January 2, 2019

The Honorable Stan Humphries  
The Honorable Larry Brown  
Capital Projects and Bond Oversight Committee  
Legislative Research Commission  
Capital Annex Room 34  
Frankfort, KY 40601  

RE: Helios, a CyTOF System

Dear Honorable Humphries and Brown:

In accordance with provisions of KRS 45.760(5), I am writing to report the purchase of equipment. I hereby certify that all terms and conditions of the subsections (a), (b) and (c) have been met.

The James Graham Brown Cancer Center will be spending $639,540 for a Helios, a CyTOF System. The system and service plan comes to a cost of $841,140, which will be funded by a state contracted fund (Doc ID Number: PON2 415 1900002934, Version 1). This system will enhance the capabilities for the new immuno-oncology program, which includes looking at up to 70 markers at once. The Cancer Center will be more competitive with other institutions for grants, because of the production of data by the system.

Please contact Kim Noltemeyer at 852-8186, if you have any questions about this purchase.

Sincerely,

[Signature]

Karl Dieter  
Director  
University Planning, Design and Construction

cc: President Neeli Bendapudi  
    Dan Durbin, CFO  
    Mark Watkins  
    Jason Chesney  
    Shaun McKiernan  
    Carla Wright (OSBD)
Purchase of Capital Equipment Greater than $200,000

The following information is required to make a request to the State to purchase equipment greater than $200,000. A copy of the vendor equipment quote will also need to be attached to the request.

A. Description of the item
Mass cytometry with Helios TM uses CyTOF® technology to enable deep profiling of translational and clinical research samples across a range of cell surface and intracellular markers. Designed to significantly reduce signal oveMap, mass cytometry empowers researchers to simultaneously interrogate cellular phenotypes, function and signaling status in higher dimension than traditional fluorescence methods.

B. The purpose of which it will be used
This machine will enhance the capabilities for the new Immuno-oncology program in order to provide data, which gives the Cancer Center a competitive edge above other institutions submitting similar grants. The machine can also look at up to 70 markers at once.

C. The necessity for the purchase
The necessity of this purchase is to allow Cancer Center researchers to have that competitive edge above other institutions when it comes to grant submissions. This machine will allow us to submit grants with data that other institutions don’t have the capabilities to. Also, this machine will be the mainstay for our immunomics core for the COBRE submission we are submitting in January. These items will bring significant revenue to the Cancer Center and the University of Louisville.

D. The amount expended for the purchase from each source of funds used
100% of the purchase will come from state contracted funds, speedtype GB190441A1

E. Will the money being used for the purchase jeopardize any existing program
No

F. The purchase will not require the use of any current general funds specifically dedicated to existing programs
No

G. Funds are available for the purchase and the method of financing the purchase will not require any additional appropriate of state funds.
No
**FLUIDIGM**

**Sales Quotation**

**QUOTE NO:** Q-42418  
**PLEASE REFERENCE QUOTE NUMBER ON PURCHASE ORDER**

**QUOTE DATE:** 11/29/2018  
**VALID THROUGH:** 12/28/2018  
**PAYMENT TERMS:** N30  
**FREIGHT TERMS:** FOB Origin, PP&DADD  
**CURRENCY:** USD  
**FLUIDIGM CONTACT:** Matt Anstett  
**CONTACT EMAIL:** mstafft@fluidigm.com  
**CONTACT PHONE:** +1 17347 173877

**SHIP TO:** Brooke DeGroot  
University of Louisville  
580 S. Preston St.  
Louisville, Kentucky 40202  
United States  
**PHONE:** 5025617526  
**FAX:**  
**EMAIL:** brooke.degroot@louisville.edu

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**Instruments**

<table>
<thead>
<tr>
<th>Item #</th>
<th>Product Name</th>
<th>Product Description</th>
<th>QTY</th>
<th>Unit List Price</th>
<th>Offer Price</th>
<th>Extended Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>107001</td>
<td>Helios, a CyTOF® System</td>
<td>Inductively coupled plasma ion source with free running RF generator and a balanced load coil interface; 5-stage vacuum system with 2-stage plasma-vacuum interface and TOF turbo-pump; ion-neutral decoupling ion deflector, high-pass ion optic and point-to-parallel focusing lens system; Orthogonal TOF analyzer operated at &gt;75000 spectra/second TOF cycle frequency; Discrete dynode ion detector; Detection system based on 1 GS/s 8-bit signal dual digitizing boards; Direct sampling spray chamber for individual cell assays; Microconcentric nebulizer; Automatic single sample pneumatic sample loader Auto optimization feature Instrument control and data handling CyTOF MS software. Warranty Period is the earlier of (a) 12 months from the date of installation or (b) 18 months from date of shipment. One PM is included within the Warranty Period.</td>
<td>1.0</td>
<td>USD 673,200.00</td>
<td>USD 639,540.00</td>
<td>USD 639,540.00</td>
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<td>USD 639,540.00</td>
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**Consumables**

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<th>Item #</th>
<th>Product Name</th>
<th>Product Description</th>
<th>QTY</th>
<th>Unit List Price</th>
<th>Offer Price</th>
<th>Extended Price</th>
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<tbody>
<tr>
<td>201081</td>
<td>Consumable Allowance</td>
<td>Consumable Allowance will expire December 31, 2018.</td>
<td>1.0</td>
<td>USD 10,000.00</td>
<td>USD 0.00</td>
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Fluidigm Corporation  
7000 Shoreline Court, Suite 100, South San Francisco, CA 94080, U.S.A tel: 650-266-6000 fax: 650-589-2546  
www.fluidigm.com
<table>
<thead>
<tr>
<th>Item #</th>
<th>Product Name</th>
<th>Product Description</th>
<th>QTY</th>
<th>Unit List Price</th>
<th>Offer Price</th>
<th>Extended Price</th>
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<tbody>
<tr>
<td>104500</td>
<td>CyTOF® Mass Cytometer Installation</td>
<td>On-site CyTOF Mass Cytometer instrument installation</td>
<td>1.0</td>
<td>USD 6,962.00</td>
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<td>104501</td>
<td>CyTOF® Mass Cytometer 101 Training</td>
<td>A 3-day intensive overview of the Fluidigm Mass Cytometer for 2 participants. The course includes hands-on experience and mastery of the mass cytometer operation and maintenance. Introduction to experimental design and data analysis is provided so that you can have the confidence to design experiments and engage in research projects following the course. *Must be used within 90-days of CyTOF instrument installation. Cost of training includes necessary Fluidigm Reagents.</td>
<td>1.0</td>
<td>USD 11,246.00</td>
<td>USD 0.00</td>
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<tr>
<td>104502</td>
<td>CyTOF® Mass Cytometer 201 Training</td>
<td>A 2-day Mass Cytometer operation and maintenance refresher visit to enable higher dimensional experiments and new research projects; including dedicated time for both operators and researchers. * Must be completed within 6-months of CyTOF instrument installation with CyTOF® Mass Cytometer 101 Training as a prerequisite.</td>
<td>1.0</td>
<td>USD 7,497.00</td>
<td>USD 0.00</td>
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<tr>
<td>104304</td>
<td>Helios Preventative Maintenance</td>
<td>1 on-site preventative maintenance visit Detector coverage not included Travel charges not included</td>
<td>1.0</td>
<td>Included</td>
<td>Included</td>
<td>USD 0.00</td>
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<td></td>
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Subscription Items:

Service

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<th>Item #</th>
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<th>Product Description</th>
<th>Serial Number</th>
<th>QTY</th>
<th>Months</th>
<th>Unit List Price</th>
<th>Extended Price</th>
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</thead>
<tbody>
<tr>
<td>104300</td>
<td>Helios Premium Plus Service Plan</td>
<td>Parts, labor, and travel Software updates Tier 1 on-site service response 2 on-site preventative maintenance visits per year 1 on-site application visit per year (up to two days) Detector coverage included (subject to vendor evaluation) Includes 2 consumable kits per year Remote tuning service (up to 6 sessions per year; not available in all areas) Phone and email technical support</td>
<td></td>
<td>1</td>
<td>48</td>
<td>USD 252,000.00</td>
<td>USD 201,600.00</td>
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<tr>
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<td></td>
<td></td>
<td>USD 201,600.00</td>
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CUSTOM ASSAY JOB IDs (if applicable):

Please Note:
Consumables allowance must be used by 12/31/19.
- Prices do not include any applicable sales tax, consumption tax, import duties or VAT.
- Pricing only valid upon receipt of total order.
- Purchase order may not differ materially from the items listed in this quotation.
- Optional items are available at an additional cost.
- This quotation subject to acceptance of attached Sales Terms and Conditions.
- Fluidigm, the "F" logo, BioMark, TOPAZ, Dynamic Array, and Digital Array are trademarks or registered trademarks of Fluidigm Corporation in the U.S. and/or other countries.
- Installation service performed by a Fluidigm representative is recommended.

Please email your order, indicating the quotation number, to salesadmin@fluidigm.com or fax it to Order Administration: 1.650.589.2548. Contact your sales representative with any questions regarding this quotation.
FLUIDIGM
Sales and License Terms and Conditions

1. DEFINITIONS AND RELATED MATTERS
1.1 “Buyer” means the customer entity on the Sales Quote or, if no Sales Quote was issued, the name of the purchaser on the Purchase Order submitted to Fluidigm to purchase the Products.
1.2 “Consumables” means all items to be supplied by Fluidigm except Instruments and Software.
1.3 “Documentation” means the user documentation accompanying, or provided by Fluidigm regarding, or for use in connection with, a Product or related Service, including at www.fluidigm.com/legalnotices.
1.4 “Fluidigm” means the Fluidigm entity on the Sales Quote or, if none, Fluidigm Corporation or one of its directly or indirectly wholly-owned subsidiaries.
1.5 “Instrument” means all electronic equipment, hardware and other electronic or mechanical items agreed to be supplied by Fluidigm, excluding any consumables and spare parts sold separately.
1.6 “Product” means each item, including any Instrument, Software and/or Consumable, listed in the applicable Sales Quote or, in the event a Sales Quote was not issued, listed in Fluidigm’s then-current price list applicable to Buyer’s jurisdiction, and identified in a Purchase Order.
1.7 “Services” means all advice given and services performed by Fluidigm.
1.8 “Software” means any firmware, software or data compilations (i) identified in the Agreement or (ii) provided by Fluidigm in connection with installation or operation of any Instrument. For the avoidance of doubt, Software shall not include any “open source” firmware, software or data compilations, as any such “open source” firmware, software or data compilations will be subject to the terms and conditions set out in the relevant “open source” license.

