

Department of Veterans Affairs

**PHASE [select I OR II] CLINICAL TRIAL
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT (CRADA)**

This cover page identifies the Parties to this CRADA as follows:

The U.S. Department of Veterans Affairs, a Federal government agency, as represented by
[Insert the full name and address of the VAMC],

hereinafter referred to as “**VA**”

and

[Insert Collaborator’s official name],

hereinafter referred to as “**Collaborator**”,

having offices at [Insert Collaborator’s address],

created and operating under the laws of [Insert State or Country of Incorporation].

and

[Insert VA Non-Profit Research Corporation Name],

hereinafter referred to as “**NPC**”,

having offices at [Insert NPC’s address]

created and operating under the laws of [Insert State of Incorporation].

The title of the project to which this CRADA pertains is [Insert Project Title].

Protocol Number: [Insert Protocol Number]

VA Principal Investigator: [Insert Name and Degree(s) of Principal Investigator]

**VA PHASE [select I OR II] CLINICAL TRIAL
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT**

Article 1. Introduction

This Phase [I or II] Clinical Trial Cooperative Research and Development Agreement (CRADA) is entered into under the authority of the Federal Technology Transfer Act (FTTA) of 1986, 15 U.S.C. § 3710a, *et seq.*, and shall be effective on the date of the last signature of the Parties.

Any inconsistency between the standard terms of Articles 1 through 13 of this CRADA and any appendices to this CRADA shall be resolved by giving precedence to Articles 1 through 13.

Article 2. Definitions

The terms listed in this Article shall carry the meanings indicated throughout the CRADA. Terms defined in applicable statutes or regulations, but not defined in this CRADA, shall carry the meaning of the statutory or regulatory definition.

“Background Invention” means an invention conceived and reduced to practice or made the subject of a patent application in accordance with patent law in the United States, or in any other country or region, before the effective date of this CRADA.

“Case Report Form” means a printed or electronic document designed to record all of the Protocol-required information to be reported to the Collaborator on each study subject.

“Collaborator Confidential Information” means scientific, business and financial information, including the Protocol, disclosed by or on behalf of Collaborator in writing and marked or otherwise identified as confidential. Collaborator Confidential Information does not include CRADA Data, descriptions of CRADA Materials, CRADA Reports and completed Case Report Forms.

“Collaborator Materials” means all tangible materials not first produced in the performance of the Statement of Work that are owned or controlled by Collaborator and are used in the performance of the Statement of Work.

“Confidential Information” means Individually Identifiable Information, CRADA Data, descriptions of CRADA Materials, CRADA Reports, completed Case Report Forms, Collaborator Confidential Information, VA Confidential Information, and other written documents marked or otherwise identified as confidential provided that the information is not:

- (a) publicly known or available from public sources; or
- (b) made available by its owner to others without a confidentiality obligation or
- (c) already known by the receiving Party, or independently created or compiled by the receiving Party without reference to or use of information provided under this CRADA; or
- (d) related to potential hazards or cautionary warnings associated with the production, handling, or use of the subject matter of the SOW.

“CRADA Data” means recorded information first produced by the Parties as required in the performance of the Protocol. CRADA Data does not include patient medical records or Individually Identifiable Information, except for any that may be contained in the completed Case Report Form.

“CRADA Materials” means all tangible materials including biological specimens, other than CRADA Data, first produced in the performance of the Statement of Work.

“CRADA Reports” means reports of CRADA Subject Inventions prepared in accordance with Article 5.3.

“CRADA Subject Invention” means any invention conceived or first actually reduced to practice in the performance of the Statement of Work.

“Individually Identifiable Information” means any information, including health information maintained by the Veterans Health Administration (VHA), pertaining to an individual that also identifies the individual or for which there is a reasonable basis to believe the information can be used to identify the individual.

“NPC” means the VA-affiliated non-profit research, or research and education, corporation created and operated under the laws of the state identified on the cover page. The NPC’s role and obligations are set forth in this CRADA pursuant to its statutory authority under 38 U.S.C. §§ 7361-68 and VHA Handbook 1200.17.

“Principal Investigator” means the VA Employee who actually conducts a clinical investigation in accordance with the Statement of Work, i.e., under whose immediate direction the research is conducted or, in the event of research conducted by a team of investigators, is the responsible leader of that team.

“Protocol” means the formal, detailed description of the study to be performed under this CRADA, and includes amendments, modifications and associated documents such as an informed consent form template.

“Statement of Work” (SOW), Appendix A, defines the research to be conducted under this CRADA and includes the Protocol, whether or not attached.

“Test Article” means the drug that is the subject of the SOW (21 U.S.C. § 301 *et seq.*).

“VA Confidential Information” means patient medical records, Individually Identifiable Information except for any that may be contained in the completed Case Report Form, and scientific information disclosed in written form by or on behalf of VA. VA Confidential Information does not include CRADA Data, descriptions of CRADA Materials, CRADA Reports and completed Case Report Forms.

“VA Employee” means any individual who is employed by VA, including one who is salaried by VA or is working under a VA Without Compensation (WOC) Appointment (38 U.S.C. § 513 and § 7405) or under an Intergovernmental Personnel Act assignment (5 U.S.C. §§ 3371-3375). When used in this Agreement, the term “VA” includes VA employees.

Article 3. Cooperative Research and Development

- 3.1 **Performance of Research and Development.** VA Employees and Collaborator shall carry out the collaborative research as described in the SOW and in accordance with applicable Federal laws, regulations and VA policies and procedures. Each Party agrees to comply with, and to ensure that its contractors and agents comply with, applicable statutes, Executive Orders, and VA regulations relating to research on human subjects including but not limited to 38 C.F.R. Parts 16 and 17, 21 C.F.R. Parts 50, 56, and 312 as applicable to the research described in the SOW. Such regulations may include the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information (45 C.F.R. Parts 160 and 164), as well as those set forth in VA's security directives.
- 3.2 **Use and Disposition of Collaborator Materials.** VA agrees to use Collaborator Materials only in accordance with the SOW. Upon completion, expiration or termination of this CRADA, VA agrees to dispose of these materials in accordance with this CRADA.
- 3.3 **Principal Investigator Responsibilities.** The Principal Investigator shall be responsible for coordinating the scientific and technical conduct of this project on behalf of VA. Principal Investigator shall ensure that the research under this CRADA is conducted in accordance with VA policies and applicable laws and regulations. Prior to beginning research under this CRADA, the Principal Investigator shall obtain R&D Committee approval of the Protocol. Such approval entails Institutional Review Board (IRB) approval of the Protocol and all associated documents including informational documents, the informed consent form and advertisements used in the performance of this CRADA.
- 3.4 **Human Subjects Protection.**
- 3.4.1 The research to be conducted under this CRADA involves human subjects or human tissues as described in 38 C.F.R. Part 16. All research performed under this CRADA shall conform to laws, regulations and VA policies and procedures pertaining to protections for human subjects. Collaborator and VA shall immediately notify each other, and VA shall promptly notify the IRB, upon identifying any aspect of the Protocol, including unanticipated problems involving risk and information discovered during site monitoring visits or in the study results that may adversely affect the safety, well-being, or medical care of subjects, or that may affect the willingness of subjects to continue participation in the research, may influence the conduct of the study, or may alter the IRB's approval to continue the study. When subject safety or medical care could be directly affected by study results, VA shall send study subjects a written communication the content of which is subject to IRB approval.
- 3.4.2 The data contained in completed Case Report Forms may include Individually Identifiable Information. Collaborator shall comply with all applicable laws, regulations and the provisions of this CRADA relating to Information privacy and data security in regard to Individually Identifiable Information. Collaborator will take appropriate measures to protect the confidentiality and security of all such Individually Identifiable Information and will use and disclose such information

only as authorized by the subject's prior signed informed consent and authorization document(s) and in accordance with this CRADA.

3.5 Test Article Information and Supply. Collaborator agrees to provide VA, without charge and on a schedule that shall ensure timely performance of the research, a sufficient quantity of formulated and acceptably labeled, clinical-grade Test Article and, if required by the Protocol, any placebo, comparator, or supplemental drug necessary to complete the SOW. Collaborator shall provide to VA information regarding safety and efficacy data from clinical and non-clinical studies, recommended dosage or usage, storage and known risks or contraindications, if any.

3.6 Test Article Delivery, Use and Disposition.

3.6.1 Collaborator shall ship the Test Article, placebo, comparator and supplemental drug, if any, to the pharmacy at the participating VA facility, or as otherwise directed by VA, in containers marked in accordance with 21 C.F.R. § 312.6. Pharmacy contacts at VA shall be determined by VA and communicated to Collaborator.

3.6.2 VA agrees to use Test Article only in accordance with the SOW.

3.6.3 Upon completion, termination, or expiration of this CRADA, any unused quantity of Test Article will be returned to Collaborator or disposed of as directed by Collaborator.

3.7 Monitoring.

3.7.1 In accordance with VA policies regarding site monitors and subject to the restrictions in this CRADA concerning Individually Identifiable Information, VA shall permit Collaborator or its designee(s) upon reasonable notice and during regular business hours to monitor, in accordance with the section on monitoring of the International Conference on Harmonization (ICH) E6: "Good Clinical Practice: Consolidated Guideline," 62 Fed. Reg. 25,692 (1997), the conduct of the research, as well as to audit source documents:

(a) for regulatory purposes; and

(b) to the extent necessary to verify compliance with:

(i) Good Clinical Practice in accordance with the International Conference on Harmonisation (ICH) E6: "Good Clinical Practice: Consolidated Guideline," 62 Federal Register 25,692 (1997) where and as adopted by the FDA; and

(ii) the Protocol.

3.7.2 Monitors will be subject to applicable Federal laws, regulations and VA policies on access to Federal facilities, data, and data systems. VA shall disclose Individually Identifiable Information to monitors only to the extent permitted by the

subjects' prior signed informed consent and authorization document(s), and this CRADA.

- 3.8 **Registration of Protocol.** VA encourages Collaborator to register the Protocol with www.clinicaltrials.gov, and any other registry with requirements consistent with the registration and publication guidelines of the International Committee of Medical Journal Editors.

Article 4. Financial and Equipment Contributions

- 4.1 **VA and Collaborator Contributions.** The respective contributions of the Parties are set forth in the SOW. All payments by Collaborator shall be made to NPC and shall be in U.S. dollars by check or bank draft, sent in accordance with Article 13.15.4, or shall be made by electronic transfer. Collaborator's failure to make any scheduled payment shall be deemed a material breach. If Collaborator fails to cure such breach within 30 days, VA and NPC shall not be obligated to perform their responsibilities under this CRADA and may terminate this CRADA in accordance with the procedures set forth in Article 10.3. All remedies for such non-payment remain available to VA and NPC under Federal and state law.
- 4.2 **Capital Equipment.** Collaborator's commitment, if any, to provide VA with capital equipment appears in the SOW. If Collaborator transfers capital equipment to VA or provides funds to VA or NPC for purchase of capital equipment, VA or NPC shall own the equipment. If Collaborator loans capital equipment to VA for use pursuant to this CRADA, Collaborator shall be responsible for paying costs associated with the transport, installation, maintenance, repair, removal, or disposal of the equipment, and VA shall not be liable for damages to the equipment, except due to the negligence of VA.

Article 5. Inventions and Intellectual Property

- 5.1 **Background Inventions.** Nothing in this CRADA shall be construed to grant a Party any rights in another Party's Background Invention other than to use the Background Invention to fulfill the requirements of the SOW.
- 5.2 **Ownership of CRADA Subject Inventions.** Subject to Article 6.3, VA or Collaborator shall retain sole ownership of and title to CRADA Subject Inventions made solely by its respective employees. VA and Collaborator shall jointly own CRADA Subject Inventions made jointly. NPC neither acquires nor retains any intellectual property rights in CRADA Subject Inventions and shall have no obligation or responsibility to participate in the reporting, filing, or prosecution of patents.
- 5.3 **Reporting.** VA and Collaborator shall promptly report to each other in writing each CRADA Subject Invention disclosed by its respective personnel. Such CRADA Reports shall be in sufficient detail to allow determination of inventorship in accordance with U.S. patent law.
- 5.4 **Filing of Patent Applications.** VA and Collaborator shall each make timely decisions regarding whether it will file patent applications on CRADA Subject Inventions made solely by their respective employees and shall notify each other in advance of filing. Collaborator shall have the first opportunity to file a patent application on joint CRADA

Subject Inventions and shall notify VA of its decision whether to file within ninety (90) days of a CRADA Subject Invention being reported. If Collaborator fails to notify VA of its decision within that time period or notifies VA of its decision not to file a patent application, then VA has the right to file a patent application on the joint CRADA Subject Invention. Collaborator shall place the following statement in any patent application it files on a CRADA Subject Invention: "This invention was created in the performance of a Cooperative Research and Development Agreement with the Department of Veterans Affairs, an agency of the U.S. Government, which has certain rights in this invention."

