

SOFTWARE CONSULTING AGREEMENT

1. **Background.** Big Biotech, Inc. (“Big Biotech”) and the Consultant named on the signature page (“Consultant”) have signed this Software Consulting Agreement, pursuant to which Consultant has agreed to provide certain Consulting Services for Big Biotech’s benefit. This Software Consulting Agreement and the **Business Terms Exhibit** attached hereto (together, the “Agreement”) establish all of the terms and conditions of Consultant’s consultancy with Big Biotech.

2. **Definitions.** The following terms have the meanings set forth below:

2.1. **“Agents”** shall mean Consultant’s agents, consultants and advisors who have been pre-approved in writing by Big Biotech.

2.2. **“Business Terms Exhibit”** shall mean the business terms and conditions set forth in the attached exhibit entitled “Business Terms Exhibit,” attached hereto and incorporated herein by reference.

2.3. **“Confidential Information”** means any scientific, technical, trade or business information possessed, obtained by, developed by Big Biotech or developed for or given to Big Biotech which is treated by Big Biotech as confidential or proprietary including, without limitation, software, documentation, computer passwords and network access mechanisms, results obtained from the performance of the Consulting Services, Research Materials and Developments (defined below), genes, gene sequences and loci, formulations, techniques, methodology, assay systems, formulae, procedures, tests, equipment, data, reports, know-how, sources of supply, patent positioning, relationships with consultants and employees, business plans and business developments, information concerning the existence, scope or activities of any research, development, manufacturing, marketing or other projects of Big Biotech, any other information which due to its nature, would cause a reasonable person to know that it is confidential and proprietary to Big Biotech, and any other confidential information about or belonging to Big Biotech’s suppliers, licensors, licensees, partners, affiliates, customers, potential customers or others.

“Confidential Information” does not include information which (a) was known to Consultant at the time it was disclosed, other than by previous disclosure by Big Biotech, as evidenced by Consultant’s written records at the time of disclosure; (b) is at the time of disclosure or later becomes publicly known under circumstances involving no breach of this Agreement; or (c) is lawfully and in good faith made available to Consultant by a third

party who did not derive it, directly or indirectly, from Big Biotech.

2.4. **“Developments”** include, without limitation, software (including without limitation object code and source code), documentation, ideas, concepts, discoveries, inventions, developments, know-how, trade secrets, techniques, methodologies, modifications, innovations, improvements, writings, documentation, data, Research Materials and rights (whether or not protectible under state, federal, or foreign patent, trademark, copyright or similar laws) that are conceived, delivered, discovered, invented, developed, created, made or reduced to practice or fixed in tangible medium by Consultant or under its direction (solely or with others) during the Term and that (a) are developed by use of Big Biotech’s equipment, facilities or intellectual property or at Big Biotech’s expense, or (b) are directly or indirectly related to the Consulting Services.

2.5. **“Intellectual Property Rights”** means any and all now known or hereafter existing (a) rights associated with works of authorship, including, but not limited to, exploitation rights, copyrights, moral rights, database rights, and mask works, (b) trademark and trade name rights and similar rights, (c) trade secret rights, (d) patents, designs, algorithms, and other industrial property rights, (e) other intellectual and industrial property and proprietary rights of every kind and nature throughout the universe, whether arising by operation of law, by contract or otherwise, and (f) all registrations, applications, continuations in part, renewals, extensions, combinations, divisions or reissues of the foregoing.

2.6. **“Licensed Works”** means any items not first conceived, delivered, discovered, invented, developed, created, made or reduced to practice or fixed in tangible medium by Consultant or under its direction (solely or with others) during the Term that are incorporated by Consultant into the Developments or necessary for the utilization by Big Biotech and/or its affiliates of the Developments and all Intellectual Property Rights related to such items.

2.7. **“Research Materials”** include, without limitation, genes, gene fragments, gene sequences, probes, DNA, RNA, cDNA libraries, plasmids, vectors expression systems, cells, cell lines, organisms, antibodies, biological substances, and any constituents, progeny, mutants, derivatives or replications thereof or therefrom, together with all reagents, chemical compounds or other materials developed by or furnished to Consultant in connection with Consultant’s rendering of the Consulting Services.

