# PUBLIC HEALTH SERVICE

## EXTRAMURAL
## CLINICAL TRIAL AGREEMENT

This Clinical Trial Agreement, hereinafter referred to as the "CTA," consists of this Cover Page, an attached Agreement, a Signature Page and various Appendices referenced in the Agreement. This Cover Page serves to identify the Parties to this CTA:

(1) The **National Institute of Diabetes and Digestive and Kidney Diseases of the National Institutes of Health, (NIDDK)**, hereinafter referred to as "**NIDDK**", and

(2) ***[please insert Collaborator name and address]*** hereinafter referred to as "**Collaborator**".

**Background**

NIDDK recognizes the importance of industry in the development of the NIDDK's technologies into products that may benefit the public health. NIDDK thus wishes to foster collaboration with industry whenever feasible. Specifically, NIDDK shares with industry the important goal of defining the effect of a new drug or other agent in the diagnosis, prevention, and/or treatment of ***[please insert disease]***. NIDDK therefore recognizes and supports the need of a private sponsor to focus at the appropriate time on clinical trials that lead to appropriate applications before the US Food & Drug Administration. Industry, in turn, recognizes the NIDDK's mission to conduct research for the benefit of the public health, to disseminate the results of its research as widely and rapidly as feasible, and to preserve the spirit of free and open inquiry among clinical investigators.

Thus, the NIDDK considers it appropriate for the investigators funded by the NIDDK to conduct a clinical study that, in part, is supported by industry, provided that the study has scientific merit and is consistent with the overall goals of the funded investigators and the NIDDK.

Industry recognizes that participation in clinical studies developed by NIDDK funded investigators can lead to further insights into the effect of a new drug or other agent in the diagnosis, prevention and treatment of disease. Industry also recognizes the necessity of preserving the spirit of free and open inquiry among clinical investigators.

Collaborator is considered to be exempt from 45 CFR Part 46 and consequently Collaborator does not need an Assurance number from the Office of Human Research Protections, at the NIH for the following reasons:

1. Collaborator employees or agents neither interact or intervene with living individuals nor obtain, receive, or possess Identifiable Private Information about living individuals.

NIDDK, through its Project Scientists, ***[please insert NIDDK PI name],*** wishes to conduct a clinical trial using ***[please insert generic description of device(s)]*** supplied by Collaborator, upon terms and conditions set forth in this Agreement. The Parties agree to the following:

## AGREEMENT

The following statement serves as the basis for the conduct of a clinical study ("Study") jointly developed and conducted by ***[please insert name of Collaborator]*** and NIDDK, as defined below:

### 1. DEFINITIONS.

1.1 "**Affiliates**" means any corporation or other business entity controlled by, controlling or under common control with Collaborator. For this purpose, "control" means direct or indirect beneficial ownership of at least fifty (50) percent of the voting stock or at least fifty (50) percent interest in the income of such corporation or other business.

1.2 "**Confidential Information**" means confidential scientific, business, or other technical data of a party, disclosed, directly or indirectly by that party to the other party in writing and marked "proprietary" or "confidential" or orally (provided that within thirty (30) days after disclosure, a summary of the Confidential Information or data is provided marked "proprietary" or "confidential"). All such Confidential Information shall be owned solely by the providing Party. Confidential Information shall not include:

(a) data or information that is in the public domain or subsequently enters the public domain through no fault of the receiving Party; or

(b) data or information that is presently known or becomes known to the receiving Party from its own independent sources from a person having the legal right to disclose data; or

(c) data or information that is developed independently by individuals who have not had access to Confidential Information; or

(d) data or information that is required to be disclosed by law.

Regarding any particular subset of Confidential Information, if any one or more of the above provisions of this definition is met during the term of this Agreement, the relevant information shall no longer be considered Proprietary Information.

1.3 "**Contract**" means a Funding Agreement that is a research and development contract requiring the contractor to perform for the benefit of the Government, with an expectation of completion of the stated research goals and the delivery of a report, data, materials or other product. Generally, Government contracts are administered under the Federal Acquisition Regulations (FAR), codified at Title 48 Code of Federal Regulations, Chapter 1. A "**Contractor**" is the entity receiving Federal funds under an awarded Contract.

