Grants Administration for Small Businesses 2013-2014
A Guidebook
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Introduction to the Guidebook

This guidebook for small businesses represents a broad-based assimilation of key areas pertaining to the establishment of a small business, registrations necessary to enable the business to apply for federal grants (independently or as a collaborator with academia), and management of federal awards. There are numerous federal regulations and agency guidelines, which govern grants administration.

The purpose of this guidebook is to provide a general overview of the grants administration process and provide pathways for the small business to develop successful federally funded collaborations with universities. The information in this guidebook is drawn from the knowledge and experiences of the University of Texas Medical Branch’s staff members from the Research Services, Technology Transfer, Institutional Compliance and Clinical Research Offices. The information provided should not be considered a substitution for the official statutes and regulations of the federal government. Individuals are encouraged to use this information simply as a guide. This document does not purport to provide or give any legal advice on any of the topics listed herein. Independent legal counsel should be obtained prior to and during the formation of a small business.
Starting a business is an exciting proposition. However, it is also a huge undertaking. The small business should know the different types of businesses and how to properly form the business. When forming a small business, one of the first things to decide is the type of entity to establish. Depending upon the initial financial capital, goals, and expected employee size of the business, there are varying legal and tax implications for each type of entity structure. Each structure offers different attributes. Therefore, it is important to consult with legal counsel to determine which structure or legal entity is appropriate.

A. Organizational Structure

The standard business structures that a founder can consider when creating a legal entity include the following:

1. Sole Proprietorship. A Sole Proprietorship is the simplest form of business entity and easy to form. Here, the founder has maximum control of the business but is also personally responsible for the financial obligations of the business, such as debts. Sole proprietorships are taxed at the personal level, i.e. the founder files a personal income tax return.

2. General Partnership. A General Partnership is made up of two or more partners who are owners of the business. The partners actively participate in the daily business operations and are also personally liable for all business debts. This unlimited liability risk to all partners makes a limited partnership (mentioned below) a better alternative business structure.

Operating a business as a sole proprietorship or a general partnership can result in the owner/founder being personally liable for the debts of the business.

3. Limited Partnerships (LP). A Limited Partnership (LP) has both general and limited partners. There is at least one general partner who manages the business and is personally liable for the business’ debts and one limited partner who invests money in the partnership, but is not actively involved in the daily business operations of the entity. Unlike the general partner who has unlimited liability, the limited partner’s personal liability is limited to the amount of his or her financial contribution to the partnership.

The main difference between a limited partnership (LP) and a general partnership is that in general partnership all partners are liable for the debts while in a limited partnership the limited partners are only liable for the financial investment they contribute into the partnership entity.
4. **Limited Liability Partnerships (LLP).** Another form of partnership structure is a Limited Liability Partnership (LLP). An LLP has some characteristics of both a partnership and a corporation. An LLP provides all partners with limited personal liability. As such, each partner is protected against the misconduct or negligence of the other partners and thus is not personally liable for acts committed by another partner. This structure is best suited for certain types of business such as attorneys, accountants, and doctors pursuant to state law.

5. **Limited Liability Company (LLC).** A Limited Liability Company (LLC) is considered a hybrid between a partnership and a corporation. This structure offers much more flexibility with respect to corporate governance. Members of an LLC can take an active or passive role in the day-to-day operation of the business or may hire an outside manager to run the business. The entity can have an unlimited number of members and is taxed like a partnership. Any taxable income is passed through to the individual members and reported on their personal tax returns.

6. **S-corporation.** An S-corporation is limited to 100 shareholders, and each shareholder must be a citizen or permanent resident of the United States. The entity can issue only one class of stock. Like the LLC, an S-corporation also takes advantage of pass-through taxation. The income or loss of the corporation is passed through to its shareholders and the shareholders report it on their own personal tax returns, according to each shareholder’s ownership interest. For a small business with limited number of shareholders, the S-corporation might be a good fit.

7. **C-corporation.** When compared to an S-corporation, a C-corporation can have unlimited shareholders, there are no restrictions on residency or citizenship of the shareholders, and the entity can issue multiple classes of stock. The earnings of the entity are taxed at the corporate level and at the shareholder level, known as double taxation.

**B. Organizational Documents**

After determining the type of business structure, the next step is to complete the necessary documents with the appropriate state agency. Due to the availability of online resources, it might be relatively easy to incorporate the business structure for a small fee. However, it is better to obtain independent legal advice and counsel when incorporating the small business, as it will help to ensure that the paperwork has been filed accurately.

When collaborating on research projects with the University of Texas Medical Branch (UTMB), UTMB’s Office of Technology Transfer will provide advice about its policies and procedures. However, the office cannot provide legal representation to
the small business or its employees on any matters related to its business. The small business is a separate entity and would need to hire legal counsel when negotiating contracts with the UTMB. Additionally, any small business that includes UTMB faculty or staff as its employee or official should make sure the UTMB faculty or staff contacts UTMB’s Conflicts of Interest Office to ensure that no conflicts exist or, if one does exist, the conflict can be managed appropriately prior to engaging in any research collaboration.

For further information regarding documents that may need to be completed to establish a small business, see Appendix A, which includes helpful templates that can serve as a guide in forming the small business.

C. Protecting Intellectual Property

Protecting intellectual property is extremely vital to establishing and maintaining the financial success of the small business. Intellectual property refers to creations of the mind (such as inventions), service marks, literary, artistic, and scientific works that can be protected under federal and state law. Failure to protect intellectual property rights can result in lost profits for the small business and could ultimately result in a business’s failure. Therefore, the small business should first assess its intellectual property and pursue the proper intellectual property protection. This section will explore the different types of intellectual property and how small businesses can protect its intellectual property.

1. Patent. A patent is the grant of a property right to an inventor, issued by the United States Patent and Trademark Office (USPTO). An inventor is anyone who invents or discovers or improves any new and useful process, machine, manufacture, or composition of matter. The right conferred by a patent is “the right to exclude others from making, using, offering for sale, or selling” the invention in the United States or “importing” the invention into the United States for a limited time in exchange for public disclosure of the invention when the patent is granted. If the small business has developed an invention or improvement, the proper protection is the filing of a patent application with the USPTO.

2. Trademark. A trademark protects words, names, symbols, sounds, or colors that distinguish goods and services from those manufactured or sold by others. Although registration of a trademark is not required in the U.S., there are benefits to obtaining a federal trademark registration through the USPTO. Registered trademarks serve as evidence of the exclusive ownership of the mark for the goods and services listed in the registration, which can be helpful in a court proceeding against an infringer. Most importantly, trademark registration protects against registration of confusingly similar marks.

3. Copyright. A copyright is a form of protection provided to the authors of original works of authorship including literary, dramatic, musical, artistic, scientific, and certain other intellectual works, both published and unpublished. A copyright registration protects the form of expression rather than the subject matter of the
writing. The U.S. Copyright Office handles copyright registrations. Owners of copyrighted works seeking protection in other countries should first determine the extent of protection available to works of foreign authors in that country. As with trademarks, copyright registration is not necessarily required for copyright protection, but it makes a strong case against any potential infringers that the small business solely owns a copyright.

As stated above, different types of intellectual property are protected by different means. Often, many small businesses lack the familiarity with the process of protecting their intellectual property. To help address this problem, the USPTO launched a nationwide program to encourage small businesses to recognize and consider the benefits of strong intellectual protection domestically and internationally, entitled the Small Business Education Campaign. Particularly, the USPTO wants small businesses to understand:

- When to apply for intellectual property protection;
- What type of intellectual protection to apply for;
- Where to apply; and
- How to apply.

As part of the small business education program, the USPTO has developed a website to help small businesses better identify and address their intellectual property protection needs. Small businesses should visit the website, STOPfakes.gov, sponsored by the Small Business Education Campaign for free information and tips on how to protect its intellectual property.
Applying for Federal Research Grants

Any successful proposal for federal funding requires planning, development, implementation, and follow-through. Obtaining funding for research is no exception to the rule. Small businesses can obtain funding from various federal agencies, such as the National Institutes of Health (NIH), National Science Foundation (NSF), Department of Defense (DOD), and the National Aeronautics and Space Administration Agency (NASA). This section provides an overview of the steps required for a grant application to proceed from application planning, registration, submission through award, and close out.

A. Registrations Required to Apply for Federal Grants

Before a small business is able to apply for federal grants or conduct other business with the federal government, it must first register on several different websites in order to obtain key identifiers used throughout the grant administration process, such as obtaining a DUNS number and registering with eRA Commons and FastLane.

1. Obtaining a DUNS Number.

The Data Universal Numbering System (DUNS) number is a unique nine-digit identification number provided by Dun & Bradstreet (D&B) and given to site-specific entities. A DUNS number is required when the small business applies for federal grants and cooperative agreements. The federal government will use the DUNS number to better identify related organizations that are receiving funding and to provide consistent name and address data for electronic grant application systems.

Obtaining a DUNS number is free for all entities doing business with the Federal government. Thus, if a small business anticipates applying for federal grant funding it should promptly obtain a DUNS number. There is no need to wait until a particular application is submitted.

If the small business previously obtained a DUNS number in connection with the federal acquisition process or had one assigned for another purpose, that number should be used on all applications.

If the small business cannot ascertain whether or not it has a DUNS number, its representative should call the DUNS at the number listed above. Having the following information will expedite the process:

- Small Business’s Legal Name;
• Headquarters name and address of the small business;
• Doing business as (DBA) or other name by which the small business is commonly known or recognized;
• Physical Address, City, State and Zip Code;
• Mailing Address (if separate from Headquarters and/or physical address);
• Telephone Number;
• Contact Name and Title; and
• Number of Employees at the physical location of the small business.

Upon completion of the call, a DUNS number will be assigned to the small business. Additionally, D&B periodically contacts organizations with DUNS numbers to verify that the organization’s information is correct and current. Organizations, e.g. small businesses, with multiple DUNS numbers may request a free family tree listing from D&B to help determine what branches/divisions have numbers and whether the information is current. The dedicated toll-free DUNS Number request line is currently, 1-866-705-5711. Additionally, D&B recommends that organizations with multiple DUNS numbers have a single point of contact for controlling DUNS number requests to ensure that the appropriate branches/divisions have DUNS numbers for federal purposes.

2. eRA Commons/NIH.

The eRA Commons is an online interface where signing officials, principal investigators, trainees, and post-docs at small businesses or institutions can access and share administrative information relating to research grants with the National Institutes of Health (NIH).

Only individuals with legal signing authority (Signing Official) for the small business can register the small business in eRA Commons. The Signing Official typically has a title such as: President, CEO, CFO, Executive Director, Dean, Chancellor, Provost, Owner, or Partner. Please note both the small business and the principal investigator, through the Signing Official, need to register in eRA Commons.

To register with eRA Commons, the small business should complete the following steps:

• Complete the online registration form.
• Print and fax the registration form (the Signing Official [SO] must sign, date, and fax the registration to the number listed on the form which is 301-451-5675). This step must be completed before NIH is able to process the registration.
• The Signing Official will receive an e-mail to verify the e-mail address indicated in the registration.
• Once the registration has been processed, the Signing Official will receive an approval email from NIH (this email will contain a link to
information that must be verified as correct before the confirmation process is completed).

- The Signing Official will then receive two emails: One email will contain the user names created during the registration process; and the second email will contain the temporary password(s) for the created accounts.
- The Signing Official can then log into the eRA Commons account on the Commons website.
- Once the small business is registered in eRA Commons, its Signing Official can register its principal investigator by creating an account. When a Signing Official creates an account for its principal investigator, the principal investigator will receive an email to go to the eRA Commons site to verify the principal investigator’s profile information. This email is sent only when the principal investigator has prior NIH funding support, otherwise the account is created immediately.

*Note: All users of eRA Commons MUST also be registered with Grants.gov before submitting an application to the NIH.

3. System for Award Management (SAM).

The General Service Administration’s Office of the federal government-wide policy has consolidated the acquisition and award support systems into one new system entitled, the System for Award Management (SAM). SAM is streamlining processes, eliminating the need to enter the same data multiple times, and consolidating hosting to make the process of doing business with the federal government more efficient. Registering is necessary if the small business will be conducting business with the federal government, including contracts, grants, and other awards.

To register the small business in SAM, the small business’s representative must have an individual SAM account. Once the representative registered for the individual account, the small business will need to complete the “Entity Management” registration process.

For further information and instructions on completing the registration process and using the SAM, click here.

4. National Science Foundation (NSF) FastLane.
FastLane is a website which facilitates business transactions and the exchange of information between the National Science Foundation (NSF) and its client-based community including researchers, small businesses, organization, reviewers, research administrators, and others doing business with NSF.

In order to submit a grant proposal to the NSF, the small business must be a registered organization. At the time of registration, the small business must register a point of contact, called a FastLane Contact/SPO. Once the small business registers a primary FastLane Contact/SPO, the primary FastLane Contact/SPO can then set up a secondary FastLane Contact/SPO within the small business to perform all or individual FastLane Contact/SPO functions.

The small business should [complete the registration form](#) and then submit the completed form to the NSF in one of the following ways:

**By Mail:**
National Science Foundation  
Attn: FastLane Registration, Room 357  
4201 Wilson Boulevard  
Arlington, VA 22230

**By Facsimile:**
703-292-9281 or 703-292-9003

**By Email:**
Scan and email as an attachment to fastlane@nsf.gov

5. **NASA NSPIRES.**

NASA solicits through the release of various research announcements in a wide range of science and technology disciplines. NASA uses a peer review process to evaluate and select research proposals submitted in response to these research announcements. NSPIRES is NASA’s Solicitation and Proposal Integrated Review and Evaluation System. Through this system, principal investigators of small businesses can help NASA achieve national research objectives by submitting research proposals and conducting awarded research. NASA NSPIRES facilitates the search for NASA research opportunities.

To submit a research proposal to NASA, individuals and the small business with which they are affiliated must be registered in NSPIRES. As discussed supra, the
small business is required to have a valid registration with the System for Award Management (SAM) before they can register in NSPIRES. Note: Only the SAM Electronic Business Point of Contact (EBPOC) or alternate EBPOC of the small business can register in NSPIRES.

To register with NSPIRES, the small business should visit the Home page and click the “Registration Information” link in the “Member Login” box. To register the entity within NSPIRES, the small business must first register as a user. Questions and answers about completing a personal registration can be found in the FAQs section under the “Member Registration” link.

There is an online tutorial for organization registration on the NSPIRES Tutorials page, which is accessible from the NSPIRES Help Page. Additionally, the NSPIRES Help Desk is available from 8 a.m. to 6 p.m., M-F Eastern Time at (202) 479-9376 or via email to NSPIRES-Help@nasaprs.com.

The registration activation is processed as soon as online registration is complete. NSPIRES will then issue system-generated registration number. The small business will receive an email confirmation of this registration citing the registration number and confirmation of activation after NASA activates the small business’s account. The activation process should take a maximum of two business days.

An OPOC is the Organization Point of Contact within NSPIRES for a registered small business. It is either the SAM EBPOC (the representative who must register the small business within NSPIRES) or another individual designated by the EBPOC to act on the small business's behalf. The OPOC is the representative at the small business who manages the small business's NSPIRES records, including granting affiliation requests from proposers and (in the role of Authorized Organizational Representative (AOR)) submitting proposals.

B. Assurances, Representations, and Certifications

1. Overview.

During the initial stages of federally funded grant proposal submissions, the small business will be required to provide certain assurances, representations, and certification to the sponsoring federal agency. The assurances, representations and certifications may be incorporated by reference in signing the proposal or are incorporated specifically of by reference in the award document.

2. Definitions.

- **Assurance** - An assurance is a written guarantee or pledge that one will operate in a certain way or comply with certain terms and conditions of an award.
• **Representation** - A representation is an account or statement of fact concerning the applicant and its capabilities and abilities to perform. It is viewed legally as an inducement to parties to enter into a contract or some other formal agreement. It may introduce terms into a contract and affect performance. Representations may be a vital part of a contract, a "condition" of an award and an untruth may be the basis for an award being withdrawn.

• **Certification** - A certification is the submission of documents that serve as guarantees that the award applicant meets certain standards or will comply with certain governmental acts. Generally, the government views a certification as an attestation for which false certification may make the individual subject to criminal sanctions.

3. **Additional Information Regarding Certifications.**

Although all the certifications carry the same force, many recipients of federal awards approach the certification requirements by separating them into three broad categories for purposes of oversight: special monitoring (e.g. fraud, waste, abuse, research subjects and costs); routine monitoring (e.g. access to records, labor standards, nondiscrimination/affirmative action, and environmental issues); minimal monitoring (e.g. place of performance, patents & copyrights, and other items requiring merely that certain information be provided to the sponsoring federal agency at certain times). Certifications are provided in writing either within the application guidelines or at the time of the award and normally are signed by the authorized signatory of the applicant organization. Some certifications and assurances may require submission of a separate document (e.g., human subjects assurance, IRB certification, etc.).

The small business, as the recipient of federal funding is responsible for establishing and maintaining the necessary processes to monitor its compliance and that of its employees, consortium participants, and contractors with these requirements; taking appropriate action to meet the stated objectives; and informing the sponsor of any problems or concerns.

Certification categories generally stated in grants and contracts are as follows:

- Debarment and Suspension (specific certification language included in application instructions);
- Drug-Free Workplace;
- Lobbying (specific certification language included in application instructions);
- Financial Conflict of Interest;
- Research Misconduct;
- Non delinquency on Federal Debt;
- Human Embryonic Stem Cell Research;
- Human Subjects;
• Research on Transplantation of Fetal Tissue;
• Recombinant DNA Molecules and Human Gene Transfer Research;
• Vertebrate Animals;
• Women and Minority Inclusion Policy;
• Inclusion of Children Policy;
• Age Discrimination;
• Civil Rights;
• Sex Discrimination; and
• Handicapped Individuals.

C. Conflicts of Interest

A conflict of interest may arise when an individual’s private and financial interests (such as outside professional or financial relationships) might be perceived as interfering with his or her professional obligations to his or her employer. Such situations do not necessarily imply wrong-doing. However, such situations may compromise, or appear to compromise, important endeavors of the employer.

A small business engaged in federally funded research grants and other federal projects must adhere to National Institutes of Health (NIH)/Public Health Service (PHS) regulations governing conflicts of interest. In sum, the regulations state that principal investigators or researchers who are engaged in federally funded research activities are required to disclose potential conflicts of interest to the sponsoring federal agency. Moreover, when the small business is collaborating with an institution on federally-funded projects or research, the small business must work with the institution to develop and implement management plans to manage, reduce, or eliminate conflicts of interest whenever a conflict of issue arises during the performance of the research.

If research is carried out with the small business acting in the role of a “sub-recipient” and an institution acting in the primary role, the small business is required to enter into a written agreement that establishes whether the conflicts of interest policy of the small business or the institution will apply to the researchers.

In each circumstance, all researchers must annually submit a financial interest disclosure statement to the federal funding agency. Furthermore, the researchers will be required to complete training related to research conflicts of interest every four years.

When collaborating with UTMB on federally-funded projects, UTMB’s Conflicts of Interest Office can provide guidance on implementing a research conflicts of interest policy suitable to the small business.

Visit the National Institutes of Health webpage to learn more about research conflicts of interest

http://grants.nih.gov/grants/policy/coi/
D. Approach to Budget

1. General.

A proper budget can be an effective tool in driving the project from start to finish. Preparing a credible budget that supports the technical proposal is a key component of a competitive submission. The small business must carefully review the program guidelines when drafting the budget. Questions for the small business to consider are as follows:

- Does the program cap the amount of funding that can be requested? If so, is this a direct costs cap or a total costs cap?

- Does the federal agency expect the small business to “cost-share” an amount or percent of project costs?

- Does the federal agency identify items that will not be paid from the grant (travel, equipment, salaries, etc.)?

- Does the federal agency place limits on the amount of certain project costs that can be paid from the award (e.g. $1,000 for travel)?

- How long is the spending or budget period?

The program guidelines will provide instructions regarding the forms in which the budget should be submitted and the detailed budget.

2. Planning.

The small business should begin drafting the budget as soon as reasonably possible. The business manager of the small business should determine what items and costs will be necessary to conduct the project. The small business should consider the following costs:

- **Preexisting Costs.** For pre-existing costs, such as salaries of full-time employees who will work on the project, the small business must determine the percentage of that item (i.e. percentage of the employee’s time) which is now attributable to the project. Those percentages must be accounted for in the budget.

- **Travel & Incidental Costs.** Travel costs include airfare, hotel, meals & incidental expenses (also known as *per diem*), mileage, and rental car expenses. For federal funds, there is a limit on the amount of hotel and per diem expense that can be charged to the project. For example, only 75 percent of the *per diem* rate can be used on days in which the actual travel to and from takes place. These rates can be found at [www.gsa.gov](http://www.gsa.gov).
- **Equipment.** In some cases, the program requirements may allow the purchasing equipment for conducting the research under the project. Equipment is generally defined as an item that costs greater than $5,000 and having a life span of greater than one year.

- **Supply Costs.** Supply costs are simply those tangible items needed to carry out the project (i.e. tubes, pipettes).

- **Other Direct Costs.** Is a catchall for those items that are not supplies but are needed to carry out the projects. These might include reimbursements to those who participate in the project as study subjects, or payments to others for services rendered.

- **Indirect Costs.** Indirect costs are facilities and administrative (F&A) costs or overhead of the small business.

Any and all costs identified in the budget must match the proposed work to be performed. If the project has phases, then the budget should flow accordingly. For example, a four-year project may have 1 year of start-up time, 2 years of research and 1 year of finalizing and data analysis. The sponsoring federal agency would expect lower funding amounts for years 1 and 4 in comparison to the funding amounts requested for years 2 and 3.

Once all of the direct costs have been determined and summed, the indirect cost is then added as a percentage of the total direct costs. For more information, see the following Section E. Indirect Costs.

3. **Budget Narrative.**

The small business must also provide a budget narrative to accompany the budget. The purpose of the budget narrative is to explain why the budgeted items are needed to carry out the project and how the costs were determined. Small businesses should never assume that a cost is obvious and, thus, does not need to be explained in the justification. All costs should be accounted for in the budget.

4. **Cost Sharing.**

Cost sharing is portion of project or program costs not borne by the sponsoring federal agency. If cost sharing is required by the funding source, both the budget and budget justification will need to clearly identify those costs being charged to the federal agency and those costs that will be absorbed by the small business. Once awarded, this cost sharing commitment must be honored and tracked then reported on the financial reports. Funds set aside as cost sharing cannot be used for any other activity or project.
E. Indirect Costs

1. General.

Indirect (also known as facilities and administrative (F&A) or overhead) costs represent those expenses that cannot be easily identified to any specific project, but that are incurred for common or joint objectives. Indirect costs support the operations of the small business and should be factored into the budget. Indirect cost elements include items, such as operation and maintenance of facilities, including building depreciation, library expenses, space, utilities, payroll, accounting, and other services.

2. Establishing an Indirect Cost Rate.

There are different formulas for calculating indirect cost rates. If the small business seeks to establish an indirect cost rate for federal grants, then the small business should contact the federal agency in which the application is being submitted. The federal agency will have a process for establishing an indirect cost rate that includes submitting and negotiating a proposed rate. Once a rate is approved, that rate would be applied on any other application to any federal agency.

Indirect cost rates are not established before the small business applies for a federal grant or contract. Rather, the small business applies for an indirect cost rate at the time of submission of the grant application. This means that the small business must estimate an indirect rate in the grant application. When the rate has been approved and the approved rate differs from the estimated rate submitted, the federal agency will request for the small business to revise its budget accordingly.

Listed below are links to federal agencies sites regarding the process for establishing indirect rates:

- Department of Energy, Sample Indirect Rate Proposal;
- Department of Health and Human Services, Program Support Center;
- Environmental Protection Agency, “A Guide on How to Prepare an Indirect Cost Rate Proposal”; and
- National Science Foundation, Indirect Cost Rates.

The small business does not have to establish indirect cost rates to apply for grants. If they choose to establish a rate, it can be done any time. In other words, the small business does not have to establish a rate the first time it applies for a federal grant. A federal agency could be approved for a grant and operating one or more federal grant programs, before it decides to apply for an indirect cost rate.
A. General Overview

The Small Business Innovation Research (SBIR) & Small Technology Transfer Research (STTR) Programs are one of the largest sources of early-stage technology financing in the United States.

The SBIR Program was created under the Small Business Innovation Development Act of 1982. The STTR Program was created by the Small Business Technology Transfer Act of 1992. On December 31, 2011, the SBIR/STTR Reauthorization Act of 2011 made a number of changes to the SBIR and STTR programs, including increases in the funding set-asides over the next six years, and expanded eligibility for STTR awardees to take part in technical assistance programs.

The U.S. Small Business Administration (SBA) directs the governmental agencies' implementation of SBIR/STTR Program, reviews their progress, and reports annually to Congress on its operation. The statutory purpose of the SBIR/STTR Program is to strengthen the role of innovative small business in federally funded research or research and development (R/R&D). Specific program purposes are the following: (1) stimulate technological innovation; (2) use small business to meet federal R/R&D needs; (3) foster and encourage participation by socially and economically disadvantaged small businesses, and by women-owned small businesses, in technological innovation; and (4) increase private sector commercialization of innovations derived from federal R/R&D, which will lead to increasing competition, productivity and economic growth.

Although similar, the SBIR and STTR Programs differ in 2 distinct ways. First, under the SBIR Program, the Principal Investigator must have his/her primary employment with the small business concern at the time of award and for the duration of the project period, however, under the STTR Program, primary employment is not stipulated. Second, the STTR Program requires research partners at universities and other non-profit research institutions to have a formal collaborative relationship with the small business. At least 40 percent of the STTR research project is to be conducted by the small business and at least 30 percent of the work is to be conducted by the single, “partnering” research institution and the institution’s principal investigator.

B. Register in SBA’s Company Registry Database

Why Should the Small Business Register?

All applicants to the SBIR/STTR Program are required to complete their registration in the Company Registry Database prior to submitting a SBIR/STTR application. Company Registry Database houses company information on all SBIR/STTR applicants including specific information on small business applicants that are
majority-owned by multiple venture capital operating companies, hedge funds and/or private equity firms. Small businesses should register at http://www.sbir.gov/registration.

SBA maintains and manages the Company Registry Database to track ownership and affiliation requirements for all companies applying to the SBIR/STTR Program, including participants that are majority-owned by multiple venture capital operating companies, private equity firms, or hedge funds. Each small business applying for a Phase I or Phase II award must register with the Company Registry prior to submitting an application. The small business will report and/or update ownership information to SBA prior to each SBIR/STTR application submission. The small business will also be able to view all of the ownership and affiliation requirements of the program on the registry site.

Completed registrations will receive a unique control identification number and a file to be used for submissions at any of the 11 participating agencies in the SBIR/STTR Program. The main data requirements include: (1) basic identifying information of the small business; (2) the number of employees; and (3) information on the affiliates of the small business. Data collected in the Company Registry Database will not be shared publicly.

The Company Registry Database is one of seven databases located in the SBA's vastly improved program data system, Tech-Net. Tech-Net facilitates administrative reporting and program evaluation. Tech-Net consists of the following databases: (1) Solicitations Database; (2) Other Reports Database; (3) Application Information Database; (4) Award Information Database; (6) Annual Report Database; and (7) Company Registry Database.

C. Budgets

When preparing the budget, the small business should be familiar with the award limitations, review the guidelines specific to the solicitation, and then draft the budget that matches the proposed work to be performed.

1. Award Limits.

The SBIR/STTR Program is structured in 3 phases: Phase I, II, and III.

- **Phase I.** The objective of Phase I is to establish the technical merit, feasibility, and commercial potential of the proposed R/R&D efforts and to determine the quality of performance of the small business awardee organization prior to providing further federal support in Phase II. For this reason, SBIR/STTR Phase I awards normally do not exceed $150,000 total costs for 6 months.

- **Phase II.** The objective of Phase II is to continue the R/R&D efforts initiated in Phase I. Funding is based on the results achieved in Phase I
and the scientific and technical merit and commercial potential of the project proposed in Phase II. Only Phase I awardees are eligible for a Phase II award. For this reason, SBIR/STTR Phase II awards normally do not exceed $1,000,000 total costs for 2 years.

- **Phase III.** The objective of Phase III, where appropriate, is for the small business to pursue commercialization objectives resulting from the Phase I/II R/R&D activities. SBIR/STTR Program does not fund Phase III. Some Federal agencies, Phase III may involve follow-on non-SBIR funded R&D or production contracts for products, processes or services intended for use by the U.S. Government.

2. **Preparing the Budget.**

The proposed budget is an integral part of an SBIR/STTR submission. First, the small business should complete the budget several weeks before the submission deadline. The budget should support the work as confirmed with the concise budget justification. All items in the budget should be justified, including the salary for each individual listed on the budget. The two major components of the SBIR/STTR budget are the direct and indirect costs. Direct costs include salary of individuals working on the project, supplies, and equipment. Indirect costs support the operations of the small business, such as lights, facility, and equipment maintenance costs and should be factored into the budget. The small business should use the SF424 R&R Budget Form. The small business must also complete a budget justification. The budget justification is a narrative explanation of each of the components of the budget, which "justifies" the cost in terms of the proposed work. The explanations should focus on how each budget item is required to achieve the aims of the project and how the estimated costs in the budget were calculated.

In short, each federal agency will devise its requirements in regards to the budget. Small businesses should review the requirements and make their budget in accordance with the requirements of the program in order to ensure success in winning the award.

**D. Intellectual Property**

Small businesses should protect their prior-owned intellectual property before describing or disclosing the intellectual property in a Small Business Innovation Research (SBIR) or Small Business Technology Transfer (STTR) application. According to U.S. Patent laws, an inventor must file for patent protection no later than one year after publicly disclosing the invention or obtaining such protection will be forever barred. Describing inventions in grant proposals may be considered public disclosures. Therefore, small businesses should obtain patent protection as soon as the invention is conceived and reduced to practice and prior to disclosing the invention in a SBIR or STTR application.
The Bayh-Dole Act and Federal Acquisition Regulations (FAR) included in the SBIR or STTR contracts govern newly-developed intellectual property and give the small business doing the research and development ownership of those patents. However, the government will obtain a non-exclusive royalty free right or “march-in right” to use any such inventions for governmental purposes. This means that the small business as the contractor will get to keep the rights to any new intellectual property created during the SBIR or STTR period of performance, subject to the government’s interest. This allocation does not automatically allow the small business to retain title to the invention. The small business must first disclose the invention to the government and then elect in writing to retain title. If the small business fails to fulfill either of these requirements within pre-specified time limits, the federal government can claim title to any patent awarded for the invention. In regards to research data, small business will own the rights in its data resulting from a SBIR or STTR project. Even so, special terms and conditions of the award may indicate alternative rights.

It is therefore particularly important for small businesses to understand SBIR and STTR provisions relating to intellectual property, as well as related risks. Small businesses should consult patent counsel in order to obtain a proper understanding of the intellectual property provisions of the particular SBIR or STTR program and to procure patent protection for its intellectual property.

E. Commercialization Plans

Although many applicants may underestimate the importance of this requirement, the commercialization plan is a critical section of any private or federal proposal. The commercialization plan is the small business’s roadmap for the future. The primary purpose of the commercialization plan is to describe the strategy the business will employ to further develop the technology and generate profits.

Generally, a “succinct” commercialization plan is required to be submitted during the Phase II application process of an SBIR or STTR award. The commercialization plan should provide evidence that the small business has the ability to move the Phase II results out of the laboratory and into the market place.

Each federal agency may require a variety documents to be presented in the plan. However, a thorough commercialization plan should include these elements:

- **Small Business/Company Information**: provide history of previous federal and non-federal funding, regulatory experience, and subsequent commercialization and submit information regarding the founding of the small business, past revenue, members, employees.

- **Customer and Competition**: provide a clear description of key technology objectives, current competition, and advantages compared to competing products or services; description of hurdles to acceptance of the innovation.
• **Intellectual Property**: provide the patent status of technologies, copyright, trade secrets or other demonstration of a plan to achieve sufficient protection to realize the commercialization stage and attain at least a competitive advantage.

• **Market Analysis**: provide milestones, target dates, analyses of market size, and estimated market share after first year sales and after five years; explanation of plan to obtain market share.

• **Financing**: provide a finance and revenue model for advancing the funded research/technology/product to market and provide a list of potential investors, venture capitalists, licensees, and sponsors.

• **Assistance and Monitoring**: state the plans for securing needed technical or business assistance through mentoring, partnering, or through arrangements with state assistance programs, federally-funded research laboratories, Manufacturing Extension Partnership centers, or other assistance providers.

In short, the commercialization plan should convey the status of the effort to date and map out a strategy for moving the product or technology forward. It should describe the current as well as the anticipated resources required to address the opportunity enabled by the product or technology. The commercialization plan should conclude with the small business’s vision for the enterprise, how the proposed product or technology fits into the market and finally, how the company plans to fund the technology in future.
Managing an Award

When a federal agency awards a grant, it is formalizing its partnership with the small business or grantee to ensure compliance with federal laws, regulations, and policies. This protects the integrity of the overall scientific endeavor. Timely and effective communication between a grantee and the federal agency is critical throughout the pre-award process, award process, and post-award process. This section explores the post-award processes including submission of data reports, final invoices, and the winding down of the project.

A. Small Business’s Principal Investigator (PI) Responsibilities

Although the federal award is made to the small business, its Principal Investigator (PI) assumes responsibility for leading and directing the project scientifically, financially and administratively. In addition to overseeing the scientific conduct of the award, the PI is responsible for ensuring that all reports are submitted on time and that all expenses are allowable, allocable and reasonable for the work that is being done. The PI is also responsible for ensuring all appropriate regulatory approvals are in place and remain active during the award period. The oversight extends to any collaborators in which a portion of the work has been subcontracted.

B. Accounting Practices

Recipients of federal grant funds are required to meet the standards for financial management systems as proscribed in 45 CFR Parts 74.21 or 92.20, as applicable. Federal agencies are hesitant to issue awards without the assurance that the federal funds will be used appropriately, adequate documentation of transactions will be maintained and assets will be safeguarded. Every federal award must have its own unique account; so that, sources of funding are not co-mingled. Embedded within this requirement are accounting and internal control systems that provide for appropriate monitoring of grant accounts to ensure that expenses are reasonable, allocable, and allowable. Additionally, the systems must be able to identify large unobligated balances, accelerated expenditures, inappropriate cost transfers, and other inappropriate obligations and expenditures of funds. Any small business that has $500,000 or more in research expenditures during a fiscal year must undergo an A-133 audit. For more information, please click here.

C. Report Requirements

In general, most federal agencies will require a progress report and some semblance of a financial report that may or may not be incorporated into the progress report. It is critical that the small business understand the expectations of the federal agency as it pertains to reports as the continuation of funding could be compromised if the report(s) are not submitted timely. The interim/progress reports should focus on progress towards meeting the specific aims, any changes in key personnel or issues encountered. The federal agency may request a detailed financial report. If a major
issue occurs during the conduct of the science that causes a change in the scope of the project do not wait to communicate this during the established reporting period. The Scientific Director/Program Official should be contacted immediately.

Upon completion of the project, a final technical report and final financial report will need to be submitted to the sponsoring federal agency. The final technical report will discuss achievement of the specific aims, problems encountered, remedies employed towards the problems and any new knowledge that was discovered. The final financial report will detail the funding received and how those funds were spent.

Depending on the program, there may also be other reporting requirements including but not limited to patent/inventions report, equipment property report, etc. This information is found in the program guidelines or in the terms and conditions of the award.

D. Closing the Award

Most federal agencies provide a 90-day period for closing the award. At the end of the 90 days, all the reports mentioned above are due. During this 90 day period, the small business’s PI should contact any regulatory bodies / committees to close-out IRB/IACUC protocols, as appropriate. If the small business has subcontracted a portion of the work, it is during this close-out period that the small business should receive the final financial and technical information from their collaborator/subcontractor for purposes of incorporating the information into their report. To comply with record retention requirements, the small business must archive all source documents (laboratory “notebooks”, purchase orders, time sheets, effort reporting documents, reports, etc.).
Subcontracts

The Federal Government provides research and development funding to small businesses under a variety of mechanisms. The most common mechanisms are contracts and grants. When a company is awarded a contract or grant, the granting agency will specify a list of regulations or terms and conditions that will serve as conditions to the award. Additionally, the agency may require subcontractors of the small business to follow these same regulations. These clauses are called “flow-downs.” This section explores the effect of flow-downs on subcontractors in contracts and grants and offers solutions on how to approach negotiations of subcontracts with institutions.

A. Federal Flow-Downs in Contracts

Governmental agencies issue contracts when the principle purpose is the acquisition of property or services for the direct benefit or use of the federal government (Contract). The agency will specify a list of strict regulations that govern the small business’s activities under the Contract. These regulations are known as the Federal Acquisition Regulations or FAR. The FAR is a system of uniform policies and procedures for acquisitions by governmental agencies. The FAR addresses many aspects of the Contract, including but not limited to contract pricing, billing, patent rights, reporting requirements, disclosure of the small business’s work results, and auditing of the small business’s work. The FAR is codified in Title 48 of the United States Code of Federal Regulations. The FAR is one (1) chapter with fifty-three (53) parts. Agencies incorporate parts of the FAR into Contracts by reference, which means they “flow-down” FAR rules on the small business. However, the Company should review all flow-down clauses and its prescriptions to ensure that the clauses are applicable to the work and to the small business. For example, Part 30 of the FAR references cost accounting standards that allows for small businesses to be exempt from said requirements. If the company can demonstrate to the agency that it meets the small business criteria, then Part 30 would not apply.

In many cases, the governmental agency may require that certain FAR clauses of the small business’s Contract also apply to the subcontractor. These clauses are known as mandatory flow-down clauses. Additionally, the small business may wish to flow-down additional terms and clauses in order to protect the small business’s interest in the work, such as reporting requirements. However, if the clauses are not mandatory flow-downs, then any other clauses should be negotiated out of the subcontract. Yet, many companies often negotiate a Contract without considering the impact of flow-downs on its subcontractors. Even worse, it has become more common for subcontracts to include a blanket flow-down clause, in which the entire Contract is used for the subcontract. This type of flow-down could put the subcontractor in the awkward position of having to fulfill requirements that do not apply to its work. As a result, contract personnel and legal counsel may spend months negotiating the unnecessary but equally restrictive flow-down clauses out of the subcontract.
**For Example:** Company X received a multi-million dollar contract from the Department of Defense. The contract had several different scopes of work that would be completed by several subcontractors. The scopes of work were divided in the following groups: classified research, product development, export-controlled sensitive data research, and mere experimental testing. Company X requested University Y to act as a subcontractor for the portion of the contract that involved only experimental testing and no classified or export-controlled research. All information and techniques that University Y would use in the testing was already in the public domain. During the negotiations for the subcontract, Company X insisted on a blanket flow-down of all the FAR clauses, which included the nondisclosure of research results clause and the handling of classified information clause. Negotiations stalled for months with Company X insisting that University Y had to accept every FAR clause that the Company accepted as a condition in order to receive the subcontract even though many of the clauses did not apply to the basic work that University Y would perform.

**B. Federal Flow-Downs in Grants**

Federal agencies issue grants when the principal purpose of award is to accomplish a public purpose of support. Grants are flexible instruments that the government uses to provide funding in hope of achieving a particular aim. Therefore, flow-down clauses in grant awards are not as strict as the flow-down terms of the FAR. Flow-down clauses of grants are generally found in the terms and conditions section of notice of award (NoA) documents. The terms and conditions of a grant award includes general administrative and public policy requirements that apply to all recipients or certain classes of awards or activities; program-specific requirements (i.e. conditions on activities and expenditure of funds) in other statutory requirements; and as necessary award-specific requirements. The recipient of the grant is accountable for the performance of the project, program, or activity; the appropriate expenditure of funds under the award by all parties; and all other obligations of the recipient, as cited in the NoA. In general, the requirements that apply to the recipient, including public policy requirements, are also flowed down to subrecipients and subcontractors under grants, unless an exception is specified. Therefore, similar to the federal Contract flow-downs, the small business or recipient should use care when flowing down provisions and only flow down those provisions that by its very terms require the conditions to flow down to the subcontractor.

**C. Approach to Negotiating**

As stated in the previous sections, the small business can ensure smooth negotiations with subcontractors, especially institution’s subcontractors. Identify the appropriate type of work required in the contract or grant, then take exceptions to the FAR clauses as needed. The small business must remember that the subcontractor is not in privity of contract with the governmental agency. This means that the subcontractor is not invited to table in order voice its concerns and problems with flow-downs to the governmental agency. Therefore, in the proposal stage, the small
business should consider the needs of the subcontractors when negotiating the grant or Contract with the federal agency. In the subcontract phase, the small business should make sure that it flows down only the federal requirements that are applicable to the subcontractor and the subcontractor’s work under the subcontract.

Federal flow-down clauses are not the only obstacles that can arise when negotiating the subcontract with the institutions. The institution may also have additional policies in regards to intellectual property ownership and publication that may conflict with certain flow-down clauses that the small business wishes the institution to undertake. Therefore, in the earliest possible phase of the award, the small business should consult the institution’s researcher, the institution’s Office of Sponsored Programs, Office of Technology Transfer, and Office of Legal Affairs in order to become familiar with the requirements of the institution. With this knowledge, the small business should then make the appropriate exemptions or exceptions regarding flow-down clauses in contracts or grants. This approach to negotiations will properly facilitate the subcontract process and result in subcontracts that are optimal for both the small business and the subcontractor.

D. Invoices and Accounts Payable

Award payments from most federal agencies are on a cost reimbursable basis or fixed fee basis.

If the small business holds the award and subcontracts a portion of the work with another entity, the small company will be the recipient of the subcontractor’s invoices. As the holder of the award or the prime recipient (prime), it is the small business’s responsibility to review all expenditures and make sure that they are allowable, applicable, and reasonable for the work being performed. The small business has the right to request detailed documentation from its subcontractors in order to support any item on the invoice. In practice, invoices should be paid within 30 days of prime’s receipt of the invoice. Prompt payment reduces delays in the project and ensures that the work can continue as scheduled.

When the small business is the subcontractor, the small business will be expected to generate monthly invoices that provide sufficient detail to enable the prime to pay the invoice. The invoice should include a categorical breakdown of expenses (Salary, fringe benefits, supplies, travel, etc.). The actual invoice should include the small business’s name, address, contact person, period covered by the invoice and any other award identifying information (Subaward #, PO #, reference award number, etc.) designated in the subcontract. Often, the entity holding the award will include a sample invoice as part of the subcontract package. If the invoices are not submitted timely, the entity holding the award can refuse to pay so pay careful attention to the invoice expectations language in the subaward agreement. The final invoice for the work period must be specified as such. With federal funds, the federal agency holds the purse strings. The small business should always work with the subcontractor or the prime to ensure prompt reporting and invoicing procedures.
Human Subject Research

**Projects involving human subject research** are often referred to as clinical studies. A clinical study involves research using human volunteers (also called participants) that is intended to add to medical knowledge. There are two main types of clinical studies: clinical trials and observational studies. In a clinical trial (also called an interventional study), participants receive specific interventions according to the research plan or protocol created by the investigators. In an observational study, investigators assess health outcomes in groups of participants according to a protocol or research plan. Clinical Research has a complex system of oversight. A small business should only undertake clinical research if it has identified the Principal Investigator (PI) who understands the strict ethical and regulatory responsibilities of conducting clinical research. The small business must work with the Institutional Review Board (IRB) as discussed in detail below.

### A. Principal Investigator (PI) Responsibilities

Every clinical study is led by a principal investigator, who is often a medical doctor. Clinical studies also have a research team that may include doctors, nurses, social workers, and other health care professionals. Clinical studies can be sponsored, or funded, by pharmaceutical companies, academic medical centers, voluntary groups, and other organizations, in addition to Federal agencies such as the National Institutes of Health, U.S. Department of Defense, and U.S. Department of Veterans Affairs. Physicians, health care providers, and other individuals can also sponsor clinical research.

In clinical research, the PI is responsible for protecting the rights and welfare of human research participants. Additionally, the PI has the obligation to personally oversee the research and ensures compliance with applicable federal, state and local regulations and policies. Federal agencies that oversee aspects of clinical research include: The Food and Drug Administration (FDA), The Office of Human Research Protections (OHRP), and the Office of Civil Rights which enforces HIPAA regulations. In addition, the Center for Medicare and Medicaid (CMS) and the Office of Inspector General (OIG) oversee clinical research billing of federal beneficiaries and the financial management of federal funds respectively. Funding agencies such as Private industry Corporations, the National Institute for Health (NIH) or the Department of Defense (DOD) also has significant oversight of and obligations for the PI. In addition to state and local guidelines, the policies and procedures of the Institutional Review Board (IRB) must be followed as well. While many support personnel may assist in conducting the research, the ultimate responsibility to ensure that all key personnel involved in human research complete required training and comply with all applicable regulations and procedures rests on the shoulders of the PI.

1. Preparing the Protocol.
Preparation of Scientific Proposal, or protocol, is a key obligation of the PI. The PI must perform a comprehensive review of background and scientific literature prior to preparing the scientific proposal. The use of human participants must be detailed in the proposal including how subjects will be identified, recruited, consented, as well as how their privacy and confidentiality will be respected. The protocol must mirror the funding proposal. Once the protocol is prepared, it must be submitted to the IRB for approval. The IRB approval information must be provided to the sponsoring agency. Any proposed changes to the protocol must also be submitted to the IRB for approval prior to implementation unless necessary to protect the welfare of the research participant.

A PI must demonstrate good financial stewardship of research funds. The first step is a thoughtfully prepared proposal budget. The PI must verify the proposal budget provides sufficient funds for compliance with any and all applicable federal regulations, and sponsoring agency policies and procedures. The PI must also pay research participants and/or covers their expenses as approved by the IRB. As outlined in the Billing Section, the PI must pay close attention to how items and services required by the study are billed. The human research subject must be told of any financial obligations incurred as part of their participation. The PI ensures the terms and condition of the award are met before accepting the award.

2. Obtaining Voluntary Informed Consent.

Voluntary Informed Consent of research participants is an ethical paramount. The PI is responsible for the preparation of all documents related to the informed consent process which may include assent documents. The documents must receive review and approval by the IRB. The PI ensures the consent process is completed as approved and is ongoing throughout the subjects’ participation. Research subjects should be promptly informed of any changes to the research that might influence their decision to participate this might include obtaining consent on an updated IRB approved consent form.

3. Conducting the Clinical Trial.

During the conduct of the clinical trial, the PI oversees all key personnel and ensures that the protocol is being followed, data collection is accurate and timely, and reporting obligations are met. They must promptly report any unanticipated problems involving risks to research participants or others to the IRB. The PI must comply with technical, progress, and compliance reporting requirements in accordance with any and all applicable state and federal regulations, sponsoring agency policies, institutions, and procedures.

At the conclusion of the clinical research, the PI submits accurate and timely closeout documents and ensures research files are secure and stored in accordance with the applicable policy.
B. Billing

When conducting a human subject’s research study, the PI should consider how services and procedures required by the study will be billed during the study. If the study protocol includes items or services which may be considered part of the routine care of the subject and the intent is to bill these items or services to the subject or their third-party payer (i.e. insurance company) then a Coverage Analysis (CA) is required.

A Coverage Analysis is simply a billing grid to identify the appropriate disposition of any charges the subject may incur as a result of their participation in the research. When applicable, the CA is completed by the Office of Clinical Research and will identify each procedure or service required in the research protocol and determine if the charge can be legitimately billed to a 3rd party payer. This becomes particularly important if the subject is a Medicare beneficiary. Medicare, as issued in the 2000 Clinical Trial Policy, will cover “routine costs” for “Qualifying Clinical Trials”. Part of the Coverage Analysis will determine if the trial meets the definition of a Qualifying clinical trial and if the item or service constitutes a routine cost. Once the CA is complete and the trial is determined to be a Qualifying Clinical trial, the subjects must be identified in the billing system as a research participant so the appropriate billing review can be completed.

C. Institutional Review Board (IRB)

An Institutional Review Board (IRB) is a committee comprised of physicians, scientists, nonscientists and community members who serve to protect the rights and welfare of human research subjects as outlined in the U.S. Code of Federal Regulations. The IRB will review each research study to ensure that the risks are appropriate in relation to the benefits and that there are safeguards in place to address risks encountered in the research. The federal regulations require an IRB to specifically review various aspects of a research study such as the study design, risk vs. benefit, the informed consent document and process, privacy protection, and confidentiality. IRBs have the authority to approve, require modifications in planned research prior to approval, or disapprove research. The IRB also determines what information should be provided to the potential research participant and approves the consent document that is to be used before the study is started.

When working with institutions, the small business must understand institutions that accept research funding from the federal government must have an IRB to review all research involving human subjects (even if a given research project does not involve federal funds).

D. Federalwide Assurance

The Office for Human Research Protections (OHRP) requires that federally funded human subjects research only be conducted at facilities covered by a Federalwide Assurance (FWA). An FWA is a document that designates the Institutional Review
Board that will review and oversee the research, specifies the ethical principles under which the research will be conducted, and names the individuals who will be responsible for the proper conduct of the research.
Record Retention

*Small business must have sound record-keeping practices.* The small business must retain financial and programmatic records, supporting documents, statistical records, and all other records that are required by the terms of a grant, or may reasonably be considered pertinent to a grant, for a period of three years from the date the annual financial report is submitted. If according to the grant terms and conditions there is only one formal financial report – which is the final financial report submitted at the end of the project - the three-year retention period will be calculated from the date the final financial report is submitted.

See 45 CFR 74.53 and 92.42 for exceptions and qualifications to the three-year retention requirement (e.g., if any litigation, claim, financial management review, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken). Those sections also specify the retention period for other types of grant-related records, including F&A cost proposals and property records. See 45 CFR 74.48 and 92.36 for record retention and access requirements for contracts under grants.
A. **Texas Secretary of State**

The Texas Secretary of State’s website regarding start-up businesses will provide useful information about the different incorporation filing procedures for each type of business as well as forms, filing options, and fee information. [Click here](#) for the website.

B. **UTMB's Research Conflicts of Interest Policy**

An individual financial conflict of interest in research performed at UTMB may exist when an individual’s activities or personal financial interests may directly and significantly affect, or have the appearance of directly and significantly affecting, the individual’s professional judgment in the design, conduct, or reporting of research results or in exercising an institutional duty or responsibility related to research.

UTMB’s Research Conflicts of Interest Policy sets forth the requirements that research personnel must adhere to while engaged in research activities at the institution. [Click here](#) for the policy.

C. **NIH Grants Policy Statement**

The National Institutes of Health Grants Policy Statement (NIHGPS), available to those seeking NIH funding, sets forth the terms and conditions of NIH grant awards. The document includes helpful links and web resources. [Click here](#) for the policy.

D. **OMB Circulars**

The Office of Management and Budget Circulars set costing and auditing principles for any entity that seeks federal funding. [Click here](#) for the link.

E. **Online Resources**

- [U.S. Small Business Administration](#)
- [SBIR/STTR](#)
- [D&B DUNS Numbers](#)
- [Guides and Resources for Start-Ups](#)
- [BioHouston, Inc.](#)
- [Houston Technology Center](#)
A. *Model Bylaws*

_________________, INC.

**BYLAWS**

(Adopted on ________, 201_)

**ARTICLE I**

**OFFICES**

Section 1.1 **Principal Office.** The principal office of the corporation shall be located in the State of Texas or as otherwise designated by the board of directors.

Section 1.2 **Other Offices.** The corporation may also have offices at such other places both within and without the State of Texas as the board of directors may from time to time determine or the business of the corporation may require.

**ARTICLE II**

**MEETINGS OF SHAREHOLDERS**

Section 2.1 **Time and Place of Meeting.** Meetings of shareholders for any purpose may be held at such time and place within or without the State of Texas as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 2.2 **Annual Shareholder Meeting.** The annual meeting of shareholders shall be held annually at such date and time as shall be designated from time to time by the board of directors and stated in the notice of meeting.

Section 2.3 **Special Meetings.** Special meetings of the shareholders for any purpose or purposes may be called by the chairman of the board or the chief executive officer and shall be called by the secretary at the request in writing of a majority of the board of directors, or at the request in writing of shareholders owning twenty percent (20%) of all the shares entitled to vote at the meetings. A request for a special meeting shall state the purpose or purposes of the proposed meeting, and business transacted at any special meeting of shareholders shall be limited to the purposes stated in the notice.

Section 2.4 **Notice of Meeting.** Written notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than sixty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting.
Section 2.5  **Quorum.** The holders of a majority of the shares issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the shareholders for the transaction of business except as otherwise provided by statute or by the certificate of formation. If, however, a quorum shall not be present or represented at any meeting of the shareholders, the shareholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At a meeting reconvened after such an adjournment, any business may be transacted which might have been transacted if the meeting had been held in accordance with the original notice thereof, provided a quorum is present or represented at such reconvened meeting.

Section 2.6  **Vote Required.** If a quorum is present at any meeting, the vote of the holders of a majority of the shares entitled to vote, present in person or represented by proxy, shall decide any question brought before such meeting, unless the question is one upon which a different vote is required by law or by the certificate of formation.

Section 2.7  **Voting; Proxies.** Each outstanding share having voting power shall be entitled to vote on each matter submitted to a vote at a meeting of shareholders in accordance with the corporation’s certificate of formation. A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact.

Section 2.8  **Action Without Meeting.** Any action required or which may be taken at a meeting of the shareholders may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by the holder or holder of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted.

**ARTICLE III**

**DIRECTORS**

Section 3.1  **Powers.** The powers of the corporation shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of the board of directors.

Section 3.2  **Number, Election and Term.** The number of directors which shall constitute the whole board of directors shall be not less than one. Such number of directors shall from time to time be fixed and determined by the directors and shall be set forth in the notice of any meeting of shareholders held for the purpose of electing directors. The directors shall be elected at the annual meeting of shareholders, except as provided in Sections 3.3 and 3.4, and each director elected shall hold office until his successor shall be elected and qualify. Directors need not be residents of Texas or shareholders of the corporation.

Section 3.3  **Resignation; Vacancies.** Any director may resign at any time upon notice given in writing or by electronic transmission to the corporation. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. Any vacancy occurring in the board of directors may be filled by a majority of the remaining directors though less than a quorum of the
board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. If no directors remain, a vacancy may be filled by the vote of the shareholders at a special meeting called for such purpose.

Section 3.4 Change in Number. The number of directors may be increased or decreased from time to time as provided in these bylaws but no decrease shall have the effect of shortening the term of any incumbent director. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of one or more directors by the shareholders.

Section 3.5 Removal. Any director may be removed either for or without cause at any special meeting of shareholders duly called and held for such purpose. A vacancy created by a removal of the shareholders may be filled by the shareholders at a special meeting called for such purpose.

Section 3.6 Place of Meetings. Meetings of the board of directors, regular or special, may be held either within or without the State of Texas and may be conducted by telephone conference, video conference or any other method which allows the participants to hear and to speak to those in the meeting.

Section 3.7 First Meeting. The first meeting of each newly elected board of directors shall be held at such time and place as shall be fixed by the vote of the shareholders at the annual meeting and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present. In the event that the shareholders fail to fix the time and place of such first meeting, it shall be held without notice immediately following the annual meeting of shareholders, and at the same place, unless by the unanimous consent of the directors then elected and serving such time or place shall be changed.

Section 3.8 Notice of Regular Meetings. Regular meetings of the board of directors may be held upon such notice, or without notice, and at such time and at such place as shall from time to time be determined by the board.

Section 3.9 Special Meetings. Special meetings of the board of directors may be called by the chairman of the board of directors or the chief executive officer and shall be called by the secretary on the written request of two directors. Notice of each special meeting of the board of directors shall be given to each director at least one day before the date of the meeting.

Section 3.10 Waiver of Notice. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Except as may be otherwise provided by law or by the certificate of formation or by the bylaws, neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.
Section 3.11  **Quorum.** At all meetings of the board of directors a majority of the directors shall constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors, unless otherwise specifically provided by law, the certificate of formation or the bylaws. If a quorum shall not be present at any meeting of directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 3.12  **Committees.** The board of directors, by resolution passed by a majority of the full board, may from time to time designate a member or members of the board to constitute committees, including an executive committee, which shall in each case consist of one or more directors and shall have and may exercise such powers as the board may determine and specify in the respective resolutions appointing them. A majority of all the members of any such committee may determine its action and fix the time and place of its meetings, unless the board of directors shall otherwise provide. The board of directors shall have power at any time to change the number, subject as aforesaid, and members of any such committee, to fill vacancies and to discharge any such committee.

Section 3.13  **Action Without Meeting.** Any action required or permitted to be taken at a meeting of the board of directors or any committee may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the members of the board of directors or committee, as the case may be.

Section 3.14  **Compensation.** By resolution of the board of directors, the directors may be paid their expenses, if any, of attendance at each meeting of the board of directors and may be paid a fixed sum for attendance at each meeting of the board of directors or a stated salary as director. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

ARTICLE IV
NOTICES

Section 4.1  **Form of Notice; Delivery.** Any notice to directors or shareholders shall be in writing and shall be delivered personally to the directors or shareholders or mailed to the shareholders at their respective addresses appearing on the books of the corporation. Notice to shareholders by mail shall be deemed to be given at the time when the same shall be deposited in the United States mail, postage prepaid. Notice to directors may also be given by telegram, telex, cablegram, facsimile, electronic mail or other similar transmission.

Section 4.2  **Waiver.** Whenever any notice is required to be given under the provisions of the statutes, the certificate of formation or these bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.
ARTICLE V
OFFICERS

Section 5.1 Officers. The officers of the corporation shall be elected by the board of directors and shall consist of at least a president and a secretary, neither of whom need be a member of the board.

Section 5.2 Additional Officers. The board of directors may elect a chairman of the board, a chief executive officer, an assistant to the president, one or more vice presidents, one or more chief officers, a treasurer, and one or more assistant secretaries and assistant treasurers. The board of directors may also appoint such other officers and assistant officers and agents as it shall deem appropriate, who shall hold their offices for such terms and shall have such authority and exercise such powers and perform such duties as shall be determined from time to time by the board by resolution not inconsistent with these bylaws. Two or more offices may be held by the same person.

Section 5.3 Compensation. The salaries of all officers and agents of the corporation shall be fixed by the board of directors. The board of directors shall have the power to enter into contracts for the employment and compensation of officers for such terms as the board deems advisable.

Section 5.4 Term; Removal; Vacancies. The officers of the corporation shall hold office until their successors are elected or appointed and qualify, or until their death or until their resignation or removal from office. Any officer elected or appointed by the board of directors may be removed at any time by the board, with or without cause, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights. Any vacancy occurring in any office of the corporation by death, resignation, removal or otherwise shall be filled by the board of directors.

Section 5.5 Chairman of the Board. The chairman of the board, if one be elected, shall preside at all meetings of the board of directors and of the shareholders and shall have such other powers and duties as may from time to time be prescribed by the board of directors, upon written directions given to him pursuant to resolutions duly adopted by the board of directors.

Section 5.6 Chief Executive Officer. The chief executive officer of the corporation, if one be elected, shall, subject to the control of the board of directors, have general supervision, direction, and control of the business of the corporation. He shall see that all orders and resolutions of the board are carried into effect.

Section 5.7 President. The president shall have the general powers and duties of management usually vested in the office of president of a corporation, subject to the duties delegated by the board of directors to the chairman of the board and the chief executive officer. In addition, he shall also have such powers and duties as prescribed by the board of directors or the bylaws.
Section 5.8  **Vice President.** The vice presidents in the order of their seniority, unless otherwise determined by the board of directors, shall, in the absence or disability of the president, perform the duties and have the authority and exercise the powers of the president. They shall perform such other duties and have such other authority and powers as the board of directors may from time to time prescribe or as the president or chief executive officer may from time to time delegate.

Section 5.9  **Secretary.** The secretary shall attend all meetings of the board of directors and all meetings of shareholders and record all of the proceedings of the meetings of the board of directors and of the shareholders in a minute book to be kept for that purpose and shall perform like duties for the standing committees when required. The secretary shall give, or cause to be given, notice of all meetings and special meetings of the shareholders and the board of directors, and shall perform such other duties as may be prescribed by the board of directors the chairman of the board, the chief executive officer or president. The secretary shall be under the supervision of the chief executive officer or, if one is not elected, of the president. The secretary shall perform such other duties and have such other powers as the board of directors may from time to time prescribe or as the president may from time to time delegate.

Section 5.10  **Assistant Secretaries.** The assistant secretaries in the order of their seniority, unless otherwise determined by the board of directors, shall, in the absence or disability of the secretary, perform the duties and exercise the powers of the secretary. They shall perform such other duties and have such other powers as the board of directors may from time to time prescribe or as the chief executive officer or president may from time to time delegate.

Section 5.11  **Treasurer.** The treasurer, if one be elected, shall have custody of the corporate funds and securities and shall keep full and accurate accounts and records of receipts, disbursements and other transactions in books belonging to the corporation, and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors. The treasurer shall disburse the funds of the corporation as may be ordered by the board of directors, taking proper vouchers for such disbursements, and shall render the chairman of the board, the chief executive officer, the president, and the board of directors, at its regular meetings, or when the chairman of the board, the chief executive officer, the president or board of directors so requires, an account of all his transactions as treasurer and of the financial condition of the corporation. If required by the board of directors, the treasurer shall give the corporation a bond of such type, character and amount as the board of directors may require.

Section 5.12  **Assistant Treasurers.** The assistant treasurers in the order of their seniority, unless otherwise determined by the board of directors, shall, in the absence or disability of the treasurer, perform the duties and exercise the powers of the treasurer. They shall perform such other duties and have such other powers as the board of directors may from time to time prescribe or as the chief executive officer or president may from time to time delegate.
ARTICLE VI
CERTIFICATES REPRESENTING SHARES

Section 6.1 Certificates. The shares of the corporation shall be represented by certificates signed by the chairman of the board, the chief executive officer, the president or a vice president and the secretary or an assistant secretary of the corporation.

Section 6.2 Facsimile Signatures. The signatures of the chairman of the board, the chief executive officer, the president or vice president and the secretary or assistant secretary upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issue.

Section 6.3 Lost Certificates. The board of directors may direct a new certificate to be issued in place of any certificate theretofore issued by the corporation alleged to have been lost or destroyed. When authorizing such issue of a new certificate, the board of directors, in its discretion and as a condition precedent to the issuance thereof, may prescribe such terms and conditions as it deems expedient and may require such indemnities as it deems adequate to protect the corporation from any claim that may be made against it with respect to any such certificate alleged to have been lost or destroyed.

Section 6.4 Transfers. Upon surrender to the corporation or the transfer agent of the corporation of a certificate representing shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, a new certificate shall be issued to the person entitled thereto and the old certificate canceled and the transaction recorded upon the books of the corporation.

Section 6.5 Closing of Transfer Records. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders, or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, sixty days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting. In lieu of closing the stock transfer books, the board of directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than sixty days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of
shareholders has been made as provided in this section, such determination shall be applied to any adjournment thereof except where the determination has been made through the closing of the stock transfer books and the stated period of closing has expired.

Section 6.6 Fixing Record Dates for Consents to Action. Unless a record date shall have previously been fixed or determined, whenever action by shareholders is proposed to be taken by consent in writing without a meeting of shareholders, the board of directors may fix a record date for the purpose of determining shareholders entitled to consent to that action which record date shall not precede, and shall not be more than ten days after, the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors and prior action of the board of directors is not required by law, the record date for determining shareholders entitled to consent to action in writing without a meeting shall be the first date on which a signed written consent setting forth the action taken proposed to be taken is delivered to the corporation in the manner required by Section 2.8 of these bylaws. If no record date shall have been fixed by the board of directors and prior action of the board of directors is required by law, the record date for determining shareholders entitled to consent to action in writing without a meeting shall be at the close of business on the date on which the board of directors adopts a resolution taking such prior action.

Section 6.7 Registered Shareholders. Except as otherwise required by law, the corporation shall be entitled to regard the person in whose name any shares are registered in the share transfer records at any particular time as the owner of those shares at that time for purposes of voting those shares, receiving distributions, share dividends or notices in respect thereof, transferring those shares, exercising rights of dissent with respect to those shares, entering into agreements with respect to those shares or giving proxies with respect to those shares. Except as otherwise required by law, neither the corporation nor any of its officers, directors, employees or agents shall be liable for regarding that person as the owner of those shares at that time for those purposes, regardless of whether that person does not possess a certificate for those shares.

Section 6.8 List of Shareholders. The officer or agent having charge of the transfer books for shares shall make, at least ten days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting, arranged in alphabetical order, with the address of each and the number of shares held by each, which list, for a period of ten days prior to such meeting, shall be kept on file at the registered office of the corporation and shall be subject to inspection by any shareholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original share ledger or transfer book, or a duplicate thereof, shall be prima facie evidence as to who are the shareholders entitled to examine such list or share ledger or transfer book or to vote at any meeting of the shareholders.

ARTICLE VII
GENERAL PROVISIONS

Section 7.1 Distributions and Share Dividends. Subject to the provisions of the certificate of formation relating thereto, if any, dividends may be declared by the board of
directors, in its discretion, at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property or in the corporation's own shares, subject to any provisions of the certificate of formation.

Section 7.2 Reserve Funds. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve fund for meeting contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the directors shall think conducive to the interest of the corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

Section 7.3 Checks. All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the board of directors may from time to time designate.

Section 7.4 Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the board of directors.

Section 7.5 Corporate Seal. The corporation shall not have a corporate seal.

Section 7.6 Books and Records. The corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders and board of directors, and shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each.

Section 7.7 Severability. If any provision of these bylaws is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; these bylaws shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such illegal, invalid, or unenforceable provision there shall be added automatically as a part of these bylaws a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Section 7.8 Headings. The headings used in these bylaws are for reference purposes only and do not affect in any way the meaning or interpretation of these bylaws.

ARTICLE VIII
INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 8.1 Indemnification of Directors and Officers. The Texas Business Organizations Code (the “Code”) permits the corporation to indemnify its present and former directors and officers to the extent and under the circumstances set forth therein. In addition, in
some instances, indemnification is required by the Code. The corporation shall indemnify all such persons to the fullest extent permitted or required by the Code promptly upon request of any such person making a request for indemnity hereunder. Such obligation to so indemnify and to so make such determinations may be specifically enforced by resort to any court of competent jurisdiction. Further, the corporation shall pay or reimburse the reasonable expenses of such persons covered hereby in advance of the final disposition of any proceeding to the fullest extent permitted by the Code and subject to the conditions thereof. To the extent there is any conflict between the provisions of this Article VIII and the corporation’s certificate of formation, the provisions of the certificate of formation shall control.

ARTICLE IX
AMENDMENTS

Section 9.1 Amendments. These bylaws may be altered, amended, or repealed or new bylaws may be adopted by the affirmative vote of a majority of the whole board of directors at any regular or special meeting; provided, that these bylaws may not be altered, amended, or repealed so as to be inconsistent with law or any provision of the certificate of formation.
B. Model Certificate of Formation

CERTIFICATE OF FORMATION
OF
______________, INC.

The undersigned natural person of the age of at least eighteen (18) years of age, acting as the sole organizer of a for-profit corporation under the Texas Business Organizations Code (the “TBOC”), does hereby adopt the following Certificate of Formation for _____________, INC. (the “Corporation”):

ARTICLE I

The name of the filing entity is ______________, INC.

ARTICLE II

The type of filing entity being formed hereby is a Texas corporation.

ARTICLE III

The purpose for which the Corporation is formed is to conduct any and all lawful business for which a corporation may be organized under the TBOC.

ARTICLE IV

The address of the Corporation’s initial registered office in the State of Texas is _____________, ________, Texas _____, and the name of the Corporation’s initial registered agent at that address is ________.

ARTICLE V

The Corporation is authorized to issue two classes of stock to be designated, respectively, “Common Stock” and “Preferred Stock.” The total number of shares that the Corporation is authorized to issue is_____ shares. _____ shares shall be Common Stock and ________ shares shall be Preferred Stock, each with a par value of $0.0001 per share.

Except as otherwise provided by law or by the resolution or resolutions providing for any series of Preferred Stock, the holders of outstanding shares of Common Stock shall exclusively possess voting power for the election of directors and for other matters requiring shareholder action. Each share of Common Stock shall entitle the holder to one vote. Except as otherwise provided by the resolution or resolutions providing for any series of Preferred Stock, dividends may be declared and paid or set apart for payment to the holders of shares of Common Stock out of any assets or funds of the Corporation legally available for the payment of dividends, and may be payable in cash, stock or otherwise. Except as otherwise provided by the resolution or resolutions providing for any series of Preferred Stock, in the event of any liquidation,
dissolution or winding up of the Corporation, the net assets of the Corporation shall be
distributed to the holders of Common Stock ratably according to the number of shares of
Common Stock held by them.

The Board of Directors is authorized, subject to any limitations prescribed by law, to
provide for the issuance of the shares of Preferred Stock in one or more series, by filing a
certificate pursuant to the applicable law of the State of Texas, to establish from time to time the
number of shares to be included in each such series, and to fix the designation, powers,
preferences and rights of the shares of each such series and any qualifications, limitations or
restrictions thereof. The number of authorized shares of Preferred Stock may be increased or
decreased by the affirmative vote of the holders of a majority of the stock of the Corporation
entitled to vote without the separate vote of holders of Preferred Stock as a class.

Shares of series of Preferred Stock that have been redeemed or purchased by the
Corporation or, if convertible or exchangeable, have been converted or exchanged, shall have the
status of authorized but unissued shares of Preferred Stock and may be reissued as a part of the
series of which they were originally a part or may be reclassified or reissued as part of another
series of Preferred Stock created by resolution of the Board of Directors, all subject to the
conditions or restrictions on issuance set forth in the resolution or resolutions adopted by the
Board of Directors providing for the issuance of any such series of Preferred Stock.

ARTICLE VI

The number of directors constituting the initial board of directors shall be three (3) and
the name and address of the person who is to serve as the director until the first annual meeting
of the shareholders or until his or her successor is elected and qualified is:

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The number of directors may hereafter be increased or decreased as provided in the
Bylaws of the Corporation.

ARTICLE VII

The name and address of the organizer is _________ and the organizer’s address is
___________, ________, Texas _________.

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ARTICLE VIII

The Corporation shall have all of the powers provided for a domestic entity under the TBOC.

ARTICLE IX

As further provided below, each person who was or is made a party or is threatened to be made a party to or is involved in any proceeding concerning, involving, or relating to the Corporation shall be indemnified by the Corporation to the fullest extent permitted by the TBOC, as such laws exist or may hereafter be amended. In the case of any such amendment, however, such indemnification shall apply only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment. The indemnification provided hereunder shall (i) extend to judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including, without limitation, attorneys’ fees) actually incurred by such person in connection with a proceeding; (ii) apply only if the person’s involvement or potential involvement in the proceeding arises by reason of the fact that such person is or was a director or officer of the Corporation or while a director or officer of the Corporation is or was serving at the request of the Corporation as a managing member, director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise; (iii) continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnity hereunder; (iv) be applicable, without limitation, to claims against such person based on negligent or allegedly negligent acts or omissions of such person; and (v) not apply to proceedings and threatened proceedings in which the Corporation is adverse to such person. The rights granted pursuant to this Article Nine shall be deemed contract rights, and no amendment, modification or repeal of this Article Nine shall have the effect of limiting or denying any such rights with respect to actions taken or proceedings arising prior to any such amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article Nine could involve indemnification for negligence or under theories of strict liability.

The Corporation may indemnify and advance expenses to an employee or agent of the Corporation to the same extent and subject to the same conditions under which it is required to indemnify and advance expenses to the director under this Article Nine.

ARTICLE X

To the fullest extent permitted by the TBOC, the right to indemnification conferred in Article Nine shall include the right to be paid or reimbursed by the Corporation the reasonable expenses incurred by a person of the type entitled to be indemnified under Article Nine who was, is or is threatened to be made a named defendant or respondent in the proceeding in advance of the final disposition of the proceeding and without any determination as to the person’s ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such person in advance of the final disposition of the proceeding, shall be made only
upon delivery to the Corporation of a written affirmation by such person of such person’s good faith belief that such person has met the standard of conduct necessary for indemnification under Article Nine and a written undertaking, by or on behalf of such person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified person is not entitled to be indemnified under Article Nine or otherwise.

ARTICLE XI

The Corporation may purchase and maintain reasonable insurance, at its expense, to protect itself, the members of the Board of Directors, and any person who is an officer, employee or agent of the Corporation against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under Article Nine.

ARTICLE XII

A director of the Corporation shall, to the fullest extent permitted by the TBOC as it now exists or as it may hereafter be amended, not be personally liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its shareholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, or (iii) for any transaction from which the director derived any improper personal benefit. If the TBOC is amended to authorize corporation action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall automatically, without further action on the part of the Corporation, be eliminated or limited to the fullest extent permitted by the TBOC, as so amended.

Any amendment, repeal or modification of this Article Twelve, or the adoption of any provision of these Articles of Incorporation inconsistent with this Article Twelve, by the shareholders of the Corporation shall not apply to or adversely affect any right or protection of a director of the Corporation existing at the time of such amendment, repeal, modification or adoption.

ARTICLE XIII

Any action required or permitted to be taken at any annual or special meeting of the Board of Directors or Shareholders may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by all the members of the Board of Directors or in the case of the Shareholders the number of Shareholders having not fewer than the minimum number of votes that would be necessary to take action at a meeting at which all Shareholders entitled to vote on the action were present and voted. Every written consent shall bear the date of signature of the members of the Board of Directors or Shareholders. A telegram, telex, cablegram or similar transmission by members of the Board of Directors or Shareholders, or a photograph, photostat, facsimile or similar reproduction of a writing signed by members of the Board of Directors or Shareholders, shall be regarded as signed by members of the Board of Directors or Shareholders for purposes
of this Article Twelve. If any action by the Board of Directors or Shareholders is taken by written consent, any documents filed with the Secretary of State of Texas as a result of the taking of the action may state either that such action was taken pursuant to a vote at an annual or special meeting, or in lieu of any statement required by the TBOC concerning any vote of the Board of Directors or Shareholders, that written consent has been given in accordance with the provisions of the TBOC and that any written notice required by the TBOC has been given.

IN WITNESS WHEREOF, this Certificate of Formation has been executed on _______, 201_, by the undersigned.

SOLE ORGANIZER

_______________________________

_______________________________
C. Model Organizational Consent

UNANIMOUS WRITTEN CONSENT OF BOARD OF DIRECTORS
IN LIEU OF AN ORGANIZATIONAL MEETING
OF
______________________, INC.

The undersigned, being all of the directors named in the Certificate of Formation of
_______________________, INC., a Texas corporation (the “Corporation”), hereby, pursuant to
the provisions of Section 6.201 of the Texas Business Organizations Code, consent to and
approve the following resolutions and each and every action effected thereby:

ARTICLE I
RATIFICATION OF THE CERTIFICATE OF FORMATION

RESOLVED, that the form, terms, and provisions of the Certificate of Formation of the
Corporation, in the form filed in the Office of the Secretary of State of Texas on or about
_______, 201_, are in all respects approved and shall be filed in the minute book of the
Corporation.

ARTICLE II
ADOPTION OF THE BYLAWS

RESOLVED, that the bylaws of the Corporation be and hereby are adopted in the form
attached hereto.

ARTICLE III
APPOINTMENT OF OFFICERS

RESOLVED, that each of the following persons is elected to the office of the
Corporation set forth opposite his or her name to serve in accordance with the provisions of the
bylaws of the Corporation and until his or her successor shall have been elected and shall have
qualified:

____________ President
____________ Secretary and Treasurer

ARTICLE IV
ISSUANCE OF FOUNDER STOCK

RESOLVED, that the Corporation issue ___________ shares of its Common Stock,
$0.0001 par value, to ________, in exchange for and against receipt by the Corporation of $___
as consideration.
RESOLVED FURTHER, that the Corporation issue ________ shares of its Common Stock, $0.0001 par value, to ________ in exchange for and against receipt by the Corporation of $____ as consideration.

RESOLVED FURTHER, that following the issuance of such shares, the proper officers of the Corporation are hereby authorized and directed to issue a certificate or certificates representing such shares; and that when such shares of Common Stock are so issued, they shall be duly issued, validly outstanding, fully paid and nonassessable.

**ARTICLE V**

**STOCK CERTIFICATES**

RESOLVED, that the forms of stock certificates representing shares of Common Stock attached to this consent are hereby approved and adopted and that the Secretary is instructed to insert a specimen thereof in the minute book.

**ARTICLE VI**

**STOCK OPTIONS**

WHEREAS, the Board of the Corporation has determined that it is in the best interest of the Corporation to authorize and approve the ___________ 201_ Stock Incentive Plan (the “Plan”) and to submit the Plan to the Shareholders of the Corporation for their authorization and approval;

WHEREAS, the Corporation has determined that the authorization and approval of the Plan is in the best interest of the Corporation;

NOW THEREFORE BE IT RESOLVED BY THE BOARD, that the form, terms and provisions of the Plan as presented to the Board are hereby authorized and approved;

RESOLVED FURTHER, that _____ shares of the Company’s Common Stock, $0.0001 par value, be set aside and reserved to be issued under the Plan;

RESOLVED FURTHER, upon approval of the Plan by the Shareholders, that the Board is hereby granted the authority to issue Options and Stock Awards (as such terms are defined in the Plan) subject to the terms and conditions of the Plan and any other terms and conditions the Board deems advisable which are consistent with the Plan; and

RESOLVED FURTHER, upon approval of the Plan by the Shareholders, that the proper officers of the Corporation are authorized and directed to take any and all further action as those officers, in their discretion, may consider necessary or appropriate to carry out the purposes and intent of the foregoing resolutions.

**ARTICLE VII**

**FISCAL YEAR**
RESOLVED, that the fiscal year of this Corporation shall end on the 31st day of December of each year.

ARTICLE VI
GENERAL AUTHORIZATION

RESOLVED, that the officers of the Corporation are hereby severally authorized (a) to sign, execute, certify to, verify, acknowledge, deliver, accept, file, and record any and all instruments and documents, and (b) to take, or cause to be taken, any and all such action, in the name and on behalf of the Corporation, as (in such officer’s judgment) shall be necessary, desirable or appropriate in order to effect the purposes of the foregoing resolutions.

RESOLVED FURTHER, that the proper officers of the Corporation are hereby authorized to pay all fees and expenses incurred in connection with the organization of the Corporation.

RESOLVED FURTHER, that for the purpose of authorizing the corporation to transact business in any state, territory or dependency of the United States or any foreign country in which it is necessary or expedient for the corporation to transact business, the proper officers of the corporation are hereby authorized to appoint and substitute all necessary agents or attorneys for service of process, to designate and change the location of all necessary statutory offices and, under the corporate seal or otherwise, to make and file all necessary certificates, reports, powers of attorney and other instruments as may be required by the laws of such state, territory, dependency or country to authorize the corporation to transact business therein and, whenever it is expedient for the corporation to cease doing business therein and withdraw therefrom, to revoke any appointment of agent or attorney for service of process, and to file such certificates, reports, revocation of appointment or surrender of authority as may be necessary to terminate the authority of the corporation to do business in any such state, territory, dependency or country.

RESOLVED FURTHER, that any and all action taken by any proper officer or director of the Corporation, or the sole organizer of the Corporation, prior to the date this Consent is actually executed in effecting the purposes of the foregoing resolutions is hereby ratified, approved, confirmed, and adopted in all respects.

EXECUTED as of ______, 201_.

DIRECTORS:

______________________________

______________________________
REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this “Agreement”), dated as of ____________, 201_, is entered into by and between ________________, Inc, a Texas corporation (the “Company”), and the Board of Regents (the “Board”) of The University of Texas System, an agency of the State of Texas (the “System”), on behalf of The University of Texas Medical Branch at Galveston, a component institution of the System (“UTMB”).

WHEREAS, the Board requires that the Company grant the rights contained herein as a condition to acquiring the securities of the Company pursuant to the license of certain technology by the Company from UTMB of even date herewith;

WHEREAS, the Board and UTMB requires that the Company grant the rights contained herein as a condition to entering into a convertible bridge note with the Company;

WHEREAS, the Company’s Board of Directors has determined that entering into this Agreement is in the best interests of the Company; and

WHEREAS, the Company, UTMB, and the Board desire to provide for certain arrangements with respect to the registration of shares of capital stock of the Company under the Securities Act;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties hereto agree as follows:

ARTICLE I
CERTAIN DEFINITIONS

As used in this Agreement, the following terms shall have the following respective meanings:

“Assignee” means a person to whom Shares have been transferred in accordance with Section 4 hereof.

“Capital Stock” means the Common Stock and Preferred Stock of the Company.

“Commission” means the Securities and Exchange Commission, or any other federal agency at the time administering the Securities Act.

“Common Stock” means the common stock, $0.0001 par value per share, of the Company.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, or any successor federal statute, and the rules and regulations of the Commission issued under such Act, as they each may, from time to time, be in effect.

“Initial Public Offering” means the initial public offering of shares of Common Stock
pursuant to a firm commitment underwriting and an effective Registration Statement.

“Preferred Stock” means any Preferred Stock, $0.0001 par value per share, of the Company.

“Prospectus” means the prospectus included in any Registration Statement, as amended or supplemented by an amendment or prospectus supplement, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

“Registration Statement” means a registration statement filed by the Company with the Commission for a public offering and sale of securities of the Company (other than a registration statement on Form S-8 or Form S-4, or their successors, or any other form for a similar limited purpose, or any registration statement covering only securities proposed to be issued in exchange for securities or assets of another corporation).

“Registration Expenses” means the expenses described in Section 2.3.

“Registrable Shares” means the Shares currently outstanding and any other Shares acquired after the date hereof; provided, however, that shares of Common Stock that are Registrable Shares shall cease to be Registrable Shares upon (i) any sale pursuant to a Registration Statement or Rule 144 under the Securities Act or (ii) any sale in any manner to a person or entity which, by virtue of Section 4 of this Agreement, is not entitled to the rights provided by this Agreement.

“Securities Act” means the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations of the Commission issued under such Act, as they each may, from time to time, be in effect.

“Selling Stockholder” means any Stockholder owning Registrable Shares included in a Registration Statement.

“Shares” shall mean the shares of Common Stock issued to the Stockholders as of the date hereof and any Capital Stock subsequently acquired by the Stockholders.

“Stockholders” means the Board and an Assignee.

ARTICLE II
REGISTRATION RIGHTS

Section 2.1 Incidental Registration.

(a) Whenever the Company proposes to file a Registration Statement, at any time and from time to time, it will, prior to such filing, give written notice to all Stockholders of its intention to do so. Upon the written request of a Stockholder or Stockholders given within thirty (30) days after the Company provides such notice (which request shall state the intended method of disposition of such Registrable Shares), the Company shall use its reasonable best efforts to cause all Registrable Shares which the Company has been requested to register by such Stockholder or Stockholders to be registered under the Securities Act to the
extent necessary to permit their sale or other disposition in accordance with the intended methods of distribution specified in the request of such Stockholder or Stockholders; provided that the Company shall have the right to postpone or withdraw any registration effected pursuant to this Section 2.1 without obligation to any Stockholder.

(b) If the registration for which the Company gives notice pursuant to Section 2.1(a) is a registered public offering involving an underwriting, the Company shall so advise the Stockholders as a part of the written notice given pursuant to Section 2.1(a). In such event, the right of any Stockholder to include its Registrable Shares in such registration pursuant to Section 2.1 shall be conditioned upon such Stockholder’s participation in such underwriting on the terms set forth herein. All Stockholders proposing to distribute their securities through such underwriting shall (together with the Company) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for the underwriting by the Company. Notwithstanding any other provision of this Section 2.1, if the managing underwriter determines that marketing factors require a limitation of the number of Shares to be underwritten, the Company may limit the number of Registrable Shares to be included in the registration and underwriting. The Company shall so advise all holders of Registrable Shares requesting registration, and the number of shares that are entitled to be included in the registration and underwriting shall be allocated in the following manner. The number of shares that may be included in such registration and underwriting shall be allocated first to holders of the Company’s preferred stock, if any, requesting registration and having registration rights superior to the registration rights of the Stockholders, and then among the Stockholders requesting registration in proportion, as nearly as practicable, to the respective number of shares of Registrable Securities that they held at the time the Company gave the notice specified in Section 2.1(a). If any Stockholder would thus be entitled to include more securities than such Stockholder requested to be registered, the excess shall be allocated among other requesting Stockholders pro rata in the manner described in the preceding sentence. If any holder of Registrable Shares disapproves of the terms of any such underwriting, such person may elect to withdraw therefrom by written notice to the Company, and any Registrable Shares or other securities excluded or withdrawn from such underwriting shall be withdrawn from such registration.

Section 2.2 Registration Procedures.

(a) If and whenever the Company is required by the provisions of this Agreement to use its reasonable best efforts to effect the registration of any Registrable Shares under the Securities Act, the Company shall:

(1) as expeditiously as reasonably possible furnish to each Selling Stockholder such reasonable numbers of copies of the Prospectus, including any preliminary Prospectus, in conformity with the requirements of the Securities Act, and such other documents as such Selling Stockholder may reasonably request in order to facilitate the public sale or other disposition of the Registrable Shares owned by such Selling Stockholder;

(2) as expeditiously as reasonably possible to register or qualify the Registrable Shares covered by the Registration Statement under the securities or Blue Sky laws of such states as the Selling Stockholders shall reasonably request; provided, however, that the Company shall not be required in connection with this paragraph (ii) to qualify as a foreign corporation or execute a general consent to service of process in any jurisdiction;
(3) as expeditiously as reasonably possible, cause all such Registrable Shares to be listed on each securities exchange or automated quotation system on which similar securities issued by the Company are then listed;

(4) promptly provide a transfer agent and registrar for all such Registrable Shares not later than the effective date of such registration statement;

(5) notify each Selling Stockholder, reasonably promptly after it shall receive notice thereof, of the time when such Registration Statement has become effective or a supplement to any Prospectus forming a part of such Registration Statement has been filed; and

(6) notify each seller of such Registrable Shares of any request by the Commission for the amending or supplementing of such Registration Statement or Prospectus.

(b) If the Company has delivered a Prospectus to the Selling Stockholders and after having done so the Prospectus is amended to comply with the requirements of the Securities Act, the Company shall reasonably promptly notify the Selling Stockholders and, if requested, the Selling Stockholders shall immediately cease making offers of Registrable Shares and return all Prospectuses to the Company. The Company shall reasonably promptly provide the Selling Stockholders with revised Prospectuses and, following receipt of the revised Prospectuses, the Selling Stockholders shall be free to resume making offers of the Registrable Shares.

c If, in the judgment of the Company, it is advisable to suspend use of a Prospectus included in a Registration Statement due to pending material developments or other events that have not yet been publicly disclosed and as to which the Company believes public disclosure would be detrimental to the Company, the Company shall notify all Selling Stockholders in writing to such effect, and, upon receipt of such notice, each such Selling Stockholder shall immediately discontinue any sales of Registrable Shares pursuant to such Registration Statement until such Selling Stockholder has received copies of a supplemented or amended Prospectus or until such Selling Stockholder is advised in writing by the Company that the then current Prospectus may be used and has received copies of any additional or supplemental filings that are incorporated or deemed incorporated by reference in such Prospectus. The Company, as expeditiously as reasonably possible, shall advise the Selling Stockholders that use of the then current Prospectus may be resumed or deliver copies of a supplemented or amended Prospectus.

Section 2.3 Allocation of Expenses. The Company will pay all Registration Expenses for all registrations under this Agreement. For purposes of this Section 2.3, the term “Registration Expenses” shall mean all expenses incurred by the Company in complying with this Agreement, including, without limitation, all registration and filing fees, Nasdaq and exchange listing fees, printing expenses, fees and expenses of counsel for the Company, compensation of the employees of the Company, state Blue Sky fees and expenses, the expense of any special audits incident to or required by any such registration and the fees and expenses of one legal counsel representing the Selling Stockholders, but excluding underwriting discounts, and selling commissions.
Section 2.4 **Indemnification and Contribution.**

(a) In the event of any registration of any of the Registrable Shares under the Securities Act pursuant to this Agreement, the Company will indemnify and hold harmless the seller of such Registrable Shares and each of its officers, directors, employees and partners, each underwriter of such Registrable Shares, and each other person, if any, who controls such seller or underwriter within the meaning of the Securities Act or the Exchange Act against any losses, claims, damages or liabilities, joint or several, to which such seller, underwriter or controlling person may become subject under the Securities Act, the Exchange Act, state securities or Blue Sky laws or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any Registration Statement under which such Registrable Shares were registered under the Securities Act, any preliminary prospectus or final prospectus contained in the Registration Statement, or any amendment or supplement to such Registration Statement, or arise out of or are based upon the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and the Company will reimburse such seller, underwriter and each such controlling person on at least a quarterly basis for any legal or any other expenses reasonably incurred by such seller, underwriter or controlling person in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any untrue statement or omission made in such Registration Statement, preliminary prospectus or prospectus, or any such amendment or supplement, in reliance upon and in conformity with information furnished to the Company, in writing, by or on behalf of such seller, underwriter or controlling person specifically for use in the preparation thereof.

(b) In the event of any registration of any of the Registrable Shares under the Securities Act pursuant to this Agreement, each seller of Registrable Shares, severally and not jointly, will indemnify and hold harmless the Company, each of its directors and officers and each underwriter (if any) and each person, if any, who controls the Company or any such underwriter within the meaning of the Securities Act or the Exchange Act, against any losses, claims, damages or liabilities, joint or several, to which the Company, such directors and officers, underwriter or controlling person may become subject under the Securities Act, Exchange Act, state securities or Blue Sky laws or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement under which such Registrable Shares were registered under the Securities Act, any preliminary prospectus or final prospectus contained in the Registration Statement, or any amendment or supplement to the Registration Statement, or arise out of or are based upon any omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, if the statement or omission was made in reliance upon and in conformity with information relating to such seller furnished in writing to the Company by or on behalf of such seller specifically for use in connection with the preparation of such Registration Statement, prospectus, amendment or supplement; provided, however, that this indemnity shall be limited by the applicable provisions of the Constitution and laws of the State of Texas; provided further, however, that the indemnity contained in this section shall not apply to amounts paid in settlement of any such claim, loss, damage, liability or action if such action is effected
without the consent of the applicable Selling Stockholder (which consent shall not be unreasonably withheld, conditioned, or delayed); provided further, however, that the obligations of a Selling Stockholder hereunder shall be limited to an amount equal to the net proceeds (after deducting the underwriters’ discount but without deduction of other expenses) to such Selling Stockholder of Registrable Shares sold in connection with such registration.

(c) Each party entitled to indemnification under this Section 2.4 (the “Indemnified Party”) shall give notice to the party required to provide indemnification (the “Indemnifying Party”) promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom; provided, that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not be unreasonably withheld, conditioned, or delayed); and, provided, however, that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Section 2.4 except to the extent that the Indemnifying Party is adversely affected by such failure. The Indemnified Party may participate in such defense at such party’s expense; provided, however, that the Indemnifying Party shall pay such reasonable expense if representation of such Indemnified Party by the counsel retained by the Indemnifying Party would be inappropriate due to actual or potential differing interests between the Indemnified Party and any other party represented by such counsel in such proceeding; provided, however, that in no event shall the Indemnifying Party be required to pay the expenses of more than one law firm per jurisdiction as counsel for the Indemnified Party. The Indemnifying Party also shall be responsible for the reasonable expenses of such defense if the Indemnifying Party does not elect to assume such defense. No Indemnifying Party, in the defense of any such claim or litigation shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect of such claim or litigation, and no Indemnified Party shall consent to entry of any judgment or settle such claim or litigation without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, conditioned, or delayed.

Section 2.5 Information by Stockholder. Each Selling Stockholder shall furnish to the Company such information regarding such Selling Stockholder and the distribution proposed by such Selling Stockholder as the Company may reasonably request in writing and as shall be required in connection with any registration, qualification or compliance referred to in this Agreement.

Section 2.6 “Lock-up” Agreement: Confidentiality of Notices.

(a) Each Selling Stockholder, if requested by the managing underwriter of an underwritten public offering by the Company of Common Stock, hereby agrees that, for a period of not more than 180 days following the effective date of a Registration Statement for the Company’s Initial Public Offering, or not more than 90 days for any other Registration Statement, it will not (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, or
(2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise, as long as all officers, directors and five percent or greater stockholders of the Company are bound by similar provisions. In connection with this Section 2.6, each Stockholder shall execute the form of lock-up agreement as may be requested by the managing underwriters, as long as all officers, directors and all shareholders who hold five percent or greater of any class of equity securities of the Company are bound by similar provisions.

(b) The Company may impose stop-transfer instructions with respect to the Registrable Shares or other securities subject to the foregoing restrictions until the end of the applicable lock-up period.

(c) Any Stockholder receiving any written notice from the Company regarding the Company’s plans to file a Registration Statement shall treat such notice confidentially and shall not disclose such information to any person other than as necessary to exercise its rights under this Agreement.

Section 2.7 Rule 144 Requirements. After the earliest of (i) the closing of the sale of securities of the Company pursuant to a Registration Statement or (ii) the registration by the Company of a class of securities under Section 12 of the Exchange Act, the Company agrees to comply with the following, it being understood that any failure to do so because of circumstances beyond its control shall not be regarded as being a breach of this Agreement:

(a) make and keep current public information about the Company available, as those terms are understood and defined in Rule 144 (or any subsequent Rule that replaces Rule 144);

(b) file with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements); and

(c) so long as a Stockholder owns any Registrable Shares, to furnish to such Stockholder forthwith upon request a written statement by the Company as to its compliance with the reporting requirements of Rule 144 (or any subsequent Rule that replaces Rule 144) and of the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), a copy of the most recent annual or quarterly report of the Company, and such other reports and documents so filed by the Company as the Stockholder may reasonably request in complying with any rule or regulation of the SEC allowing the Stockholder to sell any such securities without registration;

Section 2.8 Termination. All of the Company’s obligations to register Registrable Shares under Section 2.1 of this Agreement shall terminate five (5) years after the closing of the Initial Public Offering.