- 5.5 **Non-election of Patent.** If VA or Collaborator elects not to file a patent application on a CRADA Subject Invention made solely or jointly by its employees, such Party may assign its interest to the other Party. In the event neither VA nor Collaborator elects to file a patent application, either or both (if a joint CRADA Subject Invention) may assign its ownership to its respective inventor(s).
- 5.6 **Patent Expenses.** Unless agreed otherwise, the Party filing a patent application shall pay all related expenses.
- 5.7 **Prosecution of Patent Applications.** The Party filing a patent application for a CRADA Subject Invention shall provide the other party with a copy of any official communication relating to prosecution of the patent application within thirty (30) days of transmission of the communication. The Parties agree to cooperate in the preparation and filing of patent applications relating to CRADA Subject Inventions.
- 5.8 **Third-Party Rights in Collaborator's CRADA Subject Inventions.** If either Party has pre-existing agreements that give a third party rights in a CRADA Subject Invention or if either Party has received (or will receive) support of any kind from a third party in exchange for rights in a CRADA Subject Invention, the Party shall ensure that its obligations to the third party are consistent with Articles 5 through 7 and subordinate to Article 6 of this CRADA.

Article 6. Licensing

- 6.1 **License Options.** VA grants to Collaborator an option to elect a nonexclusive, partially exclusive or exclusive license on any CRADA Subject Invention made solely by VA Employee(s) or made jointly by VA and Collaborator employees. Any license granted shall be subject to negotiation of reasonable license terms within one hundred eighty (180) days after the exercise of the option and shall be substantially in the form of the model VA license agreement. To exercise this option, Collaborator shall submit a written notice to the VA Director of Technology Transfer within ninety (90) days after notification by VA of a CRADA Subject Invention in accordance with Article 13.6. Collaborator agrees to negotiate and pay reasonable patent costs.
- 6.2 **Government Rights in CRADA Subject Inventions.** Pursuant to 15 U.S.C. § 3710a the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced CRADA Subject Inventions throughout the world by or on behalf of the Government for research or other Government purposes.

Article 7. Ownership, Access and Use of Data and Publication

- 7.1 **Case Report Forms and Records.** Collaborator shall own the original, completed Case Report Forms and the data therein. VA may retain copies. Collaborator acknowledges that the data contained in the completed Case Report Form may be replicated in VA-owned patient medical records or source documents. Collaborator ownership of data in the completed Case Report Forms in no way limits VA's ownership and use of data in its medical records and other source documents. Patient medical records, Individually Identifiable Information (except that contained in Collaborator's completed Case Report Forms), original notes, documents and records created by VA in the course of the Protocol shall be the property of VA. Collaborator shall have access to such materials and may receive copies to the extent permitted in the prior signed authorizations of subjects and this CRADA, or to the extent permitted by the applicable confidentiality statutes and regulations where a subject authorization was not required or was revoked.
- 7.2 **CRADA Data, CRADA Reports, CRADA Materials and Descriptions of CRADA Materials.**
- 7.2.1 VA may use CRADA Data, descriptions of CRADA Materials, CRADA Reports and CRADA Materials for publications and presentations as described in Article 7.3 Presentations and Publications and Article 8 Confidentiality. VA may use CRADA Data, descriptions of CRADA Materials, CRADA Reports and CRADA Materials for educational, noncommercial research and patient care purposes, and to comply with any applicable Federal state and local government laws and regulations, consistent with its obligations under this CRADA and as defined in the informed consent and authorization document signed by the research subject.
- 7.2.2 Collaborator may use CRADA Data, including Individually Identifiable Information contained on the completed Case Report Forms, descriptions of CRADA Materials, CRADA Reports and CRADA Materials for research purposes, including the creation and maintenance of a research database or repository, and regulatory filings, consistent with its obligations under this CRADA and to the extent allowed in the informed consent and authorization document(s) signed by the research subject. Biological specimen CRADA materials will be handled in accordance with the Protocol and/or informed Consent Document. Collaborator shall return to VA or destroy, as specified in the SOW, biological specimen CRADA Materials at the completion of the Protocol.
- 7.3 **Presentations and Publications.** VA and Collaborator have the right to make publicly available the results of their research and are encouraged to do so. Authorship shall be determined by mutual agreement of Collaborator, VA and Principal Investigator in accordance with customary scientific practices.
- 7.3.1 **Review.** Principal Investigator shall submit to Collaborator for review a draft of each proposed presentation or publication of the results of the research performed under this CRADA. Collaborator shall have a review period of thirty (30) days. Collaborator may comment upon, but may not make editorial changes to the results and conclusions set forth in the draft. The draft may be submitted for publication or presentation upon receipt of Collaborator's written comments or upon expiration of the review period with no comments received from

Collaborator. Reasonable consideration shall be given to all requested edits received from Collaborator.

- 7.3.2 **Single Site Data.** After pooled dataset is published by Collaborator or 180 days after data lock, Principal Investigator may freely publish and/or present the results derived from the data collected solely by VA. VA shall determine the authorship and contents (including scientific conclusions and professional judgments) of any publication or presentation. VA shall provide Collaborator with a copy for review in accordance with Articles 7.3 Presentations and Publications.
- 7.3.3 **Excise of Confidential Information.** VA shall excise Confidential Information, other than the results of the research, identified by Collaborator in the draft.
- 7.3.4 **Extension of Time for Patentable Inventions.** If Collaborator determines that any draft submitted for review in accordance with this Article describes one or more potentially patentable CRADA Subject Inventions, Collaborator shall provide notice to VA of this determination prior to expiration of the review period. Collaborator shall have ninety (90) days from the date of such notice to file patent application(s) for such inventions in accordance with Article 5, during which time VA shall refrain from publication of the draft.

Article 8. Confidentiality

8.1 **Non-disclosure and Non-use.** No Party may disclose or use any Confidential Information, or use or distribute CRADA Materials, except as expressly permitted in this CRADA.

8.2 Disclosure and Use of Confidential Information

8.2.1 Each Party may use and disclose Confidential Information as needed to accomplish the SOW.

8.2.2 Collaborator may use or disclose Collaborator Confidential Information and VA may use or disclose VA Confidential Information without any limitations imposed by this CRADA.

8.2.3 A Party may disclose Confidential Information:

- (a) As required by a court, administrative or regulatory body of competent jurisdiction, or by law, regulation or other applicable legal authority, or for patent filings and/or prosecution.
- (b) When requested by the chairman of a congressional oversight committee of jurisdiction acting in its oversight capacity.
- (c) When needed to provide medical care to a research subject when, in the opinion of the research subject's health care providers, such treatment is reasonable and necessary.

- (d) To other entities to which a Party has a prior legal or contractual obligation to disclose.
- (e) As permitted in Article 7.2 and as necessary for publications and presentations in accordance with Article 7.3.
- (f) With the prior written consent of the providing Party.

8.2.4 A Party shall provide notice to the other Parties of an intended disclosure under (a), (b), (c), or (d) of Article 8.2.3 as soon as possible and shall limit any such disclosure to the extent possible. Disclosure in accordance with Article 8.2.3 will not otherwise affect the confidential nature of the information.

8.3 Duration of Confidentiality Obligation.

8.3.1. Confidential Information that is a trade secret, commercial or financial information under the meaning of section 552(b)(4) of title 5 of United States Code, obtained either in the conduct of this CRADA or as a result of activities related to this CRADA, and is from the Collaborator, shall not be disclosed by VA. See, 15 U.S.C. § 3710a(c)(7)(A).

8.3.2 Confidential Information that results from research and development activities under this CRADA (that would be a trade secret or commercial or financial information if the information had been obtained from Collaborator under Article 8.3.1) shall be maintained as confidential by a Party for (5) years after development of such information. See, 15 U.S.C. § 3710a(c)(7)(B).

8.3.3 The obligation to maintain the confidentiality of Individually Identifiable Information shall last as long as the Party or any successor-in-interest maintains the Individually Identifiable Information.

Article 9. Warranties

9.1 **Party Warranties.** The Parties warrant:

- (a) Each has authority to enter into this CRADA.
- (b) The signatories have authority to sign on behalf of their organization.
- (c) Neither they nor any of their personnel involved in this CRADA are debarred or suspended by any agency of Government, or are excluded from any Federal health care program, or have received notice of intent to seek such action.
- (d) No person or organization that becomes debarred or suspended during the performance of this CRADA shall be allowed to provide services or to participate in research under this CRADA.

9.2 **Additional Collaborator Warranties.** Collaborator also warrants:

- (a) Collaborator is financially able to satisfy the funding obligations described herein.

- (b) Collaborator maintains insurance or self-insurance at levels sufficient to support the indemnification obligations assumed herein. Upon request, Collaborator shall provide evidence of such insurance.
- (c) Collaborator's study monitors understand and will respect the confidential nature of VA patient health records.

Article 10. Expiration and Termination

- 10.1 **Expiration.** This CRADA shall expire in accordance with the SOW. The term of this CRADA may be extended by mutual written consent of the Parties in accordance with Article 13.6.
- 10.2 **Termination by Mutual Consent.** VA and Collaborator may terminate this CRADA at any time by mutual written consent given in accordance with Article 13.6.
- 10.3 **Unilateral Termination.** Either VA or Collaborator may unilaterally terminate this CRADA 1) at any time by providing written notice in accordance with Article 13.6 at least sixty (60) days before the desired termination date; or 2) immediately upon a material breach, for good cause, for subject safety, or upon termination of the study by the FDA.
- 10.4 **Payments.** If this CRADA is terminated, Collaborator shall pay any funds due through the date of termination and for work accomplished through the date of termination, as well as for reasonable termination costs and non-cancelable obligations, i.e., costs which cannot be prevented or mitigated and which arise directly as a result of this CRADA, including the cost of returning Collaborator property or removal of abandoned Collaborator property. In the event the total payments made by Collaborator exceed the final calculation of the payments owed, NPC shall promptly reimburse such excess to Collaborator.
- 10.5 **New Commitments.** No Party shall incur new expenses related to this CRADA after expiration, mutual termination, or unilateral termination and shall, to the extent feasible, cancel all outstanding commitments and contracts by the termination date.

Article 11. Disputes

- 11.1 **Settlement.** Disputes shall be submitted jointly to VA and Collaborator in accordance with Article 13.6. If VA and Collaborator are unable to jointly resolve the dispute within thirty (30) days after notification thereof, the VHA Office of the Under Secretary for Health shall propose a resolution. Nothing in this Article prevents VA or Collaborator from pursuing any additional administrative remedies that may be available and, after exhaustion of such administrative remedies, pursuing judicial remedies. When imposed by the IRB, requirements and modifications pertaining to the conduct of the Protocol are not disputes subject to settlement under this Article. In the event that a joint decision cannot be reached, VA policy is to encourage the use of Alternative Dispute Resolution (ADR) procedures.

11.2 **Continuation of Work.** Pending the resolution of any dispute pursuant to this Article, the Parties agree to diligently pursue performance of all obligations to the extent possible.

Article 12. Indemnification and Liability

12.1 Collaborator's Indemnification and Liability.

12.1.1 Collaborator shall defend, indemnify and hold harmless VA, VA Employees, the responsible IRB, the NPC and any of their agents (collectively the "indemnitees") from all liabilities, claims, actions and suits for personal injury, loss or death arising from the Protocol, except to the extent that:

- (a) The clinical trial is not performed by the indemnitees in accordance with the Protocol, written instructions provided by Collaborator, and Good Clinical Practices where and as adopted by the FDA; or
- (b) Such liability, claim, action and/or suit arises out of the negligence or wrongful act of any indemnitee.