1.4 "**Cooperative Agreement**" means a Grant wherein the funding Federal agency intends to be substantially involved in carrying out the research program. Cooperative Agreements may be used where the Federal agency intends for its scientists to directly collaborate with the researchers of the funded institution on a joint research project. The Federal agency may then pay for the research of both its employees and those of the funded institution (see 45 C.F.R. Part 74).

1.5 "**Cooperative Group**" means a group composed of investigators receiving Federal funds under a Cooperative Agreement who join together to develop and implement common protocols. Participation in a Cooperative Group is predicated on compliance with the requirements of the

Department of Health and Human Services for clinical research, including the protection of human subjects.

1.6 "**Cooperative Research and Development Agreement**" or "**CRADA**" means an agreement entered into by NIH and a private party, pursuant to the Federal Technology Transfer Act, 15 U.S.C. § 3710a, as amended, and Executive Order 12591 of April 10, 1987. A CRADA is not a Funding Agreement. A CRADA is the only mechanism authorized by Congress through which a Federal agency may promise anyone present rights in future inventions of the agency. This Agreement does not represent a CRADA.

1.7 "**Devices**" means Collaborator's ***[PLEASE INSERT IDENTIFYING NAME OF DEVICE]*** for ***[PLEASE IDENTIFY THE FUNCTION OF THE DEVICE]***.

1.8 "**Extramural Investigator**" means an Investigator who is a not a government employee, whose research is funded at least in part by NIH under a Grant, Contract or Cooperative Agreement, and who personally assumes organizational and fiscal responsibility for the conduct of the research under the Grant, Contract, or Cooperative Agreement.

1.9 "**FDA**" means the Food and Drug Administration, an agency of the Department of Health & Human Services.

1.10 "**Funding Agreement**" means a Contract, Grant, or Cooperative Agreement entered into between a Federal agency and another party for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. Pertinent statutes include: 31 U.S.C. §§ 6303-6305; 35 U.S.C. §§ 200-212; and any and all implementing regulations thereof.

1.11 "**Government**" means the U.S. Government and any of its agencies.

1.12 "**Grant**" means a Funding Agreement that is an award of financial assistance that may be provided for support of basic research in a specific field of interest to the funding Federal agency. (See 45 C.F.R. Part 74, for grants from the U.S. Public Health Service.) While no specific product is anticipated, the funding agency may review the progress and direction of the funded research. A "**Grantee**" is the entity receiving Federal funds under an awarded Grant.

1.13 "**Human Subjects**" means individuals whose physiologic or behavioral characteristics and responses are the object of study in a research project. Under the federal regulations for the protection of human subjects, human subjects are defined as living individuals about whom an investigator conducting research obtains: (1) data through intervention or interaction with the individual; or (2) Identifiable Private Information.

1.14 **"Identifiable Private Information"** means patient-identifying data from medical records or attached to patient specimens, to be obtained prospectively or from stored medical records or specimens, that can be linked to individual human subjects, either directly or indirectly through codes. (See also 45 C.F.R. § 46.102(F))

1.15 "**Instruments**" means ***[please insert any instruments to be provided for use with Devices]*** including any software related thereto, used with the Devices. ***[If no instruments are provided, delete this paragraph.]***

1.16 "**Investigator**" means any physician who assumes full responsibility for the treatment and evaluation of Human Subjects participating in research protocols, as well as for the integrity of research data.

1.17 "**NIDDK**" means the National Institute Diabetes and Digestive and Kidney Diseases, an Institute or Center of the NIH, in the Department of Health & Human Services, an agency of the United States Government.

1.18 "**NIH**" means the National Institute of Health.

1.19 "**Principal Investigator**" means a physician or other authorized health care professional employed by a Party to this Agreement, who is authorized to treat patients or test patient samples, and who personally has organizational and fiscal responsibility for the conduct of this study, in whole or in part.

