



DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

RESEARCH AND DEVELOPMENT AGREEMENT

THIS RESEARCH AND DEVELOPMENT AGREEMENT ("AGREEMENT") is effective as of _____, 2000 (the "EFFECTIVE DATE"), by and between _____, a corporation, with its principal place of business at _____ (hereinafter referred to as "VENDOR"), and ABC Pharmaceuticals Inc., a _____ corporation, having its principle business offices at _____ (hereinafter referred to as "ABC").

BACKGROUND

WHEREAS, VENDOR is a company organized and operated for the development and commercialization of _____.

WHEREAS, ABC is a biopharmaceutical company engaged in the development of _____.

WHEREAS, ABC wishes to engage VENDOR to provide certain research and development services for the express purpose of _____ as set forth more specifically in this AGREEMENT and VENDOR's Proposal _____ (hereinafter referred to as the "PROPOSAL"; a copy of the PROPOSAL being attached in Exhibit "A"), and VENDOR warrants it is fully able to perform the research and development program in a professional, competent manner with strict adherence to its terms.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, both VENDOR and ABC agree as follows:

ARTICLE I. THE PROJECT

ABC hereby establishes a research and development project with VENDOR (the "PROJECT"), described in this AGREEMENT and the PROPOSAL (as such PROPOSAL may be amended from time to time upon the mutual written agreement of the parties), the exclusive purpose of which is to assist ABC in research, development and characterization of _____. Time and quality are of the essence in this AGREEMENT. VENDOR understands that the data and other information resulting from the PROJECT may ultimately be submitted as part, or in support, of an Investigational New Drug Application or a New Drug Application with the U.S. Food and Drug Administration ("FDA") or other health regulatory filings in or outside the U.S.A., and, if applicable, agree to make itself and its employees and agents reasonably available, whether during the term of this AGREEMENT or thereafter, to assist ABC and its employees and advisors in putting the results of the PROJECT in form and substance suitable for such regulatory filings.

ARTICLE II. TERM

Section 2.1 Term This AGREEMENT shall become effective on the EFFECTIVE DATE written above and

shall, unless terminated earlier as set forth below, terminate concurrently with a mutually agreed upon date for completion of the PROJECT.

Section 2.2 Termination ABC can terminate this AGREEMENT at any time with or without cause by giving VENDOR a written notice stating the desired termination date. This notice shall be given at least two weeks in advance of the desired termination date in the event of termination without cause. In the event that ABC decides to terminate this AGREEMENT without cause prior to completion of the work as described in the PROPOSAL, ABC agrees to pay to VENDOR no later than thirty (30) days after such termination without cause an early termination fee (the "Termination Fee") in an amount equal to 50% of the difference between any amounts previously paid to VENDOR for services rendered under this AGREEMENT (including for these purposes all amounts due and owing under this AGREEMENT to VENDOR but not yet paid) and the initial estimated cost for the PROJECT set forth in the PROPOSAL (the "Initial Cost Estimate). Other than payment of the Termination Fee, ABC shall not be liable to VENDOR for any amounts of any kind in the event of ABC's termination of this AGREEMENT without cause. Further, no such Termination Fee shall be due and owing hereunder in the event of ABC termination without cause if such termination occurs concurrently with or following the earlier of (a) _____ or (b) the amounts paid plus any amounts accrued and then owing by ABC to VENDOR for services rendered under this AGREEMENT shall equal or exceed \$ _____ in the aggregate. VENDOR may terminate this AGREEMENT for cause upon written notice to ABC. For purposes of this Section 2.2 "cause" shall mean:

(a) the non-terminating party (i) applies for or consents to the appointment of a receiver, conservator, trustee, liquidator, custodian or other judicial representative for itself or any substantial portion of its assets or properties; (ii) admits in writing its inability to pay its debts as they become due; (iii) makes an assignment for the benefit of its creditors; (iv) has an order for relief filed by a bankruptcy court for or against it or is adjudicated insolvent; or (v) files a voluntary petition admitting bankruptcy or an arrangement with creditors or takes advantage of any bankruptcy, insolvency, readjustment or debt, dissolution or liquidation law or statute, or files an answer admitting the material allegations of a petition filed against it in any proceeding; (vi) or a decree is entered by any court of competent jurisdiction approving a petition seeking reorganization or appointing a receiver, conservator, trustee, liquidator, custodian or other judicial representative, and such order, judgment or decree continues in effect for a period of ninety (90) consecutive days; or