12.1.2 VA shall promptly notify Collaborator of any liability, claim, action, suit, complaint and/or injury relating to its obligations under this Article.

12.1.3 Collaborator shall have the right to select defense counsel and to direct the defense or settlement of any such liability, claim, action and/or suit except to the extent that the Department of Justice is defending an indemnitee.

12.1.4 Material deviations from the terms of the Protocol that arise out of necessity do not constitute negligence, wrongful act or willful malfeasance. VA shall promptly notify Collaborator of any such deviations.

12.2 **VA's Indemnity and Liability.** The parties agree that any claims that VA employees were negligent in the performance of this CRADA shall be handled in accordance with the Federal Tort Claims Act as the exclusive remedy.

12.3 **Costs of Subject Injury.** Collaborator shall be responsible for reasonable and customary costs incurred for treatment of injury reasonably related to the subject's participation in the study described in the SOW except to the extent that:

- (a) the injury is attributable to the negligence or willful misconduct of an indemnitee; or
- (b) the injury is attributable to failure to administer Test Article as required in the Protocol or to otherwise substantially follow the Protocol.

12.4 **Force Majeure.** No Party shall be liable for any unforeseeable event beyond its reasonable control and not caused by its own fault or negligence, which causes the Party to be unable to perform its obligations under this CRADA, and which it has been unable to overcome by the exercise of due diligence. If a *force majeure* event occurs, the Party unable to perform shall promptly notify the other Party. It shall use reasonable

efforts to resume performance as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the *force majeure* event.

Article 13. Miscellaneous

- 13.1 **Governing Law.** This CRADA shall be governed by U.S. Federal law, as applied by the Federal courts in the District of Columbia. If any provision in this CRADA conflicts with or is inconsistent with any U.S. Federal law or regulation, the applicable U.S. Federal law or regulation shall preempt that provision.
- 13.2 **Waivers.** None of the provisions of this CRADA shall be considered waived by any Party unless a waiver is given in writing to the other Parties. The failure of a Party to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any Party.
- 13.3 **Severability.** The illegality or invalidity of any provisions of this CRADA shall not impair, affect, or invalidate the other provisions of this CRADA. If any provision is found illegal or invalid, the Parties shall promptly negotiate a substitute provision.
- 13.4 **Amendments.** This CRADA may be modified only by written instrument executed by an authorized signatory for each Party. The SOW and the Protocol may be modified by mutual written consent of Collaborator and the Principal Investigator, subject to approval, if required, by the IRB and R&D Committee. VA may deviate from the Protocol for subject safety with appropriate notification to the IRB and Collaborator.
- 13.5 **Assignment.** Neither this CRADA nor any rights or obligations of any Party hereunder may be assigned or otherwise transferred by any Party without the prior notification in accordance with Article 13.6. This CRADA shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assignees.
- 13.6 **Notices.** All notices shall be in writing and signed by an authorized representative of the notifying Party. Parties shall send notices by registered or certified mail by U.S. Postal Service with return receipt, or by an express/overnight commercial delivery service, with delivery prepaid. Notices shall be properly addressed to the other Parties at the addresses provided below or to any other address designated in writing by the other Parties.
- 13.7 **Party Relationships.** All Parties are independent from one another. This agreement does not establish a contract between any VA entity and NPC.
- 13.8 **Use of Name; Press Releases.** By entering into this CRADA, VA does not endorse any product or service. Collaborator shall not state or imply that the Government or any of its organizational units or employees endorses any product or service. The Parties shall provide proposed press releases related to this CRADA to each other for review and comment at least five (5) business days before publication. Any Party may disclose the title of this CRADA to the public without the approval of the other Parties.
- 13.9 **Reasonable Consent.** Whenever a Party's consent or permission is required under this CRADA, its consent or permission shall not be unreasonably withheld.

13.10 **Export Controls.** Collaborator agrees to comply with U.S. export law and regulations.

13.11 **Record Retention.**

13.11.1 **Study Records.** Study records are managed in accordance with the VA Privacy Act System of Records Notice, currently identified as “Veteran, Patient, Employee and Volunteer Research and Development Project Records-VA” (34VA12). VA will retain study records for this clinical trial in accordance with applicable regulations and VA policy. Study records may be destroyed thereafter in accordance with Privacy Act guidelines.

13.11.2 **Storage.** The expense of storage of research records in excess of five years due to clinical trial activities shall be paid by Collaborator. The costs for this additional retention will be negotiated in good faith at the time Collaborator undertakes this expense. Ownership of the records remains with VA.

13.11.3 **Patient Medical Records.** Patient medical records of clinical treatment of VA patients in the course of the SOW are covered by the VA Privacy Act System of Records entitled “Patient Medical Records-VA” (24VA19). VA shall retain and dispose of these records in accordance with the published Federal Register notice for these records and the applicable VA Records Control Schedule.

13.12 **Entire Agreement.** This CRADA constitutes the entire agreement of the Parties concerning the subject matter of this CRADA and supersedes any prior understanding or written or oral agreement.

13.13 **Survivability.** The provisions of Articles 3.4, 3.8, 4.1, 5.4 - 5.7, 6.1, 6.3, 7.1 – 8.3, 10.4, 11.1, 12.1 - 13.3, 13.5, 13.6, 13.8, 13.10, 13.11, 13.13 – 13.15 shall survive the expiration or early termination of this CRADA.

13.14 **Interpretation.** Any reference in this CRADA to an article of this CRADA includes all sub-articles thereof.

13.15 **Contacts.**

13.15.1 **CRADA Notices.**

For VA: ACOS/R&D and Principal Investigator:

For Collaborator:

For NPC:

13.15.2 **Patenting and Licensing.**

For VA:
Department of Veterans Affairs
Director, Technology Transfer (12TT)
810 Vermont Av NW

Washington, DC 20420
Email: VHACOTTTC@va.gov; Telephone: (202) 443-5640;

For Collaborator:

13.15.3 **Delivery of Materials** (if any).

For VA:

For Collaborator:

For NPC:

13.15.4 **Payments.**

For NPC:

SIGNATURES ARE FOUND ON THE NEXT PAGE.

**DEPARTMENT OF VETERANS AFFAIRS
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT**

SIGNATURE PAGE

ACCEPTED AND AGREED:

By executing this agreement, each Party represents that all statements made herein are true, complete, and accurate to the best of its knowledge; that each has read and understood this CRADA prior to signing; and that each enters into it freely and voluntarily.

FOR COLLABORATOR:

Signature

Date

Typed Name

Title

FOR VA:

VA MC or HCS Director Signature

Date

Typed Name

FOR NPC:

Signature (NPC Executive Director or Other Authorized Signatory)

Date

Typed Name

Title

Principal Investigator Acknowledgement

While not a Party, I understand and agree to the Principal Investigator obligations stated in this Agreement. Further, I certify that I am not debarred under subsections 306(a) or (b) of the Federal Food, Drug, and Cosmetic Act and shall not use in any capacity the services of any person debarred under such law with respect to services to be performed under this Agreement. I also certify that I am not excluded from any Federal health care program, including but not limited to Medicare and Medicaid.

Principal Investigator Signature

Principal Investigator Name

**DEPARTMENT OF VETERANS AFFAIRS
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT**

APPENDIX A

STATEMENT OF WORK

The term of this CRADA shall begin as of the date of the last signature of the Parties and shall terminate as of [specify date or event].

Department of Veterans Affairs

**PHASE [select III OR IV] CLINICAL TRIAL
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT (CRADA)**

This cover page identifies the Parties to this CRADA as follows:

The U.S. Department of Veterans Affairs, a Federal government agency, as represented by
[Insert the full name and address of the VAMC],

hereinafter referred to as “**VA**”

and

[Insert Collaborator’s official name],

hereinafter referred to as “**Collaborator**”,

having offices at [Insert Collaborator’s address],

created and operating under the laws of [Insert State or Country of Incorporation].

and

[Insert VA Non-Profit Research Corporation Name],

hereinafter referred to as “**NPC**”,

having offices at [Insert NPC’s address]

created and operating under the laws of [Insert State of Incorporation].

The title of the project to which this CRADA pertains is [Insert Project Title].

Protocol Number: [Insert Protocol Number]

VA Principal Investigator: [Insert Name and Degree(s) of Principal Investigator]

**VA PHASE [select III OR IV] CLINICAL TRIAL
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT**

Article 1. Introduction

This Phase [III or IV] Clinical Trial Cooperative Research and Development Agreement (CRADA) is entered into under the authority of the Federal Technology Transfer Act (FTTA) of 1986, 15 U.S.C. § 3710a, *et seq.*, and shall be effective on the date of the last signature of the Parties.

Any inconsistency between the standard terms of Articles 1 through 13 of this CRADA and any appendices to this CRADA shall be resolved by giving precedence to Articles 1 through 13.

Article 2. Definitions

The terms listed in this Article shall carry the meanings indicated throughout the CRADA. Terms defined in applicable statutes or regulations, but not defined in this CRADA, shall carry the meaning of the statutory or regulatory definition.

“Background Invention” means an invention conceived and reduced to practice or made the subject of a patent application in accordance with patent law in the United States, or in any other country or region, before the effective date of this CRADA.

“Case Report Form” means a printed or electronic document designed to record all of the Protocol-required information to be reported to the Collaborator on each study subject.

“Collaborator Confidential Information” means scientific, business and financial information, including the Protocol, disclosed by or on behalf of Collaborator in writing and marked or otherwise identified as confidential. Collaborator Confidential Information does not include CRADA Data, descriptions of CRADA Materials, CRADA Reports and completed Case Report Forms.

“Collaborator Materials” means all tangible materials not first produced in the performance of the Statement of Work that are owned or controlled by Collaborator and are used in the performance of the Statement of Work.

“Confidential Information” means Individually Identifiable Information, CRADA Data, descriptions of CRADA Materials, CRADA Reports, completed Case Report Forms, Collaborator Confidential Information, VA Confidential Information, and other written documents marked or otherwise identified as confidential provided that the information is not:

- (a) publicly known or available from public sources; or
- (b) made available by its owner to others without a confidentiality obligation or
- (c) already known by the receiving Party, or independently created or compiled by the receiving Party without reference to or use of information provided under this CRADA; or

- (d) related to potential hazards or cautionary warnings associated with the production, handling, or use of the subject matter of the SOW.

“CRADA Data” means recorded information first produced by the Parties as required in the performance of the Protocol. CRADA Data does not include patient medical records or Individually Identifiable Information, except for any that may be contained in the completed Case Report Form.

“CRADA Materials” means all tangible materials including biological specimens, other than CRADA Data, first produced in the performance of the Statement of Work.

“CRADA Reports” means reports of CRADA Subject Inventions prepared in accordance with Article 5.3.

“CRADA Subject Invention” means any invention conceived or first actually reduced to practice in the performance of the Statement of Work.

“Individually Identifiable Information” means any information, including health information maintained by the Veterans Health Administration (VHA), pertaining to an individual that also identifies the individual or for which there is a reasonable basis to believe the information can be used to identify the individual.

“NPC” means the VA-affiliated non-profit research, or research and education, corporation created and operated under the laws of the state identified on the cover page. The NPC’s role and obligations are set forth in this CRADA pursuant to its statutory authority under 38 U.S.C. §§ 7361-68 and VHA Handbook 1200.17.

“Principal Investigator” means the VA Employee who actually conducts a clinical investigation in accordance with the Statement of Work, i.e., under whose immediate direction the research is conducted or, in the event of research conducted by a team of investigators, is the responsible leader of that team.

“Protocol” means the formal, detailed description of the study to be performed under this CRADA, and includes amendments, modifications and associated documents such as an informed consent form template.

“Statement of Work” (SOW), Appendix A, defines the research to be conducted under this CRADA and includes the Protocol, whether or not attached.

“Test Article” means the drug that is the subject of the SOW (21 U.S.C. § 301 *et seq.*).