1.20 "**Raw Data**" means the primary quantitative and empirical data first collected by the NIDDK's intramural and extramural investigators from experiments and clinical trials conducted under the scope of this Agreement, but does not include data summaries and other aggregate data to be used for publication.

1.21 "**Raw Data in NIH's Possession & Control**" refers to Raw Data that either was originally generated by NIH or was transferred to NIH by a Grantee or Contractor.

**Article 2. Research Plan**

The Study will be conducted in accordance with the Protocol(s) and all amendments as established through the Steering Committee of the Cooperative Group. If the scope of this Study is to be limited to a single protocol, a copy of the most recent version of the protocol is attached to this Agreement. If the Study contemplates multiple protocols, a summary of the research is attached. All Protocols sponsored by NIDDK using Device must be mutually agreeable to Collaborator and NIDDK, in as much as Collaborator will have final authority over the original provision of Device to NIDDK.

**Article 3. Conduct of Study**

The Study shall be conducted in accordance with the terms of this Agreement, the Protocol(s), and all applicable federal laws, regulations, and guidelines, including, but not limited to, 21 C.F.R. parts 809 and 812. The location(s) where the Study is to be conducted and the number of patients to be enrolled in the Study are, or will be, set forth in the Protocol(s). NIH may use Extramural Investigators for part or all of the development and completion of the Protocol through Contracts, Grants, or Cooperative Agreements.

**Article 4. Device Information and Supply**

**4.1 Supply of device, instruments and information.** Collaborator shall provide NIDDK, without charge, sufficient quantities of the Device to complete the Study. Collaborator shall also provide the Instruments and shall service and maintain the Instruments throughout the term of the Study. NIDDK understands and agrees that the Instruments are to be used only for purposes of the Study, and not for patient care purposes. NIDDK further agrees that there will be no charge to any public or private insurer for any testing performed on the Instruments or with the Devices. Collaborator shall retain sole title to the Instruments provided pursuant to this Agreement. Upon the earlier of: (1) completion of the Study or (2) termination or expiration of this Agreement, the Institution shall return the Instruments to Collaborator and, at Collaborator's direction, return and/or destroy any unused Devices. All returns shall be at the expense of Collaborator. To the extent that

materials are to be destroyed, the NIDDK shall dispose of such items in accordance with applicable environmental regulations.

**4.2 Use of study results for treatment.** It is the understanding of NIDDK and the Collaborator that the results of the testing with the Devices will not be reported to physicians or used for monitoring or treatment purposes in this Study until such time as, and consistent with, either a Premarket Approval Application (PMA) for the pertinent Device used in this Study is approved by the FDA, or as an appropriate investigational use consistent with all applicable laws and regulations.

**4.3 Use of Device.** NIDDK shall use the Device (and all data or information supplied by Collaborator relating to the Device) solely for the conduct of the Protocol(s) in the Study, and shall not transfer devices to any entity not participating in the Study. NIDDK agrees that Collaborator has provided Device for research use only, not for use in diagnostic procedures, and that Device may not be sold commercially or used for commercial purposes. Collaborator shall, at NIDDK's request, provide information which may include confidential information of the Collaborator, as follows: descriptions of the Devices and sufficient information to properly use each, and publications, whether adverse or supportive, regarding the safety or effectiveness of the Devices. Upon completion or early termination of the Study for any reason, NIDDK shall return all unused supplies of the Device to Collaborator unless otherwise mutually agreed upon. Nonetheless, Collaborator agrees to allow the use of the Device beyond the termination or expiration of the Agreement to the extent required to complete studies initiated prior to such termination or expiration in accordance with the protocol. The contact person for NIDDK shall be ***[please insert contact name and telephone number]***, and the Collaborator contact will be ***[please insert contact name and telephone number].***

**Article 5. Data Rights**

Raw Data generated under this study shall be the property of the party that generates it. Contractors or Grantees are not Parties to this Clinical Trial Agreement, and this Clinical Trial Agreement does not address rights to data generated at Contractor or Grantee institutions. Collaborator is prohibited from access, review, receipt, or use of Raw Data, including Raw Data in NIH's Possession & Control, unless such data has been released to the public, provided that, in no event shall Collaborator receive data containing Identifiable Private Information. Raw Data in NIH's Possession & Control will be publicly released by NIDDK only in accordance with applicable federal regulations and guidelines.

