

## Explanations to Use with Sponsor re: Why Sponsor Must Indemnify Us for Their Use of Our Results

1. If we are negligent in any way, Sponsor is off the hook.
2. In the event the invention is commercialized, Sponsor will indemnify Institution. Our need for being indemnified is only if the invention is commercialized, in that you are selling it for profit. Sponsor stands to make a lot of \$\$\$ -- Sponsor should bear the risk.
3. The 5-years-from-now scenario could happen ... As between the two of us, since we are not commercial, for-profit partner (we will never make a dime off your product), if we give you the results, you should be willing to bear the risks and pick up the tab (IF WE ARE NOT NEGLIGENT). It clearly states that all bets are off if we are NEGLIGENT!

If we are willing to share the results, and its only by sharing them with you and your using the results that this could happen in the future, then you should be willing to bear the risks and pick up the tab.

4. If it is early-on in the study and it is our idea and we do the primary studies WITH NO INDEMNIFICATION ... then Sponsor will need to further validate the drug/indication/use and when Sponsor performs these future studies THEY WILL Be indemnifying the institutions performing these validation studies. Why will Sponsor indemnify in the future but not now???

# Indemnification & Governing Law Rationale

## [Where we are indemnifying them...]

1. If we are indemnifying Sponsor (“...to the extent authorized by the Constitution and the State of Texas ...”), then it is okay for the governing law/jurisdiction provision to be silent. Also, this is NOT a Form G.

## Rationale

- a. When “governing law” is silent, the Court decides which law to use and it will usually (always) choose the state where the contract is performed (careful here, because this would not be rock-solid rationale if Sponsor is performing the contract themselves);
- b. We also ensure that Texas law will be invoked when interpreting the indemnification provision because the following language is always included “... to the extent authorized by the Constitution and the State of Texas ...”.