries and affiliated companies are the owners of valuable trade secrets and other confidential information. Each party receiving (a "Party Recipient") information hereunder

concerning the business, products, equipment, systems, techniques, and practices that is identified in writing as confidential ("Confidential Information") of the disclosing party (the "Disclosing Party"), for a period of five years commencing upon first receipt of the particular Confidential Information (the "Confidentiality Period") shall retain the same in confidence and shall only use such Confidential Information for purposes of this Agreement, or as otherwise agreed to in writing by both parties, and shall not disclose any such Confidential Information to any entity; provided, that "Confidential Information" shall not include any information that: (a) was already known to the Party Recipient prior to the date of this Agreement as documented in Party Recipient's records made prior to such dates; (b) was publicly available in its entirety as of the date of the disclosure or thereafter becomes publicly available other than through breach of this Agreement; (c) is made known to the Party Recipient by a third party who had not obtained the information directly or indirectly from the Disclosing Party and does not obligate the Party Recipient to hold the same in confidence; or (d) is mutually agreed in writing by the parties to be non-confidential.

3.2 During the relevant Confidentiality Period, each Party Recipient shall use its best efforts to safeguard the Confidential Information of the Disclosing Party, using at least as great a degree of care as it uses to safeguard its own most Confidential Information.

3.3 Both parties acknowledge that the disclosure or use by a Party Recipient of any aspect of the Confidential Information of the Disclosing Party (other than as expressly permitted by this Agreement) shall immediately give rise to continuing irreparable injury to the Disclosing Party inadequately compensable in damages at law and without prejudice to any other remedy available to the Disclosing Party, and shall entitle the Disclosing Party to seek injunctive relief.

3.4 In the event that this Agreement is terminated, each Party Recipient shall cease to use the Confidential Information of the other party, and will return all originals and copies or extracts, summaries and the like made therefrom to the Disclosing Party.

Article 4. Term and Termination

4.1 The term of this Agreement shall commence upon the Effective Date and shall continue for a period of five years, unless sooner terminated hereunder.

4.2 Either party may terminate this Agreement by prior written notice to the other party. In the event of such termination, neither party shall be liable to the other party for any failure to perform or for any additional payment hereunder, and each party shall bear its own costs and expenses incurred prior to such termination.

4.3 In the event of Termination, all obligations of either party to the other under this Agreement shall cease, other than (a) the obligation of Company to issue Cornell all Shares required to be issued through the effective date of termination under Section 2.2, (b) the obligations under Article 3, and (c) the indemnification obligations of the parties set forth in Article 7. In the event that Cornell terminates this Agreement prior to _____ then Cornell shall be obligated to surrender to Company the number of Company Shares issued to Cornell pursuant to Sections 2.1 (i) and 2.1 (ii) in the same proportion that the number of days that the Agreement was terminated by Cornell prior to _____ bears to the number of days in the period from the date of this Agreement to _____. This obligation to surrender Shares to Company shall not be effective in the event Cornell terminates this Agreement as a result of Company's breach of any terms of this Agreement.

Article 5. Disclaimer of Warranties; Acknowledgements

Cornell MAKES NO REPRESENTATIONS, EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND ASSUMES NO RESPONSIBILITIES WHATSOEVER WITH RESPECT TO THE SERVICES PROVIDED UNDER THIS AGREEMENT. Company hereby acknowledges and agrees that (i) it is a sophisticated business enterprise that has entered into this Agreement with Cornell for the limited purposes set forth in this agreement and that the rights and obligations of the parties hereto are contractual in nature; and (ii) Cornell has not made any warranties or guarantees of any nature with respect to the satisfactory conclusion of any services to be provided to Company by it hereunder or as to the economic, financial or other results which may be obtained or experienced by Company as a result thereof. Each of Company and Cornell disclaim any intention to impose fiduciary duties or obligations on the other by virtue of the engagement contemplated by this agreement, and no other person or entity shall have any rights or obligations hereunder except as expressly provided herein. Company further acknowledges that any role of Cornell and the McGovern Center in connection with any capital raising transaction contemplated or undertaken by Company during the term hereof shall be consultative in nature and that Company shall not request Cornell or the McGovern Center to, nor shall either of them, take any action or perform any services such that they would be deemed to be a "broker" under any relevant federal or state securities laws or regulations.