**Article 6. Multi-Party Data**

In accordance with the Protocol, the Device will be used in combination with ***[please insert drug, device, etc. if appropriate – and delete article if data is not the result of a combination of agents]*** that is proprietary to an entity not a Party to this Clinical Trial Agreement (hereinafter referred to as Second Party), the access and use of data derived from such combination studies, (hereinafter referred to as Multi-Party Data), by the Collaborator and Second Party shall be co-exclusive as follows:

(a) NIDDK will provide all Parties with notice regarding the existence and nature of any agreements governing their use of Study Drug including, the design of the proposed combination protocol and the existence of any obligations that might restrict NIDDK's participation in the proposed combination protocols.

(b) Collaborator agrees to permit use of the Multi-Party Data from these trials by the Second Party to the extent necessary to allow said Second Party to develop, obtain regulatory approval or commercialize its own proprietary compound. However, this provision will not apply unless said Second Party also agrees to Collaborator's reciprocal use of Multi-Party Data.

(c) Collaborator and Second Party must agree in writing prior to the commencement of the combination trials that each will use the Multi-Party Data solely for development, regulatory approval, and commercialization of its own proprietary compound(s).

**Article 7. Confidential Information**

For a period of three (3) years from the date of disclosure, each Party shall treat as confidential any Confidential Information provided by the other Party in writing, and which has been conspicuously marked as "CONFIDENTIAL." With respect to any orally disclosed Confidential Information that Collaborator asserts is confidential, Collaborator shall reduce to writing within thirty (30) days after disclosure the primary substance of the information contained in the oral disclosure which Collaborator believes is confidential. For any Confidential Information that is still secret and confidential at the end of this period, if the providing Party requests and if the receiving Party concurs, this obligation of confidentiality shall be extended for up to an additional two (2) years, but unless otherwise agreed by both Parties in writing, this obligation shall expire concurrently with the expiration of this Agreement. During the period of confidentiality, the Party receiving Confidential Information shall take all reasonable steps to maintain the confidentiality of the Confidential Information, such efforts to be no less than the degree of care employed by the receiving Party to preserve and safeguard its own confidential information, and Confidential Information shall be disclosed only to the receiving Party's employees and/or contractors who are directly involved with the Study and who are bound to their employer to maintain the confidentiality of such data, unless otherwise agreed in writing by the providing Party. NIDDK agrees that Confidential Information shall not be used, reproduced, or disclosed other than for the purpose of carrying out this Agreement and the activities contemplated by the Protocol(s).

Notwithstanding the above, the receiving party's obligation hereunder shall not extend to or apply to any part of the disclosure which: (a) is or becomes publicly known other than through breach of this Agreement; (b) is received by the receiving party in good faith from any third party without any obligation of confidentiality to the disclosing party; (c) is in the receiving party's rightful possession prior to disclosure by the disclosing party hereunder; (d) is independently developed by the receiving party; or (e) the receiving party is required to divulge either by a court of law or in order to comply with any federal, state or local law or regulation (after providing the disclosing party with reasonable notice of such requirement to divulge and with an opportunity to obtain a protective order).

**Article 8. Publications**

The Parties agree that the Principal Investigators are encouraged to make publicly available the results of their research. However, Collaborator recognizes that limitations on its access, prior to publication, to data generated in this Study, may preclude authorship by Collaborator's Principal Investigator or other employees.

Before either Party submits a paper or abstract for publication or otherwise intends to publicly disclose information about the research, the other Party shall be provided thirty (30) days to review the proposed publication or disclosure to assure that Confidential Information is protected. For these purposes, Confidential Information shall include all data and information which has been marked as "confidential" or "proprietary," which shall generally include technical information and data regarding the Devices and/or the Instruments that have not previously been disclosed in a public forum. In the event that there are any questions regarding whether particular data or information constitutes "Confidential Information," Collaborator shall promptly respond to any requests for clarification of such proprietary status. The Collaborator's Confidential Information relating to the Devices and/or Instruments shall be treated as Confidential Information of NIDDK under any agreements between NIDDK and other companies. Collaborator agrees that if the proposed publication may contain data subject to a prior agreement with another Collaborator, Collaborator's review shall occur only after the other Collaborator's review of the publication, which shall not include any Confidential Information of the Collaborator.

