

SUBCONTRACT
BETWEEN
THE UNIVERSITY OF TENNESSEE
AND
THE UNIVERSITY OF MEMPHIS

This Agreement is entered into by and between The University of Tennessee (hereinafter referred to as "UT") and The University of Memphis (hereinafter referred to as Subcontractor).

Whereas, UT has entered into a [grant/contract] with [name of sponsor] to perform the research project, " _____," under the direction of _____, [insert grant/contract #] and

Whereas, UT wishes to utilize the services of _____ (employee of Subcontractor) in performance of above [grant/contract], and

Whereas Subcontractor is willing to provide the services of this individual on the above [grant/contract],

Now, therefore, in consideration of the covenants and agreements set forth herein, the parties hereto agree as follows:

1. **Statement of Work.** Subcontractor will use its best efforts to perform the work as described in Attachment 1, Statement of Work, which is hereby made a part of this Subcontract.
2. **Period of Performance.** The period for the performance of this Subcontract shall be from _____ to _____, unless amended by written agreement between the parties. Expenditures incurred prior to the beginning date or subsequent to the termination date are unallowable.

This Subcontract may be terminated by either party hereto upon written notification delivered to the other party at least thirty (30) days prior to the date of early termination. Should the subcontract be terminated early, the Subcontractor will be reimbursed for costs incurred to the date of early termination. The Subcontractor will furnish all necessary reports of research completed or in progress through the date of termination.

3. **Payment.** UT agrees to pay the Subcontractor a total amount not to exceed \$_____. UT shall not be obligated to reimburse, nor shall Subcontractor be permitted to incur any expenditures in excess of this limitation. Subcontractor shall make obligations in accordance with the budget that is attached hereto and hereby made a part of this Subcontract as Attachment 2. Any rebudgeting must be in accordance with applicable policy.

The Subcontractor shall submit quarterly invoices to UT indicating the amounts expended in the current period and cumulatively to date by line item budget category. Said invoices shall be certified by an officer or other responsible official of the Subcontractor, shall reference Account # _____, and shall be sent to:

(insert name of department personnel to process invoices)
UT Health Science Center
Memphis, TN 38163

Within a reasonable time after submission of each invoice, UT shall make provisional payment.

At any time or times prior to final payment on account of allowable costs, UT may make such audit of the invoices as shall be deemed proper. Each provisional payment shall be subject to reduction to the extent of amounts that are found not to constitute allowable costs.

A final billing shall be submitted no later than sixty (60) days after termination of this Subcontract. In no event shall the final billing exceed the Subcontract amount.

4. **Standard of Work.** The Subcontractor agrees that the performance of work and services pursuant to the requirements of this Subcontract shall conform to high professional standards in the field.

5. **Key Personnel.** _____ is considered to be essential to the work being performed under this Subcontract. Substitutions for this individual or substantial reduction in his/her effort will not be made without the prior written approval of UT.

6. **Allowable Costs.** For the performance of the work hereunder, UT will pay to the Subcontractor the cost thereof determined to be allowable in accordance with generally accepted accounting principles.

Subcontractor shall maintain documentation for all charges against UT under this Subcontract. The books, records, and documents of Subcontractor, insofar as they relate to work performed or money received under this Subcontract, shall be maintained in accordance with generally accepted principles of accounting for a period of three full years from the date of the final payment, and shall be subject to audit, at any reasonable time and upon reasonable notice, by UT or its duly appointed representatives, or by state or federal auditors.

7. **Assurances.** Subcontractor agrees to comply with all applicable federal and state laws, including but not limited to the following and will, upon request, furnish UT with written assurances of such compliance:

a. Care and treatment of laboratory animals. Subcontractor, if using warm-blooded animals in the project covered by this agreement, will comply with applicable portions of the Animal Welfare Act (P.L. 89-544 as amended) and will follow the guidelines prescribed in the most recent revision of the PHS publication, "Guide for the Care and Use of Laboratory Animals."

b. Civil rights and equal employment opportunity. Subcontractor must comply with Title VI of the Civil Rights Act of 1964 and Executive Order 11246. The Subcontractor must have a valid Assurance of Compliance with the Civil Rights Act of 1964 on file with the DHEW (Form HEW441) and this Subcontract will include paragraphs (1) through (7), Part II, Subpart B, Section 202 Executive Order 11246. Breach of this provision shall be cause for termination of this Subcontract.

Subcontractor must also comply with Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title II of the Americans with Disabilities Act of 1990, and the applicable related regulations to each, as well as all future amendments of such statutes and regulations applicable to UM, which are all incorporated by reference as a part of this agreement. UM assures that it will not discriminate against any individual including, but not limited to, employees or applicants for employment and/or students because of race, religion, creed, color, sex, age, handicap, or national origin.

Subcontractor also agrees to take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, creed, color, sex, handicap, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection available to employees and applicants for employment.

c. Protection of human subjects. Subcontractor, if using human subjects in the projects covered by this Subcontract, agrees to abide by the Code of Federal Regulations, 45 CFR Part 46, Subpart A, "Protection of Human Subjects." The Subcontractor is required to submit certification that Subcontractor's Principal Investigator and all individuals responsible for the design and conduct of the research have successfully completed the NIH-required education in the protection of human subjects, as well as a description of the Subcontractor's education program such personnel have completed.

d. Non-segregated facilities. "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

The Subcontractor hereby certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in the subcontract.

e. Confidentiality of PHI Records. Strict standards of confidentiality of private health information (PHI) records and information shall be maintained in accordance with applicable state and federal law. All PHI material and information, regardless of form, medium or method of communication, provided to UM by UT or acquired by UM on behalf of UT shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by UM to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

UM's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by UM of this Subcontract; previously possessed by UM without written obligations to UT to protect it; acquired by UM without written restrictions against disclosure from a third party which, to UM's knowledge, is free to disclose the information; independently developed by UM without the use of UT's information; or, disclosed by UT to others without restrictions against disclosure. Nothing in this paragraph shall permit UM to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to UM due to intentional or negligent actions or inactions of agents of UT or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Subcontract.

HIPAA Compliance. Both parties are familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and agree to comply with all applicable HIPAA requirements in the course of this contract. The parties agree to cooperate in the course of performance of the contract so that both parties will be in compliance with HIPAA, including cooperation and coordination with State and/or UT privacy officials and other compliance officers required by HIPAA and its regulations. The parties will sign any documents that are reasonably necessary to keep UT and UM in compliance with HIPAA, including but not limited to business associate agreements. Both parties agree to use and disclose any PHI (as defined by HIPAA) solely as authorized by the subjects in the consent form/authorization.

f. Prime. Subcontractor further agrees to conduct the study in accordance with the applicable terms and conditions of the [grant/contract/subcontract], a copy of which is attached hereto as Exhibit 3 and hereby incorporated herein.

g. **Export Control.** UM acknowledges that the export of goods and/or technical data from the United States may require some form of export control license from the U.S. Government. UM agrees that it will not disclose, export or re-export any materials or technical data received under this Agreement to any countries for which the U.S. Government requires an export license, unless UM has obtained prior written authorization first from the U.S. Office of Export Control or other authority responsible for such matters. UM agrees that it is responsible for any fees or expenses associated with obtaining an Export License, if required. UT neither represents that a license shall not be required nor that, if required, it shall be issued.

If the data received by UM do not fall under the Export regulations, this clause shall not apply.

h. In compliance with the requirements of Chapter 878, Public Acts of 2006 of the State of Tennessee, for any contract for goods or services purchased by UT, UM hereby attests that UM shall not knowingly utilize the services of an illegal immigrant in the United States in the performance of this Subcontract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the United States in the performance of the Subcontract.

8. **Inventions, Patents, Discoveries, and Publications.** New intellectual property which results from work done under this Subcontract shall be handled in accordance with UT and Subcontractor policy and the terms and conditions of the prime [grant/contract]. UT shall retain ownership of such property developed by UT employees; Subcontractor shall retain ownership of such property developed by Subcontractor employees.. All proposed publications based on this study must be submitted to UT prior to submission for publication. UT may submit for publication the information based on combined data submitted by UM and UT. All publications that result from this study must recognize the contributions of the parties and/or sponsorship of UT and prime contractor.

9. **Independent Contractor.** Subcontractor represents that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of UT as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to Subcontractor in connection with any work contemplated or performed relative to this Subcontract.

10. **Assignment.** Subcontractor shall not assign this Subcontract or enter into subcontracts for any of the work described herein without obtaining the prior written approval of UT.

11. **Termination.** If UM breaches a material provision of this agreement, UT shall have the right so long as UT acts in good faith, to immediately terminate this subcontract and to reasonably withhold payments in excess of fair compensation for work completed. Notwithstanding the above, Subcontractor shall not be relieved of liability to UT for damages sustained by virtue of any breach of this agreement by Subcontractor.

12. **Entire Subcontract.** It is expressly agreed by the parties hereto that for the work hereunder this Subcontract constitutes the entire and only contract between the parties hereto; that there are not agreements, understandings, or covenants between the parties hereto of any kind, nature or description, expressed or implied, oral or otherwise, which have not been set forth herein.

13. **Liability.** As agencies of the State of Tennessee, UM and UT are self-insured under the provisions of the Tennessee Claims Commission Act, T. C.A. 9-8-301 *et seq.*, and the liability of each to the other and to third parties for the negligence of the respective party and its employees is subject to the provisions of that Act. Accordingly, any liability of UM or UT for any damages, losses, or costs arising out of or related to acts performed by the UM or UT or their respective employees under this agreement is governed by the provisions of said Act.

Notwithstanding anything in this agreement to the contrary, any provision or provisions of this agreement will not apply to the extent that it is (they are) finally determined by a court of competent jurisdiction, including appellate

review if pursued, to violate the laws or Constitution of the State of Tennessee.

In witness hereof, the signatures of the parties hereto are affixed below:

For The University of Tennessee:

For The University of Memphis:

(signature)

(signature)

(typed name)

(typed name)

Title: _____

Title: _____

Date: _____

Date: _____