“VA Confidential Information” means patient medical records, Individually Identifiable Information except for any that may be contained in the completed Case Report Form, and scientific information disclosed in written form by or on behalf of VA. VA Confidential Information does not include CRADA Data, descriptions of CRADA Materials, CRADA Reports and completed Case Report Forms.

“VA Employee” means any individual who is employed by VA, including one who is salaried by VA or is working under a VA Without Compensation (WOC) Appointment (38 U.S.C. § 513 and

§ 7405) or under an Intergovernmental Personnel Act assignment (5 U.S.C. §§ 3371-3375). When used in this Agreement, the term “VA” includes VA employees.

Article 3. Cooperative Research and Development

- 3.1 **Performance of Research and Development.** VA Employees and Collaborator shall carry out the collaborative research as described in the SOW and in accordance with applicable Federal laws, regulations and VA policies and procedures. Each Party agrees to comply with, and to ensure that its contractors and agents comply with, applicable statutes, Executive Orders, and VA regulations relating to research on human subjects including but not limited to 38 C.F.R. Parts 16 and 17, 21 C.F.R. Parts 50, 56, and 312 as applicable to the research described in the SOW. Such regulations may include the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information (45 C.F.R. Parts 160 and 164), as well as those set forth in VA’s security directives.
- 3.2 **Use and Disposition of Collaborator Materials.** VA agrees to use Collaborator Materials only in accordance with the SOW. Upon completion, expiration or termination of this CRADA, VA agrees to dispose of these materials in accordance with this CRADA.
- 3.3 **Principal Investigator Responsibilities.** The Principal Investigator shall be responsible for coordinating the scientific and technical conduct of this project on behalf of VA. Principal Investigator shall ensure that the research under this CRADA is conducted in accordance with VA policies and applicable laws and regulations. Prior to beginning research under this CRADA, the Principal Investigator shall obtain R&D Committee approval of the Protocol. Such approval entails Institutional Review Board (IRB) approval of the Protocol and all associated documents including informational documents, the informed consent form and advertisements used in the performance of this CRADA.
- 3.4 **Human Subjects Protection.**
- 3.4.1 The research to be conducted under this CRADA involves human subjects or human tissues as described in 38 C.F.R. Part 16. All research performed under this CRADA shall conform to laws, regulations and VA policies and procedures pertaining to protections for human subjects. Collaborator and VA shall immediately notify each other, and VA shall promptly notify the IRB, upon identifying any aspect of the Protocol, including unanticipated problems involving risk and information discovered during site monitoring visits or in the study results that may adversely affect the safety, well-being, or medical care of subjects, or that may affect the willingness of subjects to continue participation in the research, may influence the conduct of the study, or may alter the IRB’s approval to continue the study. When subject safety or medical care could be directly affected by study results, VA shall send study subjects a written communication the content of which is subject to IRB approval.
- 3.4.2 The data contained in completed Case Report Forms may include Individually Identifiable Information. Collaborator shall comply with all applicable laws, regulations and the provisions of this CRADA relating to Information privacy and data security in regard to Individually Identifiable Information. Collaborator will

take appropriate measures to protect the confidentiality and security of all such Individually Identifiable Information and will use and disclose such information only as authorized by the subject's prior signed informed consent and authorization document(s) and in accordance with this CRADA.

3.5 **Test Article Information and Supply.** Collaborator agrees to provide VA, without charge and on a schedule that shall ensure timely performance of the research, a sufficient quantity of formulated and acceptably labeled, clinical-grade Test Article and, if required by the Protocol, any placebo, comparator, or supplemental drug necessary to complete the SOW. Collaborator shall provide to VA information regarding safety and efficacy data from clinical and non-clinical studies, recommended dosage or usage, storage and known risks or contraindications, if any.

3.6 **Test Article Delivery, Use and Disposition.**

3.6.1 Collaborator shall ship the Test Article, placebo, comparator and supplemental drug, if any, to the pharmacy at the participating VA facility, or as otherwise directed by VA, in containers marked in accordance with 21 C.F.R. § 312.6. Pharmacy contacts at VA shall be determined by VA and communicated to Collaborator.

3.6.2 VA agrees to use Test Article only in accordance with the SOW.

3.6.3 Upon completion, termination, or expiration of this CRADA, any unused quantity of Test Article will be returned to Collaborator or disposed of as directed by Collaborator.

3.7 **Monitoring.**

3.7.1 In accordance with VA policies regarding site monitors and subject to the restrictions in this CRADA concerning Individually Identifiable Information, VA shall permit Collaborator or its designee(s) upon reasonable notice and during regular business hours to monitor, in accordance with the section on monitoring of the International Conference on Harmonization (ICH) E6: "Good Clinical Practice: Consolidated Guideline," 62 Fed. Reg. 25,692 (1997), the conduct of the research, as well as to audit source documents:

(a) for regulatory purposes; and

(b) to the extent necessary to verify compliance with:

(i) Good Clinical Practice in accordance with the International Conference on Harmonisation (ICH) E6: "Good Clinical Practice: Consolidated Guideline," 62 Federal Register 25,692 (1997) where and as adopted by the FDA; and

(ii) the Protocol.

3.7.2 Monitors will be subject to applicable Federal laws, regulations and VA policies on access to Federal facilities, data, and data systems. VA shall disclose

Individually Identifiable Information to monitors only to the extent permitted by the subjects' prior signed informed consent and authorization document(s), and this CRADA.

- 3.8 **Registration of Protocol.** VA encourages Collaborator to register the Protocol with www.clinicaltrials.gov, and any other registry with requirements consistent with the registration and publication guidelines of the International Committee of Medical Journal Editors.

Article 4. Financial and Equipment Contributions

- 4.1 **VA and Collaborator Contributions.** The respective contributions of the Parties are set forth in the SOW. All payments by Collaborator shall be made to NPC and shall be in U.S. dollars by check or bank draft, sent in accordance with Article 13.15.4, or shall be made by electronic transfer. Collaborator's failure to make any scheduled payment shall be deemed a material breach. If Collaborator fails to cure such breach within 30 days, VA and NPC shall not be obligated to perform their responsibilities under this CRADA and may terminate this CRADA in accordance with the procedures set forth in Article 10.3. All remedies for such non-payment remain available to VA and NPC under Federal and state law.
- 4.2 **Capital Equipment.** Collaborator's commitment, if any, to provide VA with capital equipment appears in the SOW. If Collaborator transfers capital equipment to VA or provides funds to VA or NPC for purchase of capital equipment, VA or NPC shall own the equipment. If Collaborator loans capital equipment to VA for use pursuant to this CRADA, Collaborator shall be responsible for paying costs associated with the transport, installation, maintenance, repair, removal, or disposal of the equipment, and VA shall not be liable for damages to the equipment, except due to the negligence of VA.

Article 5. Inventions and Intellectual Property

- 5.1 **Background Inventions.** Nothing in this CRADA shall be construed to grant a Party any rights in another Party's Background Invention other than to use the Background Invention to fulfill the requirements of the SOW.
- 5.2 **Ownership of CRADA Subject Inventions.** Subject to Article 6.3, VA or Collaborator shall retain sole ownership of and title to CRADA Subject Inventions made solely by its respective employees. VA and Collaborator shall jointly own CRADA Subject Inventions made jointly. NPC neither acquires nor retains any intellectual property rights in CRADA Subject Inventions and shall have no obligation or responsibility to participate in the reporting, filing, or prosecution of patents.
- 5.3 **Reporting.** VA and Collaborator shall promptly report to each other in writing each CRADA Subject Invention disclosed by its respective personnel. Such CRADA Reports shall be in sufficient detail to allow determination of inventorship in accordance with U.S. patent law.
- 5.4 **Filing of Patent Applications.** VA and Collaborator shall each make timely decisions regarding whether it will file patent applications on CRADA Subject Inventions made solely by their respective employees and shall notify each other in advance of filing.

Collaborator shall have the first opportunity to file a patent application on joint CRADA Subject Inventions and shall notify VA of its decision whether to file within ninety (90) days of a CRADA Subject Invention being reported. If Collaborator fails to notify VA of its decision within that time period or notifies VA of its decision not to file a patent application, then VA has the right to file a patent application on the joint CRADA Subject Invention. Collaborator shall place the following statement in any patent application it files on a CRADA Subject Invention: "This invention was created in the performance of a Cooperative Research and Development Agreement with the Department of Veterans Affairs, an agency of the U.S. Government, which has certain rights in this invention."

- 5.5 **Non-election of Patent.** If VA or Collaborator elects not to file a patent application on a CRADA Subject Invention made solely or jointly by its employees, such Party may assign its interest to the other Party. In the event neither VA nor Collaborator elects to file a patent application, either or both (if a joint CRADA Subject Invention) may assign its ownership to its respective inventor(s).
- 5.6 **Patent Expenses.** Unless agreed otherwise, the Party filing a patent application shall pay all related expenses.
- 5.7 **Prosecution of Patent Applications.** The Party filing a patent application for a CRADA Subject Invention shall provide the other party with a copy of any official communication relating to prosecution of the patent application within thirty (30) days of transmission of the communication. The Parties agree to cooperate in the preparation and filing of patent applications relating to CRADA Subject Inventions.
- 5.8 **Third-Party Rights in Collaborator's CRADA Subject Inventions.** If either Party has pre-existing agreements that give a third party rights in a CRADA Subject Invention or if either Party has received (or will receive) support of any kind from a third party in exchange for rights in a CRADA Subject Invention, the Party shall ensure that its obligations to the third party are consistent with Articles 5 through 7 and subordinate to Article 6 of this CRADA.

Article 6. Licensing

- 6.1 **Collaborator's Nonexclusive License to CRADA Subject Inventions.** VA shall grant to Collaborator a nonexclusive, royalty free, worldwide license to a CRADA Subject Invention that is related to the Test Article and made solely by VA Employees. Collaborator shall submit to the Director of the VA Technology Transfer Program a written notice invoking such license right within ninety (90) days after receiving notification of a CRADA Subject Invention in accordance with Article 13.6. In return for the nonexclusive, royalty free license grant, Collaborator agrees to pay reasonable patent costs.
- 6.2 **Option for Exclusive License.** Subject to Article 6.3, VA grants to Collaborator an option to elect an exclusive or partially exclusive license on any CRADA Subject Invention made solely by VA Employee(s) or made jointly by VA and Collaborator employees. To exercise this option, Collaborator shall submit a written notice in accordance with Article 13.6 to the VA Director of Technology Transfer within ninety (90) days after notification by VA of a CRADA Subject Invention. Such notice shall specify Collaborator's intent to negotiate an exclusive or partially exclusive license. The Parties

shall have an additional one-hundred-eighty (180) days to negotiate such license. Such license shall include reasonable license terms and be substantially in the form of the model VA license agreement.

- 6.3 **Government Rights in CRADA Subject Inventions.** Pursuant to 15 U.S.C. § 3710a the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced CRADA Subject Inventions throughout the world by or on behalf of the Government for research or other Government purposes.

Article 7. Ownership, Access and Use of Data and Publication

- 7.1 **Case Report Forms and Records.** Collaborator shall own the original, completed Case Report Forms and the data therein. VA may retain copies. Collaborator acknowledges that the data contained in the completed Case Report Form may be replicated in VA-owned patient medical records or source documents. Collaborator ownership of data in the completed Case Report Forms in no way limits VA's ownership and use of data in its medical records and other source documents. Patient medical records, Individually Identifiable Information (except that contained in Collaborator's completed Case Report Forms), original notes, documents and records created by VA in the course of the Protocol shall be the property of VA. Collaborator shall have access to such materials and may receive copies to the extent permitted in the prior signed authorizations of subjects and this CRADA, or to the extent permitted by the applicable confidentiality statutes and regulations where a subject authorization was not required or was revoked.

7.2 CRADA Data, CRADA Reports, CRADA Materials and Descriptions of CRADA Materials.

7.2.1 VA may use CRADA Data, descriptions of CRADA Materials, CRADA Reports and CRADA Materials for publications and presentations as described in Article 7.3 Presentations and Publications and Article 8 Confidentiality. VA may use CRADA Data, descriptions of CRADA Materials, CRADA Reports and CRADA Materials for educational, noncommercial research and patient care purposes, and to comply with any applicable Federal state and local government laws and regulations, consistent with its obligations under this CRADA and as defined in the informed consent and authorization document signed by the research subject.

