

**INTER-INSTITUTIONAL AGREEMENT
FOR JOINT INVENTION MANAGEMENT**

This Inter-Institutional Agreement for Joint Invention Management (the “IIA”) is between the Parties identified below.

No binding agreement between the Parties will exist until this IIA has been signed by all Parties. Unsigned drafts of this IIA shall not be considered offers.

NOW, THEREFORE, in consideration of the mutual covenants and premises herein contained, the parties hereby agree as follows:

The Terms and Conditions for Inter-Institutional Agreement for Joint Invention Management attached hereto as Exhibit A are incorporated herein by reference in their entirety (the “Terms and Conditions”). In the event of a conflict between provisions of this IIA and the Terms and Conditions, the provisions in this IIA shall govern. Capitalized terms used in this IIA without definition shall have the meanings given to them in the Terms and Conditions.

The section numbers used in the left hand column in the table below correspond to the section numbers in the Terms and Conditions.

1. Definitions			
Parties			
Effective date			
Patent rights:			
	<i>Application no/ Date of filing</i>	<i>Title</i>	<i>Inventor(s) (include employer for each)</i>
Know-how included		Is know-how included in the joint invention covered hereby? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Identification of know-how:			
If know-how is included in the Joint Invention, the items of know-how and the inventors thereof are as follows:			
	<i>Items of know-how</i>	<i>Inventor(s) (include employer for each)</i>	
Collaboration agreement	The results of the following collaboration agreement will be governed by this IIA:		
Managing party			
Management fee			

2.2. Third-party interests		
3.5. Allocable percentage of patent expenses		
3.7(a) Past patent expenses		
3.7(b) Patent expense cap		
5.3. Allocable percentage of net consideration		
5.3(b) Licensing expense cap		
11.10. Address for notice		
	For [Party 1]:	Attn: _____ Addr: _____ Fax: _____ Phone: _____ E-mail: _____
	For [Party 2]:	Attn: _____ Addr: _____ Fax: _____ Phone: _____ E-mail: _____
	For [Party 3]:	Attn: _____ Addr: _____ Fax: _____ Phone: _____ E-mail: _____
11.12 Governing Law		

12. Special Provision.

The parties hereby agree to the following special provisions set forth in this Section 12 with respect to this

IIA. In the event of a conflict between the terms set forth in this Section 12 and those set forth in the Terms and Conditions attached as Exhibit A, the terms and conditions set forth in this Section 12 shall govern.

13. No Other Promises and Agreements; Representation by Counsel.

Each party expressly warrants and represents and does hereby state and represent that no promise or agreement which is not herein expressed has been made to it in executing this IIA except those explicitly set forth herein and in the Terms and Conditions, and that such party is not relying upon any statement or representation of the other party or its representatives. Each party is relying on its own judgment and has been represented by legal counsel. Said legal counsel has read and explained to such party the entire contents of this IIA and the Terms and Conditions incorporated by reference herein. Each party hereby warrants and represents that it understands and agrees to all terms and conditions set forth in this IIA and said Terms and Conditions.

14. Deadline for Execution.

If this IIA is not executed by all parties within sixty (60) days of the first signature date below, then this IIA shall be null and void and of no further effect.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Inter-Institutional Agreement for Joint Invention Management.

Party 1

By _____
Name _____
Title _____
Date _____

Party 2

By _____
Name _____
Title _____
Date _____

Party 3

By _____
Name _____
Title _____
Date _____

Exhibit A
TERMS AND CONDITIONS FOR
INTER-INSTITUTIONAL AGREEMENT
FOR JOINT INVENTION MANAGEMENT

These Terms and Conditions (“Terms and Conditions”) are attached to and incorporated into an Inter-Institutional Agreement for Joint Invention Management (“IIA”). All Section number references in these Terms and Conditions shall be references to provisions in these Terms and Conditions unless explicitly stated otherwise.

Background

A. As co-owners of the Joint Invention, the Parties are entering into the IIA for the management of the Joint Invention, for their mutual benefit and for the public benefit.

B. The Agreement does not provide for any rights or obligations with respect to any future research project or any future research collaboration between the Parties, unless a specific joint research collaboration agreement is identified in Section 1 of the IIA.

1. Definitions.

“Agreement” means collectively (i) the Terms and Conditions, and (ii) the IIA.

“Allocable Percentage of Net Consideration” means the respective percentage allocated to each Party of Net Consideration, as set forth in Section 5.3 of the IIA.

“Allocable Percentage of Patent Expenses” means the respective responsibility allocated to each Party for Patent Expenses, as set forth in Section 3.5 of the IIA.

“Collaboration Agreement” means a joint research collaboration agreement, if any, the results of which the Parties wish to have governed by the Agreement, as set forth in Section 1 of the IIA.

“Confidential Information” means any non-public information which is maintained by a Party as confidential, including as examples, biological materials, computer source codes, diagrams, electronic files, trade secrets, patent applications, technical information, research data, draft publications, License Agreements, terms, and so forth, but excluding however any information which the recipient Party can establish by competent written proof (a) was in the public domain through no act or omission of the recipient Party or its employees, agents, successors or assigns in breach of this Agreement; or (b) was lawfully disclosed to the recipient Party by third parties having a right to disclose it; or (c) was already known by the recipient Party at the time of disclosure by the disclosing Party; or (d) was independently developed by the recipient Party without any reliance on the Confidential Information from the recipient Party; or (e) is required by law or regulation to be disclosed publicly.

“Effective Date” means such date as set forth in Section 1 of the IIA.

“Inventors” mean individuals who are joint inventors of the Patent Rights, in accordance with 35 U.S.C. §116, and who made inventive contributions to the Patent Rights while they were employees of a Party, as set forth in the IIA. In the case of Know-How, “Inventors” are the individuals so specified in Section 1 of the IIA.

“Joint Invention” means collectively the Patent Rights and the Know-How if the IIA indicates that Know-How is included in the Joint Invention covered by the Agreement.

“**Know-How**” means the specific information, if any, identified as Know-How in Section 1 of the IIA which is developed by the Inventors (or under the supervision or coordination of the Inventors) prior to the date of the Agreement or in connection with their research under the Collaboration Agreement, if any. For avoidance of doubt, information developed by employees of the Parties other than the Inventors identified in the IIA (and persons under the supervision or coordination of such Inventors) is not treated as Know-How. Further, any information developed after the date of the Agreement, even if developed by the Inventors, is not treated as Know-How, unless developed under the Collaboration Agreement, if any, or another separate written agreement expressly providing that it be treated as Know-How under the Agreement.

“**License Agreement**” means individually or collectively any and all license agreements, options for license agreements (an “Option Agreement”), or any other agreements involving the granting of rights to a third party in the Joint Invention, or any portion thereof.

“**License Consideration**” means collectively all of the money or other items of value (excluding research grants) payable by a Licensee (or its sublicensees, successors and assigns) under a License or Option Agreement for rights to use the Joint Invention, which payments are payable to the Parties pursuant to the License or Option Agreement. Examples of such License Consideration include up-front license fees (whether cash, equity, or other consideration), annual maintenance fees, patent expense reimbursements, milestone fees, minimum royalties, earned royalties, and so forth.

“**Licensee**” means any third party who has been granted rights pursuant to an Option Agreement or License Agreement in the Joint Invention or any portion thereof.

“**Licensing Expenses**” means all reasonable out-of-pocket costs and expenses incurred by the Managing Party for negotiating and entering into License and Option Agreements for the Joint Invention and for corporate entity formation and equity ownership matters relating to forming an entity to commercialize the Joint Invention, including for example outside attorneys’ fees and expenses. In addition, other related expenses, such as travel relating to negotiation of a License Agreement, may be treated as Licensing Expenses if mutually agreed upon in writing by the Parties. For avoidance of doubt, the salaries and costs of each Party’s technology transfer office or legal affairs office are not included as outside costs for purposes of calculating the Licensing Expenses.

“**Management Fee**” means a portion of the License Consideration, excluding Patent Expense reimbursements, retained by and payable to the Managing Party as consideration for the Managing Party performing the management duties set forth in Sections 3, 4 and 5, as set forth in Section 1 of the IIA.

“**Managing Party**” means the Party so designated in Section 1 of the IIA, who has the management responsibilities with respect to the Joint Invention as set forth in Sections 3, 4 and 5. There may be changes in the designated Managing Party pursuant to Section 10.6.

“**Net Consideration**” means all of the License Consideration, minus the Patent Expenses, Licensing Expenses and Management Fee.

“**Other Parties**” means Parties other than the Managing Party, each of whom is a non-Managing Party.

“**Parties**” means the entities identified as the Parties in Section 1 of the IIA; and “**Party**” means any one of the Parties.

“**Patent Expenses**” means all reasonable outside expenses incurred in connection with obtaining patent protection for the Joint Invention, both past and future, including for example, (i) attorneys’ fees payable to the patent attorney who prepares, files and prosecutes patent applications for the Joint Invention, (ii) fees payable to the United States Patent and Trademark Office and to other governmental foreign patent offices, (iii) translation fees, and (iv) costs for prior art searches. For avoidance of doubt, the salaries and costs of each Party’s

technology transfer office or legal affairs office are not included as outside costs for purposes of calculating the Patent Expenses.

“Patent Rights” means all patents and patent applications set forth in Section 1 of the IIA or that result from the joint efforts of two or more Parties under the Collaboration Agreement, if any, and any corresponding foreign patent application, issued patent, continuations, continuations-in-part (but only to the extent that the claims in the continuations-in-part have Inventors from two or more Parties and are entitled to a priority date from a patent application otherwise included in this definition), divisionals, substitutions, re-examinations, re-issues, and so forth.

2. Representations, Warranties and Covenants.

2.1 Assignment by Inventors. Each Party represents and warrants that its Inventors are obligated to assign to it or its governing system or board all of its rights in the Joint Invention, and that such Party will use diligent efforts to cause its Inventors to sign any additional papers as may be necessary to evidence such assignment.

2.2 Ownership and No-Conflict. Except for the rights, if any, of the Government of the United States resulting from governmental funding for the research which resulted in the Joint Invention, each Party represents and warrants to the knowledge of its Technology Transfer Office or other licensing office or department, it has not granted any rights to any entity or person to acquire any rights in the Joint Invention, except as specifically disclosed in Section 2.2 of the IIA. If there is any conflict between the Agreement and any applicable law, regulation or governmental agreement, then the provisions of such applicable law, regulation or governmental agreement shall prevail.

2.3 Grant of Authority. Each Party represents and warrants that it has authority to delegate the duties concerning the Joint Invention as set forth in Section 3, 4 and 5 to the Managing Party. The Managing Party represents and warrants to each Other Party that it has the power and authority to act on behalf of all Other Parties as the Managing Party with respect to its designated duties respecting the Joint Invention.

2.4 Competing Technologies. The Agreement does not restrict any Party from developing or acquiring interests in technologies which may compete with a Joint Invention or improve upon a Joint Invention, and from commercializing such technologies.

3. Patent Prosecution.

3.1 Authority and Coordination. The Managing Party shall have the responsibility and authority to take all reasonable actions necessary and appropriate to seek patent protection for the Patent Rights in accordance with the terms of the Agreement. The Managing Party may delegate this authority to a Licensee. Although the Managing Party shall have the ultimate decisional authority in these matters, the Managing Party shall use reasonable efforts to keep the Other Parties reasonably informed as to all material matters relevant to the patent prosecution process and decisional matters, and the Managing Party shall give due consideration to any recommendations made by the Other Parties concerning the patent prosecution matters. Without limiting the generality of the foregoing, the Managing Party shall confer with the Other Parties regarding (i) selecting the outside patent counsel to prepare and prosecute the patent application for the Patent Rights; (ii) the scope of claims to be included in the patent application; (iii) if Patent Expenses are being shared by the Parties and are not being paid or reimbursed by a Licensee, a budget for the Patent Expenses for the Joint Invention and performance against such budget; (iv) responses to inquiries and actions from the patent agencies; and (v) an action plan with respect to any challenges against the Patent Rights if the Managing Party is responsible for defending such challenge under Section 7. If a Licensee has been delegated authority over patent prosecution, the Managing Party can fulfill its obligations under the preceding sentence by conferring with the Other Parties regarding such matters and conveying the collective input of the Parties to the Licensee in accordance with a License Agreement mechanism that allows the Managing Party such input.

3.2 **Foreign Filings.** It is the expectation of the Parties that foreign filings, other than potentially an initial Patent Cooperation Treaty (PCT) filing, will not be made unless a third party is paying for those costs pursuant to a License Agreement, Option Agreement or otherwise. In the absence of a third party paying for such costs, the Managing Party may file for patent protection in foreign countries, but shall be solely responsible for all of the Patent Expenses related thereto (except the initial PCT filing, but no nationalizations thereof) unless the Other Parties expressly agree in writing to share the costs of foreign filings. Notwithstanding the foregoing, Patent Expenses for foreign prosecution are subject to reimbursement under Sections 5.2 and 5.3 out of License Consideration.

3.3 **Patent Ownership.** The patent applications and issued patents for the Joint Invention shall be in the name of, and jointly owned by, the Parties or their written designees.

3.4 **Information.** The Managing Party shall instruct the patent attorney who is hired to prosecute the patent applications (i) to furnish copies to the Other Parties of all draft and final patent applications, and all correspondence with patent agencies, and all material reports and analysis by the patent attorney, with respect to the Patent Rights, and (ii) to respond openly and promptly to the Other Parties' inquiries; provided, however, that Other Parties shall direct any comments or recommendations on patent drafting, strategy, responses to USPTO and the like to the Managing Party and not to the patent attorney. If a Licensee has been delegated authority over patent prosecution, the Managing Party can fulfill its obligations under the preceding sentence by obtaining copies of the information called for under clause (i) and providing it to the Other Parties and by obtaining access for the Managing Party to make inquiries of the patent counsel and relaying the Other Parties' inquiries to patent counsel. In addition, a Managing Party can, with the consent of the Other Parties, satisfy its obligations under clause (i) above with respect to USPTO filings, whether or not the Patent Rights have been licensed, by providing to the Other Parties information to allow them to access the USPTO Private PAIR for such filing.

3.5 **Patent Expense Allocation.** Section 3.5 of the IIA sets forth the manner in which the Patent Expenses will be allocated among the Parties. Section 3.6 will apply in the case where the Managing Party is paying 100 percent of the Patent Expenses. Section 3.7 will apply in the case where responsibility for the Patent Expenses is shared between the Parties.

3.6 **Managing Party Solely Responsible for Patent Expenses.** If Section 3.5 of the IIA indicates that the Managing Party is paying 100 percent of the Patent Expenses, then the Managing Party shall be solely responsible for reviewing, approving and ensuring payment of all Patent Expenses in a timely manner. The Party serving as Managing Party may not relieve itself of its obligations to continue prosecution of the Patent Rights or continue paying Patent Expenses unless it resigns or is removed as Managing Party in accordance with Section 10.6. If a Party ceases to be a Managing Party in accordance with Section 10.6, such Party shall not be responsible for new Patent Expenses incurred after the date it ceases to be Managing Party (except for any such expenses authorized by such Party). If a new Managing Party is appointed in accordance with Section 10.6(c), such new Managing Party shall be responsible for new Patent Expenses incurred after it becomes Managing Party (except for any such expenses authorized by the former Managing Party).

3.7 **Patent Expenses Shared Among the Parties.** If Section 3.5 of the IIA indicates that the Patent Expenses are being shared among the Parties, then the following provisions shall apply:

(a) Section 3.7(a) of the IIA shows the Patent Expenses incurred prior to the Effective Date and the Parties incurring such expenses. Within 60 days of the Effective Date, the other Parties shall pay their Allocable Percentages of Patent Expenses with respect thereto to the Parties that incurred such expenses.

(b) The Managing Party shall be solely responsible for reviewing and approving all Patent Expenses incurred after the Effective Date and for ensuring that payment of all Patent Expenses is made in a timely manner. The Managing Party shall furnish to the Other Parties copies of all such invoices for such Patent Expenses on approximately a quarterly basis; and the Other Parties, within 60 days after receipt of the invoices, shall reimburse to the Managing Party the Other Parties' Allocable Percentage of Patent Expenses which have

been paid by the Managing Party, subject to Section 3.7(c). Notwithstanding the foregoing, expenditures for Patent Expenses may not exceed the cap set forth in Section 3.7(b) of the IIA, if any, absent the advance written consent of the non-Managing Parties. This Section 3.7(b) shall not apply in the event that a Licensee is paying or reimbursing the Patent Expenses.

(c) Upon at least a 60 day prior written notice from a non-Managing Party (the “Withdrawing Party”) to all other Parties, the Withdrawing Party may decline to make future payments of its Allocable Percentage of Patent Expenses for one or more types of anticipated Patent Expenses (e.g., expense for continuing to prosecute a particular patent application, or for maintenance of a particular patent, etc.). As a result of such a decision, if the non-Withdrawing Parties pay the entirety of such Patent Expenses, then the Withdrawing Party shall cease to have any rights, interest or Allocable Percentage in Net Consideration realized from the Patent Rights for which the Withdrawing Party has elected to cease paying its Allocable Percentage of Patent Expenses.

(d) The Managing Party may terminate its responsibility for continuing prosecution of any patent application or patent claim (including a decision not to pursue a divisional), or the maintenance of any issued patent, by providing the Other Parties at least 60 days prior written notice, so the Other Parties have an opportunity to assume management responsibilities for such patent matter. If the Other Parties decide to assume management responsibilities for such patent matter, (i) such Other Parties will have the obligation to pay all Patent Expenses related to the continued prosecution incurred after the effective of date of termination of the Managing Party’s responsibility (except for such Patent Expenses authorized by the Managing Party), subject to such Other Parties later being able to abandon prosecution in the manner set forth in this Section 3.7(d), (ii) the withdrawing Managing Party shall be deemed to have resigned as Managing Party under Section 10.6(a) for the purposes of the Agreement, but only with respect to the Patent Rights the Managing Party has elected to abandon, (iii) the Other Parties may appoint a new Managing Party with respect to the Patent Rights the Managing Party has elected to abandon pursuant to Section 10.6(c), and (iv) the withdrawing Managing Party shall cease to have any rights, interest or Allocable Percentage in Net Consideration realized from the Patent Rights such Managing Party has elected to abandon.

3.8 Cooperation of Inventors. Each Party shall use its good faith and diligent efforts to cause its Inventors under its employ to cooperate and provide assistance as is reasonably requested in connection with the preparation or prosecution of the patent applications for the Joint Invention, in connection with any proceedings applicable to a challenge to the Patent Rights or an infringement of the Patent Rights, and in connection with the provisions of Section 9 with respect to prior review of publications by Licensees.

4. Licensing.

4.1 Authority and Coordination. The Managing Party shall have the responsibility, obligation and authority to diligently pursue all reasonable efforts to identify suitable prospective Licensees for the Joint Invention, and to negotiate and enter into one or more License Agreements for the Joint Invention for the mutual benefit of the Parties. The Managing Party shall keep the Other Parties promptly and reasonably informed as to the plans and activities of the Managing Party with respect to the licensing matters, and the Managing Party shall give due consideration to the recommendations made by the Other Parties with respect to the licensing matters. Without limiting the generality of the foregoing, examples of the foregoing are that the Managing Party shall confer with the Other Parties regarding (i) term sheets for potential License Agreements; (ii) business plans of prospective Licensees for commercializing the Joint Invention; (iii) alternative licensing opportunities; and (iv) the draft License Agreement before it is signed. The Managing Party will respond in a timely manner to status inquiries from the Other Parties regarding its licensing efforts. The Other Parties shall promptly communicate to the Managing Party any inquiries they receive regarding licensing the Joint Invention.

4.2 Exclusive Authority. The Managing Party shall have the exclusive right and authority to negotiate, execute and administer any and all Option Agreements and License Agreements for the Joint Invention; all of which Option and License Agreements shall be for the mutual benefit of the Parties; and such Option and

License Agreements upon execution by the Managing Party shall be binding on the co-ownership interests of the Parties in the Joint Invention; and the Other Parties shall not be entitled to enter into any Option or License Agreement for the Joint Invention with respect to the Other Parties' interest in the Joint Invention.

4.3 License Agreements. The form of License Agreements to be entered into by the Managing Party with respect to the Joint Invention shall contain financial terms and general legal terms which are customary for a university license agreement for the type of technology involved in the Joint Invention, including for example:

- a. Customary financial terms, generally including license fees, maintenance fees, milestone fees, royalties and sublicense fees.
- b. Terms as to "field of use," territory, and exclusive or non-exclusive nature.
- c. In the event of an exclusive license grant, an obligation on the Licensee to pursue commercially reasonable and diligent efforts to commercialize the Joint Invention.
- d. In the event of any exclusive license, an obligation on Licensee to pay all past and future Patent Expenses.
- e. The reserved right for the Parties to use the Joint Invention for academic, research and clinical purposes of the Parties.
- f. The reserved right for the Parties to publish the general scientific findings from their research related to the Joint Invention, subject to customary terms for prior review by the Licensee in accordance with Section 9.
- g. No assignment of any ownership interests in the Joint Invention.
- h. Standard indemnity obligations on the Licensee in favor of the Parties, and standard disclaimers by the Parties against all warranties, express or implied.
- i. Reasonable rights of the Managing Party to audit the Licensee's books and records applicable to the Licensee's payment obligations under the License Agreement.
- j. Customary provisions acknowledging that there are no implied licenses granted to the Licensee to use any other intellectual property belonging to the Parties, other than the Joint Invention.
- k. Customary insurance provisions as the Managing Party deems appropriate in the circumstances.
- l. Restriction to using the names of the Parties only in connection with factually based materials related to the Licensed Invention and the business of the Licensee, and specifically restricting the use of the name of any Party or its governing system or board in any name, brand or trademark related to Licensed Invention or any product created therefrom.
- m. Requirement that the Licensee comply with all applicable federal, state and local laws and regulations in the exercise of its license rights, including, without limitation, all export laws and regulations.
- n. Acknowledgement by the Licensee that nothing in the License Agreement shall constitute a waiver of sovereign immunity by Parties that are state agencies.
- o. Standard confidentiality terms regarding licensed Know-How, if any.

If the Managing Party provides a draft License Agreement to an Other Party and specifically identifies in writing how that License Agreement deviates from the requirements of this Section 4.3, then such Other Party shall be deemed to have consented to such deviations unless it notifies the Managing Party otherwise within 10 business days.

5. Sharing Net Consideration.

5.1 Collecting License Consideration. The Managing Party shall have the responsibility, obligation and authority to diligently manage, administer and enforce the Licensee's performance of the License Agreement, including without limitation, receiving and collecting the License Consideration payable under the License Agreement, and performing such audit under the License Agreement as the Managing Party deems appropriate. The Managing Party shall keep the Other Parties fully and promptly informed as to all receipts of the License Consideration in accordance with Section 5.4. The Managing Party shall keep the Other Parties reasonably

informed of any material delinquencies, deficiencies or defaults by the Licensee in performing the License Agreement.

5.2 Recovery of Patent Expenses from Licensee. To the extent that the Licensee reimburses previously incurred Patent Expenses, said reimbursements shall be paid to the Parties in proportion to the prior Patent Expenses actually paid by each Party, except in the circumstances described in Section 3.7(c).

5.3 Net Consideration. Prior to the Managing Party distributing and paying to the Other Parties their Allocable Percentages of Net Consideration, the Managing Party shall deduct from the License Consideration and retain for itself or reimburse the Other Parties the following amounts:

(a) first, the Patent Expenses (which shall be distributed to the Parties in proportion to the prior Patent Expenses actually paid by each Party, except in the circumstances described in Section 3.7(c)),

(b) second, the Licensing Expenses (not to exceed the cap set forth in Section 5.3 of the IIA, except to the extent that a Licensee is explicitly reimbursing those expenses or paying a license documentation fee or similar fee for that purpose), and

(c) third, the Management Fee, if any.

5.4 Reports and Payments to Other Parties. Within 45 days after the Managing Party receives the License Consideration (including equity or other non-cash consideration), the Managing Party shall make the calculations as to the allocation of that License Consideration in accordance with the terms of the Agreement and furnish to the Other Parties a written report of such receipts and calculations (including itemized amounts for Licensing Expenses). The Managing Party shall deliver to the Other Parties with such report their Allocable Percentages of Net Consideration as shown in said calculations, if any. The reports and payments shall be mailed to the Other Parties at their addresses as specified in Section 11.10.

5.5 Equity or Other Non-cash Consideration. To the extent that the License Consideration includes equity or other non-cash consideration, such equity and non-cash consideration shall be distributed among the Parties (or to their designees) pursuant to their relative Allocable Percentage of Net Consideration, after the prior payment of the Management Fee, if any, out of such equity or other non-cash consideration. For the avoidance of doubt, in making a Management Fee payment in equity or other non-cash consideration, there will not be any valuation made of the equity or other non-cash consideration, but the Management Fee payment will simply be calculated by multiplying the Management Fee percentage by the total amount of equity or other non-cash consideration included in the License Consideration. Management Fee payments of equity or other non-cash consideration shall not count towards any cap on Management Fee payments. Equity or other non-cash consideration will not be used to reimburse Patent Expenses or Licensing Expenses.

5.6 Inventors' Distribution. With respect to the Parties' policies and agreements for sharing with its Inventors a portion of the Net Consideration, each Party shall be responsible for making its own distributions to its respective Inventors; and the Managing Party shall not have any responsibility to make any distributions to the Other Parties' Inventors.

5.7 Audit. The Other Parties, either separately or jointly, shall have the right to hire an independent, certified public accountant who is reasonably acceptable to the Managing Party, to audit the books and records of the Managing Party related to the License Consideration and the calculation of the Net Consideration and the Allocable Percentage of Net Consideration. Such an audit may be exercised during normal business hours upon at least 30 days' prior written notice to the Managing Party, but not more frequently than once in any 12-month period. The Other Parties shall pay the costs for said auditor; but if the audit determines underpayments of at least five percent for the records audited, the Managing Party shall reimburse said auditor costs. The Managing Party will pay any past due amounts within 30 days of the results of such audit.

5.8 Allocation of Proceeds. The Parties acknowledge that in some circumstances gross licensing proceeds received by the Managing Party must be allocated for the purposes of making payments under the Agreement. Such circumstances include the Managing Party licensing the Joint Invention together with other inventions or a Party withdrawing under Section 3.7(d) from participating in payment of Patent Expenses for some portion of the Joint Invention. If allocation is required, the Parties shall negotiate in good faith an equitable allocation of the gross licensing proceeds. If the Parties are unable to agree upon an equitable allocation, such matter shall be resolved in accordance with Section 11.3.

6. Infringement by Third Parties.

If any Party learns of a potential infringement of the Patent Rights, they will promptly notify the other Parties. The Parties acknowledge that an exclusive License Agreement will generally provide a first right to the Licensee to pursue patent infringement claims against third parties who infringe the licensed Patent Rights. In the absence of a Licensee pursuing third party infringers of the licensed Patent Rights, the Parties will determine in good faith how to proceed against such potential infringer.

7. Challenge against Patent Rights.

If any challenge is made against the Patent Rights, the Parties shall confer and endeavor to agree how best to defend against such challenge. If no agreement is reached, then Managing Party may, if it so elects, defend against the challenge, as it deems most appropriate at its sole cost and expense. If it does not choose to defend against the challenge, then the Other Parties may jointly or separately defend against the challenge, as they deem most appropriate and at their sole cost and expense. All such expenses incurred by a Party will be deemed to be Patent Expenses for purposes of reimbursement out of Net Consideration under Section 5.3, but shall not be subject to sharing and reimbursement under Section 3.7(b).

8. Confidential Information.

Each Party agrees to maintain the confidentiality of the Other Parties' Confidential Information, and to not use the Other Party's Confidential Information, other than in accordance with the terms and purposes of the Agreement. If any Confidential Information from another Party is required by law, regulation or court order to be disclosed, the disclosing Party shall be given written notice and an opportunity to challenge such disclosure.

9. Publications.

Each Party reserves the right to publish the general scientific findings from its own research related to the Joint Invention, in accordance with each Party's own policies and practices. If a License Agreement or Option Agreement provision requires that the Licensee receive an advance copy of the proposed publication by any of the Parties relating to the Joint Invention to review for disclosure of Licensee's confidential information or other customary reasons, then the Parties shall comply with such provision, provided that the Parties shall not be required to furnish advanced copies more than 60 days prior to the publication and the Parties shall not be prevented from publishing.

10. Term and Termination; Change in Managing Party.

10.1 Term Duration. The term of the Agreement shall continue for the life of the last to expire of the Patent Rights for the Joint Invention and the last to expire of the License Agreements, unless terminated earlier in accordance with the provisions below.

10.2 Termination without Cause. Any Party may terminate the Agreement without cause upon 60 days' prior written notice to the other Parties, unless either (a) there is a License Agreement or Option Agreement currently in effect with respect to the Joint Invention, or (b) the Managing Party notifies the terminating Party that it is actively engaged in good faith negotiations with a bona fide potential Licensee and the Managing Party consummates a License Agreement with such potential Licensee within 120 days of the notice of termination. For the purpose of this Section, "actively engaged" shall mean that there has been at least one exchange of a draft License Agreement or term sheet between the Managing Party and the bona fide potential Licensee within 60 days after receipt of the notice of termination.

10.3 Breach. If a Party is in breach of its obligations under the Agreement, and the breach is not cured within 30 days after written notice of the breach is delivered to the breaching Party, then any other Party may elect to terminate the Agreement. The Agreement shall also terminate in accordance with Section 10.6(d) if there is a period of 30 days in which no Party is serving as Managing Party.

10.4 Joint Agreement. If all Parties agree in writing to terminate the Agreement, then the Agreement shall be so terminated.

10.5 Effect of Termination.

(a) Upon any termination, the Managing Party shall make available to the Other Parties copies of all relevant documents called for under the Agreement applicable to the Joint Invention, to the extent that copies have not been furnished previously.

(b) Upon any termination, each Party shall continue to be co-owners of the Joint Invention and the related Patent Rights and License Agreements.

(c) Upon any termination of the Agreement, such termination shall not affect any previously signed License Agreement; and the applicable provisions of the Agreement shall continue to be applied with respect to each such previously signed License Agreement, notwithstanding the termination of the Agreement.

10.6 Change in the Managing Party.

(a) The Party serving as Managing Party may resign from that position upon 60 days prior written notice to the Other Parties (or may be deemed to have resigned in the circumstances set forth in Section 3.7(d)).

(b) If the Managing Party is in breach of its obligations under the Agreement and does not cure its breach in the time period set forth in Section 10.3, or if the Managing Party has not been successful in signing a License Agreement within two years of serving as Managing Party, then at the option of the Other Parties with a majority of the Allocable Percentage of Net Consideration held by all such Other Parties they may elect by written notice to the Parties to terminate a Party's service as Managing Party.

(c) In the event of a resignation or termination of a Party's service as Managing Party pursuant to Section 10.6(a) or (b), the Other Parties with a majority of the Allocable Percentage of Net Consideration held by all such Other Parties may elect a new Party to become the Managing Party and to so replace the initial Managing Party, subject to obtaining the written consent of such Party to act as the new Managing Party. Upon any such election, all Parties shall cooperate to effect a smooth and orderly transition and change in roles.

(d) If a replacement Managing Party is not in place within 30 days of a resignation or termination of another Party's service as Managing Party, then the Agreement will terminate automatically.

(e) In the event of a termination and/or replacement of a Managing Party in accordance with the provisions of this Section 10.6, responsibility for Patent Expenses will be determined in the manner set forth in Sections 3.6 and 3.7.

(f) In the event of a resignation or termination of a Party's service as Managing Party in accordance with the provisions of this Section 10.6, the old Managing Party shall be entitled to keep and/or receive any Management Fee, if any, that accrued and was payable out of License Consideration received prior to the effective date of resignation or termination; provided, however, that 50 percent of any equity or other non-cash consideration paid out for a Management Fee within two years prior to such resignation or termination shall be relinquished and distributed among the Parties in accordance with the Allocable Percentage of Net Consideration. The Party serving as replacement Managing Party shall be entitled to the Management Fee, if any, which accrues and is payable after such Party becomes Managing Party. If there is a cap on Management Fees specified in the IIA, then the Parties shall determine in good faith whether that cap requires equitable adjustment or allocation in the circumstances.

11. General Provisions.

11.1 Assignment. The Agreement may not be assigned by any Party without the prior written consent of the other Parties, which consent shall not be unreasonably withheld. The Agreement binds and inures to the benefit of the Parties and their respective successors and permitted assigns.

11.2 Use of Names: Exception for Managing Party. The Parties may issue a press release concerning the Agreement or any License Agreement, only so long as it is reviewed and approved by the Parties, which approval will not be withheld unreasonably. The Agreement does not confer any right on any Party to use any name, trademark or other designation of any other Party (including any contraction, abbreviation or simulation of a Party's name) in advertising, publicity, or any promotional activities. Notwithstanding the foregoing, the Managing Party may use the name of the Other Parties in connection with pursuing any Patent Rights for the Joint Invention and with respect to entering into and managing any License or Option Agreement for the Joint Invention.

11.3 Dispute Resolution. The Parties will encourage the prompt and equitable settlement of all controversies or claims between the Parties. Each Party agrees that any dispute between the Parties related to the Agreement will first be submitted in writing to a panel of one senior executive of each, who shall promptly meet and confer in an effort to resolve such dispute through good faith consultations and negotiation. Each Party's executive shall be identified by notice to the other Party and may be changed at anytime thereafter also by notice to the other. In the event the executives are unable to resolve any dispute within 90 days after submission to them, the Parties will submit the dispute to JAMS for mediation. The mediation will be held in a neutral location. This mediation is a compromise negotiation for the purposes of Rule 408 of the Federal Rules of Evidence. The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Any Party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process.

11.4 Disclaimers. Except as set forth in Section 2, no Party extends any warranties of any kind, either express or implied, including but not limited to the warranties or merchantability or fitness for a particular purpose, with respect to the Joint Invention. In addition, each of the Parties expressly disclaims any warranty that the practice of the Joint Invention will not infringe any patent, copyright, trademark, or other rights of third parties. No Party will make statements, representations, or warranties, or accept liabilities or responsibilities, with respect to or potentially involving the other Party, that are inconsistent with this Section. In no event will a Party be liable to the Other Parties for any indirect, incidental, special, consequential or punitive damages arising out of the Agreement.

11.5 Entirety. The Agreement, together with the Collaboration Agreement (if any), constitutes the entire agreement between the Parties with respect to the Joint Invention. The Agreement supersedes and replaces all prior understandings, negotiations, representations, agreements and commitments related to the Joint Invention. The Agreement may be amended or altered only by a written instrument which is signed by all Parties.

11.6 No Implied Rights. Nothing in the Agreement shall be construed to imply any license rights or other commitments with respect to any future research, or any intellectual property rights, or any Know-How or technology, other than for the express terms set forth in the Agreement relative to the Joint Invention.

11.7 No Waiver. Any delay by a Party to enforce any right under the Agreement shall not act as a waiver of that right, nor as a waiver of the Party's ability to later assert that right relative to any particular factual situation.

11.8 Construction. The headings for the paragraphs for the Agreement have been added for convenience only and shall not be used to construe or alter the meaning of the words in such paragraphs. Each Party has participated in the negotiations and drafting for the Agreement; so in the event of any ambiguity in the wording of the Agreement, such ambiguity shall not be construed against any particular Party as the drafter of the ambiguous provision.

11.9 Enforceability. If any provision of the Agreement is found to be unenforceable for any reason, all other provisions of the Agreement shall nevertheless remain in full force and effect, so long as the essential rights and benefits of the Agreement are realizable.

11.10 Notices. Any notice required by the Agreement shall be given in writing and given by any reasonable means, such as U.S. Mail, overnight delivery service, telecopy facsimile transmission (with receipt verified), or hand delivery; but not electronic mail transmission. Notices to the Parties shall be given as specified in Section 11.10 of the IIA. A Party may change its address from time to time by delivering written notice of the change of address to the other Parties.

11.11 Compliance with Law. Each Party agrees to comply with all national, state and local laws and regulations which may be applicable to its activities pursuant to the Agreement.

11.12 Governing Law. The Agreement shall be construed and enforced in accordance with the laws of the jurisdiction specified in Section 11.12 of the IIA, without giving effect to choice of law and conflicts of law principles. If no jurisdiction is so specified or Section 11.12 of the IIA states "None" or the like, then the Parties have contractually agreed not to designate a particular governing law for the Agreement.

11.13 No Waiver of Sovereign Immunity. The Parties acknowledge that nothing in the Agreement shall constitute a waiver of sovereign immunity by Parties that are state agencies.

[End of Terms and Conditions]