Institutional Services Agreement

**Johns Hopkins University**

This agreement (the “Agreement”) is entered into as of this \_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_\_ (the “Effective Date”), by and between Johns Hopkins University, on behalf of its School of Medicine, having an Office of Research Administration located at 733 North Broadway, Suite 117 Baltimore, Maryland, 21205 (“JHU”), and \_\_\_\_\_\_\_\_\_, a corporation organized under the laws of the State of\_\_\_\_\_\_\_\_\_, located at \_\_\_\_\_\_\_\_\_ (“Sponsor”).

WHEREAS, Sponsor wishes that JHU perform services that are of mutual interest and benefit to the JHU and Sponsor;

WHEREAS, \_\_\_\_\_\_\_\_\_\_\_\_\_ in JHU’s [Department/Division] shall be JHU’s principal investigator in performing the services for Sponsor (“Investigator”); and

WHEREAS, the services will further JHU’s instructional, scholarship, and research objectives in a manner consistent with its status as a non-profit, tax-exempt, educational institution.

NOW, THEREFORE, in consideration of the following mutual promises, covenants, and conditions and any sums to be paid, the parties hereto agree as follows:

**1. STATEMENT OF WORK**

(a) JHU agrees to use its reasonable efforts to perform the services (the “Services”), as described in the Statement of Work (attached as Exhibit A). JHU shall perform the Services in accordance with academic standards and all applicable laws and regulations.

(b) Sponsor acknowledges that JHU and/or its researchers may perform similar services not financially supported by Sponsor or subject to this Agreement. Nothing in this Agreement shall be construed to limit the freedom of JHU and/or its researchers who are participants in this Agreement, whether paid under this Agreement or not, from performing similar services with parties other than the Sponsor, and Sponsor shall have no rights via this Agreement to the results of such similar services.

**2. INVESTIGATOR**

This Services will be performed under the direction of the Investigator identified above. In the event the Investigator should become unavailable to serve in that role, or shall no longer be employed by JHU, JHU shall have the right to designate a replacement principal investigator, subject to Sponsor’s reasonable approval. If the parties are unable to identify a mutually acceptable replacement principal investigator within sixty (60) days of notification to Sponsor by JHU of a proposed replacement, then either party may terminate this Agreement in accordance with the termination provision of this Agreement.

**3. PAYMENT**

(a) This is a fixed price agreement. In consideration of JHU performing the Services hereunder, Sponsor shall pay JHU in the amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Payments shall be made according to the following schedule:

*{To be determined}*

(b) Payments shall be made as follows:

 Payable to: **The Johns Hopkins University**

 Tax I.D. Number: **52-0595110**

 **Payments by check shall be sent to:**

**Johns Hopkins University Central Lockbox**

**c/o Bank of America**

**12529 Collections Center Drive**

**Chicago, IL 60693**

**All electronic fund transfers should be sent to:**

**c/o Bank of America**

**100 S. Charles Street**

**Baltimore, Maryland 21201**

**Transit/routing/ABA number: 052001633**

**Account number: 003936830516**

**All payments shall include the following reference information:**

**4. EQUIPMENT AND PROPERTY**

Unless otherwise explicitly provided, title to and ownership of all equipment, supplies, and property purchased or manufactured by JHU under this Agreement will be in and remain with JHU, even after completion or termination of the Agreement.

**5. PROPRIETARY INFORMATION AND CONFIDENTIALITY**

(a) “Confidential Information” means all non-public, confidential, and/or proprietary information that is marked as “Confidential Information” as described below and which is disclosed by one party to the other, including but not limited to software, inventions (whether patentable or not), algorithms, diagrams, drawings, processes, research, product or strategic plans or collaborations or partnerships, financial information, or business models. Confidential Information, if in tangible or readable form, shall be marked as such at the time of disclosure and if disclosed orally, shall be reduced to writing, marked confidential, and addressed to the other party within ten (10) days after disclosure.

(b) Both JHU and Sponsor shall have the right to refuse to accept any Confidential Information proffered to it by the other. If necessary, the parties will exchange Confidential Information only under the provisions set forth herein. The party who receives Confidential Information (the “Receiving Party”) shall (i) use the same degree of care it affords its own confidential information of a similar nature, but not less than a reasonable degree of care; (ii) use the Confidential Information only for the performance of the Services; and (iii) restrict disclosure of the Confidential Information to employees whose duties justify the need to know the Confidential Information in furtherance of the performance of the Services and who are advised as to the confidential nature of the information and required to comply with the provisions of this Agreement. The Receiving Party shall not provide any third parties with access to the Confidential Information unless such third party has agreed to be bound by confidentiality and non-disclosure obligations in a form of an agreement reasonably acceptable to the party disclosing the Confidential Information (the “Disclosing Party”).