(b) a material default in the non-terminating party's performance hereunder which is not cured, or capable of being cured, within thirty (30) days after receipt of written notice of such default from the terminating party; or

1. for purposes of termination by ABC only, the failure, inability or unwillingness of _____ to serve as President and/or Chief Executive Officer of VENDOR, which for these purposes shall include without limitation the permanent disability of _____ or the failure, regardless of cause, of _____ to perform his functions as President and/or Chief Executive Officer of VENDOR for a period of two months out of any three consecutive month period.

The accrued rights and obligations of the parties, and any remedies provided in this AGREEMENT, at law or in equity available to the parties, shall not be affected by any termination of this AGREEMENT except as explicitly stated herein.

Section 2.3 Force Majeure Neither party shall be in default hereunder by reason of its delay in the performance of, or failure to perform, any of its obligations under this AGREEMENT if such delay or failure is caused by strikes, acts of God, public enemies, riots or any other causes beyond its reasonable control, or due to the fault or negligence of the other party. During the pendency of such intervening event, each party shall take all commercially reasonable steps to perform its obligations required hereunder by other means, shall use commercially reasonable efforts to remove the force majeure constraint, and in any event shall, upon

termination of such intervening event, forthwith resume performance of its obligations under this AGREEMENT. A party who is prevented from meeting its obligations hereunder due to force majeure event shall notify the other party promptly of such event.

Section 2.4 Return of Materials and Equipment If this AGREEMENT is terminated prior to completion of the PROJECT for any reason whatsoever, then irrespective of any claims it may have against the ABC, VENDOR shall deliver immediately the following to ABC so that the pursuit of any such claims, rights and remedies shall not interfere with the timely progress of ABC's research and development programs: (i) all work product (including partial results, drafts and notes, in all tangible media including electronic format, works in progress and patents, know-how and other intellectual property) created or worked on by VENDOR (including its employees, agents and representatives) in, and relating to, the performance of its obligations under this AGREEMENT; (ii) any and all SAMPLES and materials received from ABC or from other sources in order for VENDOR to perform hereunder; (iii) all EQUIPMENT (shipped in accordance with ABC's instructions); and (iv) a report in reasonable detail outlining the status of the work at the time of termination.

Section 2.5 Accrued Right and Obligations Notwithstanding any termination of this AGREEMENT, the parties shall remain bound by the provisions of this AGREEMENT which specifically relate to periods, activities or obligations upon or subsequent to the termination of this AGREEMENT, including the third sentence of Article 1, Articles 6, 7, 8, 9 and 10, and Sections 4.3, 11.1, 11.6 and 11.10.

ARTICLE III. FACILITIES, PERSONNEL, EQUIPMENT AND MATERIALS

With respect to the PROJECT, VENDOR shall provide the services of such personnel, laboratory facilities, apparatus, chemicals and other supplies as shall be necessary to conduct its activities under this AGREEMENT. The parties have agreed that VENDOR shall procure certain items of equipment ("EQUIPMENT") as described in the PROPOSAL, which specific items of EQUIPMENT will be agreed to by the parties in writing, on ABC's behalf in order for VENDOR to perform the work hereunder. Such EQUIPMENT shall at all times be and remain the property of ABC, and in which ABC shall have sole, unencumbered rights, title and interest at all times. VENDOR covenants to conspicuously mark all EQUIPMENT as the "Property of ABC Pharmaceuticals Inc." VENDOR will at all times use due care in the setup, operation, calibration and maintenance of the EQUIPMENT, normal wear and tear excepted.

