
Agreement Regarding Use of Full Time Equivalent Service

This Agreement is entered into the ____ day of _____, 20__ by and between Obiter Research, LLC, an Illinois Limited Liability Company (hereinafter "Obiter") and _____, a _____ (hereinafter "Customer").

WHEREAS, Obiter is a provider of custom research and chemical synthesis of materials intended for research;

WHEREAS, Customer wishes to utilize Obiter's capabilities;

WHEREFORE, the parties agree as follows:

1. FTE Commitment; Selection of Researcher.

(a) Obiter agrees to lease to Customer one or more researchers (each a "Researcher") on a full time equivalent ("FTE") basis. A typical FTE corresponds to an eight (8) hour, five (5) day work week and a fifty (50) week work year, less Obiter holidays. Fractional FTE's may be reduced to practice as full time in a partial year, a full year with a fraction of the effort each day going toward the Customer's research. The relationship between Obiter and Customer shall be that of an independent contractor relationship and shall not constitute an employment relationship, partnership or joint venture.

(b) Obiter shall designate each Researcher to perform the research activities hereunder (the "Research") and shall use its best efforts to dedicate the same individuals to such activities during the term of the Research as set forth in the applicable Statement of Work to be attached hereto (hereinafter "SOW"). Each SOW shall be mutually agreed to and signed by Obiter and Customer. At any time during the term of the applicable SOW, Customer shall have the right to terminate the Researcher designated by Obiter for any reason, having given a one week notice. If at any time during the term of the applicable SOW Obiter reasonably believes that the Researcher dedicated by Obiter to perform the Research set forth in such SOW will be unable to perform such activities required to be performed hereunder for 5 consecutive business days, for any reason (including without limitation vacation time or sick days), then Obiter shall provide Customer with notice that such Researcher will be unavailable during such period. Any Researcher that no longer performs research activities hereunder for any reason (including without limitation as a result of termination by Customer or Obiter or voluntary termination of such Researcher's employment with Obiter), shall be replaced by Obiter with an equally qualified researcher that possesses the skills, knowledge and capabilities to perform the Research. Obiter hereby agrees to use its best efforts to prevent any delay or interruption in the activities to be performed hereunder.

2. Resources; Records; Warranties.

(a) Subject to the provisions of Section 4 hereof, Obiter agrees to provide, either directly or indirectly, research equipment, facilities, and other infrastructure, necessary to support the performance of Researcher. Obiter shall maintain accurate and complete records of (a) the materials used to perform the research services hereunder and (b) the time usage, and ensure that the agreed upon proportion of time has been used. Customer shall have the right to audit and validate such records at any time during the term of this Agreement. Researcher shall orally report its progress to Customer at least weekly. In addition, Researcher shall provide, written progress reports to Customer pursuant to which Researcher shall summarize its activities and findings for such time as agreed to in the SOW.

(b) Obiter warrants that each Researcher possesses the skills, knowledge and capabilities to perform the research activities required hereunder, and is trained in laboratory safety practices and the handling of chemicals with both known and unknown hazards.

(c) Obiter warrants and covenants that it shall perform all services required by this Agreement in a timely,

professional and workmanlike manner and in accordance with industry practices and standards generally applicable to such services and in accordance with industry-recognized good safety practices.

(d) Obiter represents and warrants that it shall comply with all applicable laws, statutes, and regulations relating to its performance and obligations under this Agreement.

(e) Obiter has the power and authority to enter into and perform this Agreement without breach of any legal, contractual or ethical responsibilities. Obiter represents and warrants that neither it nor any Researcher assigned to Customer has any obligation to third parties that would prevent or conflict with any requirement of this Agreement, including but not limited to the confidentiality, ownership and non-competition provisions hereof.

(f) Obiter makes no warranty as to the results or outcome of Researcher's work product and specifically disclaims all warranties except as provided above, including all warranties of merchantability and fitness for a particular purpose.

3. **Scope of Research.**

Subject to the provisions of this Section 3, Researcher shall perform the research activities requested by Customer, including without limitation, preparation of target compounds or non-synthetic, but chemically-related, work, and as set forth in each SOW to be attached hereto. Customer hereby agrees that it will not request work, or transfer materials to third parties, in connection with this Agreement in a manner that would violate any county, state, or federal laws. It is understood that Customer or its designated recipients will possess the licenses and/or permits, if required, for the legal transfer to Customer or its designated recipients of any work product created hereunder.