(c) Confidential Information shall not include any information disclosed that the Receiving Party can demonstrate (i) previously was in its possession, without violation of any obligation of confidentiality; (ii) was received from a third party without violation of any obligation of confidentiality; (iii) was publicly known and made generally available prior to such disclosure; (iv) becomes publicly known and made generally available, through no action or inaction of the Receiving Party, after such disclosure; or (v) was independently developed without use of any Confidential Information by employees or consultants of the Receiving Party.

(d) If the Receiving Party is required to disclose Confidential Information by order of a court of competent jurisdiction, administrative agency or governmental body, or by subpoena, summons, or other legal process, the Receiving Party shall provide the Disclosing Party with prompt written notice of such required disclosure so that the Disclosing Party may seek a protective order or take other appropriate action, cooperate reasonably with Disclosing Party in connection with Disclosing Party’s efforts to seek such relief, and thereafter to disclose only the minimum information required to be disclosed in order to comply.

(e) Upon termination of this Agreement or the Disclosing Party’s request, Confidential Information shall be promptly returned to the Disclosing Party or destroyed, with such destruction confirmed in writing. The Receiving Party may retain one archival copy of such Confidential Information, for the purpose of fulfilling its obligations under this Agreement.

(f) The obligations of confidentiality under this Section shall continue for a period of three (3) years following conclusion or early termination of this Agreement.

**6. PUBLICATION**

Sponsor agrees that the results of the Services that are of general scientific interest, and which do not disclose Sponsor’s Confidential Information may be published by JHU. Publications will be limited to new scientific information regarding the JHU Services and JHU shall not disclose Sponsor Confidential Information of Sponsor, including the nature or composition of the materials provided by Sponsor. JHU agrees to submit any proposed publication to Sponsor for review prior to publication. Within thirty (30) days of its receipt, Sponsor shall advise JHU in writing of any patentable information of Sponsor contained therein, and any Sponsor Confidential Information, and may formally request JHU to delay disclosure of such information. JHU agrees to refrain from publishing any such information categorized by Sponsor as Confidential Information or patentable for a period not to exceed sixty (60) days from the date of such written request, to enable Sponsor to appropriately coordinate with JHU to file for the protection of any intellectual property interests. JHU further agrees to delete Sponsor Confidential Information, defined in this agreement from any such publications. JHU shall have no other legal obligation to delay publication or to protect potential intellectual property interests.

**7. INTELLECTUAL PROPERTY RIGHTS**

(a) Nothing contained herein shall affect the pre-existing rights of either party in intellectual property developed prior to the Effective Date of this Agreement (“Background IP”). Sponsor shall not acquire any rights in JHU Background IP utilized by JHU in the performance of the Services.

(b) All materials provided by Sponsor to JHU for the Services (“Sponsor Materials”) shall remain the property of Sponsor, and the transfer of the Sponsor Materials shall constitute a non-exclusive license from Sponsor to JHU to use the Sponsor Materials, and any intellectual property rights embodied therein, for the purpose of performing the Services. Sponsor shall own the agreed upon deliverables, as expressly indicated in the Statement of Work, produced as a result of JHU’s performance of the Services (the “Service Deliverables”). JHU shall retain all rights in the methods and mechanisms by which it performs the Services.

(c) With the exception of the Service Deliverables and Sponsor Materials, the parties will retain title to any patent or other intellectual property rights in inventions or discoveries made solely by their respective employees in the performance of the Services.

**8. TERM AND TERMINATION**

(a) Unless earlier terminated in accordance with subsection (b) of this Section, the term

of this agreement shall commence on the Effective Date and shall terminate on \_\_\_\_\_\_\_\_\_.

(b) This Agreement may be terminated if any of the following events occur: (i) for convenience by either party upon sixty (60) days written notice to the other party; (ii) either party materially breaches this Agreement, and the non-breaching party provides the breaching party with thirty (30) days advance written notice of termination and such breach is not remedied within such thirty (30) day period; (iii) Sponsor files for creditor protection under any section of the U.S. Bankruptcy Code; and/or (iv) a bankruptcy trustee or receiver is appointed for Sponsor. Upon written notice, JHU shall proceed in an orderly fashion to limit or terminate any outstanding commitments and to conclude the Services. All costs incurred by JHU associated with termination shall be allowable including, without limitation, all non-cancelable costs or commitments incurred or obligated and work performed prior to the effective date of termination, which shall include all appointment of research staff prior to the effective date of termination.