7.2.2 Collaborator may use CRADA Data, including Individually Identifiable Information contained on the completed Case Report Forms, descriptions of CRADA Materials, CRADA Reports and CRADA Materials for research purposes, including the creation and maintenance of a research database or repository, and regulatory filings, consistent with its obligations under this CRADA and to the extent allowed in the informed consent and authorization document(s) signed by the research subject. Biological specimen CRADA materials will be handled in accordance with the Protocol and/or informed Consent Document. Collaborator shall return to VA or destroy, as specified in the SOW, biological specimen CRADA Materials at the completion of the Protocol.

- 7.3 **Presentations and Publications.** VA and Collaborator have the right to make publicly available the results of their research and are encouraged to do so. Authorship shall be

determined by mutual agreement of Collaborator, VA and Principal Investigator in accordance with customary scientific practices.

- 7.3.1 **Review.** Principal Investigator shall submit to Collaborator for review a draft of each proposed presentation or publication of the results of the research performed under this CRADA. Collaborator shall have a review period of thirty (30) days. Collaborator may comment upon, but may not make editorial changes to the results and conclusions set forth in the draft. The draft may be submitted for publication or presentation upon receipt of Collaborator's written comments or upon expiration of the review period with no comments received from Collaborator. Reasonable consideration shall be given to all requested edits received from Collaborator.
- 7.3.2 **Single Site Data.** After pooled dataset is published by Collaborator or 180 days after data lock, Principal Investigator may freely publish and/or present the results derived from the data collected solely by VA. VA shall determine the authorship and contents (including scientific conclusions and professional judgments) of any publication or presentation. VA shall provide Collaborator with a copy for review in accordance with Articles 7.3 Presentations and Publications.
- 7.3.3 **Excise of Confidential Information.** VA shall excise Confidential Information, other than the results of the research, identified by Collaborator in the draft.
- 7.3.4 **Extension of Time for Patentable Inventions.** If Collaborator determines that any draft submitted for review in accordance with this Article describes one or more potentially patentable CRADA Subject Inventions, Collaborator shall provide notice to VA of this determination prior to expiration of the review period. Collaborator shall have ninety (90) days from the date of such notice to file patent application(s) for such inventions in accordance with Article 5, during which time VA shall refrain from publication of the draft.

Article 8. Confidentiality

- 8.1 **Non-disclosure and Non-use.** No Party may disclose or use any Confidential Information, or use or distribute CRADA Materials, except as expressly permitted in this CRADA.
- 8.2 **Disclosure and Use of Confidential Information**
- 8.2.1 Each Party may use and disclose Confidential Information as needed to accomplish the SOW.
- 8.2.2 Collaborator may use or disclose Collaborator Confidential Information and VA may use or disclose VA Confidential Information without any limitations imposed by this CRADA.
- 8.2.3 A Party may disclose Confidential Information:

- (a) As required by a court, administrative or regulatory body of competent jurisdiction, or by law, regulation or other applicable legal authority, or for patent filings and/or prosecution.
- (b) When requested by the chairman of a congressional oversight committee of jurisdiction acting in its oversight capacity.
- (c) When needed to provide medical care to a research subject when, in the opinion of the research subject's health care providers, such treatment is reasonable and necessary.
- (d) To other entities to which a Party has a prior legal or contractual obligation to disclose.
- (e) As permitted in Article 7.2 and as necessary for publications and presentations in accordance with Article 7.3.
- (f) With the prior written consent of the providing Party.

8.2.4 A Party shall provide notice to the other Parties of an intended disclosure under (a), (b), (c), or (d) of Article 8.2.3 as soon as possible and shall limit any such disclosure to the extent possible. Disclosure in accordance with Article 8.2.3 will not otherwise affect the confidential nature of the information.

8.3 Duration of Confidentiality Obligation.

8.3.1. Confidential Information that is a trade secret, commercial or financial information under the meaning of section 552(b)(4) of title 5 of United States Code, obtained either in the conduct of this CRADA or as a result of activities related to this CRADA, and is from the Collaborator, shall not be disclosed by VA. See, 15 U.S.C. § 3710a(c)(7)(A).

8.3.2 Confidential Information that results from research and development activities under this CRADA (that would be a trade secret or commercial or financial information if the information had been obtained from Collaborator under Article 8.3.1) shall be maintained as confidential by a Party for (5) years after development of such information. See, 15 U.S.C. § 3710a(c)(7)(B).

8.3.3 The obligation to maintain the confidentiality of Individually Identifiable Information shall last as long as the Party or any successor-in-interest maintains the Individually Identifiable Information.

Article 9. Warranties

9.1 **Party Warranties.** The Parties warrant:

- (a) Each has authority to enter into this CRADA.
- (b) The signatories have authority to sign on behalf of their organization.

- (c) Neither they nor any of their personnel involved in this CRADA are debarred or suspended by any agency of Government, or are excluded from any Federal health care program, or have received notice of intent to seek such action.
- (d) No person or organization that becomes debarred or suspended during the performance of this CRADA shall be allowed to provide services or to participate in research under this CRADA.

9.2 **Additional Collaborator Warranties.** Collaborator also warrants:

- (a) Collaborator is financially able to satisfy the funding obligations described herein.
- (b) Collaborator maintains insurance or self-insurance at levels sufficient to support the indemnification obligations assumed herein. Upon request, Collaborator shall provide evidence of such insurance.
- (c) Collaborator's study monitors understand and will respect the confidential nature of VA patient health records.

Article 10. Expiration and Termination

- 10.1 **Expiration.** This CRADA shall expire in accordance with the SOW. The term of this CRADA may be extended by mutual written consent of the Parties in accordance with Article 13.6.
- 10.2 **Termination by Mutual Consent.** VA and Collaborator may terminate this CRADA at any time by mutual written consent given in accordance with Article 13.6.
- 10.3 **Unilateral Termination.** Either VA or Collaborator may unilaterally terminate this CRADA 1) at any time by providing written notice in accordance with Article 13.6 at least sixty (60) days before the desired termination date; or 2) immediately upon a material breach, for good cause, for subject safety, or upon termination of the study by the FDA.
- 10.4 **Payments.** If this CRADA is terminated, Collaborator shall pay any funds due through the date of termination and for work accomplished through the date of termination, as well as for reasonable termination costs and non-cancelable obligations, i.e., costs which cannot be prevented or mitigated and which arise directly as a result of this CRADA, including the cost of returning Collaborator property or removal of abandoned Collaborator property. In the event the total payments made by Collaborator exceed the final calculation of the payments owed, NPC shall promptly reimburse such excess to Collaborator.
- 10.5 **New Commitments.** No Party shall incur new expenses related to this CRADA after expiration, mutual termination, or unilateral termination and shall, to the extent feasible, cancel all outstanding commitments and contracts by the termination date.

Article 11. Disputes

- 11.1 **Settlement.** Disputes shall be submitted jointly to VA and Collaborator in accordance with Article 13.6. If VA and Collaborator are unable to jointly resolve the dispute within thirty (30) days after notification thereof, the VHA Office of the Under Secretary for Health shall propose a resolution. Nothing in this Article prevents VA or Collaborator from pursuing any additional administrative remedies that may be available and, after exhaustion of such administrative remedies, pursuing judicial remedies. When imposed by the IRB, requirements and modifications pertaining to the conduct of the Protocol are not disputes subject to settlement under this Article. In the event that a joint decision cannot be reached, VA policy is to encourage the use of Alternative Dispute Resolution (ADR) procedures.
- 11.2 **Continuation of Work.** Pending the resolution of any dispute pursuant to this Article, the Parties agree to diligently pursue performance of all obligations to the extent possible.

Article 12. Indemnification and Liability

12.1 Collaborator's Indemnification and Liability.

12.1.1 Collaborator shall defend, indemnify and hold harmless VA, VA Employees, the responsible IRB, the NPC and any of their agents (collectively the "indemnitees") from all liabilities, claims, actions and suits for personal injury, loss or death arising from the Protocol, except to the extent that:

- (a) The clinical trial is not performed by the indemnitees in accordance with the Protocol, written instructions provided by Collaborator, and Good Clinical Practices where and as adopted by the FDA; or
- (b) Such liability, claim, action and/or suit arises out of the negligence or wrongful act of any indemnitee.

12.1.2 VA shall promptly notify Collaborator of any liability, claim, action, suit, complaint and/or injury relating to its obligations under this Article.

12.1.3 Collaborator shall have the right to select defense counsel and to direct the defense or settlement of any such liability, claim, action and/or suit except to the extent that the Department of Justice is defending an indemnitee.

12.1.4 Material deviations from the terms of the Protocol that arise out of necessity do not constitute negligence, wrongful act or willful malfeasance. VA shall promptly notify Collaborator of any such deviations.

12.2 **VA's Indemnity and Liability.** The parties agree that any claims that VA employees were negligent in the performance of this CRADA shall be handled in accordance with the Federal Tort Claims Act as the exclusive remedy.

12.3 **Costs of Subject Injury.** Collaborator shall be responsible for reasonable and customary costs incurred for treatment of injury reasonably related to the subject's participation in the study described in the SOW except to the extent that:

- (a) the injury is attributable to the negligence or willful misconduct of an indemnitee; or
- (b) the injury is attributable to failure to administer Test Article as required in the Protocol or to otherwise substantially follow the Protocol.

12.4 **Force Majeure.** No Party shall be liable for any unforeseeable event beyond its reasonable control and not caused by its own fault or negligence, which causes the Party to be unable to perform its obligations under this CRADA, and which it has been unable to overcome by the exercise of due diligence. If a *force majeure* event occurs, the Party unable to perform shall promptly notify the other Party. It shall use reasonable efforts to resume performance as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the *force majeure* event.

Article 13. Miscellaneous

- 13.1 **Governing Law.** This CRADA shall be governed by U.S. Federal law, as applied by the Federal courts in the District of Columbia. If any provision in this CRADA conflicts with or is inconsistent with any U.S. Federal law or regulation, the applicable U.S. Federal law or regulation shall preempt that provision.
- 13.2 **Waivers.** None of the provisions of this CRADA shall be considered waived by any Party unless a waiver is given in writing to the other Parties. The failure of a Party to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any Party.
- 13.3 **Severability.** The illegality or invalidity of any provisions of this CRADA shall not impair, affect, or invalidate the other provisions of this CRADA. If any provision is found illegal or invalid, the Parties shall promptly negotiate a substitute provision.
- 13.4 **Amendments.** This CRADA may be modified only by written instrument executed by an authorized signatory for each Party. The SOW and the Protocol may be modified by mutual written consent of Collaborator and the Principal Investigator, subject to approval, if required, by the IRB and R&D Committee. VA may deviate from the Protocol for subject safety with appropriate notification to the IRB and Collaborator.
- 13.5 **Assignment.** Neither this CRADA nor any rights or obligations of any Party hereunder may be assigned or otherwise transferred by any Party without the prior notification in accordance with Article 13.6. This CRADA shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assignees.
- 13.6 **Notices.** All notices shall be in writing and signed by an authorized representative of the notifying Party. Parties shall send notices by registered or certified mail by U.S. Postal Service with return receipt, or by an express/overnight commercial delivery service, with delivery prepaid. Notices shall be properly addressed to the other Parties at the addresses provided below or to any other address designated in writing by the other Parties.