Article 6. Securities Law Compliance

6.1 In connection with its receipt of Company Shares pursuant to Article 2, Cornell represents and warrants that:

(i) Cornell is acquiring the Company Shares for its own account, for investment, and not with a view to any resale or distribution thereof in any transaction which would be in violation of federal or state securities laws or which would require the issuance of such Company Shares to be registered under the Securities Act of 1933, as amended (the "Securities Act"), subject, nevertheless, to the disposition of Cornell's property being at all times within its control. Company agrees to cooperate with Cornell in effecting such transfers in accordance with terms and conditions intended to ensure compliance with applicable exemptions from registration under the Securities Act, which will, among other things, require the transferees to make representations and warranties and acknowledge restrictions to Company similar to those made and acknowledged by Cornell to Company in this Section 6.1.

(ii) Cornell understands and agrees that because the Company Shares to be received by it pursuant to this Agreement have not been registered under the Securities Act, Cornell cannot dispose of any or all of its Company Shares until such Company Shares are subsequently registered under the Securities Act or an exemption from such registration is available (e.g., Rule 144 under the Securities Act). Cornell understands and agrees that each certificate representing such Company Shares will bear the following legend or one substantially similar thereto:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY APPLICABLE STATE OR FOREIGN SECURITIES LAWS. THESE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO DISTRIBUTION OR RESALE, AND MAY NOT BE SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATING TO SUCH SECURITIES UNDER THE ACT AND ANY APPLICABLE STATE AND FOREIGN SECURITIES LAWS OR THE AVAILABILITY OF AN EXEMPTION FROM SUCH REGISTRATION REQUIREMENTS.

(iii) Cornell is sufficiently knowledgeable and experienced in financial matters so as to be able to evaluate the risks and merits of its investment in Company Shares and is able to bear the economic risk of loss of its entire investment in Company Shares. Cornell is an "accredited investor" as such term is defined in Rule 501 (a) promulgated under the Securities Act.

(iv) Cornell has been advised that the Company Shares to be received by it pursuant to the transactions contemplated by this Agreement have not been registered under the Securities Act or under the "blue sky" laws of any jurisdiction and that Company, in issuing such Company Shares to Cornell pursuant to this Agreement, is relying upon, among other things, the representations and warranties of Cornell contained in this Section 6.1.

Article 7. Indemnification

7.1 Company shall, at all times during the term of this Agreement and thereafter, indemnify, defend and hold harmless Cornell and its affiliates, and the respective trustees, officers, employees, and agents of Cornell and its affiliates, against all claims and expenses, including legal expenses and reasonable attorneys fees, arising out of the death of or injury to any person or persons resulting from the production, manufacture, sale, use, lease, consumption or advertisement of products incorporating or making use of the technology, if any, assigned, licensed or otherwise provided or made available to Company under this Agreement, unless such claim or expense is due to the sole and direct negligence of Cornell. Further, Company agrees to indemnify, defend and hold harmless Cornell and its trustees, officers, employees, and agents from and against any and all losses, claims, damages, liabilities or costs, as and when incurred, to which any such person may become subject or which are asserted against any of them, directly or indirectly, in any way related to Cornell's status as a shareholder of Company or any services provided by Cornell pursuant to this Agreement; provided, however, that Company shall not be liable under the foregoing indemnity agreement in respect of any liability to the extent that such liability is found in a final judgment by a court of competent jurisdiction, not subject to further appeal, to have resulted primarily from Cornell's gross negligence or willful misconduct in the performance of its duties under this Agreement. Cornell at all times reserves the right to select and retain its own counsel, at its own expense, to represent Cornell's interests in any such action.

7.2 Neither party shall be liable to the other party for any indirect, special, consequential or punitive damages whatsoever, whether grounded in tort (including negligence), strict liability, contract or otherwise.

7.3 Company shall at all times comply in all material respects, through insurance or self-insurance, with all statutory workers' compensation and employers' liability requirements covering any and all employees with respect to activities performed under this Agreement.

7.4 Company warrants that it now maintains and will continue to maintain liability insurance coverage that, based on industry experience, it believes to be appropriate to the risk involved in its activities and operations.

Article 8. Additional Representations, Warranties and Covenants

8.1 Cornell shall have the right to participate in any sale of Company Shares in the same proportion, and under the same terms, as apply to the sale of Shares by any other owner of Company Shares.

