

RESEARCH CORE SERVICE AGREEMENT

This Research Core Service Agreement (“**Agreement**”) is made and effective as of this 1st day of March, 2017 (the “**Effective Date**”), by and between **The Brigham and Women's Hospital, Inc.**, a not-for-profit Massachusetts corporation, through its *[Core Name]*, having a principal place of business at 75 Francis Street, Boston, Massachusetts 02115 (“**BWH**”), and **COMPANY** (“**COMPANY**”). **COMPANY** and **BWH** are each hereafter referred to individually as a “**Party**” and together as the “**Parties**.”

Background

- A. BWH is a nationally-recognized teaching and research hospital, and has the charitable missions of furthering and improving patient care, undertaking biomedical research, and engaging in educational activities benefiting medical students, interns, residents, and other medical personnel. Through its *[Core]* BWH maintains the Crimson Core to provide ***CLIA-level services and support for clinical and research studies***. The Crimson Core services are made available to clinical investigators located within and outside of BWH in accordance with research study and design, protocol orders and participant requirements.
- B. **COMPANY** develops and commercializes **COMPANY ACTIVITIES**. In support of the Study, **COMPANY** requires the services of the Core to perform
 - (1) **CORE SERVICES TO BE PROVIDED**
- C. BWH is willing to provide such services to **COMPANY** in accordance with the terms and provisions of this Agreement. The Parties anticipate that the services contemplated by this Agreement will advance the charitable missions of BWH, the legitimate interests of **COMPANY**, and, ultimately, improve public health.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, the Parties hereto agree as follows:

1. **Scope of Activities.** The purpose of the activities undertaken pursuant to this Agreement is to provide services that are intended to facilitate, directly or indirectly, improvements in patient care and public health. BWH will ensure that its activities conducted within the context of this Agreement are in furtherance of and consistent with the charitable research, educational and patient care missions of BWH. The terms and conditions of this Agreement will govern the overall conduct of the activities undertaken by the Parties.

2. **Services and Deliverables.** BWH shall render the services described in **Attachment A** (the “**Services**”), including preparation of the materials described therein (the “**Deliverables**”), within the agreed-upon timeframes. BWH shall use diligent efforts to provide the Services in accordance with the professional standards reasonably expected of similarly situated academic institutions providing similar services. The Parties may from time to time add additional Services and/or Deliverables by executing a written amendment to Attachment A signed by both Parties.

3. **Compensation.** COMPANY shall compensate BWH for the Services at the rates and in the amounts detailed in **Attachment A** (the aggregate amounts due hereunder are the “**Fees**”). COMPANY shall pay the Fees within forty-five (45) days following its receipt from BWH of a duly issued written invoice. COMPANY shall also reimburse all documented, necessary and reasonable expenses incurred by BWH related to the Services and Deliverables including, without limitation, travel, lodging, materials and other costs (the “**Expenses**”) within forty-five (45) days following submission to COMPANY of records of Expenses. Such Expenses shall be billed at actual costs and must be approved, in advance, by COMPANY. COMPANY shall not be obligated to reimburse BWH for any expenses that do not comply with this provision. All payments due hereunder shall be remitted to BWH at the following address:

Partners Healthcare
c/o Research Core Facilities Financial Analyst
Suite 300
101 Huntington Ave
Boston, MA 02199

Reference:
Please submit payment referencing Account
2200-779001-106569

4. **No Endorsement; No Exclusivity.** COMPANY acknowledges and agrees that BWH’s fundamental purpose and approach is the rendering of vendor-neutral analyses and information pursuant to this Agreement. Nothing in this Agreement does or shall be construed to (i) require BWH or any of its affiliates to endorse or promote, or refrain from constructive or negative commentary regarding products, whether manufactured or marketed by COMPANY or its affiliates, or (ii) preclude BWH or any of its affiliates from rendering to other parties services similar to the Services provided pursuant to this Agreement to the extent that such services do not conflict or interfere with BWH’s performance under this Agreement.

5. **Term and Termination**

5.1 **Term.** Unless earlier terminated pursuant to Section 5.2 below, this Agreement shall be deemed effective as of the Effective Date, and shall continue in force for a period of one (1) year

(the “**Term**”). This Agreement may be extended for an additional period only upon the mutual written consent of both Parties.