ARTICLE III
BOARD OBSERVATION RIGHTS
THE COMPANY SHALL GIVE UTMB COPIES OF ALL NOTICES, MINUTES, CONSENTS, AND OTHER MATERIAL THAT THE COMPANY PROVIDES TO ITS DIRECTORS AT THE SAME TIME AND IN THE SAME MANNER AS GIVEN TO THE DIRECTORS. THE COMPANY SHALL ALLOW A UTMB REPRESENTATIVE TO ATTEND ALL MEETINGS OF THE COMPANY’S BOARD OF DIRECTORS AS AN OBSERVER, EXCEPT THAT SUCH REPRESENTATIVE MAY BE EXCLUDED FROM ACCESS TO ANY MATERIAL OR MEETING OR PORTION THEREOF IF THE COMPANY BELIEVES, UPON ADVICE OF COUNSEL, THAT SUCH EXCLUSION IS REASONABLY NECESSARY TO PRESERVE THE ATTORNEY-CLIENT PRIVILEGE. THE COMPANY SHALL GIVE UTMB, AS THE REPRESENTATIVE OF SYSTEM, ALL RIGHTS TO NON-PUBLIC FINANCIAL INFORMATION, INSPECTION RIGHTS, AND OTHER RIGHTS AS PROVIDED BY LAW TO SHAREHOLDERS OF THE COMPANY. [THIS PROVISION IS NOT NEEDED IF UTMB HAS A BOARD SEAT.]

ARTICLE IV
TRANSFERS OF RIGHTS

THE RIGHTS AND OBLIGATIONS OF THE STOCKHOLDERS HEREUNDER MAY NOT BE ASSIGNED BY ANY STOCKHOLDER, EXCEPT TO ANY PERSON TO WHOM THE STOCKHOLDER TRANSFERS AT LEAST _________ SHARES, WHICH AMOUNT SHALL BE ADJUSTED FOR ANY STOCK SPLIT, STOCK DIVIDEND, STOCK COMBINATION, REVERSE STOCK SPLIT, RECAPITALIZATION OR SIMILAR EVENT. UPON SUCH ASSIGNMENT AND TRANSFER, SUCH TRANSFEREE SHALL BE DEEMED AN “ASSIGNEE” FOR PURPOSES OF THIS AGREEMENT; PROVIDED THAT (I) SUCH TRANSFEREE GIVES WRITTEN NOTICE TO THE COMPANY OF SUCH TRANSFER; (II) SUCH TRANSFEREE AGREES IN WRITING TO COMPLY WITH THE TERMS AND PROVISIONS OF THIS AGREEMENT AND ASSUMES ALL OBLIGATIONS OF A STOCKHOLDER HEREUNDER; (III) SUCH TRANSFER IS OTHERWISE IN COMPLIANCE WITH THIS AGREEMENT AND (IV) SUCH TRANSFER IS OTHERWISE EFFECTED IN ACCORDANCE WITH APPLICABLE SECURITIES LAWS. EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 4, THE RIGHTS OF A STOCKHOLDER WITH RESPECT TO REGISTRABLE SHARES AS SET OUT HEREIN SHALL NOT BE TRANSFERABLE TO ANY OTHER PERSON. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS AGREEMENT SHALL INURE TO THE BENEFIT OF, AND BE BINDING UPON, THE SUCCESSORS, PERMITTED ASSIGNS, HEIRS, EXECUTORS AND ADMINISTRATORS OF THE PARTIES HERETO.

ARTICLE V
GENERAL

Section 5.1 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.
Section 5.2  **Specific Performance.** In addition to any and all other remedies that may be available at law in the event of any breach of this Agreement, the Stockholders shall be entitled to specific performance of the agreements and obligations of the Company hereunder and to such other injunctive or other equitable relief as may be granted by a court of competent jurisdiction.

Section 5.3  **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas (without reference to the conflicts of law provisions thereof). The Texas state courts of Harris County, Texas (or, if there is exclusive federal jurisdiction, the United States District Court for the Southern District of Texas) shall have exclusive jurisdiction and venue over any dispute arising out of this Agreement, and the parties hereby consent to the jurisdiction of such courts.

Section 5.4  **Notices.** All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be deemed delivered (i) two business days after being sent by registered or certified mail, return receipt requested, postage prepaid or (ii) one business day after being sent via a reputable nationwide overnight courier service guaranteeing next business day delivery, in each case to the intended recipient as set forth below:

If to the Company, at _________________, __________, __________, ________
Attention: __________, or at such other address or addresses as may have been furnished in writing by the Company to the Stockholders; or

If to the Board, the System, or UTMB, c/o The University of Texas Medical Branch at Galveston, Office of Technology Transfer, 301 University Blvd., Galveston, Texas 77555-0926, Attention: Jason C. Abair, or at such other address or addresses as may have been furnished in writing to the Company; or

If to the other Stockholders, at their record address as maintained in the Company’s stockholder records.

Any party may give any notice, request, consent or other communication under this Agreement using any other means (including, without limitation, personal delivery, messenger service, telecopy, first class mail or electronic mail), but no such notice, request, consent or other communication shall be deemed to have been duly given unless and until it is actually received by the party for whom it is intended. Any party may change the address to which notices, requests, consents or other communications hereunder are to be delivered by giving the other parties notice in the manner set forth in this Section 5.4.

Section 5.5  **Complete Agreement.** This Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter.

Section 5.6  **Amendments and Waivers.** Any term of this Agreement may be amended or terminated and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), with the written consent of
the Company, on the one hand, and UTMB, on behalf of the Stockholders, on the other hand; provided, that this Agreement may be amended with the consent of the holders of less than all Registrable Shares only in a manner which applies to all such holders in the same fashion. Any such amendment, termination or waiver effected in accordance with this Section 5.6 shall be binding on all parties hereto, even if they do not execute such consent. Upon the effectuation of any such amendment, the Company shall promptly give written notice to the Stockholders, if any, who have not previously consented thereto in writing. No waivers of or exceptions to any term, condition or provision of this Agreement, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, condition or provision.

Section 5.7 Pronouns. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural, and vice versa.

Section 5.8 Counterparts: Facsimile Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same document. This Agreement may be executed by facsimile signatures.

Section 5.9 Section Headings. The section headings are for the convenience of the parties and in no way alter, modify, amend, limit or restrict the contractual obligations of the parties.

COMPANY:

______________________, INC.

By: ____________________________
    __________, President

STOCKHOLDER:

By: ____________________________
SHAREHOLDERS AGREEMENT

THIS SHAREHOLDERS AGREEMENT (this “Agreement”), dated as of ______________, 201_, but to be effective as provided in Section 17, is by and among ______________, Inc., a Texas corporation (the “Corporation”), and the Shareholders, as defined below. The Corporation and each of the Shareholders, individually, shall be referred to herein as a “Party” and, collectively, the “Parties.”

WITNESSETH:

WHEREAS, the Shareholders are the owners of common stock, $0.0001 par value per share, of the Corporation (the “Common Stock”); and

WHEREAS, the Parties hereto agree that the success of the Corporation requires the active interest and support of its Shareholders and therefore desire to promote the best interests of the Corporation and their mutual interests by imposing certain requirements with respect to the voting and transferability of the shares of Common Stock of the Corporation owned by the Shareholders;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter set forth, and for other good and valuable consideration, the parties hereby agree as follows:

ARTICLE I
DEFINITIONS

AS USED IN THIS AGREEMENT:

Section 1.1 “Affiliate” shall mean a Person that controls, is controlled by, or is under common control with, the other Person specified. With respect to venture capital firms, hedge funds, private equity funds, and other institutional investors, “Affiliate” shall include portfolio companies of such Persons.

Section 1.2 “Buy-Out Offer” means an offer made by any Person who is not then a Shareholder, or an Affiliate of a Shareholder, to purchase for cash all but not less than all of the then issued and outstanding Restricted Shares.

Section 1.3 “Buy-Out Offeror” means the Person who makes a Buy-Out Offer.

Section 1.4 “Commission” means the Securities and Exchange Commission, or any other federal agency at the time administering the Securities Act.
Section 1.5 “Exchange Act” means the Securities Exchange Act of 1934, as amended, or any successor federal statute, and the rules and regulations of the Commission issued under such Act, as they may, from time to time, be in effect.

Section 1.6 “Founder” and “Founders” means ______ and ______.

Section 1.7 “Offer” and “Offerees” shall have the meanings ascribed to such terms in Section 3.

Section 1.8 “Person” shall include an individual, a corporation, a limited liability company, a partnership, a trust or any other organization or entity.

Section 1.9 “Pro Rata Shares” means that number of Restricted Shares equal to the product of (i) the total number of Restricted Shares available for purchase by all Non-Selling Shareholders pursuant to Section 3.3, multiplied by (ii) the quotient of (A) number of shares of Common Stock owned (on an as-converted basis) by such Offeree, divided by (B) the total number of shares of Common Stock (on an as-converted basis) owned by all Non-Selling Shareholders that exercise their right to purchase Restricted Shares pursuant to Section 3.3.

Section 1.10 “Remaining Shareholders” means, with respect to any specific event or transaction, all of the Shareholders other than the Shareholder or Shareholders that are the subject of such event or transaction.

Section 1.11 “Restricted Shares” shall mean all shares of Common Stock and Preferred Stock, $0.0001 par value per share, of the Corporation owned or hereafter acquired by the Shareholders while this Agreement remains in effect, including without limitation all such stock of the Corporation now owned or hereafter acquired by any Shareholder and the Shareholder’s spouse as community property or as separate property, and all references herein to the stock owned by a Shareholder include the community interest of such Shareholder’s spouse in such stock. Any obligation of a Shareholder to Sell or offer to Sell Restricted Shares includes an obligation on the part of the Shareholder’s spouse to Sell or offer to Sell the spouse’s community interest in such stock in the same manner. The termination of the marital relationship of any Shareholder and his or her spouse for any reason shall not have the effect of removing any stock of the Corporation otherwise subject to this Agreement from the coverage hereof.

Section 1.12 “Sale”, “Sell” or “Sold” shall mean and include any sale, gift or other form of transfer, conveyance, disposal or encumbrance, whether voluntary or involuntary, including any dividend or distribution and the pledging of any security.

Section 1.13 “Securities Act” means the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations of the Commission issued under such Act, as they each may, from time to time, be in effect.

Section 1.14 “Shareholders” shall mean the Persons identified as Shareholders on the signature page attached hereto and any other Persons or entities who become Parties to this
Agreement as “Shareholders” pursuant to the terms of this Agreement, and their respective heirs, legal representatives, administrators and successors.

Section 1.15 “Significant Shareholder” shall mean (i) a Shareholder owning more than 30% of the Corporation’s outstanding Common Stock on an as-converted basis, or (ii) a UT Shareholder.

Section 1.16 “Third-Party Offer” means (i) a bona fide offer from a Person who is not then a Shareholder, or an Affiliate of a Shareholder (other than the Corporation), to purchase or otherwise acquire any Restricted Shares from a Shareholder who is not a Founder, or (ii) a bona fide offer from any Person to purchase or otherwise acquire Restricted Stock from a Founder.

Section 1.17 “Third-Party Offeror” means a Person that makes a Third-Party Offer.

Section 1.18 “UT” means The Board of Regents of The University of Texas System.

Section 1.19 “UTMB” means The University of Texas Medical Branch at Galveston.

Section 1.20 “UT Shareholder” means (i) UT, (ii) UTMB, and (iii) any Person to whom UT or UTMB transfers shares or rights pursuant to Section 6.

ARTICLE II
TRANSFER RESTRICTIONS

NO RESTRICTED SHARES OR ANY INTEREST THEREIN SHALL BE SOLD IN ANY FASHION UNLESS SUCH SALE IS MADE IN ACCORDANCE WITH SECTIONS 3, 4, 5 OR 6 OF THIS AGREEMENT. ANY SALE OR ATTEMPTED SALE NOT MADE IN COMPLIANCE WITH THIS AGREEMENT SHALL BE VOID AND OF NO EFFECT.

ARTICLE III
OFFER TO THE CORPORATION AND THE SHAREHOLDERS

UNLESS SUCH SALE IS EXEMPTED PURSUANT TO SECTION 6, NO SHAREHOLDER SHALL SELL ANY RESTRICTED SHARES OR ANY INTEREST THEREIN TO ANY PERSON, EXCEPT PURSUANT TO THE PROVISIONS HEREINAFTER SET FORTH IN THIS SECTION 3 OR IN SECTIONS 4 OR 5.

Section 3.1 Any Shareholder who desires in good faith to Sell any Restricted Shares or any interest therein (such Shareholder being sometimes referred to herein as the “Selling Shareholder”), pursuant to a good faith Third-Party Offer to purchase such Shares which said Shareholder desires to accept, shall first make a written offer (the “Offer”) to Sell such Shares to the Corporation, and to the Remaining Shareholders (the “Non-Selling Shareholders”) (the Corporation and the Non-Selling Shareholders being sometimes referred to collectively herein as the “Offerees”), in the order provided in Section 3.3 below; provided, however, that the terms of this Section 3 shall not apply to a transaction subject to Section 4 of this Agreement.
Section 3.2  The Offer shall be sent to the Offerees in compliance with the terms of this Agreement and shall set forth:

(a) the number of Restricted Shares and the interest therein that the Selling Shareholder desires to Sell;
(b) the names and identities of any proposed purchasers and a description of the proposed Sale;
(c) the cash consideration per share to be received by the Selling Shareholder in connection with the Third-Party Offer, or if the consideration is other than cash or partly in cash and partly in the form of other consideration, the nature of the other consideration to be received (with a reasonable description thereof) and the other terms and conditions of such proposed Sale;
(d) the address of the Selling Shareholder at which the Offerees may give any notice required herein;
(e) a copy of the Third-Party Offer, if applicable;
(f) an offer to Sell the Restricted Shares that are subject of the Offer to the Offerees pursuant to the provisions of this Agreement; and
(g) a statement that the Third-Party Offer also constitutes a Co-Sale Offer pursuant to Section 5, if applicable.

The date of the Offer shall be the later of (i) the third business day after the Offer shall have been mailed to all Offerees or (ii) the day all Offerees have been personally delivered the Offer.

Section 3.3  The Offerees shall have the option for 35 days following the date of the Offer to purchase all of the Restricted Shares offered, including Restricted Shares of Tag-Along Offerors pursuant to Section 5. As between the Corporation and the Non-Selling Shareholders, the preferential right to purchase all of the Restricted Shares offered pursuant to this Section 3 shall exist in and be exercisable:

(a) first, by the Corporation, as to any or all of such Restricted Shares, for a period of fifteen (15) days beginning with the date of the Offer;
(b) then by each Non-Selling Shareholder its Pro Rata Shares, for a period of ten (10) days beginning with the 16th day after the date of the Offer;
(c) thereafter, during the period commencing on the 26th day after the date of the Offer and ending on the 30th day after the date of the Offer, each Non-Selling Shareholder who has exercised its full rights under Section 3.3(b), any of the Restricted Shares not acquired by the Offerees pursuant to Section 3.3(b), provided that if more than one Offeree seeks to purchase such Shares, they shall be allocated among such Offerees based upon their respective number of Pro Rata Shares; and
(d) thereafter, during the period commencing on the 31st day after the date of the Offer and ending on the 35th day after the date of the Offer, as to all of the Restricted Shares not acquired by the Offerees pursuant Section 3.3(c), or that said Offerees have not theretofore elected to acquire, by the Offeree who owns the largest number of shares of Common Stock as of the close of business on the 30th day after the date of the Offer.

The Secretary of the Corporation shall give notice promptly to all Offerees of the number of shares which may be purchased at any time by any of them during each of the periods specified
Section 3.4 In order to exercise its right to purchase, an Offeree shall notify the Selling Shareholder within the requisite time period. Such notices shall state the number of Restricted Shares that the Offeree elects to purchase. Each Offeree other than the Corporation shall send a duplicate copy of its notices of exercise to the Corporation.

Section 3.5 If, at the end of the 35 day option period provided hereunder, Corporation and the Offerees have not elected to purchase all of the Restricted Shares offered, then the Offerees shall not be entitled to purchase any of the Restricted Shares and the Selling Shareholder may Sell all, but not less than all, of the Restricted Shares, including Restricted Shares of Tag-Along Offerors pursuant to Section 5, to the proposed purchaser named in the Offer, on terms that are no more favorable to the proposed purchaser than the terms set forth in the Offer. If the offered Restricted Shares are not Sold within 90 days after the date of the Offer, then, before any Sale of such Restricted Shares, a new Offer covering such Restricted Shares must be made by the Selling Shareholder in accordance with the terms of this Section 3.

Section 3.6 The closing of the purchase of Restricted Shares by the Offerees pursuant to this Section 3 shall be at 10:00 a.m. local time at the Corporation’s office on the tenth business day after expiration of the 35 day option period referred to in Section 3.3, or at such other time and place as the Parties may agree.

Section 3.7 Payment for the Restricted Shares purchased under this Section 3 by an Offeree, unless otherwise agreed between the selling and purchasing parties and except as provided below, shall be made in cash or by certified cashier’s check or checks payable to the order of the Selling Shareholder or such other Person as may be designated by him. In the event the consideration per share to be received by the Selling Shareholder consists, in whole or in part, of non-cash consideration, then each Offeree may, in lieu of paying such non-cash consideration, pay the fair market value of such consideration in accordance with Section 12 hereof.

ARTICLE IV
DRAG-ALONG RIGHT

Section 4.1 Notwithstanding any other provision of this Agreement, and subject to the provisions of this Section 4, if any Shareholders receive a Buy-Out Offer, and Shareholders who, at such time, own of record and beneficially more than 75% of the Restricted Shares (a “Controlling Interest”) elect to accept such Offer as to their Restricted Shares, then the Controlling Interest shall have the right to require that all Shareholders Sell 100% of their Restricted Shares to the Buy-Out Offeror on the same terms and subject to the same conditions of purchase and sale.

Section 4.2 The Shareholder receiving a Buy-Out Offer (the “Notifying Shareholder”) shall promptly deliver to the Corporation and the Remaining Shareholders a written notice (the
“Buy-Out Notice”) that contains the same information that must be contained in an Offer Notice given pursuant to Section 3.3, and states that the Notifying Shareholder wishes to Sell and cause to be Sold all Restricted Shares held by it pursuant to the terms of the Buy-Out Offer as described in the Buy-Out Notice. The date of the Buy-Out Notice shall be the later of (i) the third business day after the Buy-Out Notice shall have been mailed to all Remaining Shareholders or (ii) the day all Remaining Shareholders have been personally delivered the Buy-Out Notice. Solely as among the Parties, the statements made in the Buy-Out Notice shall be irrevocable and binding upon the Notifying Shareholder for a period of 30 days after the date of the Buy-Out Notice, provided that such period shall be ninety (90) days if a Controlling Interest has delivered the appropriate written notice indicating that they wish to Sell Restricted Shares in connection with the Buy-Out Offer within 30 days after the date of the Buy-Out Notice.