ARTICLE IV. MAXIMUM CHARGES AND INVOICING

Section 4.1 Maximum Charges VENDOR shall charge ABC for services rendered under this AGREEMENT on a "time and materials" basis as follows:

1. Amounts billed for time shall equal the product of _____ multiplied by the actual amount time spent by those VENDOR employees directly working on the PROJECT for the billing period covered multiplied by the sum of (i) the pro-rated annual base salary of such employees for the applicable billing period (the "Base Amount") plus (ii) an amount equal to the amount of "VENDOR Direct Overhead Expenses" (as defined below) allocated to cover those VENDOR employees working on the PROJECT, again pro-rated for the applicable billing period. For purposes of this Section 4.1, VENDOR Direct Overhead Expenses shall mean and consist of those expenses of VENDOR for rent, utilities, depreciation and amortization of leasehold improvements and capital equipment (which, for the avoidance of doubt, shall not include the EQUIPMENT), insurance, and employee fringe benefits. VENDOR Direct Overhead Expenses shall not include expenses related to general and administrative activities and costs of VENDOR, including without limitation internal costs and external expenses for legal and accounting services. For purposes of this AGREEMENT, the VENDOR Direct Overhead Expenses shall be calculated and adjusted on a calendar quarter basis. Notwithstanding the foregoing, under no circumstances shall the amount of VENDOR Direct Overhead Expenses charged to ABC under

this AGREEMENT exceed ___% of the Base Amount as measured during any six consecutive month period during the term of this AGREEMENT. Any overpayments by ABC for VENDOR Overhead Expenses shall be credited again future amounts owed by ABC to VENDOR under this AGREEMENT or refunded to ABC, as appropriate.

1. Amounts billed for materials shall cover those non-capital items that are not included as EQUIPMENT and directly utilized on the PROJECT and shall be billed to ABC at VENDOR's net cost actually incurred for such items as incurred.
2. No amounts except as explicitly set forth in clauses (a) and (b) above of this Section 4.1 shall be due and owing to VENDOR hereunder for the provision of services under this AGREEMENT.

The foregoing notwithstanding, the parties agree that in no event shall ABC's liability for the payment of PROJECT charges as described in the PROPOSAL exceed the Initial Cost Estimate of \$ _____ set forth therein without the prior written consent of ABC. VENDOR hereby represents and warrants to ABC that the Initial Cost Estimate represents VENDOR's good faith best estimate of the actual amounts its anticipates charging ABC in consideration for its complete and timely performance of the PROJECT based on its best profession judgment of the effort and resources needed to complete the PROJECT. In the event that during the course of the PROJECT VENDOR believes that the costs associated with completing the PROJECT will exceed the Initial Cost Estimate, VENDOR will alert ABC immediately of such and will promptly provide to ABC a revised cost estimate, a description for the basis for such revised estimate and a justification therefor as well as an explanation as to why the Initial Cost Estimate was not accurate.

Section 4.2 Payment and Termination ABC shall pay to VENDOR monthly, upon receipt of a duly completed invoice therefor, the sum of the PROJECT charges incurred during the preceding month. All undisputed amounts will be paid on a net 30 basis from ABC's receipt of such an invoice. VENDOR will invoice ABC once monthly. Upon receipt of ABC's written notice to terminate this AGREEMENT, VENDOR will promptly discontinue work on the PROJECT and will invoice ABC the sum of any uninvoiced charges incurred prior to ABC's requested termination date.

Section 4.3 Audit Rights VENDOR shall maintain complete and accurate books and financial records in accordance with U.S. generally accepted accounting principles, consistently applied for the periods presented, along with such other reconciliation and other information as may be necessary to calculate all consideration paid or payable by ABC under this AGREEMENT. VENDOR shall maintain such books and records for at least three (3) years after expiration or termination of this AGREEMENT. ABC shall have the right itself or through a nationally recognized independent accountant (which for these purposes the parties agree shall include _____) to audit the relevant VENDOR records during reasonable business hours for the purpose of verifying, at the expense of ABC, the amounts billed to ABC under this AGREEMENT, and the parties agree that this audit right may not be exercised more than once in any calendar year. These audit rights shall survive for three (3) years after the expiration or termination of this AGREEMENT. Any overpayment shall be refunded to ABC (or at ABC's requested credited against future amounts owed hereunder) within thirty (30) days of the delivery of a written report detailing the overpayment. If, however, any audit conducted under this Section 4.3 shows an overpayment by ABC of an amount greater than ten percent (10%) of the amount actually owed, the fees and costs of such audit shall be for the account of VENDOR.