2.8. "Term" shall mean the term of this Agreement as set forth in the Business Terms Exhibit.

3. Consulting Services. Consultant agrees to perform the services set forth in the Business Terms Exhibit ("Consulting Services"). Any changes to the Consulting Services (and any related price adjustments) must be agreed upon in writing between Consultant and Big Biotech prior to commencement of such changes.

4. Personnel.

4.1. Employees; Agents. Consultant shall engage competent employees to support its obligation to render the Consulting Services to Big Biotech. Any agents, consultants and advisors (collectively the "Agents") shall be pre-approved in writing by Big Biotech and shall be competent to support Consultant's obligation to render the Consulting Services to Big Biotech. Consultants and Agents shall at all times comply with Big Biotech's security and safety policies.

4.2. Agreements with Personnel. Consultant has or shall obtain agreements acceptable to Big Biotech with all employees and Agents who participate in rendering the Consulting Services which (i) impose confidentiality and noncompetition obligations on such personnel comparable to the obligations imposed under this Agreement and (ii) effectively vest in Consultant any and all rights which such personnel might otherwise have in the results of their work and are adequate to permit Consultant to transfer such rights to Big Biotech under Section 6 of this Agreement.

5. Compensation; Payment. Big Biotech agrees to pay Consultant the fees set forth in the **Business Terms Exhibit**. Unless otherwise specified in the **Business Terms Exhibit**, payments are due net thirty (30) days from Big Biotech's receipt of Consultant's invoice. Invoices shall contain such detail as Big Biotech may reasonably require and shall be payable in U.S. dollars.

6. Ownership of Developments; Licensed Works.

6.1. Prompt Disclosure; Records. Consultant shall promptly and fully disclose to Big Biotech all Developments. Consultant shall keep and maintain complete written records of all Developments and of all work or investigations done or carried out by Consultant.

6.2. Assignment of Developments. Consultant agrees that all right, title and interest to any Developments, including, but not limited to, all Intellectual Property

Rights related thereto are and shall become and remain the sole and exclusive property of Big Biotech and shall constitute "work made for hire". Consultant hereby assigns and agrees to assign to Big Biotech all of Consultant's right, title and interest in and to the Developments, including, but not limited to, all Intellectual Property Rights related thereto. Big Biotech may use or pursue the Developments without restriction or additional compensation. During and after the Term, Consultant will cooperate fully in order to give full and proper effect to the foregoing assignment and to assist Big Biotech in applying for, obtaining and enforcing Intellectual Property Rights in the Developments in both the United States and any and all foreign countries, and, without limitation, shall execute and deliver all requested applications, assignments and other documents, and take such other measures as Big Biotech shall reasonably request, in order to perfect and enforce Big Biotech's rights in the Developments and all Intellectual Property Rights related thereto. Consultant appoints Big Biotech its attorney to execute and deliver any such documents on Consultant's behalf in the event Consultant fails to do so. Further, if the moral rights cannot be assigned under the laws of a country where such rights exist, Consultant hereby waives all of its moral rights and consents to any action of Big Biotech that would violate such rights in the absence of such consent.

6.3. Work at Third Party Facilities. Unless covered by an appropriate agreement between any third party and Big Biotech, Consultant shall not engage in any activities or use any third party facilities or intellectual property in performing the Consulting Services, which could result in claims of ownership to any Developments being made by such third party.

6.4. Licensed Works. Consultant hereby grants Big Biotech and its affiliates a paid-up, perpetual, irrevocable, fully transferable, worldwide, non-exclusive license to use, have used, disclose, perform, reproduce, modify, enhance, sell, make or have made derivative works of, distribute (directly or indirectly) and sublicense the Licensed Works. Consultant (or its licensor) retains all right, interest and title in and to the Licensed Works, including any Intellectual Property Rights related thereto, subject to the license granted Big Biotech and its affiliates under this Agreement.