5.2 Termination. This Agreement may be terminated by COMPANY, with or without cause, upon not less than thirty (30) days written notice to BWH. Either Party shall have the right to immediately terminate this Agreement, without prejudice to its other rights or remedies, by written notice of such election in the event that the other Party is in material breach of its obligations hereunder, which breach (if curable), remains uncured for thirty (30) days following receipt of written notice specifying the breach. In addition, if any part of this Agreement is determined to violate, or to be likely to violate, federal, state, or local laws, rules, or regulations, the Parties agree to negotiate in good faith all reasonably necessary revisions to this Agreement to cure the violation or reduce the likelihood of the violation. If the Parties are unable to agree to new or modified terms as required to bring the entire Agreement into compliance, either Party may terminate this Agreement.

5.3 Obligations Upon Termination. Upon the expiration or termination of this Agreement, COMPANY shall be obligated to pay any sums then due and owing (including unbilled Fees), and to reimburse BWH for any Expenses incurred by BWH in connection with the Services that are not readily refundable or cancellable. Upon payment of such Fees and Expenses, COMPANY shall have the rights described in Section 7 (“Intellectual Property and Rights to Deliverables”) to the Inventions and Deliverables existing as of the date of expiration or termination. Notwithstanding the expiration or termination of this Agreement, it is acknowledged and agreed that those rights and obligations which by their nature are intended to survive such expiration or earlier termination shall survive (if limited in time, for the time period stated therein), including but not limited to Sections 3 through 9, 11 and 12.

6. Confidentiality. Each Party that receives information (the “**Recipient**”) from the other Party (the “**Discloser**”) covenants and agrees that it shall use reasonable efforts, but no less than the protection given its own confidential information, to keep all information that is both (x) furnished by the Discloser to the Recipient in performance of the Services, and (y) reasonably necessary for the Recipient to enable or render the Services, as applicable, and (z) which, by appropriate marking, is identified as confidential and proprietary at the time of disclosure or, if provided visually or orally, is confirmed by the Discloser within ten (10) business days of disclosure as being confidential (“**Confidential Information**”) in strict confidence and will not disclose any of the Discloser’s Confidential Information, except to the Recipient’s representatives who are under an obligation of confidentiality on terms substantially similar to the terms of this Section, who have been informed of the confidential nature of the Confidential Information and who require the Confidential Information in the performance of their duties. Notwithstanding the foregoing, Discloser’s Confidential Information may be disclosed by the Recipient if required to be disclosed by operation of law or the requirement of a governmental agency or pursuant to any action undertaken by any governmental authority, provided that the Recipient shall notify the Discloser prior to any such disclosure and give the Discloser the opportunity to oppose such disclosure before such government agency, if applicable. “Confidential Information” shall not include information that is: (i) lawfully possessed by the Recipient prior to receipt from the Discloser; (ii) published or available to the general public, other than through a breach of this Agreement by the Recipient; or (iii) independently developed by employees, agents or consultants of the Recipient who had no knowledge of or access to the Discloser’s Confidential Information at the time of such development as evidenced by the Recipient’s written records. The duties of the Recipient under this Section shall continue for a period of three (3) years from the Effective Date of this Agreement.

7. Intellectual Property and Rights to Deliverables.

7.1 Intellectual Property. Each Party retains all rights, title and interest in and to any intellectual property it owned and/or controlled prior to the Effective Date (“**Pre-existing IP**”). Nothing

herein shall create a “work for hire,” as that term is defined under the Copyright Act of 1976, and neither Party shall acquire from the other any license or rights in, or claims to, any intellectual property (including, but not limited to, Pre-existing IP) or other interests owned or controlled by the other Party by virtue of the performance of the Services or receipt of the Deliverables. BWH shall retain full rights to all inventions, background processes and methodologies and other information developed, owned or licensed by BWH, including improvements thereto, even if utilized, improved or created during the course of preparing the Deliverables or otherwise providing the Services. Notwithstanding the foregoing, if in the performance of Services, BWH first conceives and reduces to practice an invention that relates specifically and exclusively to any COMPANY technology or device or drug that is the subject of the applicable Services rendered by BWH under this Agreement ("Invention"), such Invention shall be owned by COMPANY and BWH shall assign all right, title and interest in and to such Inventions to COMPANY.

7.2 Rights to Deliverables. COMPANY shall own all documents, reports, written materials and other tangible materials created by BWH during the Term specifically and exclusively for COMPANY during the Term in the performance of the Services and identified as a “Deliverable” in Attachment A. BWH shall ensure that Deliverables do not include or embody any patentable intellectual property developed, owned or controlled by BWH, and COMPANY shall not through its receipt of the Deliverables acquire any right, title or interest to any BWH patentable intellectual property.