- 13.7 **Party Relationships.** All Parties are independent from one another. This agreement does not establish a contract between any VA entity and NPC.
- 13.8 **Use of Name; Press Releases.** By entering into this CRADA, VA does not endorse any product or service. Collaborator shall not state or imply that the Government or any of its organizational units or employees endorses any product or service. The Parties shall provide proposed press releases related to this CRADA to each other for review and comment at least five (5) business days before publication. Any Party may disclose the title of this CRADA to the public without the approval of the other Parties.
- 13.9 **Reasonable Consent.** Whenever a Party's consent or permission is required under this CRADA, its consent or permission shall not be unreasonably withheld.
- 13.10 **Export Controls.** Collaborator agrees to comply with U.S. export law and regulations.
- 13.11 **Record Retention.**
- 13.11.1 **Study Records.** Study records are managed in accordance with the VA Privacy Act System of Records Notice, currently identified as "Veteran, Patient, Employee and Volunteer Research and Development Project Records-VA" (34VA12). w VA will retain study records for this clinical trial in accordance with applicable regulations and VA policy. Study records may be destroyed thereafter in accordance with Privacy Act guidelines.
- 13.11.2 **Storage.** The expense of storage of research records in excess of five years due to clinical trial activities shall be paid by Collaborator. The costs for this additional retention will be negotiated in good faith at the time Collaborator undertakes this expense. Ownership of the records remains with VA.
- 13.11.3 **Patient Medical Records.** Patient medical records of clinical treatment of VA patients in the course of the SOW are covered by the VA Privacy Act System of Records entitled "Patient Medical Records-VA" (24VA19). VA shall retain and dispose of these records in accordance with the published Federal Register notice for these records and the applicable VA Records Control Schedule.
- 13.12 **Entire Agreement.** This CRADA constitutes the entire agreement of the Parties concerning the subject matter of this CRADA and supersedes any prior understanding or written or oral agreement.
- 13.13 **Survivability.** The provisions of Articles 3.4, 3.8, 4.1, 5.4 - 5.7, 6.1, 6.3, 7.1 – 8.3, 10.4, 11.1, 12.1 - 13.3, 13.5, 13.6, 13.8, 13.10, 13.11, 13.13 – 13.15 shall survive the expiration or early termination of this CRADA.
- 13.14 **Interpretation.** Any reference in this CRADA to an article of this CRADA includes all sub-articles thereof.
- 13.15 **Contacts.**
- 13.15.1 **CRADA Notices.**

For VA: ACOS/R&D and Principal Investigator:

For Collaborator:

For NPC:

13.15.2 Patenting and Licensing.

For VA:

Department of Veterans Affairs
Director, Technology Transfer (12TT)
810 Vermont Av NW
Washington, DC 20420
Email: VHACOTTTC@va.gov; Telephone: (202) 443-5640;

For Collaborator:

13.15.3 Delivery of Materials (if any).

For VA:

For Collaborator:

For NPC:

13.15.4 Payments.

For NPC:

SIGNATURES ARE FOUND ON THE NEXT PAGE.

**DEPARTMENT OF VETERANS AFFAIRS
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT**

SIGNATURE PAGE

ACCEPTED AND AGREED:

By executing this agreement, each Party represents that all statements made herein are true, complete, and accurate to the best of its knowledge; that each has read and understood this CRADA prior to signing; and that each enters into it freely and voluntarily.

FOR COLLABORATOR:

Signature

Date

Typed Name

Title

FOR VA:

VA MC or HCS Director Signature

Date

Typed Name

FOR NPC:

Signature (NPC Executive Director or Other Authorized Signatory)

Date

Typed Name

Title

Principal Investigator Acknowledgement

While not a Party, I understand and agree to the Principal Investigator obligations stated in this Agreement. Further, I certify that I am not debarred under subsections 306(a) or (b) of the Federal Food, Drug, and Cosmetic Act and shall not use in any capacity the services of any person debarred under such law with respect to services to be performed under this Agreement. I also certify that I am not excluded from any Federal health care program, including but not limited to Medicare and Medicaid.

Principal Investigator Signature

Principal Investigator Name

**DEPARTMENT OF VETERANS AFFAIRS
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT**

APPENDIX A

STATEMENT OF WORK

The term of this CRADA shall begin as of the date of the last signature of the Parties and shall terminate as of [specify date or event].

Department of Veterans Affairs

**INVESTIGATIONAL DEVICE CLINICAL TRIAL
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT (CRADA)**

This cover page identifies the Parties to this CRADA as follows:

The U.S. Department of Veterans Affairs, a Federal government agency, as represented by
[Insert the full name and address of the VAMC],

hereinafter referred to as “**VA**” or “**Government**”

and

[Insert Collaborator’s official name],

hereinafter referred to as “**Collaborator**”,

having offices at [Insert Collaborator’s address],

created and operating under the laws of [Insert State or Country of Incorporation].

and

[Insert VA Non-Profit Research Corporation Name],

hereinafter referred to as “**NPC**”,

having offices at [Insert NPC’s address]

created and operating under the laws of [Insert State of Incorporation].

The title of the project to which this CRADA pertains is [Insert Project Title and Classification as received from the FDA].

Protocol Number: [Insert Protocol Number]

VA Principal Investigator: [Insert Name and Degree(s) of Principal Investigator]

VA INVESTIGATIONAL DEVICE CLINICAL TRIAL
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

Article 1. Introduction

This Investigational Device Clinical Trial Cooperative Research and Development Agreement (CRADA) is entered into under the authority of the Federal Technology Transfer Act (FTTA) of 1986, 15 U.S.C. § 3710a, *et seq.*, and shall be effective on the date of the last signature of the Parties.

Any inconsistency between the standard terms of Articles 1 through 13 of this CRADA and any appendices to this CRADA shall be resolved by giving precedence to Articles 1 through 13.

Article 2. Definitions

The terms listed in this Article shall carry the meanings indicated throughout the CRADA. Terms defined in applicable statutes or regulations, but not defined in this CRADA, shall carry the meaning of the statutory or regulatory definition.

“Background Invention” means an invention conceived and reduced to practice or made the subject of a patent application in accordance with patent law in the United States, or in any other country or region, before the effective date of this CRADA. Background Invention includes the Investigational Device.

“Case Report Form” means a printed or electronic document designed to record all of the Protocol-required information to be reported to the Collaborator on each study subject.

“Collaborator Confidential Information” means scientific, business and financial information, including the Protocol, disclosed by or on behalf of Collaborator in writing and marked or otherwise identified as confidential. Collaborator Confidential Information does not include CRADA Data, descriptions of CRADA Materials, CRADA Reports and completed Case Report Forms.

“Collaborator Materials” means all tangible materials not first produced in the performance of the Statement of Work that are owned or controlled by Collaborator and are used in the performance of the Statement of Work. “Collaborator Materials” does not include the “Investigational Device.”

“Confidential Information” means Individually Identifiable Information, CRADA Data, descriptions of CRADA Materials, CRADA Reports, completed Case Report Forms, Collaborator Confidential Information, VA Confidential Information, and other written documents marked or otherwise identified as confidential provided that the information is not:

- (a) publicly known or available from public sources; or
- (b) made available by its owner to others without a confidentiality obligation or
- (c) already known by the receiving Party, or independently created or compiled by the receiving Party without reference to or use of information provided under this CRADA; or

- (d) related to potential hazards or cautionary warnings associated with the production, handling, or use of the subject matter of the SOW.

“CRADA Data” means recorded information first produced by the Parties as required in the performance of the Protocol. CRADA Data does not include patient medical records or Individually Identifiable Information, except for any that may be contained in the completed Case Report Form.

“CRADA Materials” means all tangible materials including biological specimens, other than CRADA Data, first produced in the performance of the Statement of Work.

“CRADA Reports” means reports of CRADA Subject Inventions prepared in accordance with Article 5.3.

“CRADA Subject Invention” means any invention conceived or first actually reduced to practice in the performance of the Statement of Work.

“Individually Identifiable Information” means any information, including health information maintained by the Veterans Health Administration (VHA), pertaining to an individual that also identifies the individual or for which there is a reasonable basis to believe the information can be used to identify the individual.

“NPC” means the VA-affiliated non-profit research, or research and education, corporation created and operated under the laws of the state identified on the cover page. The NPC’s role and obligations are set forth in this CRADA pursuant to its statutory authority under 38 U.S.C. §§ 7361-68 and VHA Handbook 1200.17.

“Principal Investigator” means the VA Employee who actually conducts a clinical investigation in accordance with the Statement of Work, i.e., under whose immediate direction the research is conducted or, in the event of research conducted by a team of investigators, is the responsible leader of that team.

“Protocol” means the formal, detailed description of the study to be performed under this CRADA, and includes amendments, modifications and associated documents such as an informed consent form template. The Protocol must adhere to all FDA requirements specific to the classification Collaborator received from the FDA for the Investigational Device.

“Statement of Work” (SOW), Appendix A, defines the research to be conducted under this CRADA and includes the Protocol, whether or not attached to this CRADA. The SOW shall include the FDA’s device classification determination.

“Test Article” means the investigational device that is the subject of the SOW.

“VA Confidential Information” means patient medical records and Individually Identifiable Information except for any that be contained in the completed Case Report Form, and scientific information disclosed in written form by or on behalf of VA. VA Confidential Information does not include CRADA Data, descriptions of CRADA Materials, CRADA Reports and completed Case Report Forms.

“VA Employee” means any individual who is employed by VA, including one who is salaried by VA or is working under a VA Without Compensation (WOC) Appointment (38 U.S.C. § 513 and

§ 7405) or under an Intergovernmental Personnel Act assignment (5 U.S.C. §§ 3371-3375). When used in this agreement, "VA" includes a "VA Employee."

Article 3. Cooperative Research and Development

- 3.1 **Performance of Research and Development.** VA Employees and Collaborator shall carry out the collaborative research as described in the SOW and in accordance with applicable Federal laws, regulations and VA policies and procedures. Each Party agrees to comply with, and to ensure that its contractors and agents comply with, applicable statutes, Executive Orders, and VA regulations relating to research on human subjects including but not limited to 38 C.F.R. Parts 16 and 17, 21 C.F.R. Parts 50, 56, and 800-898 as applicable to the research described in the SOW. Such regulations may include the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information (45 C.F.R. Parts 160 and 164), as well as those set forth in VA's security directives.
- 3.2 **Use and Disposition of Collaborator Materials.** VA agrees to use Collaborator Materials only in accordance with the SOW. Upon completion, expiration or termination of this CRADA, VA agrees to dispose of these materials in accordance with this CRADA.
- 3.3 **Principal Investigator Responsibilities.** The Principal Investigator shall be responsible for coordinating the scientific and technical conduct of this project on behalf of VA. Principal Investigator shall ensure that the research under this CRADA is conducted in accordance with VA policies and applicable laws and regulations. Prior to beginning research under this CRADA, the Principal Investigator shall obtain R&D Committee approval of the Protocol. Such approval entails Institutional Review Board (IRB) approval of the Protocol and all associated documents including informational documents, the informed consent form and advertisements used in the performance of this CRADA.
- 3.4 **Human Subjects Protection.**
- 3.4.1 The research to be conducted under this CRADA involves human subjects or human tissues as described in 38 C.F.R. Part 16. All research performed under this CRADA shall conform to laws, regulations and VA policies and procedures pertaining to protections for human subjects. Collaborator and VA shall immediately notify each other, and VA shall promptly notify the IRB, upon identifying any aspect of the Protocol, including unanticipated problems involving risk and information discovered during site monitoring visits or in the study results that may adversely affect the safety, well-being, or medical care of subjects, or that may affect the willingness of subjects to continue participation in the research, may influence the conduct of the study, or may alter the IRB's approval to continue the study. When subject safety or medical care could be directly affected by study results, VA shall send study subjects a written communication the content of which is subject to IRB approval.
- 3.4.2 The data contained in completed Case Report Forms may include Individually Identifiable Information. Collaborator shall comply with all applicable laws, regulations and the provisions of this CRADA relating to Information privacy and data security in regard to Individually Identifiable Information. Collaborator will take appropriate measures to protect the confidentiality and security of all such

Individually Identifiable Information and will use and disclose such information only as authorized by the subject's prior signed informed consent and authorization document(s) and in accordance with this CRADA.

3.5 **Test Article Information and Supply.** Collaborator agrees to provide VA, without charge and on a schedule that shall ensure timely performance of the research, a sufficient quantity of acceptably labeled Test Article and, if required by the Protocol, any placebo, comparator device, and, or supplemental drug necessary to complete the SOW. Collaborator shall provide to VA information regarding safety and efficacy data from clinical and non-clinical studies, recommended dosage or usage, dosage (if supplemental drug(s) is used) storage and known risks or contraindications, if any.