7. Confidentiality and Noncompetition.

7.1. Consultant Acknowledgement Regarding Confidentiality and Ownership. Big Biotech or its licensors have developed and will develop the

Confidential Information over a substantial period of time at substantial expense. The Confidential Information is of great importance to Big Biotech's business. During the Term, Consultant may develop, become aware of or have access to the Confidential Information. Consultant acknowledges Big Biotech is or its licensors are and shall at all times remain the sole owners of the Confidential Information.

7.2. Nondisclosure of Confidential Information.

During the Term and thereafter, Consultant shall not directly or indirectly publish, disseminate or otherwise disclose, deliver or make available to any third party any Confidential Information, other than in furtherance of the purposes of this Agreement, and only then with the prior written consent of Big Biotech. Consultant may disclose the Confidential Information to persons within its organization who have a need to receive the Confidential Information in the course of the performance of their duties and who are bound to protect the confidentiality of the Confidential Information, as set forth in Section 4.2. above. Consultant may disclose the Confidential Information to a governmental authority or by order of a court of competent jurisdiction, provided that such disclosure is subject to all applicable governmental or judicial protection available for like material and reasonable advance written notice is given to Big Biotech. Consultant shall not issue any announcements or press releases mentioning Big Biotech or this Agreement without the prior written consent of Big Biotech.

7.3. Nonuse of Confidential Information. During the Term and thereafter, Consultant shall not directly or indirectly use any Confidential Information for Consultant's own benefit or for the benefit of any third party.

7.4. Physical Protection of Confidential Information.

During the Term and thereafter, Consultant shall exercise all commercially reasonable precautions to physically protect the integrity and confidentiality of the Confidential Information. Consultant will not remove any Confidential Information or copies thereof from Big Biotech's premises except to the extent necessary to fulfill the Consulting Services, and then only with Big Biotech's prior written consent.

7.5. Noncompetition. During the Term and for a period of one (1) year following termination or expiration of this Agreement, Consultant shall not provide (whether for or without compensation) consulting services to any business or entity developing a product or sponsoring a project which competes,

directly or indirectly, with a product or project being developed by Big Biotech and for which Consultant is providing Consulting Services.

8. Representations and Warranties.

8.1. Professional Skill and Care. Consultant represents and warrants that the Consulting Services will be performed in a professional and workman-like manner by qualified personnel. Consultant further represents and warrants that Consultant's performance of the Consulting Services and any Developments shall conform in all material respects to the requirements set forth in the **Business Terms Exhibit**. In addition, Consultant represents and warrants that Consultant's provision of, and Big Biotech's use of, the Consulting Services in accordance with this Agreement, and Developments and Licensed Works shall not infringe any proprietary or Intellectual Property Rights of any third party,

8.2. Rightful Owner. Consultant represents and warrants that Big Biotech shall receive, pursuant to this Agreement, complete and exclusive right, title and interest in and to all tangible and intangible property rights in the Developments. Consultant further warrants that it has developed the Developments entirely through its own efforts for Big Biotech and that the Developments are free and clear of all liens, claims, encumbrances, rights, title, interest, or equities whatsoever of any third party or Consultant. Consultant further represents and warrants that it is the owner of the Licensed Works or otherwise has the right to grant the license to the Licensed Works that is set forth in Section 6.4.

8.3. No Conflict of Interest. Consultant represents and warrants that Consultant is not bound by any contract or agreement, nor will Consultant enter into any contract or agreement during the Term of this Agreement, which would in any manner prohibit or restrict Consultant's performance of the Consulting Services or Consultant's compliance with any of the terms of this Agreement. Consultant warrants that Consultant's performance of this Agreement does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by Consultant in confidence prior to or concurrent with Consultant's performance of the Consulting Services or to refrain from competing directly or indirectly with the business of a third party. Consultant will not disclose to Big Biotech or induce Big Biotech to use any confidential or proprietary information or material belonging to any previous employer or others.