8. Warranty Disclaimer; Limitation of Liability.

8.1 Warranty Disclaimer. The Services provided by BWH under this Agreement are provided “AS IS” and BWH is not responsible for ensuring that COMPANY’S implementation of the results of the Services will be clinically sound, without error or otherwise successful. BWH SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

8.2 Limitation of Liability. IN NO EVENT SHALL EITHER PARTY, OR ANY OF ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE TRUSTEES, DIRECTORS, OFFICERS, MEDICAL OR PROFESSIONAL STAFF, EMPLOYEES OR AGENTS BE LIABLE TO THE OTHER PARTY OR ANY OF ITS AFFILIATES FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE RIGHTS GRANTED HEREUNDER, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, REGARDLESS OF WHETHER SUCH PARTY SHALL BE OR HAVE BEEN ADVISED, SHALL HAVE REASON TO KNOW OR IN FACT SHALL KNOW OF THE POSSIBILITY OF THE FOREGOING; PROVIDED, HOWEVER, THE FOREGOING LIMITATION OF LIABILITY IS NOT INTENDED, AND SHALL NOT BE CONSTRUED, TO LIMIT OR CAP THE COMPANY’S INDEMNIFICATION OBLIGATION SET FORTH IN SECTION 9 (“INDEMNIFICATION”), BELOW.

9. Indemnification. COMPANY shall defend, indemnify and hold harmless (collectively, “Indemnification” or “Indemnified”) BWH, its affiliates and their directors, officers, employees and agents (each, an “**Indemnified Party**”) from and against any and all claims, actions, losses, damages, judgments, obligations and liabilities, including reasonable attorneys’, accountants’ and experts’ fees (collectively, “**Losses**”), relating to or arising from, in whole or part, any product, process or service made, used or sold by COMPANY incorporating any results of the Services, including but not limited to

Deliverables and Inventions. Notwithstanding the foregoing, no Indemnified Party shall be indemnified for Losses resulting from the willful misconduct or gross negligence of such Indemnified Party.

10. **Compliance with Laws.** While acting pursuant to this Agreement, the Parties shall comply with all applicable laws, rules and regulations, including but not limited to the federal Anti-Kickback Statute at 42 U.S.C. 1320a-7(b), all applicable conditions of participation in governmental health care programs, and the U.S. Foreign Corrupt Practices Act. In furtherance thereof, the Parties agree as follows:

10.1 The Parties hereby agree to comply with all applicable confidentiality and security laws and requirements, including but not limited to the Health Insurance Portability and Accountability Act of 1996, and the regulations promulgated thereunder, as may be amended from time to time (“HIPAA”), including the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Rule”) at 45 CFR Parts 160 and 164, as amended, and Subtitle D of the Health Information Technology for Economic and Clinical Health Act (as incorporated in Title XIII of the American Recovery and Reinvestment Act of 2009 and to be codified at 42 U.S.C. §17921-17954) (“HITECH”) and its implementing regulations and guidance issued by the Secretary of the Department of Health and Human Services, all as amended from time to time.

10.2 All Services to be provided by BWH are as expressly set forth in this Agreement. The Services are and shall be restricted solely to those legitimate and reasonably necessary services for the conduct of the Study in a commercially reasonable manner. The aggregate compensation payable to BWH pursuant to this Agreement is and shall be consistent with the fair market value of such Services in the United States and have not been and shall not be determined in a manner which takes into account the volume or value of any referrals or business otherwise generated between COMPANY and BWH, or any of its affiliates, and shall not obligate BWH or any of its affiliates to recommend or arrange for the purchase of any Products or services offered by COMPANY or any affiliate thereof.

11. **Use of Names.** Neither Party may use the name, trademark, service mark, logo or other identifying characteristic (“Name”) of the other Party or any of its affiliates, or any of its or their respective directors, trustees, officers, appointees, employees or staff, in any advertising, promotional or sales literature, publicity or in any document employed to obtain funds or financing without the prior written approval of the party or individual whose Name is to be used; *provided, however*, either Party may publicly disclose the existence of this Agreement, including information regarding remuneration paid under this Agreement, the identity of the recipient, the source of the remuneration, and the monetary value of the remuneration for the sole purpose of complying with relevant codes of conduct or ethics policies and/or governmental transparency policies.

12. **Miscellaneous**

12.1 **Assignment; Subcontracting:** BWH shall not assign, delegate transfer or subcontract this Agreement or any of BWH’s rights or obligations hereunder without the prior written consent of COMPANY. No assignment or subcontracting, if any, shall relieve either Party of the performance of any accrued obligation which such Party may then have under this Agreement.