**9. INDEMNIFICATION**

Sponsor shall indemnify, defend, and hold harmless JHU, its trustees, officers, employees, students, agents, and representatives (collectively, the “JHU Indemnitees”) from and against any and all losses, liability, cost, and expenses, including attorney’s fees and costs, awards, judgments, damages, fines, penalties, claims, and causes of action (collectively, “Claims”) arising out of or related to the performance of Sponsor’s obligations under this Agreement, including Claims for (i) personal injury, including death, and damage to property; (ii) the breach by Sponsor of any term, representation, warranty, or covenant under this Agreement; or (iii) any use by Sponsor of any intellectual property generated in the performance of the Services including use of the Service Deliverables. JHU shall not be liable to Sponsor, its officers, employees, agents, representatives, contractors, successors, assigns, or anyone acting on any of their behalf for injuries or losses arising out of the use by the Sponsor of the Service Deliverables.

**10. NOTICES**

With the exception of funds paid by Sponsor pursuant to Section 3 hereof, all notices required or permitted to be given under this Agreement shall be in writing and shall be sent by certified or registered mail, postage prepaid, or by overnight courier, with proof of delivery by receipt, to the following address (or as either party shall designate by written notice to the other party):

If to Sponsor:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 If to JHU:

 original to: Thomas F. Burns, JD, MBA

 Assistant Dean for Research Affairs

 Johns Hopkins University School of Medicine

 Office of Research Administration

 733 North Broadway, Suite 117

 Baltimore, Maryland 21205

 copy to: Investigator

**11. INDEPENDENT CONTRACTORS**

JHU and Sponsor shall each be and remain an independent contractor with respect to all rights and obligations arising under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a relationship of employment, principal and agent, partnership, co- or joint employer, or joint venture. Sponsor shall not permit any of its officers, directors, agents, employees, representatives, contractors, successors, assigns, or anyone acting on their behalf to represent or hold out itself or themselves as employees, agents, or representatives of JHU or as authorized to make any commitment to incur any obligation on behalf of JHU.

**12. USE OF OTHER PARTIES’ NAMES**

Sponsor shall not (a) issue a press release or make any other public statement that references this Agreement or discloses the results of the Services; or (b) use the names, logos, or trademarks (or derivatives thereof) of JHU, or its staff, contractors, or sub-contractors, for publicity or advertising purposes, except with the prior written consent of JHU, which consent may be withheld in JHU’s sole discretion. All requests for JHU approval shall be directed to the JHU Office of Communications. JHU shall not use the names, logos, or trademarks of Sponsor, or its staff, contractors, or sub-contractors, for publicity or advertising purposes, except with the prior consent of Sponsor. Notwithstanding the foregoing, Sponsor acknowledges and agrees that JHU and its Investigator may disclose the existence of the funding support from Sponsor in any publication and as required by law.

**13. WARRANTY DISCLAIMERS**

JHU DISCLAIMS AND MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER, INCLUDING BUT NOT LIMITED TO WARRANTY OR FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, PATENTABILITY, OR THAT THE SPONSOR’S USE OF THE SERVICE DELIVERABLES OR ANY OTHER INTELLECTUAL PROPERTY PROVIDED HEREUNDER WILL BE FREE FROM INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS, OR OTHER RIGHTS OF THIRD PARTIES.

**14. EXPORT CONTROLS**

Both parties shall comply with United States laws and regulations that control the export of services, information, goods and funds, including the *Export Administration Regulations* (Department of Commerce), the *International Traffic in Arms Regulations* (Department of State), and the sanctions programs embodied in regulations administered by the Department of the Treasury’s Office of Foreign Assets Control (OFAC). JHU anticipates that the work it will perform under this Agreement shall constitute fundamental research, as such activity is defined under the export control laws and regulations. As an institution of higher learning that educates and employs individuals from numerous countries, JHU does not wish to take receipt of export controlled items, except as may be knowingly and expressly agreed to in a writing signed by an authorized representative of JHU, and for which JHU has made specific security arrangements. Sponsor agrees that it shall not provide or make accessible to JHU any export controlled items (including, without limitation, materials, equipment, or technology) without first informing JHU of the export-controlled nature of the items and obtaining from JHU’s Export Control & Facility Security Office prior written consent to accept such items, as well as any specific instructions regarding the mechanism pursuant to which such items should be released to JHU. JHU may decide, in its sole discretion, that it is not willing accept such items. Sponsor further understands and accepts that, if fulfillment of any of JHU’s duties under this Agreement requires JHU to enter into transactions with parties in, or ordinarily resident in, countries associated with OFAC sanctions programs, JHU’s fulfillment of such duties will be conditioned upon its self-determined ability to comply with the applicable sanctions program(s).