8.2 Company represents, warrants and covenants that it shall have all requisite authority to issue Cornell the Company Shares as provided herein, free and

clear of all liens, encumbrances and restrictions. Company represents that it has provided Cornell with full and complete copies of any shareholder agreements or other agreements among the shareholders of Company that in any way relate to the ownership of Company Shares.

8.3 Company shall provide Cornell copies of its annual financial statements and shall permit representatives of Cornell to examine and make abstracts from an of Company's books and records during reasonable business hours on reasonable advance written notice and shall cooperate and assist Cornell in the valuation of Company Shares owned by Cornell.

8.4 Cornell shall at any time, in its sole discretion, have the right to withdraw as a shareholder of Company by assigning to Company, for no consideration, all Shares then held by Cornell and Company shall accept this assignment and withdrawal.

Article 9. Use of Names

Except as expressly set forth herein, neither party may identify the other party (or any affiliate thereof) in any promotional advertising or other promotional materials to be disseminated to the public or any portion thereof or to use the name of any staff member, employee, or student or any trademark, service mark, trade name, or symbol or logo, or that is associated with it, without such other party's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

Article 10. Notices

Any notice required to be given pursuant to the provisions of this Agreement shall be in writing and shall be deemed to have been given at the time when actually received as a consequence of any effective method of delivery at the address below or at such changed address as the party shall have specified by written notice, provided that any notice of change of address shall be effective only upon actual receipt.

If from Company to Cornell:

Lou Walcer
Director
The Kevin M. McGovern Family Center for
Venture Development in the Life Sciences.
Cornell University
Weill Hall Room 405
526 Campus Road

Ithaca, NY 14850

Communications relating to intellectual property to:

Alan Paau PhD
Executive Director, Cornell Center for Technology
Enterprise and Commercialization,
395 Pine Tree Road
Suite 310
Ithaca, NY 14850
607/254-2378

Permissions pursuant to Article 9:

John Carberry
Director
Cornell University Press Relations Office
607-255-6074
pressoffice@cornell.edu
After hours: 607-216-7724

A copy of all correspondence related to this Agreement should be forwarded to:

The Office of University Counsel
300 CCC Building
Garden Avenue
Ithaca, NY 14853
Phone Number: 607-255-5124
Fax Number: 607-255-2794

If from Cornell to Company:

With a copy to:

Article 11. Eligibility to Participate in Federal Grant Programs

By signing this Agreement, Company hereby represents to the best of its knowledge the following: (a) that it has not been debarred, excluded, suspended or otherwise determined to be ineligible to participate in any federal grant programs (collectively, "Debarment" 'Or "Debarred", as applicable); and (b) that it shall not knowingly employ or contract with, with or without compensation, any individual or entity (singularly or collectively, "Agent") listed by a federal agency as Debarred. In the event that Company and/or Agent either (i) becomes Debarred or (li) receives notice of action or threat of action with respect to its Debarment during the term of this Agreement, Company agrees to notify Cornell immediately. Company agrees to timely notify Cornell in the event that Company has identified or reasonably suspects potential violations associated with its performance under this Section, and the nature of such potential violation, to enable Cornell to take prompt corrective action. Further, in the event that Company or Agent becomes Debarred as set forth above and such Debarment shall have become final and non-appealable, this Agreement relative to such entity or individual's participation hereunder may be terminated upon written notice.

Article 12. Alternative Dispute Resolution

12.1 The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between officials of each party who have authority to settle the controversy.

12.2 If the matter has not been resolved by negotiation within thirty (30) days, the parties shall attempt in good faith to settle the dispute by mediation in Ithaca, New York.

12.3 If the matter has not been resolved by mediation within ninety (90) days of the initiation of such procedure, or if either party will not participate in mediation, then the parties may pursue all legal and equitable rights. Venue for any such proceeding shall be in the state or federal courts serving Tompkins County, New York.

Article 13. Choice of Law

This Agreement shall be construed and interpreted in accordance with the laws of the State of New York, without regard to that state's provisions regarding the conflict of laws.

Article 14. Severability

If any of the provisions of this Agreement are void or unenforceable, the remaining provisions shall nevertheless be effective, the intent being to effectuate this Agreement to the fullest extent possible.

[signature page follows]

IN WITNESS WHEREOF, authorized representatives of the parties hereto have executed this Equity Investment Agreement as of the Effective Date.

For Cornell University:

By: _____

Name:

Title:

For Company:

By: _____

Name:

Title: