HHMI Model Consulting Agreement

Form SC-512

[NOTE: The Howard Hughes Medical Institute (“HHMI”) has prepared the following agreement for use by companies interested in engaging HHMI laboratory heads as consultants. If a company would prefer to use its own form of consulting agreement instead of HHMI’s form, then the company must attach to its agreement and sign an unmodified copy of the appropriate version of HHMI’s Uniform Consulting Agreement Provisions. The HHMI Uniform Consulting Agreement Provisions are posted at <http://www.hhmi.org/about/policies#consulting>.

***Only consulting arrangements that use HHMI’s form of consulting agreement or which include the appropriate version of the HHMI Uniform Consulting Agreement Provisions will be approved by HHMI.***

Please note that HHMI reviews proposed consulting arrangements solely to consider whether they conform to HHMI policies. Lab heads are encouraged to seek their own legal counsel to advise them of their rights and obligations under a proposed consulting arrangement, including whether a proposed arrangement may conflict with existing consulting arrangements. Lab heads are also responsible for complying with any host institution policies or procedures relating to consulting activities. Please see HHMI’s policies on consulting, posted at <http://www.hhmi.org/about/policies#consulting>, for more information.]

# CONSULTING AGREEMENT

This Agreement is made as of ***[please insert date]*** between ***[please insert full legal name of company]*** (the “Company”) and ***[please insert name of lab head]*** (the “Consultant”), an employee of the Howard Hughes Medical Institute (“HHMI”) at HHMI’s laboratory at ***[please insert*** ***name of the lab head’s academic (“host”) institution]*** (the “University”). The Company is engaged in scientific research in ***[please insert a description of the area in which the lab head will consult]*** (the “Field”). The Consultant has extensive experience in the Field, and the Company seeks to benefit from the Consultant’s expertise by retaining the Consultant as a consultant. The Consultant wishes to perform consulting services in the Field for the Company. Accordingly, the Company and the Consultant agree as follows:

1. Services.

(a) The Consultant shall provide consulting services to the Company with respect to matters related to the Field. The Consultant’s services for the Company shall consist only of the discussion of ideas and provision of advice; the Consultant shall not direct or conduct research for or on behalf of the Company.

***[The Consultant’s services may be more specifically described in the agreement. They may include: (i) serving on the Company’s scientific advisory board and attending scientific advisory board meetings; (ii) providing general scientific advice regarding the Company’s products or services, the general direction of its research program, recruitment of personnel, and techniques used in research in the Field; and (iii) advising on the Company’s efforts to produce, develop, and market a specific product or service in the Field.***

***The Consultant may not (i) conduct research for the Company; (ii) act as the Company’s representative, e.g., by taking part in business negotiations for the Company; (iii) write software code (as opposed to making comments on the Company’s code writing); (iv) build research tools or machines, or develop research materials (as opposed to making comments on the Company’s work in this regard); (v) write research protocols; (vi) assemble and analyze raw data; (vii) draft manuscripts; or (viii) be a Company officer or employee.]***

(b) The Company acknowledges that the Consultant is an HHMI employee and is subject to HHMI’s policies, including policies concerning consulting, conflicts of interest, and intellectual property. The Company acknowledges and agrees that nothing in this Agreement shall affect the Consultant’s obligations to HHMI or the University, the Consultant’s research on behalf of HHMI or the University, the Consultant’s ability to submit and publish the results of HHMI or Host Institution research, or research collaborations in which the Consultant is a participant, and that this Agreement shall have no effect upon transfers (by way of license or otherwise) to third parties of materials or intellectual property developed in whole or in part by the Consultant as an HHMI employee or University faculty member.

2. Compensation.

(a) The consideration described below in this paragraph 2 constitutes the full consideration for the consulting services to be provided by the Consultant to the Company.

***[The consulting agreement should clearly state the amount of all compensation to be received, including compensation in the form of shares of stock or stock options or their equivalent. HHMI policy prohibits lab heads from receiving incentive compensation, such as bonuses (in cash or other property), based on the Company’s profitability or sales. An HHMI lab head may not consult for a company in which he or she holds a significant equity position as described in*** [***HHMI Policy SC-500, Consulting for Companies - General Policy***](http://www.hhmi.org/sites/default/files/About/Policies/sc500-consulting-for-companies-general-policy.pdf) ***and*** [***HHMI Policy SC-520, Consulting for and Equity Ownership in Start-Up and other Private Companies***](http://www.hhmi.org/sites/default/files/About/Policies/sc520-research-startup-consulting-policies.pdf)***.]***

***[Company: please complete subparagraph (b) and insert the appropriate subparagraph (c) below as appropriate.]***

(b) The Company shall pay the Consultant as follows: ***[please insert a description of all compensation, compensation period (yearly, quarterly, daily, etc.), payment schedule, etc.].*** In addition to the foregoing amount, the Company shall promptly reimburse the Consultant for all reasonable expenses incurred by the Consultant in providing consulting services under this Agreement.

(c) ***[Company: HHMI policies limit the amount of equity an HHMI laboratory head may own in a company for which he or she consults. Please refer to*** [***HHMI Policy SC-500, Consulting for Companies - General Policy***](http://www.hhmi.org/sites/default/files/About/Policies/sc500-consulting-for-companies-general-policy.pdf)***, for a general explanation of HHMI’s policies relating to consulting and equity ownership.***

***If the Consultant will be awarded any equity in the Company and the stock or other equity securities of the Company are publicly traded on a securities exchange, please insert the following:]***

The Company acknowledges and agrees that the Consultant will at no time hold more than 5 percent of the equity of the Company, as calculated in accordance with [HHMI Policy SC-500, Consulting for Companies - General Policy](http://www.hhmi.org/sites/default/files/About/Policies/sc500-consulting-for-companies-general-policy.pdf).

***[If the Consultant will be awarded any equity in the Company and the equity securities of the Company are not publicly-traded on a securities exchange, please review*** [***HHMI Policy SC-520, Consulting for and Equity Ownership in Start-Up and Other Private Companies***](http://www.hhmi.org/sites/default/files/About/Policies/sc520-research-startup-consulting-policies.pdf)***, and insert the following instead of the previous sentence:]***

The Company and the Consultant each acknowledge that they have reviewed HHMI Policy SC-500, Consulting for Companies – General Policy, and [HHMI Policy SC-520, Consulting for and Equity Ownership in Start-Up and Other Private Companies](http://www.hhmi.org/sites/default/files/About/Policies/sc520-research-startup-consulting-policies.pdf). The Consultant agrees that he or she will, and the Company agrees that Consultant will be permitted to, reduce his or her equity ownership in the Company as necessary in order to remain in compliance with [HHMI Policy SC-500](http://www.hhmi.org/sites/default/files/About/Policies/sc500-consulting-for-companies-general-policy.pdf) and [HHMI Policy SC-520](http://www.hhmi.org/sites/default/files/About/Policies/sc520-research-startup-consulting-policies.pdf) at all times. In addition, the Company and the Consultant agree to provide information to HHMI upon request that will allow HHMI to confirm compliance with HHMI’s policies.

3. Confidentiality.

(a) The Consultant may disclose to the Company any information that the Consultant would normally freely disclose to other members of the scientific community at large, whether by publication, by presentation at seminars, or in informal scientific discussions. However, the Consultant shall not disclose to the Company information that (i) is proprietary to HHMI or the University and (ii) is not generally available to the public, except through formal technology transfer procedures.

(b) In providing consulting services to the Company pursuant to this Agreement, the Consultant may acquire information that pertains to the Company’s products, processes, equipment, programs, developments, or plans and that is both (i) disclosed or made known by the Company to the Consultant and (ii) identified as “confidential” by the Company at any time (“Confidential Information”). The Consultant agrees not to disclose any Confidential Information to third parties or to use any Confidential Information for any purpose other than performance of consulting services pursuant to this Agreement, without the prior written consent of the Company.

(c) “Confidential Information” does not include information that: (i) is or later becomes available to the public through no breach of this Agreement by the Consultant; (ii) is obtained by the Consultant from a third party who had the legal right to disclose the information to the Consultant; or (iii) is already in the possession of the Consultant on the date this Agreement becomes effective. In addition, Confidential Information does not include information generated by the Consultant (whether alone or with others) unless the Consultant generated the information (A) during the course of performing consulting services for the Company under this Agreement and (B) outside the course of the Consultant’s activities as an HHMI employee or University faculty member.Nothing in the Agreement shall prevent the Consultant from disclosing Confidential Information to the extent it is required to be disclosed by law, government regulation, or court order, provided that the Consultant takes reasonable steps to provide the Company with sufficient prior notice to allow the Company to consent to the disclosure or seek a protective order. Upon the Company’s request, the Consultant shall return to the Company any or all Confidential Information that is in writing or is otherwise in physical form.

4. Intellectual Property.

(a) Subject to the terms of paragraph 4(b), below, the Consultant hereby assigns to the Company any right, title, and interest the Consultant may have in any invention, discovery, improvement, or other intellectual property which the Consultant (whether alone or with others) develops (i) during the course of performing consulting services for the Company under this Agreement and (ii) outside the course of the Consultant’s activities as an HHMI employee or University faculty member. Any intellectual property assignable to the Company pursuant to the preceding sentence is hereinafter referred to as “Company Intellectual Property.” Upon the request of the Company, the Consultant shall execute such further assignments, documents, and other instruments as may be necessary to assign Company Intellectual Property to the Company and to assist the Company in applying for, obtaining and enforcing patents or other rights in the United States and in any foreign country with respect to any Company Intellectual Property. The Company will bear the cost of preparation of all patent or other applications and assignments, and the cost of obtaining and enforcing all patents and other rights to Company Intellectual Property.

(b) The Company shall have no rights by reason of this Agreement in any publication, invention, discovery, improvement, or other intellectual property whatsoever, whether or not publishable, patentable, or copyrightable, which is developed as a result of a program of research financed, in whole or in part, by funds provided by or under the control of HHMI or the University. The Company also acknowledges and agrees that it will enjoy no priority or advantage as a result of the consultancy created by this Agreement in gaining access, whether by license or otherwise, to any proprietary information or intellectual property that arises from any research undertaken by the Consultant in the Consultant’s capacity as an HHMI employee or a member of the University’s faculty.

5. Defense and Indemnification.

The Company agrees, at its sole expense, to defend HHMI against, and to indemnify and hold HHMI harmless from, any liability, claim, judgment, cost, expense, damage, deficiency, loss, or obligation, of any kind or nature (including without limitation reasonable attorneys’ fees and other costs and expenses of defense) relating to a claim or suit by a third party against HHMI, either arising from this Agreement, the Consultant’s performance of services for the Company under this Agreement, or any Company products or services which result from the Consultant’s performance of services under this Agreement.

6. Term and Termination.

(a) Unless terminated earlier under paragraph 6(b), below, this Agreement shall be for a term of ***[please insert term of years/months/days as appropriate or a specific end date].***

(b) Without limiting any rights which either party to this Agreement may have by reason of any default by the other party, each party reserves the right to terminate this Agreement at its convenience by written notice given to the other party. Such termination shall be effective upon the date not earlier than 30 days following the date of such notice as shall be specified in said notice.

(c) Paragraphs 3(c), 4(a), 4(b), 5, this 6(c), 7(c) and 7(g) hereof shall survive termination of this Agreement.In addition, termination of this Agreement shall not affect either (i) the Company’s obligation to pay for services previously performed by the Consultant or expenses reasonably incurred by the Consultant for which the Consultant is entitled to reimbursement under paragraph 2, above, or (ii) the Consultant’s continuing obligations to the Company under paragraphs 3(b) and 4(a), above.

7. Miscellaneous.

(a) This Agreement shall inure to the benefit of and be binding upon the respective heirs, executors, successors, representatives, and assigns of the parties, as the case may be; provided, however, the obligations hereunder of each party to the other are personal and may not be assigned without the express written consent of such other party.

(b) The relationship created by this Agreement shall be that of independent contractor, and the Consultant shall have no authority to bind or act as agent for the Company or its employees for any purpose.

***[Company: If the Company is a California company, the consulting will take place in California, or the Consulting Agreement is governed by California law, please add the sentence set forth below.]***

The parties acknowledge that this Agreement is not a contract of employment under California law, and the Consultant is not an employee of the Company for any purpose under California law.

(c) The Company may use the Consultant’s name, and in doing so may cite the Consultant’s relationship with HHMI, so long as any such usage (i) is limited to reporting factual events or occurrences only, and (ii) is made in a manner that could not reasonably constitute an endorsement of the Company or of any Company program, product or service. However, the Company shall not use the Consultant’s name or HHMI’s name in any press release, or quote the Consultant in any company materials, or otherwise use the Consultant’s name or HHMI’s name in a manner not specifically permitted by the preceding sentence, unless in each case the Company obtains in advance HHMI’s written consent, and, in the case of the use of the Consultant’s name, the Consultant’s consent as well.

(d) Notice given by one party to the other hereunder shall be in writing and deemed to have been properly given or paid if deposited with the United States Postal Service, registered or certified mail, addressed as follows:

***[Name and Address of the Company.]***

***[Name and Address of the Consultant.]***

(e) This Agreement supersedes all prior or contemporaneous agreements and discussions relating to the subject matters hereof and constitutes the entire agreement between the Company and the Consultant with respect to the subject matters of this Agreement. The Company and the Consultant agree that any amendment of this Agreement (including, without limitation, any extension of its term or any change in the consideration set forth above to be provided to the Consultant hereunder) or any other departure from the terms or conditions hereof must be signed by the Consultant and an authorized representative of the Company, and also is subject to HHMI’s prior written approval. In the event anything in this Agreement is inconsistent with the terms of any other agreement that the Consultant executes in connection with his or her provision of consulting services to the Company, the terms of this Agreement shall govern.

***[Company: If the company contemplates having the Consultant sign other agreements, please submit them to HHMI’s attorney for review.]***

(f) If any provision of this Agreement affecting the rights or property of HHMI is adjudicated to be invalid, unenforceable, contrary to, or prohibited under applicable laws or regulations of any jurisdiction, this Agreement shall terminate as of the date such adjudication is effective.If any other provision of this Agreement is adjudicated to be invalid, unenforceable, contrary to, or prohibited under applicable laws or regulations of any jurisdiction, such provision shall be severed and the remaining provisions shall continue in full force and effect.

(g) The Consultant and the Company acknowledge that (i) the Consultant is entering into this Agreement in the Consultant’s individual capacity and not as an employee or agent of HHMI, (ii) HHMI is not a party to this Agreement and has no liability or obligation hereunder, and (iii) HHMI is an intended third-party beneficiary of this Agreement and certain provisions of this Agreement are for HHMI’s benefit and are enforceable by HHMI in its own name.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first stated above.

***[Please insert full legal name of Company]***

***[Note: Must be signed by an authorized representative.]***

By:

Name:

Title:

Date:

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***[Name of Consultant]***

Date:

Form SC-512

Last Updated: May 2015