Section 4.3 Each Remaining Shareholder who desires to participate in the Buy-Out Offer shall, within 30 days after the date of the Buy-Out Notice, deliver written notice to the Corporation and the Notifying Shareholder stating that it wishes to Sell and cause to be Sold all Restricted Shares held by it pursuant to the terms of the Buy-Out Offer as described in the Buy-Out Notice. Solely as among the Parties, such statement shall, for a period of 90 days after the date of the Buy-Out Notice, be irrevocable and binding upon the Remaining Shareholder if a Controlling Interest makes the same written commitment.

Section 4.4 If within 30 days after the date of a Buy-Out Notice a Controlling Interest has delivered the appropriate written notice indicating that they wish to Sell Restricted Shares in connection with the Buy-Out Offer, then (i) the Corporation promptly shall deliver written notice of that fact to all Shareholders, (ii) the Notifying Shareholder shall advise the Buy-Out Offeror that all communications from the Buy-Out Offeror relating to the Buy-Out Offer must be delivered to all Shareholders and (iii) for a period of 90 days after the date of the Buy-Out Notice, each Shareholder shall be obligated to Sell Restricted Shares to the Buy-Out Offeror pursuant to terms and conditions that are identical for all Shareholders and to those described in the Buy-Out Notice as to the purchase price per Share and terms of payment. Each Selling Shareholder shall pay its own costs and expenses incurred in connection with the sale of its Restricted Shares; provided, however, that if any Shareholder did not elect to participate in the sale contemplated by the Buy-Out Offer but was required to do so by the Controlling Interest, then each Shareholder who constitutes the Controlling Interest shall be liable for and pay a pro rata portion of the out-of-pocket costs and expenses incurred by each non-consenting Shareholder in connection with its sale of Restricted Shares (including attorneys’ fees and expenses). A Shareholder that is not part of the Controlling Interest shall not be required to make any representations or warranties other than that it has the right to sell the Restricted Shares and that the Restricted Shares are being sold free and clear of all liens and encumbrances. Any indemnity required to be given by such Shareholder shall be limited to an indemnification of its representation and warranty and to the sales proceeds received by it.

Section 4.5 The Notifying Shareholder promptly shall notify the Corporation and the Remaining Shareholders in writing of any changes in the terms of the Buy-Out Offer as described in the Buy-Out Notice, which subsequent notice shall constitute a new offer for purposes of this Section 4.
ARTICLE V
TAG-ALONG RIGHT

Section 5.1 Notwithstanding any other provision of this Agreement and subject to the provisions of this Section 5, if (i) any Shareholders desire to Sell or otherwise dispose of more than 30% of the outstanding Restricted Shares in the aggregate, or (ii) a Founder desires to Sell more than $100,000 fair market value in the aggregate of his Restricted Shares (such Selling Shareholders, the “Tag-Along Offerors”), in each case pursuant to a Third-Party Offer (the “Co-Sale Offer”), then the Remaining Shareholders shall have a co-sale right as set forth in this Section 5.

Section 5.2 Upon the occurrence of a Co-Sale Offer, the Tag-Along Offerors shall promptly deliver to the Corporation and the Remaining Shareholders a written notice (the “Sale Notice”) that contains the information that must be contained in an Offer Notice given pursuant to Section 3.3. The date of the Sale Notice shall be the later of (i) the third business day after the Sale Notice shall have been mailed to all Remaining Shareholders or (ii) the day all Remaining Shareholders have been personally delivered the Sale Notice. Solely as among the Parties, the statements made in the Sale Notice shall be irrevocable and binding upon the Tag-Along Offerors for a period of 60 days after the date of the Sale Notice.

Section 5.3 Each of the Remaining Shareholders shall have 30 days from the date of the Sale Notice to make a demand for the Tag-Along Offerors to cause the Third-Party Offeror to purchase such Remaining Shareholder’s Restricted Shares by delivering to the Tag-Along Offerors a notice (the “Co-Sale Notice”) duly executed by such Remaining Shareholder and specifying (i) the fact that such Remaining Shareholder is making a demand for the Tag-Along Offerors to cause the Third-Party Offeror to purchase such Remaining Shareholder’s Restricted Shares (any such Remaining Shareholder making such demand is herein referred to as a “Participating Shareholder”) and (ii) the number of Restricted Shares such Participating Shareholder is requiring the Tag-Along Offerors to cause the Third-Party Offeror to purchase, up to the maximum number determined in Section 5.4. Solely as among the Parties, such Co-Sale Notice shall, for a period of 90 days after the date of the Sale Notice, be irrevocable and binding upon the Participating Shareholder.

Section 5.4 On the closing date as set forth in the Sale Notice, each Participating Shareholder shall deliver to the Third-Party Offeror certificates representing his Restricted Shares duly endorsed for transfer to the Third-Party Offeror or its designee, free and clear of all liens, claims or encumbrances whatsoever, and the Tag-Along Offerors will cause the Third-Party Offeror to pay to such Participating Shareholder the purchase price for the Restricted Shares transferred as set forth in the Sale Notice; provided that in the event that one or more Offerees have exercised their rights pursuant to Section 3, then each such Offeree shall be deemed to be a Third-Party Offeror pursuant to this Section 5. The maximum number of Restricted Shares that a Participating Shareholder may require the Tag-Along Offerors to cause the Third-Party Offeror to purchase pursuant to a Co-Sale Notice shall equal the number of
Restricted Shares owned by the Participating Shareholder multiplied by a fraction, the numerator of which is the number of Restricted Shares set forth in the Third-Party Offer and the denominator of which is the sum of (a) the total number of Restricted Shares owned by the Tag-Along Offerors plus (b) the total number of Restricted Shares owned by all of the Participating Shareholders.

Section 5.5 The Tag-Along Offerors promptly shall notify the Corporation and the Remaining Shareholders in writing of any changes in the terms set forth in the Sale Notice, which subsequent notice shall constitute a new offer for purposes of this Section 5.

ARTICLE VI
EXEMPT TRANSACTIONS

Section 6.1 The prohibition against the Sale of Restricted Shares hereunder shall not apply to the exchange of Restricted Shares pursuant to a plan of merger, consolidation, capitalization or reorganization of the Corporation, but any stock or securities received in exchange therefor shall also become Restricted Shares subject to this Agreement; provided, however, that any such stock or securities received in any such merger, consolidation, recapitalization or reorganization shall not become Restricted Shares subject to this Agreement to the extent that the stock or securities received in such merger, consolidation, recapitalization or reorganization are registered under the Exchange Act. A dissolution or liquidation of the Corporation shall not be deemed to be a Sale for purposes of this Agreement.

Section 6.2 The prohibition against the Sale of Restricted Shares hereunder shall not apply to:

(a) the Sale or other transfer by a Shareholder to an Affiliate of such Shareholder;
(b) the Sale or other transfer by a UT Shareholder to:
   (1) UTMB, other component institutions of UT, or Affiliates of UT;
   (2) employees of, or consultants to, UT (or any of its Affiliates) in accordance with UT’s intellectual property policies; or
   (3) to Persons having rights in the intellectual property licensed by UT to the Corporation; or
(c) the assignment by a UT Shareholder of its rights pursuant to Section 7;
(d) the sale or transfer by a Shareholder that is an individual of all or part of such Shareholder’s Restricted Shares to:
   (1) such Shareholder’s spouse;
   (2) such Shareholder’s or his or her spouse’s parents, grandparents, or siblings or any lineal descendants (natural or adopted) of the foregoing individuals, or to an inter-vivos trust established on behalf of any of such individuals;
   (3) a guardian of such Shareholder’s estate;
an inter-vivos trust primarily for such Shareholder’s benefit;
(5) a charitable trust pursuant to a bona fide gift by the Shareholder to such trust; or
(6) the estate, beneficiaries, heirs or legatees of such Shareholder;

provided, however, that, in each of the above cases provided (a) through (d) above, any such transferee shall receive and hold the Restricted Shares subject to the terms of this Agreement, and there shall be no further transfer of such Restricted Shares except in accordance with the terms of this Agreement.

Section 6.3 Except as expressly provided in Section 6.1, any transferee of Restricted Shares, regardless of the method by which said transferee acquired said Restricted Shares, shall be subject to the terms of this Agreement, and shall, prior to the receipt of any of such Restricted Shares, agree in writing to be bound by the terms hereof by execution of an Adoption Agreement in the form attached as Exhibit A hereto. Any purported Sale or transfer that does not comply with this provision shall be null and void.

ARTICLE VII
ANTI-DILUTION OPTION

Section 7.1 With respect to any issuance or portion thereof (other than an Excluded Issuance, as defined below) by the Corporation of shares of its Common Stock, securities convertible into Common Stock or other equity securities or rights to acquire such Common Stock or other equity securities other than an Excluded Issuance (collectively such securities or rights shall be the “New Securities”), Significant Shareholders may elect to subscribe for and purchase for the issuance price offered by the Corporation a portion of such New Securities sufficient to maintain the Significant Shareholder’s Ownership Ratio (as defined below).

Section 7.2 The Secretary of the Corporation shall give each Significant Shareholder thirty (30) days written notice before making any sale or offering of New Securities and shall advise the Shareholder of his or her rights under this Section 7 to participate in such offering. The notice shall describe the price and the terms that the Corporation proposes to Sell such shares of New Securities together with a calculation of the Shareholder’s Ownership Ratio and the number of shares it would be allowed to purchase under this Section 7 to maintain his or her Ownership Ratio after such sale was complete. The date of the notice shall be the later of (i) the third business day after the notice shall have been mailed to all Significant Shareholders or (ii) the day all Significant Shareholders have been personally delivered the notice. Each Significant Shareholder then shall have fifteen (15) days after the date of the notice to advise the Corporation in writing whether the Shareholder will exercise its rights hereunder and to deliver payment in full for the shares of New Securities it elects to purchase. If a Significant Shareholder fails to deliver payment for its portion of the New Securities within the requisite time period, the Corporation shall proceed with the offering of such New Securities according to the plan described in the notice delivered to the Significant Shareholders and the Significant Shareholder
failing to exercise such rights shall have no further special purchase rights under this Section 7 in connection with such offering.

Section 7.3 For purposes of this Section 7, the following definitions shall apply:

(a) “Excluded Issuance” means (A) any shares issued as stock dividends or pursuant to stock splits, recapitalization or other similar events that do not adversely affect the Ownership Ratio of the Shareholders; (B) securities issued pursuant to a firmly underwritten public offering; (C) Common Stock issuable directly to, or upon the exercise of any warrants or options held by, employees, directors or consultants of the Corporation as compensation or otherwise, but not in excess of ________ shares (appropriately adjusted for any Recapitalization) in the aggregate; (D) securities issued by the Corporation to Persons who are not Affiliates of a Shareholder as consideration in connection with a bona fide business acquisition, whether by merger, stock purchase, asset acquisition or similar transaction; (E) securities issued to Persons having rights in the technology covered by any license agreement between the Corporation and UT; (F) securities issued pursuant to conversion or exercise of convertible or exercisable securities outstanding on the date hereof or issued upon satisfaction of the terms of this Section 7; (G) securities issued to Persons who are not Affiliates of a Shareholder that are financial institutions, lessors or vendors in connection with commercial credit arrangements, equipment financings or any exchange of securities for services; and (H) securities issued to a UT Shareholder or to a strategic partner who is not an Affiliate of a Shareholder in connection with a license agreement, joint marketing agreement or other strategic relationship.

(b) “Ownership Ratio” means the ratio of (A) the sum of all shares of Common Stock held by a Shareholder (including for this purpose any shares of Common Stock or other equity securities that could be acquired upon conversion of any securities convertible into Common Stock or other equity securities), to (B) all outstanding shares of Common Stock in the Corporation (including for this purpose any shares of Common Stock or other equity securities which could be acquired upon conversion of any of the Corporation’s securities convertible into Common Stock or other equity securities).

ARTICLE VIII
VOTING AGREEMENT

Section 8.1 So long as this Section 8 is in effect, each Shareholder will vote all of the Shareholder’s Restricted Shares and take all other necessary or desirable actions (in his or her capacity as a shareholder of the Corporation), and the Corporation will take all necessary or desirable actions as are reasonably requested and are within its control to cause the Corporation’s Board of Directors to consist of up to three members, and to cause one individual designated by UTMB (the “UT Designee”) to be elected to the Corporation’s Board of Directors, whether such election occurs at an annual or special meeting of the Shareholders, or by written consent in lieu thereof, and whether or not such election shall occur because of the existence of a vacancy on such Board arising for any reason whatsoever.

Section 8.2 Each Shareholder will vote all of the Shareholder’s Restricted Shares, and the Corporation will take all necessary or desirable actions, as are reasonably requested to
prevent the removal, with or without cause, of the UT Designee named pursuant to Section 8.1 without the prior written consent of the UTMB.

Section 8.3 Each Shareholder will retain at all times the right to vote the Shareholder’s Restricted Shares in his or her sole discretion on all matters presented to the Corporation’s Shareholders for a vote other than the matters set forth in Section 8.1 and 8.2 above, except as otherwise limited or controlled by the Corporation’s Certificate of Formation or Bylaws, as amended from time to time.

ARTICLE IX
LEGEND ON STOCK CERTIFICATES

THE CORPORATION WILL CAUSE TO APPEAR ON ALL STOCK CERTIFICATES REPRESENTING THE RESTRICTED SHARES A CONSPICUOUS LEGEND IN SUCH FORM AS THE BOARD OF DIRECTORS MAY DETERMINE, STATING THAT SUCH SHARES ARE SUBJECT TO AN AGREEMENT WHICH RESTRICTS THE TRANSFERABILITY AND VOTING OF THE SHARES AND OTHERWISE CIRCUMSCRIBES THE RIGHTS WHICH MAY BE EXERCISED BY THE HOLDER THEREOF.

ARTICLE X
SPECIFIC ENFORCEMENT

IN VIEW OF THE INADEQUACY OF MONEY DAMAGES, AND IN VIEW OF THE FACT THAT THE STOCK OF THE CORPORATION CANNOT BE READILY PURCHASED OR SOLD IN THE GENERAL MARKET, IF ANY SHAREHOLDER (A “BREACHING SHAREHOLDER”) OR OTHER PERSON SHALL FAIL TO COMPLY WITH THE PROVISIONS OF SECTIONS 2, 3, 4, 5, 6 OR 8 HEREOF, THE CORPORATION AND THE OTHER NON-BREACHING SHAREHOLDERS SHALL BE ENTITLED, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TO INJUNCTIVE RELIEF IN THE CASE OF THE VIOLATION, OR ATTEMPTED OR THREATENED VIOLATION, BY A BREACHING SHAREHOLDER OR OTHER PERSON OF ANY OF THE PROVISIONS OF SUCH SECTIONS, OR TO A DECREE COMPELLING SPECIFIC PERFORMANCE BY A BREACHING SHAREHOLDER OR OTHER PERSON OF ANY SUCH PROVISIONS, OR TO ANY OTHER REMEDY LEGALLY ALLOWED TO THEM.

ARTICLE XI
VOID TRANSFERS

IF ANY RESTRICTED SHARES SHALL BE SOLD OTHERWISE THAN IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, SUCH SALE SHALL BE VOID. THE PERSONS WHO WOULD OTHERWISE HAVE BEEN OFFEREES HEREUNDER REGARDING SUCH RESTRICTED SHARES SHALL, INSTEAD OF TREATING SUCH SALE AS A NULLITY, HAVE THE RIGHT,
EXERCISABLE AT ANY TIME PRIOR THE EXPIRATION OF SIX (6) MONTHS AFTER FIRST RECEIVING WRITTEN OR OTHER NOTICE OF SUCH DISPOSITION, TO PURCHASE SUCH RESTRICTED SHARES AT SUCH PRICE AND IN ALL OTHER RESPECTS AS IF THE RESTRICTED SHARES HAD BEEN DISPOSED OF IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT. SUCH RIGHT SHALL CONSTITUTE AN “ADVERSE CLAIM” WITHIN THE MEANING OF SUCH TERM AS USED WITHIN THE MEANING OF THE UNIFORM COMMERCIAL CODE OF ANY STATE.

ARTICLE XII
UNIQUE CONSIDERATION

IF THE CONSIDERATION TO BE RECEIVED IN ANY PROPOSED SALE BY A SELLING SHAREHOLDER PURSUANT TO SECTIONS 3, 4 OR 5 HEREOF IS OTHER THAN MONEY OR PROMISSORY NOTES, AND INVOLVES A CONSIDERATION WHICH IS UNIQUE AND THE VALUE OF WHICH CANNOT BE READILY DETERMINED BY THE CORPORATION AND THE SHAREHOLDERS (E.G., STOCK IN A CLOSELY HELD CORPORATION OR AN INTEREST IN LAND), THEN THE CORPORATION AND THE SHAREHOLDERS MAY, FOR THE PURPOSES OF THIS AGREEMENT, BE DEEMED TO MEET THE PURCHASE PRICE OFFER TO THE SELLING SHAREHOLDER BY PAYING CASH IN AN AMOUNT EQUAL TO THE FAIR MARKET VALUE OF THE UNIQUE CONSIDERATION PROPOSED TO BE FURNISHED TO THE SELLING SHAREHOLDER IN THE PROPOSED TRANSACTION. THE DETERMINATION OF THE VALUE OF THE UNIQUE CONSIDERATION SHALL BE MADE BY A THIRD PERSON SELECTED BY AGREEMENT OF THE CORPORATION, AND THE HOLDERS OF AT LEAST 51% OF THE OUTSTANDING VOTING STOCK OF THE CORPORATION (AND, IF APPLICABLE, THE PERSONAL REPRESENTATIVE OF A DECEASED SHAREHOLDER). IF THERE IS NO AGREEMENT ON A THIRD PARTY, THEN THE DETERMINATION SHALL BE MADE BY AN INDEPENDENT APPRAISER SELECTED BY THE CORPORATION’S BOARD OF DIRECTORS. IN THE EVENT OF AN APPRAISAL OR OTHER DETERMINATION OF VALUE PURSUANT TO THIS SECTION 12 BY A THIRD PARTY OR INDEPENDENT APPRAISAL, THE TIME PERIODS PROVIDED IN SECTIONS 3, 4 OR 5 HEREOF SHALL BE EXTENDED FOR SUCH PERIOD OF TIME AS IS REASONABLY NECESSARY TO COMPLETE SUCH APPRAISAL OR DETERMINATION OF VALUE.