ARTICLE V. DELIVERABLES

Section 5.1 Samples VENDOR and ABC will provide research samples of the _____ ("SAMPLES") to the other for evaluation as part of the PROJECT. The SAMPLES received by each party from the other will be used with prudence and appropriate caution, since they are experimental in nature and not all of their characteristics are known. THE SAMPLES PROVIDED FROM ONE PARTY TO THE

OTHER HEREUNDER ARE PROVIDED WITHOUT ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY OTHER WARRANTY, EXPRESSED OR IMPLIED. The SAMPLES shall be used by both parties for research purposes only and no SAMPLES provided from one party to the other will be used in human experiments nor shall a party distribute the SAMPLES provided from the other party to a third party for use in human experiments. It is intended that certain phases of this PROJECT will involve the supply of SAMPLES for ABC-sponsored clinical studies in animals. ABC hereby represents and warrants to VENDOR that to the extent required by law, all clinical protocols involving the use of any SAMPLES to be provided by VENDOR under this and/or subsequent agreements for use in animals by ABC shall be reviewed, as may be required by applicable law, rules or regulations, by the appropriate regulatory agency(ies) and/or institutional animal-use review board(s) for analysis of humaneness to animals. **ALL SAID RESEARCH SAMPLES PROVIDED FROM ONE PARTY HEREUNDER TO THE OTHER ARE NOT FOR USE IN HUMANS.**

Section 5.2 Reports Every two months VENDOR agrees to furnish ABC written letter reports summarizing in detail the status of the PROJECT. Such reports shall contain such information and address such matters as ABC shall specify from time to time. These reports shall contain all data, results, observation and methods generated on the PROJECT during the previous two months, and discuss any problems related to the progress of the work along with suggested corrective actions.

ARTICLE VI. PUBLICITY

Section 6.1 Generally Neither party shall use the name, symbols, and/or marks of the other in any advertising or sales promotional material or in any publications without the prior written consent of such other party.

Section 6.2 Publications VENDOR shall not have any right to publish or otherwise disclose to third parties, whether at a scientific meeting or otherwise, any information, data or materials generated under this AGREEMENT or as a result of ABC's use or study of SAMPLES.

ARTICLE VII. CONFIDENTIALITY

Section 7.1 ABC Confidential Information VENDOR acknowledges that it will be provided with and develop confidential and/or proprietary information relating to ABC, the SAMPLES, the research and development work performed hereunder, and related matters in the course of its performance under this AGREEMENT. During the term of this AGREEMENT and thereafter for a period of ten (10) years, VENDOR agrees not, either directly or indirectly, to use for its own benefit or disclose to any third party or otherwise publicly disclose any information received or derived from ABC, or developed under this AGREEMENT, including without limitation results, data, trade secrets, process and manufacturing information, and formulations ("ABC Confidential Information"), except to the extent such information: (i) was in the public domain at the time VENDOR learned of, or developed, such information under this AGREEMENT; (ii) comes into the public domain through no fault of VENDOR; (iii) except for information otherwise disclosed to, or developed by, VENDOR under an obligation of confidentiality to ABC, was in VENDOR's possession at the time it learned of, or developed, such information under this AGREEMENT (and which is provable by credible documentary evidence to that effect); (iv) is obtained by VENDOR from third parties not directly or indirectly under an obligation of confidentiality to ABC (and which is provable by credible documentary evidence to that effect); (v) is developed independently by VENDOR without reference to such information and not pursuant to work conducted under this AGREEMENT (and is provable by credible documentary evidence to that effect); or (vi) which is required by court order, statute or regulation of any governmental authority to be disclosed to any Federal or state agency, court or other body; provided however, that if VENDOR is directed to so disclose ABC Confidential Information pursuant to a subpoena or other valid legal compulsion, VENDOR shall promptly notify ABC of such so as to provide or afford ABC the opportunity to obtain such protective orders or other relief as the compelling court or other entity may grant.

Section 7.2 VENDOR Confidential Information VENDOR may provide ABC from time to time under this AGREEMENT with confidential and/or proprietary information of VENDOR ("VENDOR Confidential Information"). During the term of this AGREEMENT and thereafter for a period of ten (10) years, ABC will keep such information confidential so long as it is marked as "Confidential" when disclosed to ABC (or if initially disclosed orally, is reduced to writing within thirty (30) days of disclosure, marked as "Confidential" and sent to ABC.), and except to the extent such information: (i) was in the public domain at the time ABC learned of such information under this AGREEMENT; (ii) comes into the public domain through no fault of ABC; (iii) except for information otherwise disclosed to ABC under an obligation of confidentiality to VENDOR, was in ABC's possession at the time it learned of such information under this AGREEMENT (and which is provable by credible documentary evidence to that effect); (iv) is obtained by ABC from third parties not directly or indirectly under an obligation of confidentiality to VENDOR (and which is provable by credible documentary evidence to that effect); (v) is developed independently by ABC without reference to such information (and is provable by credible documentary evidence to that effect); or (vi) which is required by court order, statute or regulation of any governmental authority to be disclosed to any Federal or state agency, court or other body; provided however, that if ABC is directed to so disclose VENDOR Confidential Information pursuant to a subpoena or other valid legal compulsion, ABC shall promptly notify VENDOR of such so as to provide or afford VENDOR the opportunity to obtain such protective orders or other relief as the compelling court or other entity may grant. For the avoidance of doubt, the parties agree that nothing herein shall be deemed to limit ABC, either directly or through third parties, in any way from developing and commercializing the _____ and using the information and work commissioned by ABC and furnished by VENDOR under this AGREEMENT in connection with VENDOR's research, development and commercialization of the _____.

ARTICLE VIII. WARRANTY AND LIMITATION OF LIABILITY

Under this AGREEMENT, VENDOR is to perform certain research and development work and other work incidental thereto, and is to provide certain counseling, advice, conclusions and/or recommendations. VENDOR will use its professional experience and reasonable professional efforts consistent with standard industry practice in performing this work. However, VENDOR does not represent, warrant, or guarantee that _____ or products made from _____ based on the results of this work will be merchantable or satisfactory for any particular purpose, and there are no warranties, expressed or implied, to such effect. Subject to its obligations under Section 9.2 below, in connection with the work performed hereunder, VENDOR shall in no event be responsible or liable in contract or in tort for any special, indirect, incidental, or consequential damages such as, but not limited to, loss of product, profits or revenues, damage or loss from operation or non-operation of plant, or claims of customers of ABC.

ARTICLE IX. INDEMNIFICATION; VENDOR INSURANCE

Section 9.1 ABC Indemnity ABC hereby agrees to indemnify, hold harmless, and defend VENDOR and its officers, directors, representatives, agents and employees (each an "Indemnified Person") from and against any and all demands, claims, suits, actions, and costs and expenses (including reasonable attorneys' fees and court costs) (collectively, "Claims") of any character presented or brought on account of any injuries, losses, or damages sustained by any person or property in consequence of any act or omission of VENDOR or its agents, employees or subcontractors in the performance of the obligations imposed herein; provided, however, that the foregoing indemnity shall not apply with respect to any Claim relating to, or arising from, the negligence or willful misconduct of VENDOR or any other Indemnified Person.

Section 9.2 VENDOR Indemnity VENDOR hereby agrees to indemnify, hold harmless, and defend ABC and its officers, directors, representatives, agents and employees from and against any and all Claims of any character presented or brought on account of any injuries, losses, or damages sustained by any person or property in consequence of, relating to, or arising from any negligent act or omission or willful misconduct of VENDOR or its agents, employees or subcontractors.

Section 9.3 VENDOR Insurance In support of its obligations under this AGREEMENT, VENDOR will maintain during the term of this AGREEMENT the following types insurance with a reputable and financially sound "A" rated insurance provider in amounts not less than that specified for each type:

(i) bodily injury and death insurance, and commercial liability insurance, each with limits of not less than \$1,000,000 per occurrence and \$1,000,000 per accident; and

(ii) property damage liability insurance with limits of not less than \$500,000 per occurrence and \$500,000 per accident.

VENDOR will provide written evidence of its insurance coverage upon ABC's request, will provide to ABC thirty (30) days' prior written notice of any cancellation in its coverage, and include "ABC Pharmaceuticals Inc." as an additional insured on the aforementioned policies.