12.2 **Independent Contractor:** BWH acknowledges and agrees that it is engaged as an independent contractor and not as an employee, agent, partner or joint employer of COMPANY. BWH further acknowledges that any workers and/or consultants it assigns to conduct the Services are employees or agents of BWH and not of COMPANY, and with respect to any such employees and agents BWH assumes sole and full responsibility for withholding any and all appropriate taxes, and for complying with any federal, state and local employment laws and ordinances including, but not limited

to, workers compensation, unemployment insurance, and wage and hour laws. BWH shall also verify the identity and work authority of each worker and/or consultant under the United States immigration laws.

12.3 Waiver: The failure of either Party hereto to enforce at any time any of the provisions or terms of this Agreement, or any rights in respect thereof, or the exercise of or failure to exercise by either Party of any rights or any of its elections herein provided, shall in no way be considered to be a waiver of such provisions, terms, rights or elections, or in any way to affect the validity of this Agreement.

12.4 Severability: If any of the provisions of this Agreement are held invalid or unenforceable, unless such invalidity or unenforceability substantially frustrates the underlying intent and sense of the remainder of this Agreement, such invalidity or unenforceability shall not affect the remainder of this Agreement.

12.5 Governing Law: This Agreement and the performance of all obligations hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts (without reference to its choice of laws principles).

12.6 Entire Agreement: This Agreement, including all referenced appendices, exhibits and attachments, if any, constitutes the entire agreement between COMPANY and BWH and supersedes any and all other prior and contemporaneous agreements and understandings between COMPANY and BWH, whether oral or written, with respect to the subject matter hereof. This Agreement shall not be modified or amended in any manner except by a writing signed by both Parties.

12.7 Interpretation: This Agreement is the product of negotiation between the Parties and shall not be interpreted for or against either Party on account of the role of either Party in the drafting thereof.

12.8 Headings: Section headings are for reference purposes only and shall not be considered in the construing of this Agreement.

12.9 Excused Performance: Any delays in or failure of performance by any Party under this Agreement, other than failure to make payments hereunder, shall not be considered a breach of this Agreement if and to the extent caused by occurrences beyond the reasonable control of the Party affected, including but not limited to: Acts of God; acts, regulations or laws of any government; strikes or other concerted acts of workers; fires; floods; explosions; riots; wars; rebellion; terrorism; and sabotage; and any time for performance hereunder shall be extended by the actual time of delay caused by such occurrence; provided that if such delay continues for a period of sixty (60) consecutive days, either Party may terminate this Agreement upon written notice to the other Party, and provided further that the absence of adequate funding to meet payment obligations hereunder shall in no event be deemed to be a circumstance beyond the applicable Party's control.

12.10 Notices: Any notice or other communication required or permitted under this Agreement shall be in writing and will be deemed given as of the date: (i) it is delivered by hand; or, (ii) the next business day after having been sent, shipping prepaid, return receipt requested, by nationally recognized overnight courier service, in each case to the receiving Party at the address listed below, or such other address as may subsequently be specified in writing by the receiving Party:

To COMPANY:

To BWH:
The Brigham and Womens' Hospital, Inc.
75 Francis Street
Boston, Massachusetts 02115
Att'n: Leigh Keating

With a copy to:
Office of General Counsel
Research/Technology Section
Partners HealthCare System, Inc.
50 Staniford Street, 10th Floor
Boston, MA 02114

12.11 Third Party Beneficiaries: The provisions of this Agreement shall be for the exclusive benefit of the Parties hereto, and no third party is an intended beneficiary of, or shall be entitled to rely on, the provisions of this Agreement.

12.12 Counterparts: This Agreement may be executed in counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original, and all of which counterparts, taken together, shall constitute one and the same instrument even if both parties have not executed the same counterpart. Signatures provided by facsimile transmission or other electronic delivery shall be deemed to be original signatures.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed, effective as of the date first shown above, by their respective duly authorized representatives.

COMPANY

The Brigham and Women's Hospital, Inc.

By: _____

By: _____

Name: _____

Name: Lynn Bry, MD, PhD

Title:

Title: Medical Director, Crimson Core and
Massachusetts Host-Microbiome Center

Attachment A: DRAFT

1. Scope of Work- Services and Deliverables

Services: Please see above quote.

Deliverables:

2. Compensation

Fees: Please see above quote, good through 9/30/2017 (Partners Healthcare approves the core's fee schedule every year, to begin 10/1/2018 start of the institution's fiscal year). An updated quote can be provided upon request for each coming fiscal year.