ARTICLE XIII
SPOUSES

THE SPOUSES OF THE SHAREHOLDERS, IF ANY, ARE FULLY AWARE OF, UNDERSTAND, AND FULLY CONSENT AND AGREE TO THE PROVISIONS OF THIS AGREEMENT AND ITS BINDING EFFECT UPON ANY COMMUNITY PROPERTY INTEREST THEY MAY NOW OR HEREAFTER OWN. THEY AGREE THAT THE TERMINATION OF THEIR MARITAL RELATIONSHIP WITH ANY SHAREHOLDER FOR ANY REASON OR THEIR DEATH SHALL NOT HAVE THE
EFFECT OF REMOVING ANY STOCK OF THE CORPORATION OTHERWISE SUBJECT TO THIS AGREEMENT FROM ITS COVERAGE. THEIR AWARENESS, UNDERSTANDING, CONSENT AND AGREEMENT ARE EVIDENCED BY THEIR SIGNING THIS AGREEMENT. ALL STOCK DESCRIBED IN THIS AGREEMENT SHALL INCLUDE THE COMMUNITY PROPERTY INTEREST OF THE SPOUSE OF A SHAREHOLDER. FURTHERMORE, EACH SHAREHOLDER AGREES THAT IF SUCH SHAREHOLDER MARRIES DURING THE TERM OF THIS AGREEMENT, SUCH SHAREHOLDER’S SPOUSE SHALL SIGN AN ADOPTION AGREEMENT. IF SUCH SHAREHOLDER’S SPOUSE FAILS OR REFUSES TO SIGN SUCH ADOPTION AGREEMENT, SUCH SHAREHOLDER SHALL CONTINUE TO BE SUBJECT TO THE RESTRICTIONS SET FORTH IN SECTIONS 2, 3, AND 8, HOWEVER, SUCH SHAREHOLDER SHALL NOT BE CONSIDERED A SHAREHOLDER OR A SIGNIFICANT SHAREHOLDER FOR PURPOSES OF EXERCISING RIGHTS SET FORTH IN SECTIONS 4, 5 OR 7 OR FOR PURPOSES OF PURCHASING SHARES PURSUANT TO SECTION 3, NOR SHALL SUCH SHAREHOLDER EXERCISE HIS OR HER RIGHTS, IF ANY, TO DESIGNATE DIRECTORS PURSUANT TO SECTION 8. UPON THE EXECUTION OF AN ADOPTION AGREEMENT, SUCH NEW SPOUSE SHALL BECOME A PARTY TO THIS AGREEMENT AND SHALL BE BOUND HEREBY TOGETHER WITH ALL OF THE THEN PRESENT PARTIES TO THIS AGREEMENT AS THOUGH SUCH SPOUSE WERE AN ORIGINAL PARTY HERETO.

ARTICLE XIV
NOTICES

ALL NOTICES, OFFERS, REQUESTS, CONSENTS AND OTHER COMMUNICATIONS UNDER THIS AGREEMENT SHALL BE IN WRITING AND SHALL BE DEEMED DELIVERED (I) THREE BUSINESS DAYS AFTER BEING SENT BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, POSTAGE PREPAID OR (II) ONE BUSINESS DAY AFTER BEING SENT VIA A REPUTABLE OVERNIGHT COURIER SERVICE, GUARANTEEING NEXT BUSINESS DAY DELIVERY, IN EACH CASE TO THE INTENDED RECIPIENT SET FORTH BELOW:

(a) if to the Corporation, ________________, ___________, _______ _______ Attention: Secretary; and

(b) if to any Shareholder, to the address as last shown on the stock record books of the Corporation, or, in each case, at such other address as may hereafter have been designated by such Shareholder most recently to the Corporation in writing, with specific reference to this Section.

ARTICLE XV
AMENDMENT; SEVERABILITY; SUBSEQUENT PARTIES

Section 15.1 Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived or discharged other than by a written instrument signed by the
Corporation and the holders of at least a majority of the Restricted Shares; provided, that no amendment to or waiver or discharge of any provision of this Agreement that would have a materially adverse impact on the rights of UT, UTMB, or UT Shareholders shall be effective without the written consent of UTMB. In the event that any provisions hereof are held to be invalid, illegal or against public policy, the remaining provisions hereof shall not be affected thereby. In such event, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible with respect to those provisions which were held to be invalid, illegal or against public policy.

Section 15.2 Notwithstanding anything herein to the contrary, the Corporation shall not issue any equity securities of the Corporation to any Person unless such Person becomes a party to this Agreement, and this Agreement shall be amended to include any and all future holders of equity securities of the Corporation. In such instances, such Persons and the Corporation shall execute an Adoption Agreement in the form of Exhibit A hereto adding such Persons as a party to this Agreement; provided, however, that an Adoption Agreement may, in the Corporation’s sole discretion, exclude a Shareholder from the obligation to vote its Restricted Shares pursuant to Section 8 of this Agreement. Each Shareholder hereby constitutes and appoints the Corporation such Shareholder’s agent and attorney-in-fact with full power and authority, in the name, place and stead of such Shareholder to execute such Adoption Agreement on behalf of such Shareholder to evidence such Shareholder’s approval of such additional parties to this Agreement. The foregoing power of attorney is hereby declared to be irrevocable and a power coupled with an interest. Upon execution by the Corporation and the additional party of such Adoption Agreement, the additional party shall be considered a Shareholder hereunder, and all shares of capital stock owned by such additional party shall be deemed to be Restricted Shares, and legended accordingly, for all purposes of this Agreement.

ARTICLE XVI
AGREEMENTS BY CORPORATION

THE CORPORATION, INSOFAAR AS IS PROPER OR REQUIRED, CONSENTS TO THIS AGREEMENT. IT SHALL NOT ISSUE, TRANSFER OR REISSUE ANY OF ITS SHARES OF STOCK IN VIOLATION OF THIS AGREEMENT OR WITHOUT REQUIRING PROOF OF COMPLIANCE WITH THIS AGREEMENT. ALL STOCK CERTIFICATES OF THE CORPORATION ISSUED OR OUTSTANDING DURING THE LIFE OF THIS AGREEMENT SHALL BE ENDORSED AS STATED ABOVE.

ARTICLE XVII
EFFECTIVENESS; TERMINATION

THIS AGREEMENT SHALL BECOME EFFECTIVE AS OF THE DATE FIRST SET FORTH ABOVE, PROVIDED THAT IT IS EXECUTED BEFORE OR AFTER SUCH DATE BY THE CORPORATION AND EACH SHAREHOLDER OF THE CORPORATION. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS AGREEMENT SHALL TERMINATE UPON THE EARLIER TO OCCUR OF (I) THE CLOSING OF THE FIRST PUBLIC OFFERING OF THE CORPORATION’S
COMMON STOCK PURSUANT TO A FIRM COMMITMENT UNDERWRITING AND AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED; OR (II) THE WRITTEN APPROVAL OF THE CORPORATION AND THE HOLDERS OF AT LEAST 75% OF THE THEN OUTSTANDING SHARES OF VOTING STOCK OF THE CORPORATION THAT ARE SUBJECT TO THIS AGREEMENT; PROVIDED, THAT NO TERMINATION PURSUANT TO SUBSECTION (II) SHALL BE EFFECTIVE WITHOUT THE WRITTEN CONSENT OF UTMB.

ARTICLE XVIII
CONSTRUCTION

EACH PARTY HAS HAD THE OPPORTUNITY REVIEW THIS AGREEMENT WITH LEGAL COUNSEL. THIS AGREEMENT SHALL NOT BE CONSTRUED OR INTERPRETED AGAINST ANY PARTY ON THE BASIS THAT SUCH PARTY DRAFTED OR AUTHORED A PARTICULAR PROVISION, PARTS OF OR THE ENTIRETY OF THIS AGREEMENT.

ARTICLE XIX
RELATIONSHIP WITH BYLAWS

IN THE EVENT OF A CONFLICT BETWEEN A PROVISION OF THIS AGREEMENT AND THE PROVISIONS OF THE CORPORATION'S BYLAWS, THE PROVISIONS OF THIS AGREEMENT SHALL BE CONTROLLING.

ARTICLE XX
MISCELLANEOUS

THIS AGREEMENT (A) CONSTITUTES THE ENTIRE AGREEMENT AND SUPERSEDES ALL PRIOR AGREEMENTS AND UNDERSTANDINGS, BOTH WRITTEN AND ORAL, AMONG THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF, (B) MAY BE EXECUTED IN SEVERAL COUNTERPARTS, EACH OF WHICH SHALL BE DEEMED AN ORIGINAL, AND ALL OF WHICH SHALL CONSTITUTE ONE AND THE SAME INSTRUMENT, AND MAY BE EXECUTED BY FACSIMILE OR EMAIL TRANSMITTED SIGNATURE, (C) SHALL INURE TO THE BENEFIT OF AND BE BINDING UPON, THE SUCCESSORS, ASSIGNS, LEGATEES, DISTRIBUTEES, LEGAL REPRESENTATIVES AND HEIRS OF EACH PARTY AND IS NOT INTENDED TO CONFER UPON ANY PERSON, OTHER THAN THE PARTIES AND THEIR PERMITTED SUCCESSORS AND ASSIGNS, ANY RIGHTS OR REMEDIES HEREUNDER, AND (D) SHALL BE GOVERNED IN ALL RESPECTS, INCLUDING VALID INTERPRETATION AND EFFECT, BY THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES. THE TEXAS STATE COURTS OF GALVESTON COUNTY, TEXAS (OR, IF THERE IS EXCLUSIVE FEDERAL JURISDICTION, THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS) SHALL HAVE
EXCLUSIVE JURISDICTION AND VENUE OVER ANY DISPUTE ARISING OUT OF THIS AGREEMENT, AND THE PARTIES HEREBY CONSENT TO THE JURISDICTION OF SUCH COURTS. NOTHING IN THIS AGREEMENT SHALL CONSTITUTE A WAIVER OF SOVEREIGN IMMUNITY BY PARTIES THAT ARE STATE AGENCIES. THE CAPTIONS IN THIS AGREEMENT ARE FOR CONVENIENCE OF REFERENCE ONLY AND SHALL NOT AFFECT ITS INTERPRETATION IN ANY RESPECT.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands as of the day and year first above written.

____________________, INC.

By:

____________________, President
SHAREHOLDER SIGNATURE PAGE TO
______________________ SHAREHOLDERS AGREEMENT

SHAREHOLDERS:

By: __________________________

___________________________

___________________________

Signature of Spouse (if applicable)

___________________________

___________________________

Signature of Spouse (if applicable)
EXHIBIT A

ADOPTION AGREEMENT

This Adoption Agreement (“Adoption”) is executed pursuant to the terms of that certain Shareholders Agreement, dated as of __________, 201_, by and among ________, Inc., a Texas corporation (the “Corporation”), and the Shareholders (as defined therein) (“Shareholders”). By the execution of this Adoption Agreement, the undersigned agrees as follows:

1. **Acknowledgment.** The undersigned acknowledges that it is acquiring certain shares of the Common Stock of the Corporation, subject to the conditions of the terms and conditions of the Shareholders Agreement.

2. **Agreement.** The undersigned (i) agrees that the shares of the Common Stock of the Corporation acquired by it shall be bound by and subject to the terms of the Shareholders Agreement, and (ii) hereby adopts the Shareholders Agreement with the same force and effect as if were originally a party thereto and named as a Shareholder therein.

3. **Notice.** Any notice required as permitted by the Shareholders Agreement shall be given to the undersigned at the address listed beside the undersigned’s signature below.

4. **Joinder.** The spouse of the undersigned, if applicable, executes this Adoption Agreement to acknowledge its fairness and that it is in such spouse’s best interests and to bind such spouse’s community interest, if any, in any shares of the Common Stock of the Corporation, to the terms of the Shareholders Agreement.

EXECUTED and DATED as of ______________________, 20__.

PURCHASER OR TRANSFEE:

By:  
Name:  
Address: ________________________________

SPOUSE:

By:  
Name:  
Address: ________________________________
Agreed to on behalf of the Corporation and all Shareholders and their respective spouses pursuant to Section 13 of the Shareholders Agreement.

____________, INC.

(for itself and as Attorney-in-Fact for the Shareholders)

By: ________________________________
Name: ______________________________
Title: ______________________________
F. Model Subscription Agreement

_________, INC.

SUBSCRIPTION AGREEMENT

_______, 201__

Board of Regents of the University of Texas System
c/o The University of Texas Medical Branch at Galveston
Office of Technology Transfer
301 University Blvd.
Galveston, Texas 77555-0926

Dear Board of Regents of the University of Texas System (the “Board”):

Pursuant to this fully executed Subscription Agreement (this “Agreement”), you subscribe for ________ shares (the “Shares”) of Common Stock, $0.0001 par value per share (the “Common Stock”), of ___________, Inc., a Texas corporation (the “Company”). The Shares are being issued pursuant to Section ___ of that certain Patent License Agreement, effective ________, 201__, between the Board, on behalf of The University of Texas Medical Branch at Galveston (the “UTMB”), and the Company (the “License Agreement”). Upon your execution of this Agreement, the Company shall deliver to you a stock certificate representing the Shares, registered in your name.

Simultaneously with the execution of this Agreement, you are also executing the Shareholders Agreement and the Registration Rights Agreement, both of even date herewith (collectively, the “Investor Agreements”).

The Company represents and warrants to the Board as follows:

A. Organization, Good Standing and Qualification. The Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of Texas, and has all requisite corporate power and authority to carry on its business as proposed to be conducted. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure to so qualify would have a material adverse effect on its business or properties.

B. Capitalization. The Company hereby represents that (i) its authorized equity consists of (a) ______ million (__,000,000) shares of Common Stock, of which ______ thousand (_____.000) have been issued and are outstanding, and (b) ______ million (__,000,000) shares of Preferred Stock, of which none are outstanding and each of which is currently convertible into one share of Common Stock; (ii) the Company plans to adopt an incentive compensation plan providing for the issuance of up to ______ thousand (_____.000) shares of Common Stock to its officers, directors, and consultants; and (iii) there are no
other options, warrants, calls, rights, commitments, or agreements of any character to which the Company is a party or by which it is bound obligating the Company to issue, deliver, sell or cause to be issued, delivered, sold, any capital securities of the Company. All issued and outstanding shares of the Company’s Common Stock (i) have been duly authorized and validly issued and are fully paid and non-assessable and (ii) were issued in compliance with all applicable state and federal laws concerning the issuance of securities.

C. **Authorization.** All corporate action on the part of the Company, its officers, directors, and stockholders necessary for the authorization, execution, and delivery of this Agreement, the License Agreement, and the Investor Agreements, the performance of all obligations of the Company hereunder and thereunder has been taken, and the authorization, issuance (or reservation for issuance), delivery of the Shares, and this Agreement, the License Agreement, and the Investor Agreements constitute valid and legally binding obligations of the Company, enforceable in accordance with their respective terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors’ rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

D. **Due Issuance.** The Shares, when issued, will be duly and validly issued, fully paid, and non-assessable. The Shares are free of any liens or encumbrances, other than any liens or encumbrances created by or imposed upon the Board; provided, however, that the Shares are subject to restrictions on transfer under state and federal securities laws and as set forth in the Investor Agreements. Except as set forth in the Investor Agreements, the Shares are not subject to any preemptive rights or rights of first refusal.

E. **Start-Up Company.** The Company is a development-stage company and has had no business operations prior to the execution of the License Agreement.

F. **Litigation.** There is no action, suit, proceeding or investigation pending or, to the Company’s knowledge, currently threatened against the Company. The Company is not a party to or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality. There is no action, suit, proceeding or investigation by the Company currently pending or that the Company intends to initiate.

G. **Related Party Transactions.** No employee, officer, manager or owner of the Company or member of his or her immediate family is indebted to the Company, nor is the Company indebted (or committed to make loans or extend or guarantee credit) to any of them other than ordinary advances for travel, entertainment, and other similar advances. To the Company’s knowledge, none of such persons has any direct or indirect ownership interest in any firm or corporation with which the Company is affiliated or with which the Company has a business relationship, or any firm or corporation that competes with the Company, except that employees, officers, directors or members of the Company and
members of their immediate families may own stock in publicly-traded companies that may compete with the Company.

H. **Officers and Managers.** Neither the Company, nor, to the knowledge of the Company, any executive officer or director of the Company, at any time within the past five (5) years: (i) filed, or had filed against any such person, a petition under the federal bankruptcy laws or any state insolvency laws or has had a receiver, fiscal agent or similar officer appointed by a court for the business or property of any such person, or any partnership of which any such person was a general partner at or within two years before the time of such filing, or any corporation or business association of which such Person was an executive officer at or within two years prior to such filing; (ii) been convicted in a criminal proceeding or named as a subject of a pending criminal proceeding (excluding traffic violations and other minor offenses); (iii) been subject to any order, judgment, or decree (not subsequently reversed, suspended or vacated) of any court of competent jurisdiction permanently or temporarily enjoining it or him from, or otherwise imposing limits or conditions on its or his engaging in any securities, investment advisory, banking, insurance or other type of business or acting as an officer or director of a public company; or (iv) been found by a court of competent jurisdiction in a civil action or by the SEC or the Commodity Futures Trading Commission or similar state agency to have violated any federal or state commodities, securities or unfair trade practices law, which such judgment or finding has not been subsequently reversed, suspended or vacated.

You acknowledge, represent, and warrant to the Company as follows:

I. **Accredited Investor.** You: (i) are an accredited investor for purposes of Regulation D under the Securities Act of 1933, as amended (the “Act”); (ii) are able to bear the economic risks of this investment; (iii) are able to hold the Shares for an indefinite period of time; and (iv) have a sufficient net worth to sustain a loss of your entire investment.

J. **Speculative Investment.** An investment in the Shares is speculative, involving a high degree of risk, and the Company has made no assurances whatsoever concerning the present or prospective value of the Shares. You understand that valuation of the Company for financing purposes has been arbitrarily determined and bears no necessary relationship to Company assets, earnings, book value or other accepted criteria of value.

K. **Investment Decision.** You have (i) received and carefully reviewed the Investor Agreements and the Company’s organizational documents; (ii) had the opportunity to obtain any additional information necessary to evaluate the Company and its prospects and verify such information as you deem appropriate; (iii) been given the opportunity to meet with Company representatives; and (iv) had all your questions answered to your satisfaction.

L. **Private Placement.** You are not subscribing for the Shares as a result of or subsequent to any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio, or presented at any seminar or meeting.
M. **Legend.** You understand that the Shares must be held by you unless sale or other transfer is subsequently registered or an exemption is available. You understand that a legend concerning securities laws restrictions and certain of the Investor Agreements will be placed on the Share certificates you receive.

Except as otherwise provided, this Agreement may not be assigned by any party nor may any party’s duties or obligations be delegated without prior written consent.

This Agreement may be executed in two or more counterparts, each of which when executed shall be deemed to be an original, and all of which, when taken together, shall constitute one and the same document.

This Agreement is governed by and construed in accordance with the internals laws of the State of Texas, without regard to its conflicts of laws principles.

Sincerely yours,

______________, INC.

By: ________________________________

President

_______, TX ______

ACCEPTED AND AGREED TO:
BOARD OF REGENTS OF
THE UNIVERSITY OF TEXAS SYSTEM

By: ________________________________