4. **Rate.**

Customer agrees to pay Obiter a \$ 1,000.00 per man-day in each FTE unit. The minimum chargeable unit will be ½ man day (4 hours). The contracted FTE units shall be set forth in each SOW. Obiter will supply, at no additional cost to Customer, the facilities, chemist, equipment, routine expendable materials (including without limitation, pipettes, silica gel and filter paper) and the following common bulk solvents : hexanes, ethyl acetate, tetrahydrofuran, methanol, isopropanol, acetone, and methylene chloride (the "Common Solvents"). In addition, Obiter will supply, at no additional cost to Customer, routine flammables and chlorinated waste disposal, and be responsible for the cost of the following routine analytical methods, whether in-house or contracted: NMR, mass spectra, HPLC (except as otherwise provided in the following sentence), IR, UV-vis, GC, and TLC.

Customer hereby agrees to reimburse Obiter for project-specific chemicals including starting materials, HPLC grade solvents, solvents that are not Common Solvents, reagent ethanol, project-specific reagents, project-specific waste requiring special disposal (e.g. heavy metals), and those analytical methods that are reasonably considered to be uncommon such as elemental analysis and X-ray and for which Customer provides its consent prior to the submission of materials for such analytical methods. Customer will normally be invoiced on a weekly basis, and shall remit payment to Obiter within fifteen (15) days of receipt of such invoice.

5. **Confidential Information**

(a) For purposes of this Agreement, the term "Confidential Information" shall mean (i) confidential information, knowledge or data of the Customer, (ii) trade secrets of Customer and (iii) any other information of Customer disclosed to the Researcher or Obiter; and in each case, including without limitation, any information obtained by Obiter and Researcher in connection with this Agreement or any SOW. Obiter and Researcher acknowledge that, except to the extent otherwise provided in this Section 5(b), all Confidential Information disclosed to or acquired by Researcher and Obiter is a valuable, special, and unique asset of Customer and is to be held in trust by Obiter and Researcher for Customer's sole benefit. Except as otherwise provided in this Section 5(b), Researcher and Obiter shall not, at any time during or after the term of this Agreement, use for itself or others, or disclose or communicate to

any person for any reason, any Confidential Information without the prior written consent of Customer.

(b) Researcher and Obiter acknowledge and agree that Customer has received, and may receive in the future, confidential or proprietary information from third parties ("Third Party Confidential Information") subject to a duty on Customer's part to maintain the confidentiality of such Third Party Confidential Information and to use it only for certain limited purposes. During the term of this Agreement and thereafter, Researcher and Obiter shall hold Third Party Confidential Information in the strictest confidence and under the same conditions as set forth for Confidential Information.

6. Publications.

Researcher and Obiter shall not publish or present the results of activities carried out under this Agreement or any SOW, or submit any publication, news release or other public announcement relating to this Agreement or any SOW or the terms of this Agreement or any SOW, without the prior written consent of Customer.

7. Inventions; Assignment.

(a) For purposes of this Agreement, the term "Assigned Inventions" shall mean any and all Inventions that (i) are made, invented, or reduced to practice by Researcher, either alone or together with others in the course of rendering services under this Agreement and any SOW of this agreement, or (ii) arise out of or are based upon any Confidential Information or Third Party Confidential Information. For purposes of this Agreement, the term "Proprietary Rights" shall mean any and all rights under or in connection with any patents, patent applications, copyrights, copyright applications, mask works, trade secrets and other intellectual property rights with respect to Assigned Inventions.

(b) Researcher and Obiter hereby agree to hold any and all Assigned Inventions and Proprietary Rights relating to work under this agreement in trust for the sole right and benefit of Customer and such other person or persons Customer shall designate in writing, and Researcher and Obiter hereby assign to Customer and such other person or persons as Customer shall designate in writing all of its right, title and interest in and to any and all Assigned Inventions and Proprietary Rights. Researcher and Obiter agree to give Customer prompt written notice of any Assigned Invention or Proprietary Right and agree to execute such instruments of transfer, assignment, conveyance or confirmation and such other documents as Customer may request to evidence, confirm or perfect the assignment of all of Researcher's and Obiter's right, title and interest in and to any Assigned Invention or Proprietary Right pursuant to the foregoing provisions of this Section 7(b). Researcher and Obiter hereby waive and quitclaim to Customer any and all claims that each of them may now or hereafter have for infringement of any Proprietary Rights assigned hereunder to Customer. The obligations of Researcher and Obiter under this Section are without prejudice, and are in addition to, any other obligations or duties Researcher and Obiter, whether express or implied or imposed by applicable law, to assign to Customer all Assigned Inventions and all Proprietary Rights.

(c) At the request of Customer, Researcher and Obiter will assist Customer in every proper way (including, without limitation, by executing patent applications and assignments of patents or copyrights) to obtain and enforce in any country in the world Proprietary Rights relating to any or all Assigned Inventions. The obligations under this Section 7(c) shall continue beyond the term of this Agreement and any SOW. Time devoted to the completion of items listed above are billable FTE days and will be charged as applicable

8. Non-competition.

Obiter agrees that it will not, nor will its Researcher or affiliates, for a period of five (5) years after the date hereof engage in any internal research that is competitive with Customer in the Field (as described in the SOW), or contract with or engage in research activities for any business, corporation, partnership, limited liability company, enterprise, venture or other person or entity, that is competitive with Customer in the Field.

9. Termination.

Customer may unilaterally terminate this Agreement or any SOW at any time: (a) upon a one week (5) five business day prior written notice for any reason, including without limitation, removal or termination, whether voluntary or involuntary, of Researcher by Obiter; or (b) immediately upon a breach of this Agreement or in the event that Customer determines that termination of the services is necessary for legal, regulatory, safety or similar reasons. Obiter may terminate this Agreement or any SOW as a result of Customer's material breach of any provision herein, including Customer's failure to make the payments required by Section 4 hereof. If Customer has not cured such breach within a 30 day period, then this Agreement shall terminate. Upon any termination of this Agreement, all SOWs then remaining incomplete under this Agreement will automatically terminate unless the Customer notifies Obiter in writing at least two (2) days prior to the effective date of such termination of its election not to terminate the applicable SOW.

10. Governing Law, Jurisdiction.

This Agreement shall be governed by and construed in accordance with the laws of Illinois, excluding the choice of law rules thereof. EACH PARTY WAIVES ANY RIGHT TO A JURY TRIAL.

11. Assignment.

Customer may not assign this Agreement to any third party without the prior written consent of Obiter. Neither Obiter nor Researcher may assign this Agreement without the prior written consent of Customer. This Agreement shall be binding upon and inure to the benefit of, the parties hereto and their heirs, personal representatives, successors, and assigns.

12. Counterparts.

This Agreement and any corresponding SOWs may be executed in any number of counterparts, each of which, when so executed and delivered, and combined with its counterpart shall be an original, and shall together constitute one and the same document. A facsimile of a signature shall have the same effect as an original.

13. Waiver.

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

14. Entire Agreement.

This Agreement (including attached SOW and subsequent SOWs) contains the entire understanding of the parties and supersedes all previous verbal and written agreements concerning the subject matter hereof, and any prior written agreements or letters of intent among the parties shall be hereby terminated and of no further force or effect; provided that the terms and conditions of that certain Confidentiality Agreement between Obiter Research LLC and Customer dated _____ shall remain in full force and effect. There are no other agreements, representations or warranties not set forth herein. Any prior written agreements or letters of intent among the parties shall, upon execution of this Agreement, be null and void.

15. Notices.

All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing (including by facsimile communication) addressed to:

Obiter Research, LLC
Chad L. Boulanger,
President & C.E.O.
2809 Gemini Ct
Champaign, Illinois 61822
217-359-1626
Fax: 217-359-2567

Customer

Each such notice shall be deemed delivered (a) on the date delivered if by personal delivery; (b) on the date of transmission with confirmed answer back if by fax

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed and delivered this Agreement as an instrument under seal as of the date first above written.

By:

Obiter Research, LLC

Date

Customer

Date

Chad L. Boulanger,
President & C.E.O.

SAMPLE