8.4. Year 2000. Consultant represents and warrants that all Developments and Licensed Works including, without limitation, any computer software, hardware, documentation, data, services and other related items provided by or through Consultant or any component thereof, shall not with respect to any date data which the Developments and Licensed Works use in any manner and any systems date which the Developments and Licensed Works use as its current date, malfunction, cease to function, generate incorrect data, or produce incorrect results, and shall function with respect to leap year calculations. Consultant further represents and warrants that in connection with providing date data to and accepting date data from other automated, computerized and/or software systems and users via user interfaces, electronic interfaces and data storage, the Developments and Licensed Works represent dates without ambiguity as to century. In the event the Developments and Licensed Works are century noncompliant in any respect, Consultant shall, at no cost to Big Biotech, within fifteen (15) days, correct the noncompliance and provide the corrected compliant Developments and Licensed Works to Big Biotech. Any such century noncompliance shall not constitute a *force majeure*.

8.5. No Disabling Devices; Viruses; GNU Licenses. Consultant represents and warrants that the Developments and Licensed Works do not contain any disabling device, code, computer virus or defect that will with the passage of time or otherwise, impair the functionality or use of the Developments and Licensed Works. Further, Consultant represents and warrants that the Developments and Licensed Works do not contain any software covered by any GNU license or similar "open source" license, or other software which could compromise or interfere in any way with Big Biotech's Intellectual Property Rights in the Developments as provided under this Agreement.

8.6. Absence of Debarment. Consultant represents and warrants that neither it, nor any of its Agents performing the Consulting Services under this Agreement, has been debarred, and to the best of Consultant's knowledge, is not under consideration to be debarred, by the Food and Drug Administration from working in or providing services to any pharmaceutical or biotechnology company under the Generic Drug Enforcement Act of 1992.

9. Infringement Indemnity. Consultant shall indemnify and defend Big Biotech against any claim that the Developments and Licensed Works infringe any Intellectual Property Rights. Consultant shall pay all

resulting costs, damages and reasonable attorneys' fees incurred by, or awarded against, Big Biotech or agreed to in any settlement provided that (a) Big Biotech promptly notifies Consultant of any such claim and (b) to the extent necessary and at Consultant's expense, Big Biotech reasonably cooperates in the defense and furnishes all related evidence in its control to Consultant.

10. Limitation of Liability. In no event shall Big Biotech or Consultant be liable for indirect, special, incidental or consequential damages, including without limitation loss of income even if the other party has been advised of the possibility of such damages.

11. Termination. Big Biotech may terminate this Agreement, in whole or in part, at any time upon written notice to Consultant. Consultant may terminate this Agreement by written notice to Big Biotech, effective immediately upon receipt, if a material breach of this Agreement by Big Biotech is not remedied within thirty (30) days after written notice specifying such material breach is given by Consultant to Big Biotech. Upon termination for any reason, Consultant shall promptly return all Big Biotech data, records, or materials of whatever nature or kind, including any Confidential Information and shall deliver to Big Biotech all work in progress. Termination of this Agreement shall not affect Big Biotech's obligation to pay undisputed amounts owed for Consulting Services previously performed by the Consultant or authorized expenses reasonably incurred by the Consultant.

12. Miscellaneous.

12.1. Independent Contractor; Taxes.

a. Independent Contractor. Consultant will render all Consulting Services as an independent contractor and this Agreement does not create an employer-employee relationship between Big Biotech and Consultant. Consultant shall not in any way represent itself to be a partner, any type of agent of or joint venturer of or with Big Biotech.

b. Taxes. Consultant shall pay all required taxes on Consultant's income from Big Biotech under this Agreement. Consultant shall provide Big Biotech with Consultant's taxpayer identification number or social security number, as applicable. Failure to furnish such information may result in a withholding of payments to Consultant in accordance with Internal Revenue Service regulations.