2. TERMS, CONDITIONS AND ORDERS
2.1 Terms and Conditions. Unless otherwise agreed in writing between the parties, the sale or license of any Products or Services (except Software, which is only licensed) by Fluidigm to Buyer shall be governed by these Sales and License Terms and Conditions, including any addenda attached hereto (these “Terms”), together with any written sales quotation issued by Fluidigm (a “Sales Quote”), any other terms and conditions expressly agreed to in writing by an authorized Fluidigm representative expressly referencing these Terms, and Buyer’s statement of the following information, and only such information, (i) the name and identity of the Products and/or Services purchased, (ii) quantity, (iii) bill to address, (iv) ship to address, and (v) if accurate, price (items (i)——instrument submitted by Buyer or any of its authorized representatives in any manner, including by facsimile, e-mail PDF or other electronic delivery, for or regarding the purchase of Products or Services from Fluidigm or its authorized representatives, and only if accepted by Fluidigm (“Purchase Order”)). These Terms, the Sales Quote (if any) and the Purchase Order Specifics shall be referred to herein collectively as this “Agreement.” If any applicable Sales Quote is deemed to constitute an offer by Fluidigm, Buyer’s acceptance, whether by Purchase Order or otherwise, is expressly limited to the terms of this Agreement and to the exclusion of any other terms and conditions, including any terms and conditions referenced in any Purchase Order. Such other terms and conditions are hereby deemed to be material alterations, and notice of objection to which is hereby given. If Buyer’s submission of a Purchase Order, whether or not in response to a Sales Quote, is deemed to constitute an offer, Fluidigm’s acceptance is expressly conditioned on Buyer’s assent to and acceptance of the terms and conditions of these Terms and to the exclusion of any other terms and conditions that are in any way inconsistent with these Terms (except the Purchase Order Specifics); such other terms and conditions, including any in Buyer’s Purchase Order, are hereby deemed to be material, and notice of objection to which is hereby given.
2.2 Acceptance of Orders. No Purchase Order shall be binding upon Fluidigm unless and until accepted by Fluidigm, in writing or otherwise, and Fluidigm shall have no liability or obligation to Buyer with respect to orders that are not accepted. Purchase orders placed under a Sales Quote cannot be rescheduled or cancelled without prior written approval of Fluidigm. No partial shipment of an order shall constitute the acceptance of the entire order, absent the acceptance by Fluidigm of such entire order. For Instrument orders, Fluidigm may require Buyer to identify in its Purchase Order the individual responsible for ensuring that Buyer provides a prepared and available installation site in accordance with Fluidigm’s site preparation specifications. Any provision in Buyer’s Terms (as defined below) permitting Buyer at its convenience to unilaterally change or cancel a Purchase Order (in whole or part) once accepted by Fluidigm shall be void and of no effect.
2.3 Contract Documents & Order of Precedence. Notwithstanding Section 2.1 above, if a Purchase Order that is accepted by Fluidigm contains or incorporates by reference any different or additional terms and conditions, and to the extent such different or additional terms and conditions are ultimately deemed part of the contract between Buyer and Fluidigm (e.g., by express written agreement of the parties, or by application of legal doctrine), then such contract shall consist of the following documents (notwithstanding any provision in such documents to the contrary): (1) the Sales Quote(s) (if any) issued by Fluidigm; (2) the Purchase Order Specifics; (3) these Terms; and (4) any other terms and conditions contained
in, or incorporated by reference into, Buyer’s order. Any conflict among these documents shall be resolved by giving them priority in the order listed above. Items (2) and (4) are collectively referred to herein as “Buyer’s Terms.”

3. LICENSE AND USE RESTRICTIONS

3.1 Limited License. Subject to these Terms, and to all applicable end user license agreement(s), notices, terms, conditions and/or use restrictions (i) printed on any Product packaging, label or insert, (ii) appearing in or included with the Software or any Documentation, or (iii) listed on Fluidigm’s website at http://www.fluidigm.com/legals/notice, Fluidigm grants to Buyer a non-exclusive, non-transferable, non-sublicensable license to use the Products sold and/or licensed to Buyer by Fluidigm or its authorized representative only in accordance with the applicable, then-current Documentation.

3.2 Certain Use Restrictions. Buyer acknowledges that the Products do not have United States Food and Drug Administration (“FDA”) or equivalent non-U.S. regulatory agency clearance or approval (“Approval”). Buyer acknowledges that the Products are labeled and intended FOR RESEARCH USE ONLY and NOT FOR USE IN DIAGNOSTIC PROCEDURES. Unless otherwise expressly stated by Fluidigm in writing, no claim or representation is made or intended by Fluidigm that any Product has any Approval for use in any diagnostic or other clinical procedure in connection with any law, regulation or governmental policy (collectively, “Regulatory Laws”). Buyer agrees that if it elects to use a Product for a purpose that would subject Buyer, its customers or any Product to the application of Regulatory Laws, Buyer shall be solely responsible for obtaining any required Approvals. Except where prohibited by law or as authorized by Fluidigm in writing, Buyer agrees not to: (i) transfer (including but not limited to resell, donate, or loan) a Product to any third party; (ii) use any non-Fluidigm consumables or reagents with any Product, except as expressly provided in the Documentation or where approved in writing by Fluidigm; (iii) use the Products to manufacture commercial products or (iv) use any Fluidigm consumables or reagents with any non-Fluidigm instrument, device or system. Except as otherwise expressly set forth in writing by Fluidigm, Buyer hereby agrees Consumables are sold and licensed for SINGLE USE ONLY and MAY NOT BE REUSED.

4. PRICES, TAXES AND PAYMENT

4.1 Prices. The price for any Product or related service shall be the applicable price stated in the Sales Quote, or, if no Sales Quote is issued, in Fluidigm’s then-current price list applicable to Buyer’s jurisdiction, which is subject to change without notice. Fluidigm’s Sales Quotes are only valid for thirty (30) days from the quotation date unless otherwise expressly stated in the Sales Quote.

4.2 Taxes; Shipping Charges. Unless otherwise expressly stated in the Sales Quote, Buyer’s purchase price does not include any U.S. or non-U.S. federal, state, local, sales, VAT, GST or other taxes, duties, or other governmental assessments (“Taxes”) that may be applicable to the Products or Services, nor does the price include freight and insurance; Buyer will be responsible for any such charges specified on Fluidigm’s invoice(s). All Taxes shall be paid or reimbursed by Buyer (other than taxes on Fluidigm’s net income), or in lieu thereof, Buyer shall provide Fluidigm with a tax exemption certificate acceptable to the applicable taxing authorities. Taxes and other charges payable by Buyer may be billed as separate items on Fluidigm’s invoice. Buyer shall be solely responsible for any non-United States withholding taxes (e.g., if Buyer is located or incorporated outside the United States) and if withholding taxes apply, Buyer shall gross up the amount payable to ensure post-withholding remittance to Fluidigm at the amounts quoted and invoiced by Fluidigm.

4.3 Payment. Unless otherwise expressly stated in the Sales Quote, Fluidigm shall invoice Buyer for a Product, and any and all Services ordered in connection with a Product, upon shipment of the Product, or if a Service Plan (as defined in Section 7.2) is purchased separately from the purchase of a Product, on the applicable start date of such Service Plan or, if no such start date is provided, upon Fluidigm’s acceptance of Buyer’s purchase order, and such invoice shall cover Buyer’s purchase price for the Product and/or related Services and any freight, insurance, Taxes or other applicable costs initially paid or payable by Fluidigm to be ultimately borne by Buyer, and Buyer shall pay all such amounts. Unless otherwise expressly stated in the Sales Quote or, in the event a Sales Quote is not issued, in Fluidigm’s then-current price list applicable to Buyer’s jurisdiction, all invoices shall be issued and payable in U.S. Dollars, and are due and payable thirty (30) days from date of invoice, subject to credit approval. Each delivery shall be considered a separate and independent transaction and payment therefor made accordingly. Amounts outstanding thirty (30) or more days from the date of invoice shall be subject to a service charge of one and one-half percent (1.5%) per month, or the maximum allowed by applicable law, if less. Notwithstanding the foregoing, if Buyer is an agency of the U.S. Government, payment will be made in accordance with the Prompt Payment Act, 31 U.S.C. 39 et seq. Buyer shall pay all of Fluidigm’s costs and expenses (including reasonable attorneys’ fees) to enforce and preserve Fluidigm’s rights under this section. If Buyer fails to make any payment when due or if Fluidigm deems Buyer to be or to have become un-creditworthy, then, without prejudice to Fluidigm’s rights, Fluidigm may, at its option, cancel and/or suspend future deliveries, and/or require prepayment, letter of credit, or other payment method(s).