ARTICLE X. RECORD KEEPING, REPORTING, ACCESS, PROPRIETARY RIGHTS AND COMPLIANCE WITH LAW AND ACCEPTED PRACTICE

Section 10.1 Performance Audit Rights ABC's authorized representative(s), and regulatory authorities to the extent permitted by law, may, during regular business hours, arrange in advance with VENDOR to (i) examine and inspect VENDOR's facilities required for performance of the PROJECT to observe the progress of the work hereunder and for quality control/quality assurance purposes and (ii) inspect and copy all data and work product relating to the PROJECT.

Section 10.2 Access to Personnel VENDOR will make itself and those employees and/or agents conducting, supervising or otherwise related to the performance of the PROJECT available to ABC (and its representatives) from time to time at ABC's request to report (either verbally or in writing, as ABC may request) on the status of and discuss the PROJECT.

Section 10.3 Cooperation If applicable, VENDOR shall cooperate with any regulatory authority and allow its authorized personnel access to applicable records and data.

Section 10.4 Records VENDOR shall prepare and maintain in a timely fashion complete, accurately written records, accounts, notes, reports and data of the PROJECT.

Section 10.5 Inventions, etc. All data, work product, "new inventions or discoveries", and/or information (collectively, "Inventions") relating to the PROJECT or any other testing of ABC's products or technology that may be performed by VENDOR shall be the exclusive property of ABC which shall have the sole, unencumbered rights and title thereto. VENDOR acknowledges and agrees that all work product conceived or reduced to practice by VENDOR (or its employees or agents) in its performance under this AGREEMENT, including Inventions (and any improvements or modifications thereto) shall be works made for hire commissioned by ABC, and VENDOR hereby assigns and agrees to assign to ABC and all of VENDOR's right, title and interest in and to any and all of said work product. For purposes of this AGREEMENT, "new invention or discovery" shall mean any invention or discovery conceived or reduced to practice pursuant to this AGREEMENT by any of VENDOR's employees or agents or jointly by such a individuals with one or more employees or agents of ABC, and the terms "conceived" and "reduced to practice" shall be given the meaning of those terms as they appear in 35 USC Section 102(g).

Section 10.6 Further Assurances Upon request of ABC, whether during the term of this AGREEMENT or thereafter, VENDOR will do all lawful acts as are reasonable and customary, including, but not limited to, the execution of papers and lawful oaths and the giving of testimony, that in the opinion of ABC, its successors or assigns, may be necessary or desirable in obtaining, sustaining, reissuing, extending and enforcing United States and foreign letters patent, including, but not limited to, design patents, on any and all Inventions, and

for perfecting, affirming and recording ABC's complete ownership and title thereto, and to cooperate otherwise in all proceedings and matters relating thereto.

Section 10.7 Compliance with Law and Accepted Practices VENDOR shall perform the PROJECT in conformance with generally accepted standards of good laboratory practice, instructions provided by ABC and with all applicable local, state and federal laws and regulations governing its performance hereunder, including as applicable rules and regulations governing the care and handling of laboratory animals and to the extent consistent with each of the foregoing, VENDOR's internal standard operating procedures. VENDOR shall retain all records resulting from the PROJECT for the time required by applicable federal regulations (if any) and to allow for inspection of all such records.

ARTICLE XI. MISCELLANEOUS

Section 11.1 Notice Any notice required or permitted hereunder shall be in writing and shall be deemed given as of the date it is (A) delivered by hand, (B) received by registered or certified mail, return receipt requested, or by a major recognized national express courier service (such as Fed.Ex., UPS or DHL), postage prepaid, or (C) received by facsimile (against receipt of the answerback confirming delivery) and addressed to the party to receive such notice at the address set forth below, or such other address as is subsequently specified in writing:

ABC: ABC Pharmaceuticals, Inc.

Attn.:

Telephone:

Telefax:

VENDOR:

Attn.:

Telephone:

Telefax:

The parties may from time to time change the address to which notices are to be delivered or mailed by giving notice of such change to each other as provided in this Section 11.1. In the case of notices sent by facsimile, or telex, which notice shall be deemed duly given if made pursuant to the provisions of this Section 11.1 above, the notifying party shall also send a confirmation copy of any such notice to the other party by first class-mail.