3.6 **Test Article Delivery, Use and Disposition.**

3.6.1 Collaborator shall ship the Test Article, placebo, comparator device, and supplemental drug, if any, to the pharmacy at the participating VA facility, or as otherwise directed by VA, in containers marked in accordance with 21 C.F.R. § 812.5 and § 312.6 as applicable. Pharmacy contacts at VA shall be determined by VA and communicated to Collaborator.

3.6.2 VA agrees to use Test Article comparator device and supplemental drug (if any) only in accordance with the SOW.

3.6.3 Upon completion, termination, or expiration of this CRADA, any unused quantity of Test Article, comparator device(s) and supplemental drug, if any, will be returned to Collaborator or disposed of as directed by Collaborator.

3.7 **Monitoring.**

3.7.1 In accordance with VA policies regarding site monitors and subject to the restrictions in this CRADA concerning Individually Identifiable Information, VA shall permit Collaborator or its designee(s) upon reasonable notice and during regular business hours to monitor, in accordance with the section on monitoring of the International Conference on Harmonisation (ICH) E6: "Good Clinical Practice: Consolidated Guideline," 62 Federal Register 25,692 (1997), to monitor the conduct of the research, as well as to audit source documents:

(a) for regulatory purposes; and

(b) to the extent necessary to verify compliance with:

(i) Good Clinical Practice in accordance with the International Conference on Harmonisation (ICH) E6: "Good Clinical Practice: Consolidated Guideline," 62 Federal Register 25,692 (1997) and as adopted by the FDA and

(ii) the Protocol.

3.7.2 Monitors will be subject to applicable Federal laws, regulations and VA policies on access to Federal facilities, data, and data systems. VA shall disclose

Individually Identifiable Information to monitors only to the extent permitted by the subjects' prior signed informed consent and authorization document(s), and this CRADA.

- 3.8 **Registration of Protocol.** VA encourages Collaborator to register the Protocol with www.clinicaltrials.gov, and any other registry with requirements consistent with the registration and publication guidelines of the International Committee of Medical Journal Editors.

Article 4. Financial and Equipment Contributions

- 4.1 **VA and Collaborator Contributions.** The respective contributions of the Parties are set forth in the SOW. All payments by Collaborator shall be made to NPC and shall be in U.S. dollars by check or bank draft, sent in accordance with Article 13.15.4, or shall be made by electronic transfer. Collaborator's failure to make any scheduled payment shall be deemed a material breach. If Collaborator fails to cure such breach within 30 days, VA and NPC shall not be obligated to perform their responsibilities under this CRADA and may terminate this CRADA in accordance with the procedures set forth in Article 10.3. All remedies for such non-payment remain available to VA and NPC under Federal and state law.
- 4.2 **Capital Equipment.** Collaborator's commitment, if any, to provide VA with capital equipment appears in the SOW. If Collaborator transfers capital equipment to VA or provides funds to VA or NPC for purchase of capital equipment, VA or NPC shall own the equipment. If Collaborator loans capital equipment to VA for use pursuant to this CRADA, Collaborator shall be responsible for paying costs associated with the transport, installation, maintenance, repair, removal, or disposal of the equipment, and VA shall not be liable for damages to the equipment, except due to the negligence of VA.

Article 5. Inventions and Intellectual Property

- 5.1 **Background Inventions.** Nothing in this CRADA shall be construed to grant a Party any rights in another Party's Background Invention other than to use the Background Invention to fulfill the requirements of the SOW.
- 5.2 **Ownership of CRADA Subject Inventions.** Subject to Article 6.2, VA or Collaborator shall retain sole ownership of and title to CRADA Subject Inventions made solely by its respective employees. VA and Collaborator shall jointly own CRADA Subject Inventions made jointly. NPC neither acquires nor retains any intellectual property rights in CRADA Subject Inventions and shall have no obligation or responsibility to participate in the reporting, filing, or prosecution of patents.
- 5.3 **Reporting.** VA and Collaborator shall promptly report to each other in writing each CRADA Subject Invention disclosed by its respective personnel. Such CRADA Reports shall be in sufficient detail to allow determination of inventorship in accordance with U.S. patent law.
- 5.4 **Filing of Patent Applications.** VA and Collaborator shall each make timely decisions regarding whether it will file patent applications on CRADA Subject Inventions made solely by their respective employees and shall notify each other in advance of filing. Collaborator shall have the first opportunity to file a patent application on joint CRADA

Subject Inventions and shall notify VA of its decision whether to file within ninety (90) days of a CRADA Subject Invention being reported. If Collaborator fails to notify VA of its decision within that time period or notifies VA of its decision not to file a patent application, then VA has the right to file a patent application on the joint CRADA Subject Invention. Collaborator shall place the following statement in any patent application it files on a CRADA Subject Invention: "This invention was created in the performance of a Cooperative Research and Development Agreement with the Department of Veterans Affairs, an agency of the U.S. Government, which has certain rights in this invention."

- 5.5 **Non-election of Patent.** If VA or Collaborator elects not to file a patent application on a CRADA Subject Invention made solely or jointly by its employees, such Party may assign its interest to the other Party. In the event neither VA nor Collaborator elects to file a patent application, either or both (if a joint CRADA Subject Invention) may assign its ownership to its respective inventor(s).
- 5.6 **Patent Expenses.** Unless agreed otherwise, the Party filing a patent application shall pay all related expenses.
- 5.7 **Prosecution of Patent Applications.** The Party filing a patent application for a CRADA Subject Invention shall provide the other party with a copy of any official communication relating to prosecution of the patent application within thirty (30) days of transmission of the communication. The Parties agree to cooperate in the preparation and filing of patent applications relating to CRADA Subject Inventions.
- 5.8 **Third-Party Rights in Collaborator's CRADA Subject Inventions.** If either Party has pre-existing agreements that give a third party rights in a CRADA Subject Invention or if either Party has received (or will receive) support of any kind from a third party in exchange for rights in a CRADA Subject Invention, the Party shall ensure that its obligations to the third party are consistent with Articles 5 through 7 and subordinate to Article 6 of this CRADA.

Article 6. Licensing

- 6.1 **License Options.** VA grants to Collaborator an option to elect a nonexclusive, partially exclusive or exclusive license on any CRADA Subject Invention made solely by VA Employee(s) or made jointly by VA and Collaborator employees. Any license granted shall be subject to negotiation of reasonable license terms within one hundred eighty (180) days after the exercise of the option and shall be substantially in the form of the model VA license agreement. To exercise this option, Collaborator shall submit a written notice to the VA Director of Technology Transfer within ninety (90) days after notification by VA of a CRADA Subject Invention in accordance with Article 13.6. Collaborator agrees to negotiate and pay reasonable patent costs.
- 6.2 **Government Rights in CRADA Subject Inventions.** Pursuant to 15 U.S.C. § 3710a the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced CRADA Subject Inventions throughout the world by or on behalf of the Government for research or other Government purposes.

Article 7. Ownership, Access and Use of Data and Publication

- 7.1 **Case Report Forms and Records.** Collaborator shall own the original, completed Case Report Forms and the data therein. VA may retain copies. Collaborator acknowledges that the data contained in the completed Case Report Form may be replicated in VA-owned patient medical records or source documents. Collaborator ownership of data in the completed Case Report Forms in no way limits VA's ownership and use of data in its medical records and other source documents. Patient medical records, Individually Identifiable Information (except that contained in Collaborator's completed Case Report Forms), original notes, documents and records created by VA in the course of the Protocol shall be the property of VA. Collaborator shall have access to such materials and may receive copies to the extent permitted in the prior signed authorizations of subjects and this CRADA, or to the extent permitted by the applicable confidentiality statutes and regulations where a subject authorization was not required or was revoked.
- 7.2 **CRADA Data, CRADA Reports, CRADA Materials and Descriptions of CRADA Materials.**
- 7.2.1 VA may use CRADA Data, descriptions of CRADA Materials, CRADA Reports and CRADA Materials for publications and presentations as described in Article 7.3 Presentations and Publications and Article 8 Confidentiality. VA may use CRADA Data, descriptions of CRADA Materials, CRADA Reports and CRADA Materials for educational, noncommercial research and patient care purposes, and to comply with any applicable Federal state and local government laws and regulations, consistent with its obligations under this CRADA and as defined in the informed consent and authorization document signed by the research subject.
- 7.2.2 Collaborator may use CRADA Data, including Individually Identifiable Information contained on the completed Case Report Forms, descriptions of CRADA Materials, CRADA Reports and CRADA Materials for research purposes, including the creation and maintenance of a research database or repository, and regulatory filings, only as permitted under this CRADA and only to the extent allowed in the informed consent and authorization document(s) signed by the research subject. Biological specimen CRADA materials will be handled in accordance with the Protocol and/or informed Consent Document. Collaborator shall return to VA or destroy, as specified in the SOW, biological specimen CRADA Materials at the completion of the Protocol.
- 7.3 **Presentations and Publications.** VA and Collaborator have the right to make publicly available the results of their research and are encouraged to do so. Authorship shall be determined by mutual agreement of Collaborator, VA and Principal Investigator in accordance with customary scientific practices.
- 7.3.1 **Review.** Principal Investigator shall submit to Collaborator for review a draft of each proposed presentation or publication of the results of the research performed under this CRADA. Collaborator shall have a review period of thirty (30) days. Collaborator may comment upon, but may not make editorial changes to the results and conclusions set forth in the draft. The draft may be submitted for publication or presentation upon receipt of Collaborator's written comments or upon expiration of the review period with no comments received from Collaborator. Reasonable consideration shall be given to all requested edits received from Collaborator.

- 7.3.2 **Single Site Data.** After pooled dataset is published by Collaborator or 180 days after data lock, Principal Investigator may freely publish and/or present the results derived from the data collected solely by VA. VA shall determine the authorship and contents (including scientific conclusions and professional judgments) of any publication or presentation. VA shall provide Collaborator with a copy for review in accordance with Article 7.3 Presentations and Publications.
- 7.3.3 **Excise of Confidential Information.** VA shall excise Confidential Information, other than the results of the research, identified by Collaborator in the draft.
- 7.3.4 **Extension of Time for Patentable Inventions.** If Collaborator determines that any draft submitted for review in accordance with this Article describes one or more potentially patentable CRADA Subject Inventions, Collaborator shall provide notice to VA of this determination prior to expiration of the review period. Collaborator shall have ninety (90) days from the date of such notice to file patent application(s) for such inventions in accordance with Article 5, during which time VA shall refrain from publication of the draft.

Article 8. Confidentiality

- 8.1 **Non-disclosure and Non-use.** No Party may disclose or use any Confidential Information, or use or distribute CRADA Materials, except as expressly permitted in this CRADA.
- 8.2 **Disclosure and Use of Confidential Information**
- 8.2.1 Each Party may use and disclose Confidential Information as needed to accomplish the SOW.
- 8.2.2 Collaborator may use or disclose Collaborator Confidential Information and VA may use or disclose VA Confidential Information without any limitations imposed by this CRADA.
- 8.2.3 A Party may disclose Confidential Information:
- (a) As required by a court, administrative or regulatory body of competent jurisdiction, or by law, regulation or other applicable legal authority, or for patent filings and/or prosecution.
 - (b) When requested by the chairman of a congressional oversight committee of jurisdiction acting in its oversight capacity.
 - (c) When needed to provide medical care to a research subject when, in the opinion of the research subject's health care providers, such treatment is reasonable and necessary.
 - (d) To other entities to which a Party has a prior legal or contractual obligation to disclose.

- (e) As permitted in Article 7.2 and as necessary for publications and presentations in accordance with Article 7.3.
- (f) With the prior written consent of the providing Party.

8.2.4 A Party shall provide notice to the other Parties of an intended disclosure under (a), (b), (c), or (d) of Article 8.2.3 as soon as possible and shall limit any such disclosure to the extent possible. Disclosure in accordance with Article 8.2.3 will not otherwise affect the confidential nature of the information.