5. DELIVERY AND ACCEPTANCE OF PRODUCTS

5.1 Delivery and Acceptance. Unless otherwise expressly stated in the Sales Quote, (i) all deliveries to destinations within the United States are F.O.B. shipping point, (ii) all deliveries to destinations outside the U.S. are FCA Fluidigm’s facility (ICC Incoterms 2010) and (iii) Buyer must take possession of delivery no later than six (6) months after the date of the
Purchase Order referencing the applicable Products. Fluidigm’s title (except for Software, which is only licensed), and all risk of loss, passes to Buyer, and Fluidigm’s liability as to delivery ceases, upon delivery of the Products at the F.O.B./FCA shipping point. For avoidance of doubt, if the above-identified shipping terms are deemed not to apply, title and risk of loss shall pass to Buyer upon transfer of Product from Fluidigm to the carrier unless both parties agree in advance and in writing otherwise. Unless specific shipping instructions have been agreed to in writing between Fluidigm and Buyer, Fluidigm will ship in accordance with its standard practices. Fluidigm may also, in its sole discretion, postpone delivery of an Instrument due to Buyer's failure to provide a prepared and available installation site in accordance with Fluidigm’s site preparation specifications or other factors within Buyer’s reasonable control. For multiple unit and/or multiple Product orders, Fluidigm may make delivery in installments, and each installment shall be deemed to be a separate sale. Fluidigm may issue a separate invoice for each installment, which invoice shall be paid without regard to prior or subsequent installations. All Products shall be conclusively and irrevocably deemed accepted without qualification by Buyer upon delivery. Buyer, however, will notify Fluidigm or its representative in writing of any nonconformity to Fluidigm’s extant specifications promptly after delivery. Fluidigm shall be entitled to repair or replace damaged, missing or nonconforming Products, and such repair or replacement shall constitute Buyer’s sole and exclusive remedies, and Fluidigm’s sole liability and obligation, for any damaged, missing or nonconforming Products.

5.2 Inspection and Installation. Without limiting the preceding section, Buyer shall promptly visually inspect any Product upon receipt and notify Fluidigm in writing of damage or missing parts that Buyer notes. If Buyer fails to comply with this section, Buyer shall be deemed to have waived its rights to claim incorrect or incomplete delivery or packaging and any related warranty rights. If Fluidigm has agreed to install the Instrument, it is Buyer’s responsibility, at Buyer’s cost, to have the installation site prepared and available for installation in accordance with Fluidigm’s site preparation specifications and free of hazardous or unsafe conditions and, unless otherwise agreed, to move the Instrument from Buyer’s delivery dock or receiving location to the place of installation. Buyer shall have appropriate Buyer personnel present at any such installation.

6. LIMITED WARRANTIES ON PRODUCTS

6.1 Limited Warranty and Remedy for Instruments and Software. Fluidigm warrants to and only to Buyer that for thirteen (13) months from the date of shipping (“Instrument Warranty Period”) that the Software and Instruments shall be free from defects in material and workmanship, and conform to Fluidigm’s published specifications at the time of purchase in all material respects; provided, however, that for purchases of either the Helios or Hyperion Instruments, the Instrument Warranty Period shall be the earlier of (a) 12 months from the date of installation or (b) 18 months from date of shipment. Buyer's sole and exclusive remedy, and Fluidigm's sole and exclusive liability, under the foregoing warranty shall be for Fluidigm to repair or replace Software and Instruments, as determined by Fluidigm in its reasonable discretion. Nonconforming Instruments will be serviced at Buyer's facility or, at Fluidigm's option, Fluidigm's facility. If service is performed at Fluidigm's facility, Fluidigm will bear shipping costs. This limited warranty is subject to certain exceptions listed below.

6.2 Limited Warranty and Remedy for Service Parts. Fluidigm warrants, only to Buyer, that spare, replacement or upgrade parts (collectively, “Service Parts”), including Instrument hardware upgrades, that are purchased by Buyer from Fluidigm hereunder or pursuant to the terms of Section 7.5 and installed by a Fluidigm service engineer subsequent to Instrument installation will be free of defects in materials and workmanship on the date of delivery, provided that Fluidigm receives Buyer’s written warranty claim during a period of the earlier of ninety (90) days from the date of installation or one hundred twenty (120) days from the date of delivery. Buyer’s exclusive remedy, and Fluidigm's sole liability and obligation, under this warranty are replacing, or at Fluidigm's option and in its sole discretion, giving credit for, any Service Parts not meeting the above warranty for which written notice is provided to Fluidigm within the applicable period. Service Parts that are not installed by a Fluidigm service engineer are sold “AS IS,” without any warranty, statutory, express or implied. The installation of an Instrument hardware upgrade does not extend or restart any Instrument warranty, but the parts comprising the Instrument upgrade are covered by the foregoing Service Parts limited warranty to the extent applicable. This limited warranty is subject to certain exceptions listed below.

6.3 Exceptions. These warranties shall not apply to, and shall be void for, any Product that (i) was subject to improper or abnormal use, storage, or operating environment, or any abuse, neglect, negligence or accident, including without limitation failure to properly perform routine maintenance and maintain the Product site in accordance with Fluidigm’s requirements or the use of the Product with any non-Fluidigm product (except as may be specifically recommended, with respect to standard laboratory reagents, tools and equipment ancillary to use of the Product, in the then-current Documentation for that Product), (ii) use of the Product outside of the country of sale, (iii) has been repaired, altered, disassembled or reassembled, or moved within, or removed from, Buyer’s facility by persons other than Fluidigm or its designee, other than repair or replacement of a third-party good by an authorized service provider, (iv) has failed due to externally caused short circuits, incorrect voltages, failure or fluctuation of electrical power, lightning, static or other improper external inputs, or due to Force Majeure, (v) used with any item other than Fluidigm Products (except as may be set forth in the extent applicable Fluidigm protocol for use of a Product, with associated standard laboratory tools and equipment ancillary to use of such Product) or (vi) is a consumable. For example, use of an Instrument with non-Fluidigm
integrated fluidic circuits (with or without carriers, collectively "IFCs") voids the warranty for that reader, unless specifically authorized in writing by Fluidigm. Buyer acknowledges that failure to comply with any restriction of use set forth herein will invalidate any warranty provided herein and any applicable Service Plan. For clarity, and without limitation, use of an Instrument with consumables other than the Consumables specified for use with that Instrument, will void the warranty for that Instrument. Without limiting the foregoing, with regard to Software, these warranties shall not apply to any failure to conform that is caused by the use or operation of the Software in an environment other than that intended or recommended by Fluidigm, or modifications to the Software not made or authorized by Fluidigm. These warranties are not transferrable or assignable, including without limitation, in any re-sale of a Product, and any such attempt to transfer or assign these warranties shall be void. Notwithstanding the foregoing, these warranties may be assigned for any Product that is acquired as a business asset in conjunction with a merger or acquisition of Buyer or of all or substantially all of Buyer's business assets of which the Product is a part. Fluidigm neither assumes, nor authorizes any other person to assume for it, any other obligations or liabilities in connection with the sale of Products. Repair or replacement of a Product shall not extend the original warranty period for that Product. Fluidigm's warranties do not cover de-installation, re-installation, or transportation of products.

7. LIMITED WARRANTIES ON SERVICE PLANS

7.1 Service and Maintenance. After the Instrument Warranty Period, Fluidigm may offer to provide extended service and maintenance for such Instrument pursuant to a separate written Service Plan that may be purchased by Buyer from Fluidigm.

7.2 Service Plans. If Buyer has purchased a separate written contract for repair services for an Instrument (a "Service Plan"), the Sales Quote and the applicable then-current Documentation, if any, for such Service Plan describe its level and features. During the Service Plan term, Fluidigm or its designee will provide the services described in the Service Plan (the "Covered Services"). Maintenance, repairs and replacements may be effected under the Service Plan with reconditioned or refurbished Products, parts or subassemblies. Any updates or upgrades to the Software, when delivered, shall become part of the Software and shall be subject to the same end user license agreement(s), notices, terms, conditions and use restrictions unless otherwise expressly stated in writing by Fluidigm. Covered Services exclude upgrades to hardware and Software for feature enhancements. Service Plans may not be transferred or assigned without Fluidigm's prior written consent. All replaced parts removed from an Instrument in connection with any services provided by Fluidigm or its designee shall become the property of Fluidigm upon their replacement. Fluidigm may, at no charge to Buyer, provide for the temporary use of its products by Buyer for any period during which Fluidigm is performing repairs of the Products pursuant to a Service Plan. Such temporary use may be subject to additional terms, including without limitation, the payment of fees for of such temporary products if such products are not timely returned to Fluidigm after a repaired or replacement Product has been provided to Buyer. Such temporary use may be subject to additional terms, including without limitation, the payment of fees for of such temporary products if such products are not timely returned to Fluidigm after a repaired or replacement Product has been provided to Buyer.

7.3 Service Limitations. Buyer agrees to follow the operation procedures published by Fluidigm, including procedures for routine maintenance. Fluidigm shall have no obligation to provide any service or parts required as a result of (i) failure of Buyer to maintain a software release level within one major release of the most current O/S Software release made available by Fluidigm to Buyer at no additional charge or (ii) items (i) through (v) in Section 6.4. Buyer shall reimburse Fluidigm at Fluidigm's then-current service call fees, including all labor, parts and travel charges, for all work of Fluidigm or its designee incurred in investigating or remedying any damage or malfunction that Fluidigm reasonably determines to not be part of the Covered Services.