- 12.2. Insurance.** Consultant shall maintain, with financially sound and reputable insurers, insurance coverage (including workers compensation and comprehensive liability coverage) with respect to the conduct of its business against loss from such risks and in such amounts as is customary for well insured companies engaged in similar businesses.
- 12.3. Records.** Consultant agrees to maintain books, records, documents and other evidence pertaining to the costs and expenses of this Agreement (hereinafter, collectively called the “Records”) to the extent and in such detail as will properly reflect all costs and expenses for which the Consultant claims payment or reimbursement under the provisions of this Agreement, and shall make the Records available to an authorized representative of Big Biotech upon request by Big Biotech.
- 12.4. Publicity.** Consultant consents to the use by Big Biotech of Consultant’s name in written materials and oral presentations to current or prospective customers, partners, investors or others, provided that such materials or presentations accurately describe the nature of Consultant’s relationship with or contribution to Big Biotech.
- 12.5. Notice.** All communications and notices from one party to the other shall be in writing and shall be given by addressing the same to the other at the address or facsimile number set forth in this Agreement, or at such other address or facsimile number as either may specify in writing to the other. Communications and notices to Big Biotech will be marked “**Attention: Legal Department.**” All notices shall become effective when deposited in the mail with proper postage for first class registered or certified mail prepaid, return receipt requested, or when delivered personally, or, if promptly confirmed by mail as provided above, when dispatched by facsimile.
- 12.6. Entire Agreement.** This Agreement constitutes the entire agreement of the parties with regard to its subject matter, and supersedes all previous written or oral representations, proposals, negotiations, discussions, agreements and understandings between Big Biotech and Consultant concerning such subject matter.
- 12.7. Assignment.** This Agreement, and the rights and obligations hereunder, may not be assigned or transferred by Consultant without the prior written consent of Big Biotech. Any person to whom Consultant delegates obligations hereunder in accordance with Section 4.1 above shall be an agent or employee of Consultant and shall not be considered an agent or employee of Big Biotech or a party to or

beneficiary of this Agreement. Consultant shall remain solely responsible for performance of the Consulting Services, notwithstanding Consultant having delegated any such duties. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

- 12.8. No Modification.** Only a writing signed by both parties may modify this Agreement.
- 12.9. Compliance with Applicable Laws, Policies and Regulations.** In performing the Consulting Services, Consultant shall comply with all applicable laws, including without limitation the U.S. export laws, the Foreign Corrupt Practices Act, and all business conduct, regulatory, and health and safety guidelines or regulations established by Big Biotech or any governmental authority with respect to Big Biotech’s business.
- 12.10. Severability.** In the event that any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and all other provisions shall remain in full force and effect. If any of the provisions of this Agreement are held to be excessively broad, it shall be reformed and construed by limiting and reducing it so as to be enforceable to the maximum extent permitted by law.
- 12.11. Applicable Law.** This Agreement shall in all events and for all purposes be governed by, and construed in accordance with, the law of the Commonwealth of Massachusetts, U.S.A., without regard to any choice of law principle that would dictate the application of the law of another jurisdiction. The parties agree that the U.N. Convention on the International Sale of Goods shall not apply to this Agreement. English shall be the governing language of this Agreement.
- 12.12. Survival.** The terms and conditions of Sections 2, 6, 7, 8, 9, 10, 11 and 12 of this Agreement shall survive the expiration or termination hereof.

BIG BIOTECH, INC.

By _____
Print Name _____
Title _____
duly authorized

Date _____

CONSULTANT

By _____

Print Name _____

Title: _____
duly authorized

Date _____

Address _____

Telephone: _____

Facsimile _____

Taxpayer Identification No. _____

BIG BIOTECH
Agreement No.
123456789
*Please include this number on
all correspondence, invoices,
reports, payments, etc.,
regarding this agreement.*

BUSINESS TERMS EXHIBIT

1. Consulting Services

2. Fees

Compensation.

3. Project Leader

Consultant shall designate Joe the Consultant (the "Project Leader") as Consultant's primary contact with Big Biotech. During the Term, Consultant and the Project Leader will be available for consultation on a schedule to be determined by mutual arrangement and confirmed in writing between Consultant and Big Biotech's Joe the Client, to whom Consultant and the Project Leader will report during the Term. In addition, Consultant and the Project Leader will be available for a reasonable number of telephone and written consultations.

4. Location

The Consulting Services shall be rendered promptly at such times and at such places as Big Biotech may reasonably request, and in any event, will be completed on or before the end of the Term. Consultant's personnel will devote such time as is necessary to promptly perform Consultant's duties and obligations.

5. Term

The term of this Agreement shall commence on November 4, 2008 (the "Effective Date") and unless earlier terminated, shall terminate on January 20, 2013.