8.3 Duration of Confidentiality Obligation.

8.3.1. Confidential Information that is a trade secret, commercial or financial information under the meaning of section 552(b)(4) of title 5 of United States Code, obtained either in the conduct of this CRADA or as a result of activities related to this CRADA, and is from the Collaborator, shall not be disclosed by VA. See, 15 U.S.C. § 3710a(c)(7)(A).

8.3.2 Confidential Information that results from research and development activities under this CRADA (that would be a trade secret or commercial or financial information if the information had been obtained from Collaborator under Article 8.3.1) shall be maintained as confidential by a Party for (5) years after development of such information. See, 15 U.S.C. § 3710a(c)(7)(B).

8.3.3 The obligation to maintain the confidentiality of Individually Identifiable Information shall last as long as the Party, or any successor- in- interest, maintains the Individually Identifiable Information.

Article 9. Warranties

9.1 **Party Warranties.** The Parties warrant:

- (a) Each has authority to enter into this CRADA.
- (b) The signatories have authority to sign on behalf of their organization.
- (c) Neither they nor any of their personnel involved in this CRADA are debarred or suspended by any agency of Government, or are excluded from any Federal health care program, or have received notice of intent to seek such action.
- (d) No person or organization that becomes debarred or suspended during the performance of this CRADA shall be allowed to provide services or to participate in research under this CRADA.

9.2 **Additional Collaborator Warranties.** Collaborator also warrants:

- (a) Collaborator is financially able to satisfy the funding obligations described herein.
- (b) Collaborator maintains insurance or self-insurance at levels sufficient to support the indemnification obligations assumed herein. Upon request, Collaborator shall provide evidence of such insurance.

- (c) Collaborator has provided a copy of its warranty, if applicable, for the Investigational Device and comparator device, if any, and its terms are hereby incorporated into this CRADA. If there is no applicable commercial warranty, the protocol shall address post-clinical trial maintenance and repair of the Investigational Device.
- (d) Collaborator warrants that they have consulted and comply with all applicable FDA guidance documents, industry standards, and recommended practices regarding the FDA classification for the Investigational Device.
- (e) Collaborator's study monitors understand and will respect the confidential nature of VA patient health records.

Article 10. Expiration and Termination

- 10.1 **Expiration.** This CRADA shall expire in accordance with the SOW. The term of this CRADA may be extended by mutual written consent of the Parties in accordance with Article 13.6.
- 10.2 **Termination by Mutual Consent.** VA and Collaborator may terminate this CRADA at any time by mutual written consent given in accordance with Article 13.6.
- 10.3 **Unilateral Termination.** Either VA or Collaborator may unilaterally terminate this CRADA 1) at any time by providing written notice in accordance with Article 13.6 at least sixty (60) days before the desired termination date; or 2) immediately upon a material breach, for good cause, for subject safety, or upon termination of the study by the FDA.
- 10.4 **Payments.** If this CRADA is terminated, Collaborator shall pay any funds due through the date of termination and for work accomplished through the date of termination, as well as for reasonable termination costs and non-cancelable obligations, i.e., costs which cannot be prevented or mitigated and which arise directly as a result of this CRADA, including the cost of returning Collaborator property or removal of abandoned Collaborator property. In the event the total payments made by Collaborator exceed the final calculation of the payments owed, NPC shall promptly reimburse such excess to Collaborator.
- 10.5 **New Commitments.** No Party shall incur new expenses related to this CRADA after expiration, mutual termination, or unilateral termination and shall, to the extent feasible, cancel all outstanding commitments and contracts by the termination date.

Article 11. Disputes

- 11.1 **Settlement.** Disputes shall be submitted jointly to VA and Collaborator in accordance with Article 13.6. If VA and Collaborator are unable to jointly resolve the dispute within thirty (30) days after notification thereof, the VHA Office of the Under Secretary for Health shall propose a resolution. Nothing in this Article prevents VA or Collaborator from pursuing any additional administrative remedies that may be available and, after exhaustion of such administrative remedies, pursuing judicial remedies. When imposed by the IRB, requirements and modifications pertaining to the conduct of the Protocol are

not disputes subject to settlement under this Article. In the event that a joint decision cannot be reached, VA policy is to encourage the use of Alternative Dispute Resolution (ADR) procedures.

- 11.2 **Continuation of Work.** Pending the resolution of any dispute pursuant to this Article, the Parties agree to diligently pursue performance of all obligations to the extent possible.

Article 12. Indemnification and Liability

12.1 Collaborator's Indemnification and Liability.

12.1.1 Collaborator shall defend, indemnify and hold harmless VA, VA Employees, the responsible IRB, the NPC and any of their agents (collectively the "indemnitees") from all liabilities, claims, actions and suits for personal injury, loss or death arising from the Protocol, except to the extent that:

- (a) The clinical trial is not performed by the indemnitees in accordance with the Protocol, written instructions provided by Collaborator, and Good Clinical Practices where and as adopted by the FDA; or
- (b) Such liability, claim, action and/or suit arises out of the negligence or wrongful act of any indemnitee.

12.1.2 VA shall promptly notify Collaborator of any liability, claim, action, suit, complaint and/or injury relating to its obligations under this Article.

12.1.3 Collaborator shall have the right to select defense counsel and to direct the defense or settlement of any such liability, claim, action and/or suit except to the extent that the Department of Justice is defending an indemnitee.

12.1.4 Material deviations from the terms of the Protocol that arise out of necessity do not constitute negligence, wrongful act or willful malfeasance. VA shall promptly notify Collaborator of any such deviations.

- 12.2 **VA's Indemnity and Liability.** The parties agree that any claims that VA employees were negligent in the performance of this CRADA shall be handled in accordance with the Federal Tort Claims Act as the exclusive remedy.

- 12.3 **Costs of Subject Injury.** Collaborator shall be responsible for reasonable and customary costs incurred for treatment of injury reasonably related to the subject's participation in the study described in the SOW except to the extent that:

- (a) the injury is attributable to the negligence or willful misconduct of an indemnitee; or
- (b) the injury is attributable to failure to administer or use Test Article, comparator device and/or supplemental drug, if any, as required in the Protocol or to otherwise substantially follow the Protocol.

- 12.4 **Force Majeure.** No Party shall be liable for any unforeseeable event beyond its reasonable control and not caused by its own fault or negligence, which causes the Party to be unable to perform its obligations under this CRADA, and which it has been unable to overcome by the exercise of due diligence. If a *force majeure* event occurs, the Party unable to perform shall promptly notify the other Party. It shall use reasonable efforts to resume performance as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the *force majeure* event.

Article 13. Miscellaneous

- 13.1 **Governing Law.** This CRADA shall be governed by U.S. Federal law, as applied by the Federal courts in the District of Columbia. If any provision in this CRADA conflicts with or is inconsistent with any U.S. Federal law or regulation, the applicable U.S. Federal law or regulation shall preempt that provision.
- 13.2 **Waivers.** None of the provisions of this CRADA shall be considered waived by any Party unless a waiver is given in writing to the other Parties. The failure of a Party to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any Party.
- 13.3 **Severability.** The illegality or invalidity of any provisions of this CRADA shall not impair, affect, or invalidate the other provisions of this CRADA. If any provision is found illegal or invalid, the Parties shall promptly negotiate a substitute provision.
- 13.4 **Amendments.** This CRADA may be modified only by written instrument executed by an authorized signatory for each Party. The SOW and the Protocol may be modified by mutual written consent of Collaborator and the Principal Investigator, subject to approval, if required, by the IRB and R&D Committee. VA may deviate from the Protocol for subject safety with appropriate notification to the IRB and Collaborator.
- 13.5 **Assignment.** Neither this CRADA nor any rights or obligations of any Party hereunder may be assigned or otherwise transferred by any Party without the prior notification in accordance with Article 13.6. This CRADA shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assignees.
- 13.6 **Notices.** All notices shall be in writing and signed by an authorized representative of the notifying Party. Parties shall send notices by registered or certified mail by U.S. Postal Service with return receipt, or by an express/overnight commercial delivery service, with delivery prepaid. Notices shall be properly addressed to the other Parties at the addresses provided below or to any other address designated in writing by the other Parties.
- 13.7 **Party Relationships.** All Parties are independent from one another. This agreement does not establish a contract between any VA entity and NPC.
- 13.8 **Use of Name; Press Releases.** By entering into this CRADA, VA does not endorse any product or service. Collaborator shall not state or imply that the Government or any of its organizational units or employees endorses any product or service. The Parties shall provide proposed press releases related to this CRADA to each other for review and

comment at least five (5) business days before publication. Any Party may disclose the title of this CRADA to the public without the approval of the other Parties.

13.9 **Reasonable Consent.** Whenever a Party's consent or permission is required under this CRADA, its consent or permission shall not be unreasonably withheld.

13.10 **Export Controls.** Collaborator agrees to comply with U.S. export law and regulations.

13.11 **Record Retention.**

13.11.1 **Study Records.** Study records are managed in accordance with the VA Privacy Act System of Records Notice, currently identified as "Veteran, Patient, Employee and Volunteer Research and Development Project Records-VA" (34VA12). VA will retain study records for this clinical trial in accordance with applicable regulations and VA policy. Study records may be destroyed thereafter in accordance with Privacy Act guidelines.

13.11.2 **Storage.** The expense of storage of research records in excess of five years due to clinical trial activities shall be paid by Collaborator. The costs for this additional retention will be negotiated in good faith at the time Collaborator undertakes this expense. Ownership of the records remains with VA.

13.11.3 **Patient Medical Records.** Patient medical records of clinical treatment of VA patients in the course of the SOW are covered by the VA Privacy Act System of Records entitled "Patient Medical Records-VA" (24VA19). VA shall retain and dispose of these records in accordance with the published Federal Register notice for these records and the applicable VA Records Control Schedule.

13.12 **Entire Agreement.** This CRADA constitutes the entire agreement of the Parties concerning the subject matter of this CRADA and supersedes any prior understanding or written or oral agreement.

13.13 **Survivability.** The provisions of Articles 3.4, 3.8, 4.1, 5.4 - 5.7, 6.1, 6.2, 7.1 – 8.3, 10.4, 11.1, 12.1-13.3, 13.5, 13.6, 13.8, 13.10, 13.11, 13.13 - 13.15 shall survive the expiration or early termination of this CRADA.

13.14 **Interpretation.** Any reference in this CRADA to an article of this CRADA includes all sub-articles thereof.

13.15 **Contacts.**

13.15.1 **CRADA Notices.**

For VA: ACOS/R&D and Principal Investigator:

For Collaborator:

For NPC:

13.15.2 **Patenting and Licensing.**

For VA:
Department of Veterans Affairs
Director, Technology Transfer (12TT)
810 Vermont Av NW
Washington, DC 20420
Email: VHACOTTC@va.gov; Telephone: (202) 443-5640

For Collaborator:

13.15.3 **Delivery of Materials** (if any).

For VA:

For Collaborator:

For NPC:

13.15.4 **Payments.**

For NPC:

SIGNATURES ARE FOUND ON THE NEXT PAGE.

**DEPARTMENT OF VETERANS AFFAIRS
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT**

SIGNATURE PAGE

ACCEPTED AND AGREED:

By executing this agreement, each Party represents that all statements made herein are true, complete, and accurate to the best of its knowledge; that each has read and understood this CRADA prior to signing; and that each enters into it freely and voluntarily.

FOR COLLABORATOR:

Signature

Date

Typed Name

Title

FOR VA:

VA MC or HCS Director Signature

Date

Typed Name

FOR NPC:

Signature (NPC Executive Director or Other Authorized Signatory)

Date

Typed Name

Title

Principal Investigator Acknowledgement

While not a Party, I understand and agree to the Principal Investigator obligations stated in this Agreement. Further, I certify that I am not debarred under subsections 306(a) or (b) of the Federal Food, Drug, and Cosmetic Act and shall not use in any capacity the services of any person debarred under such law with respect to services to be performed under this Agreement. I also certify that I am not excluded from any Federal health care program, including but not limited to Medicare and Medicaid.

Principal Investigator Signature

Principal Investigator Name

**DEPARTMENT OF VETERANS AFFAIRS
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT**

APPENDIX A

STATEMENT OF WORK

The term of this CRADA shall begin as of the date of the last signature of the Parties and shall terminate as of [specify date or event].