7.4 Non-Covered Equipment. Any and all instruments, software and other products, and any parts or subassemblies of the foregoing, that are not provided by Fluidigm or its designee, as well as any external uninterruptible power supply (UPS), shall be deemed "Non-Covered Equipment." Fluidigm shall have no obligation to provide Covered Services for Non-Covered Equipment; moreover, and notwithstanding anything herein to the contrary, Fluidigm shall have no obligation to provide Covered Services in connection with any Instrument, part or subassembly: (i) that has been substantially altered (other than by Fluidigm or its designee); (ii) that does not incorporate all of Fluidigm's engineering improvements and other fixes that Fluidigm requests Buyer to implement; (iii) that incorporates Non-Covered Equipment or has Non-Covered Equipment attached; (iv) that has been operated in conditions outside of Fluidigm's environmental or electrical site specifications, as defined in the applicable, then-current Documentation; (v) that has been operated in hazardous environments or used to analyze hazardous materials that may cause residual contamination; or (vi) that has been repaired or maintained by anyone other than Fluidigm or its designee, except such routine maintenance as set forth in the applicable, then-current Documentation. Instruments that are no longer offered for sale by Fluidigm ("Obsoleted Items") will be maintained and repaired on a reasonable efforts basis by Fluidigm while covered by a Service Plan. If Fluidigm determines in its discretion that support, service or maintenance of such Obsoleted Items is no longer reasonable, Fluidigm shall notify Buyer of such determination and such Obsoleted Item shall be deemed Non-Covered Equipment.
7.5 **Billable Services.** All services performed by Fluidigm or its designee on Buyer’s Non-Covered Equipment or which are not Covered Services shall be billable to Buyer at Fluidigm’s then-current service call fees, including all labor, parts and travel charges.

7.6 **Access and Service Safety.** Buyer will provide Fluidigm and its designees reasonable and safe access to all Instruments for the provision of any services and for any audit of compliance with Fluidigm’s installation and operational guidelines. Buyer is responsible for proper disposal of all contaminated material and of contaminated parts and subassemblies that, in Fluidigm’s discretion, cannot be safely returned to Fluidigm. Any services that Fluidigm or its designee may provide in connection with the activities contemplated by this paragraph shall be deemed to not be Covered Services, and Buyer shall reimburse Fluidigm at Fluidigm’s then-current service call fees, including all labor, parts and travel charges, for all such work of Fluidigm or its designee.

7.7 **Limited Service Warranty.** Fluidigm warrants that it will render the Covered Services in a professional and workmanlike manner. As Fluidigm’s sole responsibility and Buyer’s exclusive remedy in the event of any material failure to meet such standard, Fluidigm shall make a commercially reasonable effort to remedy any resulting discrepancies. Any claim based on the foregoing warranty must be submitted in writing in accordance with Fluidigm’s standard procedures within thirty (30) days after delivery or the date of performance of the pertinent services at issue.

7.8 **Term and Termination.** The term of a Service Plan, if purchased, shall commence, as applicable, on the later of: (i) the date of expiration of the Instrument Warranty Period; (ii) the start Service Plan start date specified in the purchase order; or (iii) the date Fluidigm receives an authorized purchase order from Buyer. Such Service Plan will continue for the period specified in the applicable Sales Quote describing the Service Plan or, if no such term is specified, the term shall be one year. Service Plans shall not be automatically renewed. If Buyer wishes to obtain Covered Services for an Instrument beyond the term of the Service Plan or for additional Instruments, Buyer must submit a new order. Fluidigm may terminate a Service Plan immediately by giving written notice of termination to Buyer upon the occurrence of any of the following events: (a) Buyer defaults in the performance of any material requirement or obligation created by the Service Plan or any other agreement between Fluidigm and Buyer; (b) Buyer fails to make any payment to Fluidigm within (30) days of its due date; (c) Buyer ceases doing business; (d) Buyer becomes the subject of any bankruptcy, insolvency, or similar proceeding, becomes insolvent, makes an assignment for the benefit of creditors, is unable to pay its debts when due, a receiver is appointed for a substantial part of Buyer’s assets, or an action is taken toward the liquidation or winding up of Buyer’s business; or (e) Buyer suffers a materially adverse change in its financial condition or operations. In addition, either party may terminate a Service Plan by providing written notice thirty (30) days in advance to the other party and Fluidigm will reimburse Buyer on a pro rata basis up to the termination date for any payments made in advance by Buyer, less the implied value of Fluidigm’s time and materials costs and expenses in connection with the provision of services under any such Service Plan. No termination of a Service Plan shall release Buyer from any obligation to pay Fluidigm any amount that has accrued or become payable at or prior to the date of termination.

8. **WARRANTY DISCLAIMERS.** THE EXPRESS WARRANTIES AND THE REMEDIES SET FORTH IN SECTIONS 6 AND 7.7 ARE IN LIEU OF, AND FLUIDIGM AND ITS LICENSORS, SUPPLIERS AND REPRESENTATIVES HEREBY DISCLAIM, ALL OTHER REMEDIES AND WARRANTIES, EXPRESS, STATUTORY, IMPLIED, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OR REGARDING RESULTS OBTAINED THROUGH THE USE OF ANY PRODUCT OR SERVICE (INCLUDING, WITHOUT LIMITATION, ANY CLAIM OF INACCURATE, INVALID OR INCOMPLETE RESULTS), IN EACH CASE HOWEVER ARISING, INCLUDING WITHOUT LIMITATION FROM A COURSE OF PERFORMANCE, DEALING OR USAGE OF TRADE, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, FLUIDIGM AND ITS LICENSORS, SUPPLIERS AND REPRESENTATIVES SHALL NOT BE LIABLE FOR LOSS OF USE, PROFITS, REVENUE, GOODWILL, BUSINESS OR OTHER FINANCIAL LOSS OR BUSINESS INTERRUPTION, OR COSTS OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR INDIRECT DAMAGES FOR BREACH OF WARRANTY. ANY PRODUCT OR SERVICE PROVIDED WITHOUT A WRITTEN WARRANTY FROM FLUIDIGM IS PROVIDED “AS IS” WITHOUT (AND FLUIDIGM HEREBY DISCLAIMS) ANY WARRANTY, STATUTORY, EXPRESS, IMPLIED OR OTHERWISE. Without limiting the generality of Fluidigm’s general rejection of conflicting terms presented by Buyer, and for clarification purposes only, Buyer agrees that any different or additional warranty terms stated in Buyer’s Terms (if applicable) shall be void and of no effect.

9. **LIMITATION OF LIABILITY.** FLUIDIGM’S, AND ITS LICENSORS’, SUPPLIERS’ AND REPRESENTATIVES’, LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR SALE OF THE PRODUCTS OR PROVISION OF SERVICES SHALL BE LIMITED TO THE AMOUNT PAID BY THE BUYER FOR THE PRODUCTS AND/OR SERVICES TO FLUIDIGM IN THE PRIOR TWELVE (12) MONTHS. IN NO EVENT SHALL FLUIDIGM BE LIABLE FOR COSTS OF LOSS OF USE, PROFITS, REVENUE, GOODWILL, BUSINESS OR OTHER FINANCIAL LOSS OR BUSINESS INTERRUPTION, OR COSTS OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR INDIRECT DAMAGES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT, WARRANTY, PURSUANT TO ANY STATUTE, OR ON
ANY OTHER BASIS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR SALE OF THE PRODUCTS OR SERVICES, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT FLUIDIGM IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. Nothing in this Agreement shall operate so as to exclude or limit the liability of Fluidigm, its licensors, suppliers or representatives for any liability which cannot be excluded or limited by law.

10. INDEMNITY AND INSURANCE
10.1 Indemnification of Buyer. Subject to Sections 10.2 and 10.3 below, Fluidigm agrees to defend Buyer against any third party claim, proceeding or action ("Claim") to the extent the Claim alleges that any Product sold to Buyer hereunder, as delivered to Buyer by Fluidigm, directly infringes or misappropriates, as applicable, any patent, copyright, or other intellectual property right. Fluidigm will pay all damages awarded in a final non-appealable judgment, and settlements approved in writing by an authorized representative of Fluidigm, in connection therewith, provided that (i) Buyer provides to Fluidigm written notice of the Claim within thirty (30) days of receipt by Buyer of such Claim, or such earlier time as required to avoid prejudice to Fluidigm or its ability to defend such Claim, (ii) Buyer allows Fluidigm to control the defense and settlement of the Claim, and (iii) Buyer provides to Fluidigm reasonable assistance in connection therewith, at no charge to Fluidigm. Buyer may employ counsel at its own expense to assist it with respect to any such Claim, provided that this shall not obligate Fluidigm or its counsel to consult with or advise such Buyer counsel, nor affect Fluidigm's control of the defense and settlement of the Claim.

10.2 Exceptions. Fluidigm shall have no liability or obligation pursuant to this Section 10 with respect to Claims resulting from (i) modification of the Product other than by Fluidigm or its authorized service provider, (ii) combination of the Product with any item or method not supplied or specifically recommended in writing by Fluidigm, (iii) use of the Product other than in accordance with the Documentation and this Agreement (including without limitation use for diagnostic or other non-research uses), or (iv) compliance with Buyer's instructions, specifications or design to the extent such instructions, specifications or design materially differ from comparable Products that Fluidigm makes generally available to its customers (collectively, (i)-(iv), "Excluded Causes").

10.3 Remedy. In the event there is a Claim, or Fluidigm believes a Claim is likely, alleging intellectual property infringement or misappropriation, as applicable, with respect to any Product sold to Buyer hereunder, Fluidigm shall be entitled, without obligation to do so, at its option and expense, to (i) modify the Product so that it is no longer infringing, (ii) obtain a license with respect to the applicable intellectual property rights, or (iii) accept the return of each such Product purchased by Buyer hereunder (except for contaminated Products that, in Fluidigm's discretion, cannot be safely returned to Fluidigm) and in Buyer's possession and control, and provide to Buyer a refund of the price paid by Buyer to Fluidigm therefor, subject to reasonable deductions for damage and amortized on a straight line basis over three (3) years from original delivery to Buyer. Fluidigm will have no liability or obligation with respect to any alleged infringement occurring after the date Fluidigm makes any such remedy available to Buyer.

10.4 Exclusive Obligation. Notwithstanding any other provision, the foregoing Sections 10.1-10.3 state Fluidigm's sole liability and obligation, and Buyer's exclusive remedy, arising out of any actual or alleged intellectual property infringement or misappropriation, as applicable, of any kind, or any actual or alleged breach of any representation or warranty (statutory, express or implied) that the Products or Services do not infringe or misappropriate, as applicable, any third party intellectual property anywhere in the world.

10.5 Indemnification of Buyer. Buyer agrees to defend Fluidigm against any Claim (i) to the extent the Claim alleges infringement or misappropriation, as applicable, of any patent, copyright, or other intellectual property right as a result of any Excluded Cause, or (ii) that arises in connection with Buyer's use of Products (a) for any clinical purpose or application, (b) in violation of any applicable law or regulation, or (c) in the provision of services under any "fee for service" agreement or other arrangement. Buyer will pay all damages awarded, and settlements approved by Buyer, in connection therewith, provided that (x) Fluidigm provides to Buyer written notice of the Claim within thirty (30) days of receipt by Fluidigm of such Claim, or such earlier time as required to avoid prejudice to Buyer or its ability to defend such Claim, (y) Fluidigm allows Buyer to control the defense and settlement of the Claim, and (z) Fluidigm provides to Buyer reasonable assistance in connection therewith, at no charge to Buyer. Fluidigm may employ counsel at its own expense to assist it with respect to any such Claim, provided that this shall not obligate Buyer or its counsel to consult with or advise such Fluidigm counsel, nor affect Buyer's control of the defense and settlement of the Claim. If Buyer is a U.S. state, city, town or other municipality, or a public university, college or other not-for-profit institution chartered under the laws of a U.S. state, this section shall only apply to the extent permitted by applicable law. This section shall not apply if Buyer is an agency of the U.S. Government; in such case, Buyer's liability shall be limited by the Federal Tort Claims Act, 28 USC 2671, et seq.

11. INTELLECTUAL PROPERTY. Except to the extent prohibited by applicable law, Fluidigm shall retain all ownership of its intellectual property rights with respect to the Products. All rights, title and interest, including without limitation all intellectual property rights, in and to all Software, and all documentation for such software, including on-line read-me or help files (collectively "Software Documentation"), and the content of all training provided by Fluidigm representatives...
on Products are and shall remain the property of Fluidigm, its licensors and suppliers. All Software and related Software Documentation and training provided by Fluidigm are protected by copyright under 17 U.S.C. § 101 et seq. and other intellectual property rights, and their international equivalents and by international treaties. Buyer agrees not to reproduce training sessions in whole or in part.

12. MISCELLANEOUS

12.1 Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by first class mail (registered or certified if available; air mail if overseas), postage prepaid, or otherwise delivered by hand, commercial courier service, messenger or transmitted electronically by telecopy (fax) or e-mail PDF (with a copy to Legal@Fluidigm.com for any notice or communication in connection with a Claim or a Dispute), addressed to the addresses listed in the Sales Quote (or to Buyer’s address listed in its purchase order) or at such other address furnished with a notice in the manner set forth herein. Such notices shall be deemed to have been effective when delivered or, if delivery is not accomplished by reason of some fault or refusal of the addressee, when tendered (which tender, in the case of mail, shall be deemed to have occurred upon posting, and in the case of telecopy (fax), shall be deemed to have occurred upon transmission). All notices shall be in English.

12.2 Governing Law and Venue. This Agreement and any disputes arising out of or relating do this Agreement (including its formation or termination) or Fluidigm’s goods, software or related services (“Disputes”) shall be governed by and interpreted in accordance with the laws of the State of California, U.S.A., (provided, however, that if Buyer is a U.S. state, city, town or other municipality, or a public university, college or other not-for-profit institution chartered under the laws of a U.S. state, the law of such state shall govern), excluding in all cases choice of law provisions and excluding the United Nations Convention on Contracts for the International Sale of Goods. Unless Buyer is a U.S. state, city, town or other municipality, or a public university, college or other not-for-profit institution chartered under the laws of a U.S. state, in which case the laws of such state regarding Disputes shall govern, Fluidigm and Buyer agree that any dispute or controversy arising out of or in connection with this Agreement shall be finally settled by binding arbitration under the extant rules of the International Centre for Dispute Resolution, by one (1) arbitrator appointed in accordance with such rules. For sales originating in Asia, the venue of any such arbitration shall be Singapore; for sales originating in Europe, the venue of any such arbitration shall be London, England; and for sales originating in all other regions, the venue of arbitration shall be San Francisco, California. The arbitration shall be conducted in English, and any written evidence originally in a language other than English shall be submitted in English translation accompanied by the original or a true copy thereof. The decision and/or award rendered by the arbitrator shall be written, final and non-appealable, and the parties agree that the decision and/or award of the arbitrator shall be the sole, exclusive and binding remedy between them regarding any and all disputes, controversies, claims and counterclaims properly before the arbitrator. The parties agree that, any provision of applicable law notwithstanding, they will not request, and the arbitrator shall have no authority to award, punitive or exemplary damages against any party. The costs of any arbitration, including administrative fees and fees of the arbitrator, shall be shared equally by the parties, and each party shall bear the cost of its own attorneys’ and expert fees, provided that the arbitrator may at his or her discretion award to the prevailing party the costs and expenses incurred by the prevailing party in connection with the arbitration proceeding. The decision and/or award of the arbitrator may be entered in any court of competent jurisdiction for a judicial recognition of the decision and applicable orders of enforcement (which may include, without limitation, permanent injunctive relief or orders for specific performance or for equitable relief), and either party may apply to any court of competent jurisdiction for appropriate restraining orders or temporary injunctive relief pending resolution of any arbitration proceeding. For avoidance of doubt, any such equitable remedies shall be cumulative and not exclusive and are in addition to any other remedies which either party may have under this Agreement or applicable law.

12.3 Purchases for the U.S. Government. If Buyer is placing an Order for the United States Government or in support of a contract with the U.S. Government, Buyer agrees that the Products purchased are “commercial items” as defined in the U.S. Federal Acquisition Regulations (“FAR”). If Buyer is placing this Order in the name of the U.S. Government and the Order is less than or equal to $3,000, then Buyer agrees that only these Terms shall apply to the Order. If the Order is greater than $3,000, then Buyer agrees that the Order is subject to FAR Part 12, and pursuant to FAR 12.301 and 12.302, only those mandatory provisions of FAR 52.212-1, 52.212-3, 52.212-4 and 52.212-5, and these Terms, shall apply. If Buyer is placing this Order in support of a contract with the U.S. Government, Buyer agrees that only those mandatory clauses listed in FAR 52.244-6 as well as these Terms shall apply to the Order. All other terms and conditions are expressly rejected. In the event of a conflict between the FAR provisions referenced herein and these Terms, these Terms shall take precedence to the maximum extent permitted by applicable law.

12.4 U.S. Government End Users. The Software and Documentation provided by Fluidigm pursuant to this Agreement are “commercial items,” as the term is defined at 48 C.F.R. §2.101, consisting of “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, the commercial computer software and commercial computer software documentation are licensed to United States
Government end users (i) only as commercial items and (ii) with only those rights granted pursuant to the terms of this Agreement.

12.5 Export Controls. Buyer agrees that it will not export or transfer Product for re-export in violation of any United States laws or the laws of any other jurisdiction, or to any denied or prohibited person, entity, or embargoed country in violation of such laws.

12.6 Modifications. This Agreement and any Addendum may only be amended or supplemented upon the mutual written agreement of both parties.

12.7 Waivers. The waiver by either party of a term or provision of this Agreement or of any Addendum, or of the other party’s breach of this Agreement or of any Addendum shall not be effective unless such waiver is in writing and signed by such party. No waiver by a party of a breach by the other party of this Agreement or of any Addendum shall constitute a waiver of any other or subsequent breach by the other party.

12.8 Severability. If any section, paragraph, provision or clause or any portion thereof in this Agreement shall be found or be held to be invalid or unenforceable in any jurisdiction in which this Agreement is being performed, the remainder of this Agreement shall be valid and enforceable and the parties shall negotiate, in good faith, a substitute, valid and enforceable provision which most nearly effects the parties’ intent in entering into this Agreement.

12.9 Force Majeure. Except for the payment of money, neither party shall be liable to the other party for any failure or delay in the performance of any of its obligations under this Agreement for the period and to the extent such failure or delay is caused by civil unrest, threat of or actual acts of terrorism or war, embargoes, governmental actions, acts of God, earthquakes, floods, storms, fires, supplier delay, accidents, explosions, epidemics, quarantine restrictions, or other such contingencies beyond the reasonable control of the applicable party (“Force Majeure”). The party affected shall notify the other party as soon as practicable of any anticipated delay due to Force Majeure.

12.10 No Third Party Beneficiaries. This Agreement has been made and is made solely for the benefit of Fluidigm and Buyer and their respective permitted Subsidiaries, successors and assigns. Nothing in this Agreement is intended to (i) confer any rights or remedies under or by reason of this Agreement on any persons or entity other than the parties to this Agreement and their respective permitted successors and assigns; or (ii) relieve or discharge the obligation or liability of any third persons or entities to any party to this Agreement.

12.11 General. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The English language shall govern the meaning and interpretation of this Agreement. This Agreement (including without limitation all exhibits hereto and all attachments thereto, which are incorporated herein by this reference as though fully set forth in the body of this Agreement) embodies the final and complete understanding of the parties with respect to the subject matter hereof, superseding all prior oral or written communications. Neither party has entered into this Agreement in reliance on any statement or representation not expressly set out herein. No oral explanation or oral information by either party shall alter the meaning or interpretation of this Agreement.

12.12 Publicity. Neither party will issue any press releases concerning this Agreement or any Addendum or the relationship between the parties without the prior written consent of the other party.

12.13 Authority. The individual accepting this Agreement or the applicable Sales Quote on behalf of Buyer represents and warrants that he/she is authorized and empowered to bind Buyer to all of the terms and conditions set forth in this Agreement and all applicable Addenda.

12.14 No Conflicting Funding. Buyer represents and warrants that its use of any and all Products is not governed by any funding, grant or other terms or conditions, whether from the United States federal government or other institution, which would prevent Buyer from complying with all of the terms and conditions of this Agreement and of each Addendum.

12.15 Independent Contractors. Buyer’s relationship with Fluidigm is that of an independent contractor, and nothing in this Agreement or in any Addendum is intended to, or shall be construed to, create a partnership, agency, joint venture, employment or similar relationship.

12.16 Assignment. Buyer shall not assign, by operation of law or otherwise, this Agreement or any Addendum or any of its rights or delegate any of its obligations under this Agreement or any Addendum to any third party without the prior express written consent of Fluidigm. An “assignment” shall include any assignment or change of control in connection with any sale of all or substantially all of Buyer’s assets, any merger or acquisition of Buyer, or any event whereby the holders of the majority of Buyer’s voting equity immediately before such event will hold less that a majority of Buyer’s voting equity immediately after such event, whether any of the foregoing occurs in a single transaction or a series of transactions. Any attempted assignment in violation of this section shall be void.

12.17 Equitable Relief. A breach by Buyer of this Agreement or of any Addendum related to any Product or confidentiality will cause irreparable damage to Fluidigm for which money damages is not an adequate remedy, and Fluidigm shall be entitled to obtain equitable relief, in any court or forum notwithstanding Section 12.2, including but not limited to seeking injunctive relief, as well as monetary damages and any other appropriate relief, without obligation to post bond.
ADDENDUM FOR LICENSE OF
FLUIDIGM C1 SCRIPT BUILDER SOFTWARE

This Addendum for the Fluidigm C1 Script Builder Software contains terms that govern a license of the Fluidigm C1 Script Builder Software and its related documentation in addition to those contained in the main Agreement above. If there is a conflict between this Addendum and the main body of the Agreement, the terms of this Addendum shall take precedence as applicable for the Fluidigm C1 Script Builder Software only. In this Addendum, “You” and “Your” shall mean, as applicable, either the individual licensing the C1 Script Builder Software on his or her own behalf or using the C1 Script Builder Software as an employee of the Buyer in accordance with the accompanying Sales Quote. For purposes of this Addendum, all references in the main Agreement to “Buyer” shall be deemed to include You.
You may use C1 Script Builder Software by accepting the terms of the main Agreement and this Addendum. You agree to be bound by all of the terms and conditions of the main Agreement and this Addendum, INCLUDING:

• THE LIMITATIONS SET FORTH IN SECTIONS 7 AND 8 OF THE MAIN AGREEMENT ON HOW THE C1 SCRIPT BUILDER SOFTWARE MAY BE USED,
• FLUIDIGM'S RIGHTS TO FEEDBACK, AS PROVIDED IN SECTION 4.2 OF THIS ADDENDUM, AND
• NO BLOCKING PATENTS, AS PROVIDED IN SECTION 4.3 OF THIS ADDENDUM.

IF YOU DO NOT AGREE WITH ALL OF THE TERMS AND CONDITIONS OF THE AGREEMENT AND THIS ADDENDUM, YOU MUST DECLINE THE TERMS AND CONDITIONS AND YOU WILL NOT BE ABLE OR PERMITTED TO USE C1 SCRIPT BUILDER SOFTWARE.

You acknowledge that the Fluidigm C1 Script Builder Software and the related documentation are licensed and not sold: For Research Use Only. Not for use in diagnostic procedures.

1. Definitions
1.1 “Access Key” shall mean any user-specific and/or computer-specific identification code that Fluidigm, at its option, elects to use to enable and control Your access to and use of the C1 Script Builder Software. An Access Key may or may not be provided to You.
1.2 “C1 Script” shall mean a software module, developed using the C1 Script Builder Software, that provides instructions to a Fluidigm C1™ Single-Cell Auto Prep System (a "C1System") to enable the C1 System to run a particular protocol.
1.3 “C1 Script Builder Software” shall mean Fluidigm’s script development software program, however provided by Fluidigm, whether provided by Internet download, provided in tangible media (e.g., CD), or otherwise. “C1 Script Builder Software” includes, without limitation, any Updates provided by Fluidigm.
1.4 “Documentation” shall mean any documentation, including on-line read-me or help files, for the C1 Script Builder Software.
1.5 “Facility” shall mean Your facility located at Your address shown in the applicable Sales Quote or otherwise provided to Fluidigm in the connection with making the C1 Script Builder Software available to you.
1.6 “Update” means each patch, bug fix, error correction, update, upgrade, new version, new release, or other change to or replacement of the C1 Script Builder Software that Fluidigm provides. For the avoidance of doubt, Fluidigm has no obligation under this Addendum to create any Updates, or to provide any Updates.

2. License Grants
2.1 Software License. Subject to all of the terms and conditions in the main Agreement and this Addendum, Fluidigm grants You a personal, non-exclusive, non-transferable, non-assignable license, under Fluidigm’s intellectual property rights in the C1 Script Builder Software, solely to install, execute and operate the C1 Script Builder Software only at the Facility, on one or more computers owned or controlled by You, solely to develop C1 Scripts for use only on C1 Systems owned or controlled by You or to which You have access, as set forth herein, and for no other use.
2.2 Documentation License. Subject to all of the terms and conditions in the main Agreement and this Addendum, Fluidigm grants You a personal, non-exclusive, non-transferable, non-assignable license to use the Documentation solely as necessary to exercise the license granted in Section 2.1. You are granted no right to, and You agree not to, modify or make any copies of any Documentation for any purpose unless pre-approved in advance by Fluidigm in writing by Fluidigm.
2.3 Reservation of Rights. Fluidigm, its licensors and its suppliers reserve all rights in the C1 Script Builder Software and Documentation not expressly granted to You in this Addendum.

3. License Restrictions. The restrictions in this section are in addition to, and cumulative with, the limitations set forth in Sections 7 and 8 of the main Agreement.
3.1 Certain Restrictions. You shall not make, have made, import, sell, offer for sale, reproduce, distribute, publicly display, publicly perform, or modify or create a derivative work of, the C1 Script Builder Software or Documentation. You shall not permit access to the C1 Script Builder Software or Documentation through a network or over the Internet, as an application service provider (ASP) or otherwise. You shall not rent, lease, loan, time-share, assign or otherwise transfer the C1 Script Builder Software or Documentation or any part thereof. You shall not use the C1 Script Builder Software or Documentation in a service bureau arrangement. You shall not use the C1 Script Builder Software or Documentation for the benefit or on behalf of any third party, or make any C1 Script Builder Software or Documentation available to any third party.
3.2 Additional Restrictions. In addition to all other restrictions in this Addendum, You shall not: (i) create any translation or localization of the C1 Script Builder Software or Documentation; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code for the C1 Script Builder Software (except to the extent applicable laws specifically prohibit such restriction); (iii) use the C1 Script Builder Software or Documentation to develop any product or item (other than C1 Scripts as authorized herein); (iv) remove or alter any trademark, logo, copyright, patent markings or other proprietary notices, legends, symbols or labels on or in the C1 Script Builder Software or Documentation; or (v) publish any results of benchmark tests run on the C1 Script Builder Software or disclose C1 Script Builder Software features, errors or bugs to any third party without Fluidigm’s prior written consent in each case.
3.3 Script Distribution. You shall not disclose, distribute or make publicly available any of its C1 Scripts or instructions for creating any script except with written authorization from Fluidigm or in a venue provided by Fluidigm for such distribution.

4. Ownership; Rights Granted to Fluidigm
4.1 Ownership of Software and Documentation. All rights, title and interest, including without limitation all intellectual property rights, in and to the C1 Script Builder Software and Documentation, are and shall remain the property of Fluidigm, its licensors and suppliers. You hereby acknowledge such ownership and agree to refrain from any action which may jeopardize, limit or interfere in any manner such ownership. The C1 Script Builder Software and Documentation are protected by copyright and other intellectual property, and by international treaties.
4.2 Feedback License. You agree to, and hereby do, grant to Fluidigm, without any additional consideration, a worldwide, nonexclusive, royalty-free, perpetual and irrevocable license with the right to grant and authorize sublicenses, to use and exploit, without restriction, any suggestions, modifications, improvements, ideas, know-how (whether or not patentable), processes, designs, discoveries, works of authorship, or inventions that You may disclose or provide to Fluidigm related to the C1 Script Builder Software or Documentation ("Feedback"). You shall have no obligation to provide any Feedback to Fluidigm. All Feedback is provided by You AS IS and You shall have no liability with respect thereto other than for intentional misconduct.

4.3 No Blocking Patents. To help prevent blocking of development and use of C1 Scripts by Fluidigm and its other licensees, You agree not to seek or obtain any patent right (or utility model or similar right) for any invention conceived or reduced to practice in connection with or arising out of use of C1 Script Builder Software or any associated protocol (any such Patent rights, "C1 Foreground Patent Rights"). Without limiting Fluidigm's remedies, if You do obtain any C1 Foreground Patent Rights, You agree to grant, shall be deemed to have granted, and do hereby grant to Fluidigm a nonexclusive, worldwide, royalty free, fully paid, irrevocable license, with the right to grant and authorize sublicenses, under the C1 Foreground Patent Rights, until the expiration of the last of the C1 Foreground Patent Rights to expire, to exploit the C1 Foreground Patent Rights without restriction, including without limitation to make, have made, use, import, offer to sell, and sell C1 Scripts. For clarity, no license is granted by You with respect to the chemistry required to execute any protocol implemented by any C1Script.

5. Access Keys. An Access Key may be pre-installed by Fluidigm. If an Access Key is required, then You shall provide Fluidigm with the appropriate identification codes, as specified by Fluidigm support personnel, to generate an Access Key. The Access Key will be promptly sent to You via e-mail.

6. Confidentiality. You shall keep in confidence and trust and shall not disclose or disseminate, or permit any employee, agent or other person working under Your direction to disclose or disseminate, to any person or entity, the C1 Script Builder Software, Documentation, any Access Key, or any information and data related to any of the foregoing. You agree to employ at least the same methods and degree of care, but no less than a reasonable degree of care, to prevent such dissemination and disclosure as You employ for Your own trade secrets and other confidential and proprietary information. Your employees and agents may be given access to the C1 Script Builder Software or Documentation only on a need-to-know basis for the purpose of the license granted to You, and only if they have, either as a condition of employment or in order to access the C1 Script Builder Software or Documentation, agreed in writing to be bound by terms and conditions substantially similar to this section. The obligations in this section shall be in addition to, and are cumulative with, the confidentiality obligations in Section 12 of the main Agreement.

7. Warranty Disclaimer. IN ADDITION TO ALL DISCLAIMERS OF WARRANTY IN THE MAIN AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, FLUIDIGM, ITS LICENSORS AND ITS SUPPLIERS PROVIDE THE C1 SCRIPT BUILDER SOFTWARE AND DOCUMENTATION, AND ANY SUPPORT OR OTHER SERVICES OR INFORMATION, AS IS AND WITH ALL FAULTS, AND HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. THE ENTIRE RISK AS TO THE QUALITY, OR ARISING OUT OF THE USE OR PERFORMANCE, OF THE C1 SCRIPT BUILDER SOFTWARE (INCLUDING WITHOUT LIMITATION ANY RESULTING C1 SCRIPT) AND ANY DOCUMENTATION REMAINS WITH YOU.

8. Limitation of Liability. THE LIMITATIONS ON LIABILITY IN SECTION 10 OF THE MAIN AGREEMENT APPLY TO THIS ADDENDUM.

9. Term and Termination

9.1 Term. This Addendum shall be effective with respect to each party from Your acceptance as provided above, and it shall remain effective until terminated pursuant to this Addendum.

9.3 Termination. The license granted to You under this Addendum shall terminate thirty (30) days after written notice by Fluidigm of any material breach by You of the main Agreement or this Addendum, unless You cure the breach within such thirty (30) day period.

9.4 Effects. In the event of any termination of the license granted to You in this Addendum, within five (5) days of such termination, (a) You shall permanently destroy every copy of the C1 Script Builder Software and Documentation in Your possession or under Your control and send the Access Key as reported by the licensing system of the C1 Script Builder Software to techsupport@fluidigm.com and (b) Sections 1, 2, 3, 3.2, 3.3, 4, 6, 7, 8, 9.4 and 10 shall survive in perpetuity. You may continue to use any C1 Scripts created using the C1 Script Builder Software. Termination of the license granted to You this Addendum shall be in addition to all other rights and remedies of Fluidigm at law or in equity for any breach giving rise to such termination.

10. General Provisions. The provisions of Section 15 of the main Agreement apply to this Addendum.
Commonwealth of Kentucky
CONTRACT

DOC ID NUMBER:
PON2 415 1900002934 Version: 1 Record Date:

Document Description: Tobacco Settlement-UofL Cancer Research and Screening 18-20
Cited Authority: FAP111-44-00NP Memorandum of Agreement - Non Profit 501 (c) 3
Reason for Modification:

Issuer Contact:
Name: Kara Couch
Phone: 502-573-1555
E-mail: Kara.Couch@ky.gov

Vendor Name: UNIVERSITY OF LOUISVILLE RESEARCH FOUNDATION
OFFICE OF SPONSORED PROGRAMS ADMINISTRATION
300 EAST MARKET STREET SUITE 300 LOUISVILLE KY 40202-1959

Vendor No. KY0032862 Vendor Contact
Name: GRANTS MANAGEMENT
Phone: 502-852-3788
Email: JUDY.BRISTOW@LOUISVILLE.EDU

Effective From: 2018-07-01 Effective To: 2020-06-30

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<th>Delivery Date</th>
<th>Quantity</th>
<th>Unit</th>
<th>Description</th>
<th>Unit Price</th>
<th>Contract Amount</th>
<th>Total Price</th>
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Extended Description:
The University of Louisville's James Graham Brown Cancer Center will use the allotted $3,500,000 in fiscal year 2018-2019 and $3,343,250 in fiscal year 2019-2020 to lead to reduced cancer-related deaths and suffering of Kentuckians today and tomorrow through the development of new drugs, the clinical testing of novel immunotherapeutic, and improved cancer screening in Kentucky. Source of funds: Agency Funds Method of payment: Upon receipt and approval invoice, subject to the availability of funds.

Effective From: 2018-07-01 Effective To: 2020-06-30

<table>
<thead>
<tr>
<th>Line Item</th>
<th>Delivery Date</th>
<th>Quantity</th>
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Extended Description:
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<th>Billing Information:</th>
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**TOTAL CONTRACT AMOUNT:** $6,843,250.00
CONTRACTUAL AGREEMENT
between
KENTUCKY COUNCIL ON POSTSECONDARY EDUCATION
and
UNIVERSITY OF LOUISVILLE RESEARCH FOUNDATION

This Contractual Agreement (Agreement) is made and entered into by and between the Council on Postsecondary Education (Council), a governmental agency of the Commonwealth of Kentucky and the University of Louisville Research Foundation (Foundation) on behalf of the James Graham Brown Cancer Center. This Agreement is for cancer research funds received during fiscal years 2018-19 and 2019-20.

The Council and the Foundation on behalf of the James Graham Brown Cancer Center agree to the following provisions:

Introduction and Overall Objectives

The fight against cancer is one of the most daunting challenges confronting our health care system today. And nowhere in the United States is that battle raging more fiercely than right here in Kentucky. The state leads the nation in the number of people stricken by the disease, and in the number of cancer-related deaths.

For the past 30 years, the UofL’s James Graham Brown Cancer Center has been working hard to fight this battle through state-of-the-art clinical care, research, education and outreach programs. This hard work has resulted in national recognition by the preeminent cancer care quality program in the U.S., the Commission on Cancer. In 2015, this Commission granted the Brown Cancer Center their Outstanding Achievement Award, designed to recognize cancer programs that strive for excellence in demonstrating compliance with the Commission on Cancer’s standards and are committed to ensuring high-quality cancer care.

Since opening in 1981, the Brown Cancer Center has become home to some of the best scientists and physicians anywhere – delivering many exciting breakthroughs and the highest level clinical care. UofL provides and develops the most effective approaches to the prevention, diagnosis and treatment of cancer. The UofL clinical programs offer patients the latest types of cancer treatments, state-of-the-art multidisciplinary care and, as an academic medical center at the forefront of cancer research, access to innovative cancer trials and screening. With the rapid growth, especially over the past decade, UofL has become a nationally preeminent academic cancer center. And through it all, the UofL have kept their original objectives at the heart of everything they do to:

- Deliver the latest in medical advances to our patients, with compassion and respect
- Raise the standard of cancer care in our region
- Generate new knowledge that helps us not just cure cancer in patients today, but prevent it in the next generation
- Address the prevalence and impact of cancer on Kentuckians through outreach, screening and prevention programs
Translational and Clinical Cancer Research Programs

UofL have fostered the emergence of a leading Cancer Center making critical contributions to clinical trials in the region and, through pioneering research, to cancer patients throughout the world. Much of the research that has been performed in our laboratories over the past 30 years has translated into clinical trials in humans, where new cancer drugs and diagnostics are tested.

Importantly, UofL was and continue to be a key center for the global testing of several new drugs that activate your body's own immune system against cancer. These immunotherapies are resulting in prolonged survival of patients who are participating in clinical trials and, as leaders in the field, we have incorporated their use in all of our cancer-specific multidisciplinary clinics. This means that tomorrow's medicine is available to our patients today with our research efforts working in parallel to fight cancer through prevention, early diagnosis, effective therapies and scientific breakthroughs.

UofL translational and clinical cancer research programs include the Experimental Therapeutics, Immuno-Oncology, and Cancer Care and Control Programs. These programs consist of faculty and staff from across multiple University of Louisville departments who are all focused on reducing cancer deaths and suffering locally and globally. These researchers work closely together with the UofL clinical oncologists to develop and test new ideas in the lab and to translate their discoveries into early phase clinical trials. Our multidisciplinary teams also work together to select novel agents for clinical trial testing at our cancer center which in turn means Kentuckians have greater access to the most promising new cancer drugs.

UofL intend to use the following amounts of the allocated FY19 and FY20 funds to support the salaries of our faculty and staff who are conducting this ground-breaking and life-saving translational and clinical research as well as any essential supplies and equipment that they may require.

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY19</td>
<td>$2,270,000</td>
</tr>
<tr>
<td>FY20</td>
<td>$2,113,250</td>
</tr>
</tbody>
</table>

Measurable outcomes include new extramural scientific grant funding, peer-reviewed publications, national presentations, patents, cancer trials and cancer patient accruals.

New Faculty and Staff Recruitment

UofL intends to continue their current growth trajectory by recruiting new faculty into our Immuno-Oncology Program. This will allow UofL to expand their translational and clinical research on novel immunotherapeutics and improve their likelihood of obtaining an Immuno-Oncology CoBRE which provides >$10M in funding for up to five faculty members and associated core support. More importantly, novel immunotherapies are saving lives because these agents don't just shrink tumors like chemotherapies, they activate your immune system to keep tumors from spreading into vital organs.

The UofL Experimental Therapeutics Program has discovered several new cancer drugs that are
undergoing testing in clinical trials. In order to continue to develop these new drugs, we also intend to expand our medicinal chemistry capabilities by hiring new staff to conduct pre-clinical studies of our novel agents.