Section 11.2 Complete AGREEMENT and Modification This AGREEMENT, including the PROPOSAL (which is incorporated herein by reference), constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements or arrangements, written or oral, between the parties relating thereto. In the event of a conflict between the terms of this AGREEMENT and the PROPOSAL, however, the terms of this AGREEMENT shall govern. This AGREEMENT and any provisions of it cannot be modified or amended except by an agreement in writing signed by or on behalf of each party to this AGREEMENT.

Section 11.3 Assignment; Benefits; and Binding Effect Neither VENDOR nor ABC shall assign its rights or delegate its duties under this AGREEMENT without the prior written consent of the other party; provided, however, that without such consent, ABC may assign this AGREEMENT in connection with the transfer or

sale of all or substantially all of its assets or business or its merger or consolidation with another company, and may further assign this AGREEMENT in whole or in part to any corporate affiliate without consent of the Institution. This AGREEMENT inures to the benefit of, and is binding on, the legal representatives, heirs, successors, and assignees of each party.

Section 11.4 Waiver The failure of either party to insist upon the performance of any of the terms of this AGREEMENT or to exercise any right hereunder or at law or in equity, or any delay by either party in the exercise of any such right, shall not be construed as a waiver or relinquishment of any such performance, or right, or of the future performance, or any such term, or the future exercise of such right. Either party may, by written notice to the other (a) waive any of the conditions to its obligations hereunder or extend the time for the performance of any of the obligations or actions of the other; (b) waive any inaccuracies in the representations or warranties of the other contained in this AGREEMENT; (c) waive compliance with any of the covenants of the other contained in this AGREEMENT; or (d) waive any of the obligations of the other under this AGREEMENT. To be effective, any such waiver must be in writing and signed by the party against whom the waiver is sought to be enforced. No waiver or relinquishment of any right granted by either party to the other shall be deemed to be a continuing waiver of such right in the future unless otherwise provided in the waiver.

Section 11.5 Counterparts This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and will become effective when one or more counterparts has been signed by, and delivered to, each party.

Section 11.6 Applicable Law This AGREEMENT shall be governed by the laws of the State of Maryland (without regard to any rules or principles of conflicts of law that might look to any jurisdiction outside Maryland). In the event that an unresolved dispute arises over the enforcement, interpretation, construction, or breach of this AGREEMENT, it shall be litigated in the U.S. District Court for Maryland or the Circuit Courts located in Baltimore City, Maryland, and VENDOR hereby irrevocably submits to the exclusive jurisdiction of such courts for all purposes with respect to any legal action or proceeding in connection with this AGREEMENT.

Section 11.7 Severability In the event that any term of this AGREEMENT is held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other portion of this AGREEMENT, and there shall be deemed substituted therefor such term as will most fully realize the intent of the parties as expressed in this AGREEMENT to the fullest extent permitted by applicable law, the parties hereby declaring their intent that this AGREEMENT be construed in such fashion as to maintain its existence, validity, and enforceability to the greatest extent possible

Section 11.8 Parties Independent In making and performing this AGREEMENT, the parties are acting and shall act at all times as independent contractors and nothing contained in this AGREEMENT shall be construed or implied to create an agency, partnership or joint venture relationship between the parties.

Section 11.9 Headings Descriptive headings used herein are for convenience only and shall not affect the meaning or construction of any provision hereof.

Section 11.10 No Transfer of Proprietary Rights Not Specified It is agreed that neither ABC nor VENDOR transfers to the other by operation of this AGREEMENT any patent right, copyright right, or other proprietary right of either party, except as specifically set forth herein.

Section 11.11 Conflicts of Interest VENDOR agrees that, during the term of this Agreement, it shall not, directly or indirectly, engage in competition with ABC in any manner or capacity in any phase of the business which ABC is conducting during the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be duly executed, on the EFFECTIVE DATE written above.

VENDOR ABC PHARMACEUTICALS INC.

By: By:

Name: Name:

Title: Title:

EXHIBIT "A"

"PROPOSAL"

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