**15. SEVERABILITY**

If any provision or a portion of any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not be affected or impaired in any way.

 **16. SURVIVABILITY**

The terms of this Agreement which by their nature and for any reason are intended to survive and extend beyond the termination, cancellation, or expiration of this Agreement, shall remain in effect and be binding upon the parties beyond such time. Such terms shall include without limitation those that confer rights based on prior breaches or performance.

**17. MODIFICATIONS**

No amendment, modification, or addition to this Agreement will be binding upon the parties hereto unless reduced to writing and signed by an authorized representative of each party.

**18. GOVERNING LAW**

The laws of the State of Maryland, without giving effect to its choice of law provisions, shall govern all matters arising out of or relating to this Agreement, including, without limitation, its interpretation, construction, performance, and enforcement. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be brought in the Circuit Court for Baltimore City or in the United States District Court for the District of Maryland. Each of the parties waives, to the fullest extent permitted by law, any objection which it may now or later have to the exclusive jurisdiction of or the laying of venue in the Circuit Court for Baltimore City, Maryland or the United States District Court for the District of Maryland, including any objections based upon inconvenient forum. The parties agree that a final judgment in any such suit, action, or proceeding may be enforced in other jurisdictions as provided by law.

**19. FORCE MAJEURE**

Neither party will be responsible for or liable to the other party for non-performance or delay in performance of any terms or conditions of this Agreement due to acts or occurrences beyond the reasonable control of the nonperforming or delayed party. Such causes include, but are not limited to, acts of God, acts of government, embargoes, terrorism, wars, riots, strikes or other labor disputes, shortages of labor or materials, hurricanes, fires, floods, or any other circumstances of like character. The party whose performance is delayed or prevented shall promptly provide to the other party written notice of the existence of and the reason for such non-performance or delay, and shall work diligently to mitigate its effects and make best efforts to resume performance as soon as practicable.

**20. ENTIRE AGREEMENT**

This Agreement, including any exhibits, attachments, and documents referenced herein, which are incorporated into this Agreement, constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties’ agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. In entering into this Agreement, neither party has relied upon any statement, representation, warranty, or agreement of the other party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement other than those expressly stated in this Agreement.

**21. HEADINGS**

The headings in this Agreement are for the convenience of reference only and are not substantive parts of this Agreement nor shall they affect its interpretation.

**22**. **ASSIGNMENT AND DELEGATION**

Sponsor may not assign this Agreement nor assign any of its rights under this Agreement, except with the prior written consent of JHU. Sponsor may not delegate any part of its performance under this Agreement without the prior written consent of JHU, which may be withheld in its sole discretion. Any purported assignment of rights or delegation of performance in violation of this Section 23 is void.

**23. Binding Agreement on Successors**

This Agreement shall be binding upon each party’s successors and assigns.

**24. WAIVER**

Failure on the part of any party, in any or more than one instance, to insist upon the performance of any of the terms, covenants, or conditions of this Agreement or to exercise any right or privilege contained within this Agreement, or the waiver by any party of any breach of any of the terms, covenants, or conditions of this Agreement shall not be construed as thereafter waiving any such terms, covenants, conditions, rights, or privileges, but the same shall continue and remain in full force and effect, as if no such forbearance of waiver had occurred.

**25. COUNTERPARTS**

This Agreement may be executed in multiple counterparts, and by either party on separate counterpart, including by facsimile or PDF delivery, each of which is deemed an original and all of which constitute one and the same agreement.

In Witness Whereof, the parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**JOHNS HOPKINS UNIVERSITY** **SPONSOR**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Read and Agreed to abide by the terms contained herein, but not as a party hereto:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Investigator

**EXHIBIT A**

**STATEMENT OF WORK FOR SERVICES**