FY19 $620,000
FY20 $620,000

*Measurable outcomes include new faculty and staff hires into the Immuno-Oncology and Experimental Therapeutics Programs and any associated new grant funding, peer-reviewed publications and patents.*

**Clinical Trial and Cancer Screening Expansion**

For the past decade, the University of Louisville’s James Graham Brown Cancer Center has been at the forefront of developing and testing immunotherapies including immunobiologies such as antibodies that activate immune cells and autologous tumor infiltrating lymphocytes that can directly kill cancer cells. UofL clinical researchers started studying these immunotherapeutic approaches in melanoma patients because this cancer is easily detected by the immune system and kills 40,000 children and adults per year.

UofL were the top center in the world to test the combination of agents that prime the immune system (oncolytic viruses) and agents that expand the immune system (immune checkpoint inhibitors). Both of these two classes of immunotherapies are now approved by the Food and Drug Administration and have resulted in a >10-fold increase in the 3-year survival of metastatic melanoma patients (from only 5% survival to 70% survival after 3 years). These statistics mean that close to 30,000 melanoma patients per year will now be alive to watch their children grow up, pursue their careers and enjoy their lives.

But what of the 8 million who will still die of cancer in 2018? UofL is confident that these same immunotherapeutic approaches can be applied to all cancer types to improve patient outcomes. UofL has worked hard to apply their science and clinical trials to more common adult cancers including lung cancer, colon cancer, breast cancer, prostate cancer, lymphomas and leukemias.

UofL is proud that the immunotherapies that were first tested against melanoma have now been found to reduce deaths caused by 12 other types of cancer. But these immunotherapies don’t work in everyone with cancer and millions still die per year.

UofL believes that clinical trials of these new immunotherapeutic approaches will reduce the number of deaths caused by cancer by 25% over the next five years – that’s 2 million lives saved globally and 150,000 lives saved just in the United States. These new drugs are typically only available at much larger centers on the coasts such as Memorial Sloan Kettering Cancer Center in New York, MD Anderson Cancer Center in Texas and the UCLA Jonsson Cancer Center in California but the Brown Cancer Center’s early focus and investment in the testing novel immunotherapies means that Kentuckians don’t have to fly thousands of miles to receive potentially life-saving therapies. A specific example is our clinical trial program of Tumor Infiltrating Lymphocytes for patients with melanoma, cervical, lung, and head & neck cancers – we have had patients come from all over Kentucky as well as from Colorado, Tennessee, Illinois and Minnesota to be treated on this life-saving trial in Louisville, Kentucky.
In order to continue UofL trajectory and reach their goal to reduce cancer death rates locally and globally, we intend to expand our Cancer Trials Program by hiring several clinical and regulatory staff to support our clinical investigators. Given that these immunotherapeutics—like surgery—work best when the cancer is caught early, UofL also will invest in our cancer screening efforts by hiring a new Screening Navigator.

**FY19** $610,000  
**FY20** $610,000

*Measurable outcomes include the hiring of 3 Research Nurses, 3 Clinical Trial Coordinators, 1 Regulatory Staff Member and 1 Screening Navigator who will support the expansion of the number of open cancer trials, cancer patient accruals and cancer screenings.*

**Summary of FY19 Allocation ($3,500,000) and FY20 Allocation ($3,343,250)**

UofL is confident that this two-year investment in the cancer research and screening efforts at the James Graham Brown Cancer Center, University of Louisville, will lead to reduced cancer-related deaths and suffering of Kentuckians today and tomorrow through the development of new drugs, the clinical testing of novel immunotherapeutic, and improved cancer screening in Kentucky. Furthermore, from a financial perspective these key infrastructure and recruitment funds will bring significant federal and private foundation funding for cancer research, pharmaceutical industry support for clinical trials and cancer patients from out-of-state who seek to participate in our cutting-edge clinical trials.

<table>
<thead>
<tr>
<th>UofL Cancer Research and Screening</th>
<th>FY19</th>
<th>FY20</th>
</tr>
</thead>
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<tr>
<td>Translational and Clinical Cancer Research Programs</td>
<td>2,270,000</td>
<td>2,113,250</td>
</tr>
<tr>
<td>New Faculty and Staff Recruitment</td>
<td>620,000</td>
<td>620,000</td>
</tr>
<tr>
<td>Clinical Trial and Cancer Screening Expansion</td>
<td>610,000</td>
<td>610,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>3,500,000</strong></td>
<td><strong>3,343,250</strong></td>
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**Reporting**

The University of Louisville's James Graham Brown Cancer Center will provide an annual financial report detailing the expenditure of the funds and an accompanying narrative report which summarizes the areas supported during the reporting period and outlines any measurable outcomes.

**OTHER TERMS**

1. This Agreement shall remain in effect through June 30, 2020. All payments to the Foundation are subject to the availability of funds.
Memorandum of Agreement Standard Terms and Conditions

1.00 Cancellation clause:
The state agency shall have the right to terminate and cancel this contract at any time not to exceed thirty (30) days' written notice served on the Contractor by registered or certified mail.

2.00 Funding Out Provision:
The state agency may terminate this agreement if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the agreement. The state agency shall provide the Contractor thirty (30) calendar days written notice of termination of the agreement due to lack of available funding.

3.00 Reduction in Contract Worker Hours:
The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the agreement will be reduced by the amount specified in that document. If the contract funding is reduced, then the scope of work related to the contract may also be reduced commensurate with the reduction in funding. This reduction of the scope shall be agreeable to both parties and shall not be considered a breach of contract.

4.00 Access to Records:
The state agency certifies that it is in compliance with the provisions of KRS 45A.695, "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The Contractor, as defined in KRS 45A.030, agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this agreement for the purpose of financial audit or program review. The Contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. Records and other prequalification information confidentially disclosed as part of the bid process shall not be
deemed as directly pertinent to the agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

5.00 Effective Date:
All Memorandum of Agreements are not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the agreement and until the agreement has been submitted to the government contract review committee. However, in accordance with KRS 45A.700, memoranda of agreement in aggregate amounts of $50,000 or less are exempt from review by the committee and need only be filed with the committee within 30 days of their effective date for informational purposes.

KRS 45A.695(7) provides that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary.

6.00 Violation of tax and employment laws:
KRS 45A.485 requires the Contractor and all subcontractors performing work under the agreement to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the Contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to corporate and utility tax, sales and use tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the Contractor and all subcontractors performing work under the agreement shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the Contractor and all subcontractors performing work under the agreement shall be in continuous compliance with the provisions of those statutes, which apply to their operations, and that their failure to reveal a final determination as described above, or failure to comply with the above statutes for the duration of the agreement shall be grounds for the Commonwealth's cancellation of the agreement and their disqualification from eligibility for future state contracts for a period of two (2) years.
[Check box section below need only be included for Contractors that are quasi-
governmental entities or 501(c)3 non-profit entities.]

Contractor must check one:

_____ The Contractor has not violated any of the provisions of the above statutes within
the previous five (5) year period.

_____ The Contractor has violated the provisions of one or more of the above statutes
within the previous five (5) year period and has revealed such final determination(s)
of violation(s). Attached is a list of such determination(s), which includes the KRS
violated, the date of the final determination, and the state agency which issued the final
determination.

7.00 Discrimination:
This section applies only to agreements disbursing federal funds, in whole or part, when
the terms for receiving those funds mandate its inclusion. Discrimination (because of race,
religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is
prohibited. During the performance of this agreement, the Contractor agrees as follows:

The Contractor will not discriminate against any employee or applicant for employment
because of race, religion, color, national origin, sex, sexual orientation, gender identity
or age. The Contractor further agrees to comply with the provisions of the Americans
with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations
relating thereto prohibiting discrimination against otherwise qualified disabled individuals
under any program or activity. The Contractor agrees to provide, upon request, needed
reasonable accommodations. The Contractor will take affirmative action to ensure that
applicants are employed and that employees are treated during employment without
regard to their race, religion, color, national origin, sex, sexual orientation, gender
identity, age or disability. Such action shall include, but not be limited to the following;
employment, upgrading, demotion or transfer; recruitment or recruitment advertising;
layoff or termination; rates of pay or other forms of compensations; and selection for
training, including apprenticeship. The Contractor agrees to post in conspicuous places,
available to employees and applicants for employment, notices setting forth the provisions
of this non-discrimination clause.

In all solicitations or advertisements for employees placed by or on behalf of the
Contractor, the Contractor will, state that all qualified applicants will receive consideration
for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

The Contractor will send to each labor union or representative of workers with which he/ she has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this agreement or with any of the said rules, regulations or orders, this agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

The Contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency,
the contractor may request the United States to enter into such litigation to protect the interests of the United States.
Authorizing Signatures

This agreement is subject to the terms and conditions stated herein. By affixing signatures below, the parties verify that they are authorized to enter into this agreement and that they accept and consent to be bound by the terms and conditions stated herein. In addition, the parties agree that (i) electronic approvals may serve as electronic signatures, and (ii) this agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

Kentucky Council on Postsecondary Education (1st party)

________________________
Robert L. King, President  Date

Approved as to form and legality

________________________
Travis Powell, General Counsel

University of Louisville (2nd party)

Research Foundation, Inc.

________________________
Signature  10-04-11  Date  10/29/16

Printed Name:  Barbara Sells
Title:  Associate Director, OSPGA

Approved as to form and legality (optional)

________________________
Legal or General Counsel
Authorizing Signatures

This agreement is subject to the terms and conditions stated herein. By affixing signatures below, the parties verify that they are authorized to enter into this agreement and that they accept and consent to be bound by the terms and conditions stated herein. In addition, the parties agree that (i) electronic approvals may serve as electronic signatures, and (ii) this agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

Kentucky Council on Postsecondary Education (1st party)

\[Signature\]  \[Date\]

Robert L. King, President

Approved as to form and legality

Travis Powell, General Counsel

University of Louisville (2nd party)

\[Signature\]  \[Date\]

Printed Name:

Title:

Approved as to form and legality (optional)

Legal or General Counsel