The publication or other disclosure shall be delayed for up to thirty (30) additional days upon written request by any Party as necessary to preserve U.S. or foreign patent or other IP rights.

All of NIDDK's oral presentations or written publications concerning this Study will acknowledge Collaborator's contribution of the Device unless requested otherwise.

**Article 9. Use of Name**

Collaborator may use, reference, and disseminate reprints of scientific, medical, and other published articles which disclose the name of the NIDDK, the NIH, or the Department of Health & Human Services (consistent with U.S. copyright laws), provided such use does not constitute an endorsement by the NIDDK, the NIH, or any other arm of the Government, of any commercial product or service. Collaborator shall take every step possible to ensure that references to the articles are accurate, and shall explicitly state that any such reference does not claim, infer or imply an endorsement or recommendation of the product by the Investigator, NIDDK, NIH, or DHHS. Collaborator shall not otherwise use the name of any of the foregoing in any advertising, packaging, or promotional material in connection with Device except with the written permission of NIDDK, or as may be required by law. Collaborator-issued press releases that reference or rely on the work of NIDDK under this Agreement shall be made available to NIDDK at least seven (7) days prior to publication for review and comment.

**Article 10. Patent Rights**

Generally, the right to own inventions, discovered or made solely in connection with work covered by this Agreement, is retained by the Party that employs the inventor(s), and where at least one employee from each Party qualifies as a co-inventor, the Parties jointly own the invention. Both Collaborator and NIDDK recognize that these rights will be determined under patent law or other applicable laws. Each Party will notify the other upon filing a patent application on any invention its employees make while participating in this Agreement, and further, each Party will provide information about the invention in sufficient detail to enable the other Party to determine whether any of its employees might be a co-inventor. All such information shall be considered Confidential Information of the disclosing party except if the receiving party can also make a claim for co-inventorship in which case such information is Confidential Information of both parties. For rights owned by NIH in such inventions, NIDDK will seriously consider Collaborator's request for a nonexclusive, partially exclusive, or exclusive royalty-bearing license to make, use, sell, and/or import products embodying the invention as claimed in the filed patent application, subject to the terms of 35 U.S.C. §§ 207, 208, and 209, along with 37 C.F.R. Part 404. Inventions made by an Extramural Investigator or other staff of a Contractor or Grantee are not owned by NIDDK.

Nothing herein shall be construed as granting to NIDDK any license or right under Collaborator patents on the Device, except the right to conduct the Study using the Device supplied under this Agreement. Neither party shall be obligated to enter into any further arrangement regarding the Device or its development. Collaborator may proceed with the development of the Device as a product at its own discretion and cost, even in parallel with the Study.

**Article 11. Notices**

If any party is required, or wishes to give any notice hereunder, such notice shall be deemed to be duly given when delivered via traceable courier to the addresses indicated for each Party on the signature page. Any Party may change such address by notice given to the other Party in the manner set forth above.

**Article 12. Liability**

No indemnification for any loss, claim, damage, or liability is intended or provided by any Party under this agreement. Each Party shall be liable for any loss, claim, damage, or liability that said Party incurs as a result of its activities under this agreement, except that the NIDDK, as an agency of the United States, assumes liability only to the extent as provided under the Federal Tort Claims Act. (28 U.S.C. § 2571 et seq.)

**Article 13. Governing Law**

This Agreement shall be governed by and construed in accordance with Federal law as interpreted by the Federal Courts of the District of Columbia. Further, NIDDK and Collaborator shall comply with all Federal laws and regulations relating to animal use and Human Subject research in connection with this Study. In particular, Collaborator shall comply with all applicable Department of Health and Human Services regulations and policies relating to Human Subject research and to the use and care of laboratory animals.

**Article 14. Severability and Integration**

Titles and headings of the articles of this Agreement are for convenient reference only, do not form a part of this Agreement, and shall in no way affect its interpretation. This Agreement constitutes the entire agreement between the Parties concerning the subject matter of this Agreement, and supersedes any prior understanding or written or oral agreement.

**Article 15. Amendments**

Upon mutual agreement of both parties, this Agreement may be amended as necessary to ensure the Agreement accurately reflects the terms and scope of the collaborative effort. All amendments must be in writing and signed by authorized representatives of both parties. Neither this Agreement nor any rights or obligations of any Party hereunder shall be assigned or otherwise transferred by either Party without the prior written consent of the other Party, except that Collaborator may assign this Agreement to any of its parent, subsidiary or affiliate corporations or to a purchaser of the assets of its business to which this Agreement pertains without first obtaining the express written consent of the other party hereto. This Agreement shall be binding upon, and shall inure to the benefit of Collaborator, its successor and assigns.

**Article 16. Expiration and Termination**

**16.1 Expiration.** This Agreement expires on the earlier to occur of the completion of the Study or five (5) years after the date of full execution of this Agreement. If the Study has not been completed within five (5) years of the date of full execution of this Agreement, this Agreement may be renewed for successive two (2) year terms by simple letter agreement until completion of this Study, unless earlier terminated as provided below. Said expiration date may be changed by mutual agreement and written amendment of this Agreement.

**16.2 Mutual Termination.** This Agreement may be mutually terminated at any time by the written consent of the Parties.

**16.3 Unilateral Termination.** Either Party may unilaterally terminate this Agreement at any time without cause by giving written notice to the other Party at least sixty (60) days prior to the desired termination date. If Collaborator unilaterally terminates this Agreement, Collaborator agrees to supply enough Devices to complete the Study then ongoing, pursuant to Article 4.

**Article 17. *Force Majeure* Event**

Neither Party shall be responsible for performing after any unforeseeable event beyond its reasonable control that causes such Party to be unable to perform its obligations under this Agreement, provided that the event was not caused by the fault or negligence of such Party, and that the Party has been unable to overcome by the exercise of due diligence. If such a *force majeure* event occurs, the Party unable to perform shall promptly notify the other Party. Further, the Party shall use best efforts to resume performance as quickly as possible and shall suspend performance only for such period of time as the *force majeure* event requires.

**Article 18. Survivorship**

The terms of this Agreement concerning supply of Devices and Instruments, Identifiable Private Information, rights to Data, confidentiality of Confidential Information, Publications, Intellectual Property and Governing Law shall survive expiration or termination of this Agreement.

**SIGNATURES BEGIN ON THE NEXT PAGE**
**AGREED AND ACCEPTED**

By executing this Agreement, each of the undersigned represents and confirms that s/he is fully authorized to bind the identified entity to its terms. Each of the undersigned expressly certifies or affirms that the contents of any statement made or reflected in this document are truthful and accurate. ANY FALSE OR MISLEADING STATEMENTS MADE, PRESENTED, OR SUBMITTED TO THE GOVERNMENT, INCLUDING ANY RELEVANT OMISSIONS, UNDER THIS AGREEMENT AND DURING THE COURSE OF NEGOTIATION OF THIS AGREEMENT ARE SUBJECT TO ALL APPLICABLE CIVIL AND CRIMINAL STATUTES, INCLUDING FEDERAL STATUTES 31 U.S.C. §§ 3801-3812 (CIVIL LIABILITY) AND 18 U.S.C. § 1001 (CRIMINAL LIABILITY, INCLUDING FINE(S) AND/OR IMPRISONMENT).

**FOR THE NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES**

_____ _____

Griffin P. Rodgers, M.D. Date
Deputy Director, NIDDK

Mailing Address for Notices:
Rochelle S. Blaustein, J.D.
Director, Technology Transfer and Development
12 South Dr, Room 3011, MSC 5632
Bethesda, MD 20892-5632
Telephone: 301-451-3636
Facsimile: 301-402-7461

**FOR COLLABORATOR:**

_____ _____

Name: Date
Title:

Mailing Address for Notices: