

**U.S. DEPARTMENT OF VETERANS AFFAIRS
AND UNIVERSITY OF CINCINNATI
COOPERATIVE TECHNOLOGY ADMINISTRATION AGREEMENT**

This Cooperative Technology Administration Agreement ("Agreement") is made on this the 31st day of May, 2006, by and between the United States Department of Veterans Affairs ("VA"), as represented by the Technology Transfer Program, Office of Research and Development, having an address at 810 Vermont Avenue NW, Washington, D.C. 20420, and the University of Cincinnati ("UNIVERSITY").

RECITALS

- A. VA and UNIVERSITY through their employment relationship with certain faculty and staff, through 37 C.F.R. Part 501, and/or through 35 U. S. C. §§ 200-212, as well as state law and implementing policies, have an interest in inventions made by their employees;
- B. VA and UNIVERSITY policies promote disclosure of research results for the public's use and benefit, define and protect the rights of inventors, provide for an equitable assertion of ownership in inventions created by their employees, provide for an equitable distribution of the rewards and responsibilities associated with the invention(s), and provide that income from such invention(s) be used for the purpose of promoting research and education;
- C. Pursuant to their shared objectives, it is the mutual desire of VA and UNIVERSITY that their respective interests in such inventions be administered and managed exclusively by UNIVERSITY on behalf of both parties in a manner to ensure the timely commercialization of such inventions and to make their benefits widely available for society's use and benefit;
- D. VA is authorized to transfer and to undertake all suitable steps to administer its rights in any such existing or future invention through contract with a nonprofit organization (including a university) under 35 U.S.C. § 202(e) (to the maximum extent permitted by law), 35 U.S.C. § 207(a)(3), or 15 U.S.C. § 3710a;

Now, therefore, the parties hereto agree as follows:

1. DEFINITIONS

- 1.1 **"Dual Appointment Personnel (DAP)"** means any person who has appointments at both UNIVERSITY and VA, either with or without compensation, or is otherwise obligated to assign intellectual property rights under UNIVERSITY and/or federal policies.
- 1.2 **"Patent Rights"** means all United States patent applications and patents and corresponding patent applications and patents filed in countries other than the United States that are assigned to both VA and UNIVERSITY, including any reissues, reexaminations, extensions, substitutions, divisions, continuations, and continuation-in-part applications (only to the extent, however, that claims in the continuations-in-part applications are entitled to the priority filing date of the parent patent application) based on the subject matter claimed in or covered by a Subject Invention.

- 1.3 **"Property Rights"** means all personal property rights covering the tangible personal property in biological or other research materials which are either unpatented or unpatenable and directly associated with any Subject Invention.
- 1.4 **"Made"** in relation to any Subject Invention means the conception and reduction to practice of such Subject Invention.
- 1.5 **"Subject Invention"** means Patent Rights and/or related Property Rights covering any existing or future disclosed invention in which both parties have an interest under their various policies either solely or collectively with other third party co-owners, that is made either by a) a DAP, b) at least one inventor from each party, c) a University inventor who utilized significant VA facilities or significant VA resources in the conception or reduction to practice of Patent Rights, or d) a University inventor who directed and supervised VA employees in the conception or reduction of practice of Patent Rights, and (e) that is not a Disclaimed Invention. (For the purpose of later interpretations of the significant use of VA facilities or significant use of VA resources, and by way of example the Parties agree as follows: Any invention conceived or reduced to practice in a VA facility shall constitute significant use of VA facilities. Use of a single piece of equipment purchased with VA funds and housed in University facilities in the conception or reduction of practice of an invention shall not constitute significant use of VA resources. Background data collected in a VA facility related to a subsequent conception in University facilities shall not constitute significant VA facilities or significant VA resources).
- 1.6 **"Disclaimed Invention"** means any Subject Invention and related Property Rights, if any, for which UNIVERSITY and VA declines to pursue patenting or other intellectual property protection, license and/or other commercialization activities under Sections 2 and 3 of this Agreement.
- 1.7 **"License Agreement"** means any executed agreement entered into by UNIVERSITY under this Agreement that grants Licensee the right to make, use, sell, offer to sell, or import products covered by or claimed by the Subject Invention being licensed under such agreement or otherwise deals with administration of the Subject Invention, such as secrecy agreements or agreements granting options to such rights for a Subject Invention (e.g., License Option Agreements, Sponsored Research Agreements, Material Transfer Agreements, Confidential Disclosure and Limited Use Agreements, Cooperative Research and Development Agreements, and the like) and administration agreements with other institutions or organizations.
- 1.8 **"Licensee"** means any party, excluding the United States Government, that enters into a License Agreement with UNIVERSITY.
- 1.9 **"Government"** means the Government of the United States of America.
- 1.10 **"Fiscal Year"** means July 1 through June 30.
- 1.11 **"Gross Revenues"** means consideration received by UNIVERSITY from the licensing of any Subject Invention, but excluding any consideration in the form of research funding or other research support. Consideration in a form other than cash, e.g., equity or other property, will not be included in Gross Revenues upon receipt. Dividends or other income generated by the property, as well as cash proceeds received upon the sale of equity or other property, will be considered part of Gross Revenues upon receipt by the University.

- 1.12 **"Net Revenues"** means Gross Revenues, less any prior contractual obligations to third party research supporters and/or joint owners (so long as such obligations have not been met in accordance with Section 1.16), then less Administrative Fee, Expenses, and Inventor Share for each Subject Invention.
- 1.13 **"Inventor-Share"** means those revenues due under the applicable UNIVERSITY policies to named inventor(s) for each Subject Invention.
- 1.14 **"Expenses"** means out-of-pocket expenses for legal services and/ or fees incurred by UNIVERSITY (that are not otherwise reimbursed from a third party) for patentability opinions, patenting, protecting and preserving U.S. and foreign patent, copyright and related property rights, maintaining patents, developing and executing licenses, and such other costs, taxes, or reimbursements as may be necessary or required by law for each Subject Invention.
- 1.15 **"Administrative Fee"** means 15% fee of Gross Revenues less any prior contractual obligations to third party research supporters or joint owners retained by UNIVERSITY in consideration of UNIVERSITY's commercialization efforts on behalf of VA for each Subject Invention.
- 1.16 **"Pooled Amount"** means Net Revenues aggregated by UNIVERSITY cumulatively over the Term (as defined in Section 7.1 below) for all of that UNIVERSITY's Subject Inventions.
- 1.17 **"Co-inventing Institution"** means an institution, other than the VA and UNIVERSITY, having an interest in the Subject Invention, based on a contribution by one or more of that institution's employees.
- 1.18 **"University Employee"** (a) A person compensated for services by UNIVERSITY, and subject to the Patent Policy, or (b) a student of UNIVERSITY; or (c) other persons, excluding UNIVERSITY Without Compensation Appointees, who are authorized to use UNIVERSITY resources and subject to the Patent Policy with respect to inventions and discoveries made using those resources.
- 1.19 **"VA Without Compensation Employee"** A person who is a UNIVERSITY Employee but is appointed by the VA to perform work on behalf of the VA in its facilities, and subject to the federal laws applicable to inventions and discoveries made in the course of the VA appointment.

2. PATENT PROSECUTION AND PROTECTION

- 2.1 **Disclosure.** The parties agree to promptly and in confidence report to the other party each Subject Invention. VA agrees to provide UNIVERSITY a copy of its Determination of Rights letter to all inventors regarding any potential Subject Invention within thirty (30) days after the VA Office of General Counsel has issued a decision.
- 2.2 If UNIVERSITY decides not to file a patent application or attempt to secure other intellectual property protection with respect to any Subject Invention or otherwise to attempt to license or commercialize the Subject Invention, then VA then may undertake, at its sole discretion, to file such patent applications and/or market and license the Subject Invention as it deems appropriate. In that event, what otherwise would have been UNIVERSITY's financial and other rights and obligations to VA under this Agreement, with respect to such a Subject Invention, thereafter shall become VA's rights and obligations to UNIVERSITY.

- 2.3 VA grants UNIVERSITY the exclusive right to prepare, file, prosecute, and maintain patent application(s) and patents covering any Subject Invention on its behalf. UNIVERSITY shall promptly provide to VA, upon written request, all serial numbers and filing dates, together with copies of all such applications, including, on written request, copies of all office actions, responses, and all other communications to and from the United States Patent and Trademark Office (USPTO) or its foreign equivalents regarding any Subject Invention. In addition, VA agrees to grant UNIVERSITY full Power of Attorney for all patents and patent applications regarding any Subject Invention.
- 2.4 Where the VA enters into a CRADA under the FTTA (Federal Technology Transfer Act), then VA undertakes to file such patents applications and/or market and license the Subject Invention as it deems appropriate. In that event, what otherwise would have been UNIVERSITY's financial and other rights and obligations to VA under this Agreement, with respect to such a Subject Invention, thereafter shall become VA's rights and obligations to UNIVERSITY.
- 2.5 UNIVERSITY shall make an election with respect to the filing of foreign patent application(s), including in which countries foreign filing will be done, within ten (10) months of any United States filing.
- 2.6 UNIVERSITY shall timely record separate assignments to it and to VA of domestic patent rights covering a Subject Invention in the USPTO and shall promptly provide VA with a copy of each recorded assignment.
- 2.7 Notwithstanding any other provision of this Agreement, UNIVERSITY shall not abandon the prosecution of any patent application, including provisional patent applications (except for purposes of filing divisional or continuation application(s)), or the maintenance of any patent for a Subject Invention without prior written notice to VA. Upon receiving such written notice, VA may, at its sole option and expense, take over the prosecution of any such patent application, or the maintenance of any such patent. In that event, what otherwise would have been UNIVERSITY's financial and other rights and obligations to VA under this Agreement, with respect to such a Subject Invention, thereafter shall become VA's rights and obligations to UNIVERSITY.
- 2.8 UNIVERSITY may decide to bail Property Rights as a more efficient commercialization method than patenting. If UNIVERSITY so decides, then UNIVERSITY will follow the guidelines issued by the U.S. National Institutes of Health on such commercialization approach, where applicable to the Subject Invention.

3. LICENSING

- 3.1 VA grants UNIVERSITY the right to diligently seek a Licensee and to negotiate, execute, and administer any License Agreement for the commercial development of any Subject Invention and to administer all such License Agreements for the mutual benefit of the parties and in the public interest. This agreement does not apply to sponsored pharmaceutical research studies involving only data collection regarding the efficacy and/or safety of a drug or medical device. VA shall provide written notification to the UNIVERSITY of any study meeting aforementioned criteria. Nothing in this Clause shall be construed to limit VA's rights and duties with respect to VA entering a CRADA as stated in Clause 2.4, above.

- 3.2 UNIVERSITY shall have the final authority to enter into negotiations and execute License Agreements. In accordance with Section 5.2 and upon written request from the VA, UNIVERSITY may provide VA with a copy of all executed License Agreements. VA shall keep these documents and related documentation confidential, unless such disclosure is required by law, except that VA may disclose the existence of any License Agreement, but only to the extent of the granting clause. VA will not disclose the names of the Licensee or any other terms contained in the License Agreement unless such disclosure is required under law.
- 3.3 UNIVERSITY agrees to not enter into a License Agreement for commercial development of Subject Invention with a company who has not certified that they are in good standing to do business with the federal government regarding debarment, suspension, proposed debarment or other matters rendering them ineligible.
- 3.4 Any respective License Agreement will include provisions that address the following:
- 3.4.1 The License Agreement will be subject to the overriding obligations to the Government, including those set forth in 35 U.S.C. §§ 200 - 212 or 15 U.S.C. § 3710a, and applicable governmental implementing regulations, whichever may be appropriate.
- 3.4.2 For a License Agreement granting an exclusive right to use or sell the Subject Invention in the United States, Licensee acknowledges that any patent products embodying the Subject Invention or produced through the use thereof will be manufactured substantially in the United States, unless waived under 35 U.S.C. § 204.
- 3.4.3 The Government shall have a nonexclusive, nontransferable, irrevocable, royalty-free, paid-up right to practice or have practiced the Subject Invention for all Governmental purposes (see e.g., 37 C.F.R. § 501.6 and 38 C.F.R. § 1.655) throughout the world by or on behalf of the Government and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement to which the Government is a signatory.
- 3.4.4 The Government shall retain the right to require UNIVERSITY to grant to a responsible applicant a nonexclusive, or partially exclusive, or exclusive license to use the Subject Invention in the applicant's licensed field of use on terms that are reasonable under the circumstances; or, if UNIVERSITY fails to grant such a license, to grant the license itself. The Government may exercise its rights retained herein only in exceptional circumstances and only if the Government determines that: (i) the action is necessary to meet health or safety needs that cannot be reasonably satisfied by UNIVERSITY or its Licensee; (ii) the action is necessary to meet requirements for public use specified by Federal regulations, and such requirements cannot be reasonably satisfied by UNIVERSITY or its Licensee; or (iii) UNIVERSITY has failed to comply with an agreement containing provisions described in 35 U.S.C. § 204 or 15 U.S.C. § 3710 a (c)(4)(B), whichever is appropriate.
- 3.4.5 The following termination provisions:
- 3.4.5.1 Early termination upon 60 days written notice if Licensee breaches or defaults on its obligation to make payments (if any are due) or reports, unless before the end of the 60 day

period, Licensee has cured the default or breach and so notifies UNIVERSITY, stating the manner of the cure.

3.4.5.2 Early termination upon 90 days written notice if Licensee breaches or defaults on any other obligation under the License Agreement, unless before the end of the 90 day period, Licensee has cured the default or breach and so notifies UNIVERSITY, stating the manner of the cure.

3.4.5.3 Early termination if such action is necessary to meet requirements for public use specified by federal regulations issued after the date of the License Agreement and such requirements cannot reasonably be satisfied by the Licensee.

3.4.5.4 Automatic termination if Licensee becomes bankrupt or insolvent and/or if the business of Licensee is placed in the hands of a receiver, assignee, or trustee, whether by voluntary act of Licensee or otherwise.

3.4.5.5 Automatic termination if Licensee is held by a court of competent jurisdiction, without taking a further appeal, to have misused any patent rights covering a Subject Invention.

3.5 VA and UNIVERSITY may mutually agree in writing to allow an invention owned solely by the VA or solely by the UNIVERSITY to be treated as a Subject Invention under this Agreement in order to facilitate licensing of the solely owned invention in combination with a Subject Invention. Any such invention will be identified and included in Exhibit B by VA and UNIVERSITY.

3.6 VA authorizes UNIVERSITY to enter into other inter-institutional agreements with co-inventing institutions under the terms and conditions as UNIVERSITY may determine to the mutual benefit of UNIVERSITY, VA and such co-inventing institution. UNIVERSITY shall provide VA with copies of all such executed inter-institutional agreements.

4. REVENUES

4.1 **Inventor Share.** UNIVERSITY shall be solely responsible for calculating and distributing Inventor Share pursuant to UNIVERSITY policy. Inventor Share will be distributed equally among the named inventors unless mutually agreed to in writing by all inventors.

4.2 **Net Revenues.** UNIVERSITY shall be responsible for calculating and distributing to VA the pro-rated portion of Central Administration Share, based on the number of inventors. For financial calculation purposes under this section, and DAP inventor will be considered 50% UNIVERSITY and 50% VA, regardless of actual employment percentages. UNIVERSITY's *obligation* to VA shall begin after UNIVERSITY recoups all Expenses for each Fiscal Year. (See Exhibit A)

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- 4.3 All payments to VA, required under this Agreement, shall be paid out annually in October in U.S. Dollars and shall be made by UNIVERSITY by check or bank draft drawn on a United States bank and shall be payable, as appropriate, to the "Department of Veterans Affairs (royalty)." All such payments shall be sent to the following address:

Department of Veterans Affairs
Director Technology Transfer (12TT)
810 Vermont Avenue NW
Washington, D.C. 20420

The payment under Section 4.2 will be accompanied with a confidential itemized accounting of performance of each individual Subject Invention.

5. RECORDS AND REPORTS

- 5.1 UNIVERSITY shall keep complete, true, and accurate accounts of all Expenses and of all Gross Revenues received by it under each License Agreement and shall permit VA or VA's designated agent, not more than one time per Fiscal Year and at VA's sole expense, to examine its books and records in order to verify the payments due or owed under this Agreement.
- 5.2 UNIVERSITY shall submit in confidence to VA, at the address identified in Article 8, a semi-annual report, not later than January 31 covering the prior fiscal year setting forth the status of all patent prosecution, commercial development, and licensing activity concerning Subject Invention(s), and upon written request of the VA, copies of patents issued and License Agreements executed during that period.
- 5.3 The report required under Section 5.2 shall also be made within sixty (60) days of the termination of this Agreement.

6. PATENT INFRINGEMENT

- 6.1 If the administrators responsible for this Agreement at VA or UNIVERSITY learn of a substantial infringement of Patent Rights covering any Subject Invention, then the party who learns of the infringement will promptly notify the other party in writing, including all reasonable evidence of the infringement. Neither party will notify a third party of infringement without first obtaining written consent of the other party, which consent will not be unreasonably withheld. UNIVERSITY, in cooperation with VA, will use commercially reasonable efforts to terminate the infringement without litigation. If the efforts of the parties are not successful in abating the infringement within 90 days after the infringement was formally brought to the attention of the parties, then either party will have the right to elect to:
- 6.1.1 commence suit on its own account; or
- 6.1.2 join with an exclusive Licensee to bring suit, but only if UNIVERSITY or VA elects not to bring suit either solely or jointly with the other party; or
- 6.1.3 join with the other party in the suit; or

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- 6.1.4 refuse to participate in the suit.
- 6.1.5 Each party agrees to give written notice of its election to the other party within 10 days after the 90-day period. UNIVERSITY may join with an exclusive Licensee in bringing suit, either by formal notice or by failure to act within the period specified, but only if UNIVERSITY or VA elects not to commence suit or join each other in any suit.
- 6.2 Such legal action as is decided upon will be at the expense of the party by whom suit is brought and all recoveries thereby will belong to such party, provided, however, that legal action brought by VA, UNIVERSITY, and/or an exclusive Licensee, and participated in by the parties bringing suit, will be at the expense of such parties, and all recoveries will be allocated in the following order:
 - 6.2.1 to each party, reimbursement in proportional amounts of the attorney's costs, fees, and other related expenses to the extent each party paid for such costs, fees, and expenses until all such costs, fees, and expenses are consumed for each party or as required by the terms of any License Agreement covering the Subject Invention for which Patent Rights are being enforced; and
 - 6.2.2 any remaining amount will be shared by them in proportion to the share of expenses paid by each party or as required by the terms of any License Agreement covering the Subject Invention for which Patent Rights are being enforced.
- 6.3 Each party will cooperate with the other in litigation proceedings instituted under this Agreement, but at the expense of the party or parties electing to bring suit. This litigation (including settlement) will be controlled by the party bringing the suit, except that UNIVERSITY will control the suit if brought jointly by VA and UNIVERSITY. Either party may be represented at its sole expense by counsel of its choice in any suit brought by the other party or an exclusive Licensee. VA's agreement in this paragraph is subject to U.S. Department of Justice approval on a case-by-case basis.

7. TERM AND TERMINATION

- 7.1 **Term.** This Agreement shall become effective upon the Effective date, and extend from the Disclosure of the first Subject Invention, until the expiration of the last-to-expire of the License Agreements or patents covering a Subject Invention included under this Agreement, whichever is later, unless otherwise terminated by operation of law or by acts of the parties in accordance with the terms of this Agreement ("Term").
- 7.2 **Termination by Mutual Consent.** UNIVERSITY and VA may elect to terminate this Agreement, or portions thereof, at any time by mutual consent in writing. In such event, any outstanding commitments to third parties through License Agreements concerning any Subject Invention(s) under this Agreement that were entered into by UNIVERSITY or were reliant on this Agreement prior to the effective termination date shall survive this Agreement.
- 7.3 **Termination by Unilateral Action.**
 - 7.3.1 **Written Notice.** Either party may unilaterally terminate this entire Agreement at any time by giving the other party prior written notice, but not less than six (6) months prior to the desired termination date.

7.3.2 **Commitments.** In such event, any outstanding commitments to third parties through License Agreements concerning any Subject Invention(s) under this Agreement that were entered into by UNIVERSITY or were reliant on this Agreement prior to the effective termination date shall survive this Agreement. All uncancelable obligations shall be included within Expenses.

7.4 Termination by Either Party With Cure Periods.

7.4.1 Upon 60 days written notice from either party to the other party, if one party breaches or defaults on its obligation to make payments (if any are due) or reports, in accordance with the terms of Articles 4 and 5, respectively, unless, before the end of the 60 day period, the defaulting party has cured the default or breach and so notifies the other party, stating the manner of the cure; or

7.4.2 Upon 90 days written notice from either party to the other party, if one party breaches or defaults on any other obligation under this Agreement, unless, before the end of the 90 day period, the defaulting party has cured the default or breach and so notifies the other party, stating the manner of the cure.

7.5 The following sections shall survive the termination of this Agreement:

7.5.1 UNIVERSITY 's obligation to supply a termination report as specified in Section 5.3 of this Agreement; and

7.5.2 VA's right to receive or recover and UNIVERSITY's obligation to share Net Revenues as specified in Article 4 above due or accruable for payment at the time of any termination; and

7.5.3 UNIVERSITY 's obligation to maintain records and VA's right to conduct an audit pursuant to Section 5.1 of this Agreement; and

7.5.4 sublicenses, releases, and agreements of non-assertion running in favor of Licensees prior to any termination and on which royalties have been paid; and

7.5.5 any cause of action or claim either party accrued or would accrue, because of any breach or default by the other party.

7.6 If this Agreement terminates, then any License Agreement of record granted pursuant to this Agreement may, at Licensee's option, be converted to a license directly between Licensee and VA or UNIVERSITY.

7.7 After effective termination, each party may separately license its interests in Subject Inventions according to its own policy. Apart from specific obligations of the parties under this Agreement accrued prior to termination; the parties will have no further rights or obligations under this Agreement after such termination.

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8. NOTICES

All notices required or permitted by this Agreement to be given to the parties thereto shall be deemed to have been properly given if delivered in writing, in person or mailed by prepaid, first class, registered or certified mail or by an express/overnight delivery service provided by a commercial carrier, properly addressed to the other party. Notices shall be considered timely if such notices are received on or before the established deadline date or sent on or before the deadline date as verifiable by U.S. Postal Service postmark or dated receipt from a commercial carrier. Parties should request a legibly dated U.S. Postal Service postmark or obtain a dated receipt from a commercial carrier or the U. S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Notices shall be sent to the mailing address below, or alternative address(es) for individual Subject Inventions as identified in writing by the VA Director, Technology Transfer Program or by UNIVERSITY.

To VA: Director (12TT)
 Technology Transfer Program
 Office of Research and Development
 U.S. Department of Veterans Affairs
 810 Vermont Avenue N.W.
 Washington, D.C. 20420
 Phone: (202) 254-0255
 Fax: (202) 254-0473

To UNIVERSITY: Director, Intellectual Property Office
 University of Cincinnati
 Mail Location 0829
 Cincinnati, OH 45267-0829

9. GOVERNING LAWS, SETTLING DISPUTES

- 9.1 This Agreement shall be construed in accordance with U.S. Federal law and the law of the State of Ohio, when not in conflict with U.S. Federal law. U.S. Federal law and regulations will preempt any conflicting or inconsistent provisions in this Agreement. UNIVERSITY shall have all defenses available to them under Ohio law.
- 9.2 Any controversy or any disputed claim by either party against the other arising under or related to this Agreement shall be submitted jointly to UNIVERSITY, Executive Director of Research Administration and Technology Transfer, and the VA, Director, Technology Transfer Program, Office of Research and Development. After these officials issue written decisions, UNIVERSITY and VA will be free to pursue any and all administrative and/or judicial remedies that may be available.

10. CONFIDENTIALITY, USE OF NAME, AMNESTY AND MISCELLANEOUS

- 10.1 **No Immunity.** This Agreement or anything related thereto shall not be construed to confer on any person any immunity from or defenses under the antitrust laws or from a charge of patent misuse, and the acquisition and use of rights pursuant to this Agreement shall not be immunized from the operation of state or Federal law by reason of the source of the grant.

- 10.2 **Waiver.** It is agreed that no waiver by either party hereto of any breach or default of any of the covenants or agreements set forth herein shall be deemed a waiver as to any subsequent and/or similar breach or default.
- 10.3 **Assignment.** This Agreement is binding upon and shall inure to the benefit of the parties hereto, their successors or assigns, but this Agreement may not be assigned by either party without the prior written consent of the other party.
- 10.4 **No License.** This Agreement confers no license or rights by implication, estoppel, or otherwise under any patent applications, patents, or other intellectual property rights of UNIVERSITY or VA other than Subject Inventions, regardless of whether such patents are dominant or subordinate to Patent Rights.
- 10.5 **Modifications.** Any modification to this Agreement must be in writing, agreed to and executed by both parties.
- 10.6 **Entire Agreement.** It is understood and agreed by UNIVERSITY and VA that this Agreement constitutes the entire agreement, both written and oral, between the parties, and that all prior agreements respecting the subject matter hereof, either written or oral, express or implied, shall be abrogated, canceled, and are null and void and of no effect. Any VA-WOC Appointee Intellectual Property Agreement signed between a VA WOC Appointee and the VA shall be implemented in accordance with this Agreement. In the case of any conflict between this Agreement and a VA-WOC Appointee Intellectual Property Agreement, this Agreement shall take precedence.
- 10.7 **Use of Name.** Neither party may use the name of the other party in any way for advertising or publicity without the express written consent of the other party, provided, however, that while UNIVERSITY may not allow a Licensee to use the name of VA for advertising or publicity, it does have the right to use the name of VA in connection with negotiating a License Agreement or sublicense agreement and where required by law.
- 10.8 **Amnesty.** Notwithstanding any Subject Inventions created by VA and UNIVERSITY on or after February 2, 2000, neither party has any right, title or interest in and to any intellectual property created by the other party before the Effective Date.
- 10.9 **Confidentiality.** VA and UNIVERSITY each agree that all information labeled "confidential" exchanged by them pursuant to this Agreement is (i) to be received in strict confidence, (ii) to be used only for the purposes of this Agreement, and (iii) not to be disclosed by the recipient party, its directors, officers, agents or employees without the prior written consent of the other party, unless under a confidentiality agreement of like scope, except to the extent that the recipient party can establish competent written proof that such information:
- 10.9.1 was in the public domain at the time of disclosure;
 - 10.9.2 later became part of the public domain through no act or omission of the recipient party, its employees, agents, successors or assigns;
 - 10.9.3 was lawfully disclosed to the recipient party by a third party having the right to disclose it;
 - 10.9.4 was already known by the recipient party at the time of disclosure;

- 10.9.5 was independently developed by the recipient;
 - 10.9.6 is required by law, court order or regulation to be disclosed; provided, however, that the disclosing party is given prior written notice of such required disclosure and afforded an opportunity to participate in drafting a protective order or otherwise limiting the disclosure to the extent possible; or
 - 10.9.7 is required to be disclosed by UNIVERSITY or its Licensee to a regulatory authority in connection with regulatory filings related to a Subject Invention.
- 10.10 Each party's obligation of confidence hereunder shall be fulfilled by using at least the same degree of care with the other party's confidential information as it uses to protect its own confidential information. This obligation shall exist while this Agreement is in force and for a period of 2 years after termination.
- 10.11 VA agrees to consider and treat confidential information as business information which is exempt from disclosure under the Freedom of Information Act or equivalent law or regulation, to the extent permitted by law.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as follows:

U.S. Department of Veterans Affairs

By: Joel Kupersmith
Joel Kupersmith, MD
Chief Research and Development Officer

Date: 6/8/06

UNIVERSITY/AFFILIATE

By: Anne H. Chasser
NAME: ANNE H. CHASSER
TITLE: PATENT OFFICER

Date: May 31, 2006

Exhibit A

CALCULATING ROYALTY DISTRIBUTION

Royalty funds shared between VA and affiliates are calculated based on the employee status of the inventors; that is whether the inventor is full-time VA, full-time affiliate, or holds a dual appointment (DAP) at both institutions.

Example One:

Two employees jointly develop intellectual property where one inventor is full-time VA and one inventor is full-time affiliate the royalty split would be 50% VA and 50% affiliate.

- $100\%/2$ full-time employees = 50% per full-time employee
- 1 (full-time VA employee) \times 50% = 50%

Example Two:

Two employees jointly develop intellectual property where one employee is full-time affiliate and one is DAP the royalty split would be 75% affiliate and 25% VA.

- $100\%/2$ employee inventors = 50% per employee inventor
- 1 (full-time affiliate employee) \times 50% = 50%
- 1 DAP \times 50% = 50% / 2 (DAPS are split 50/50) = 25%
- 50% + 25% = 75% to Affiliate

Example Three:

Five employees jointly develop intellectual property where four employees are full-time affiliate and one is DAP the royalty split would be 90% affiliate and 10% VA.

- $100\%/5$ employee inventors = 20% per employee inventor
- 4 (full-time affiliate employees) \times 20 % = 80%
- 1 DAP \times 20% = 20%/2 (DAPS are split 50/50) = 10%
- 80% + 10% = 90% to Affiliate

I, _____, have read the "Cooperative Technology Administration Agreement for the Management of Inventions." I understand that if I have questions regarding the agreement, I can speak to Ellen Graf at 475-6498. I will retain a copy of the agreement and follow the procedures for disclosure and licensing of invention(s) as outlined in the agreement signed and dated June 2006.

Signature

Date