**U.S. DEPARTMENT OF VETERANS AFFAIRS**

**AND**

**BOARD OF REGENTS, THE UNIVERSITY OF TEXAS SYSTEM**

**COOPERATIVE TECHNOLOGY ADMINISTRATION AGREEMENT**

This Cooperative Technology Administration Agreement ("Agreement") is made February 14, 2002 ("Effective Date"), 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 each of:

The University of Texas Health Science Center at San Antonio;  
The University of Texas Health Science Center at Houston;  
The University of Texas MD Anderson Cancer Center;   
The University of Texas Health Center at Tyler;   
The University of Texas Medical Branch at Galveston; and   
The University of Texas Southwestern Medical Center at Dallas

(each an "Institution", and collectively "Institutions"), each with an office and place of business as set forth in Exhibit A hereto, and each a component institution of The University of Texas System located at 201 West 7th Street, Austin TX 78701 ("System") and wherein System is governed by the Board of Regents ("Board"). Each Institution and VA may be referred to individually as a "party", and jointly as "parties".

**RECITALS**

A. VA and Institutions 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 BOARD 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, BOARD, and Institutions that their respective interests in such inventions be administered and managed exclusively by Institution 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 is employed by an Institution or by virtue of their association with Institution is subject to The University of Texas System, Regents' Rules and Regulations, Part Two, Chapter XII, Section 2, attached hereto and incorporated herein in its entirety as Exhibit B and also meets the requirements of Section 11 of the VA Handbook, 1200.18 (Intellectual Property).

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 BOARD, 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 invention disclosed during the Term (as defined in Section 7.1 below) in which both parties have and have asserted a joint ownership interest under their various policies (i.e., via a Determination of Rights by VA under 37 C.F.R. §§ 501.6, 501.7 and 38 C.F.R. § 1.657 and an assertion of ownership by Board under The University of Texas System, Regents' Rules and Regulations, Part Two, Chapter XII, Sections 5 and 6), that is made either by a DAP or by an employee of Institution who has executed a VA-WOC Appointee Intellectual Property Agreement (a copy of which is attached as Exhibit D), or by at least one inventor from each party, and that is not a Disclaimed Invention. For sake of clarity, the VA-WOC Appointee Intellectual Property Agreement will be implemented in accordance with the provisions of this Agreement.  
  
1.6 "Disclaimed Invention" means any Subject Invention and related Property Rights, if any, for which BOARD, on behalf of Institution, 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 BOARD and/or Institution 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).

1.8 "Licensee" means any party, excluding the United States Government, that enters into a License Agreement with BOARD on behalf of Institution.

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 Institution from the licensing of any Subject Invention, but excluding any consideration in the form of research funding or other research support.

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. For avoidance of doubt, and by way of example, a sample calculation of Net Revenues is attached hereto and incorporated herein in its entirety as Exhibit C.

1.13 "Inventor-Share" means those revenues due under the applicable BOARD and Institution policies to named inventor(s) for each Subject Invention.

1.14 "Expenses" means legal and other direct out-of-pocket expenses incurred by BOARD or Institution (that are not otherwise reimbursed from a third party) for evaluating, patenting, protecting and preserving U.S. and foreign patent, copyright and related property rights, maintaining patents, developing, licensing, or otherwise commercializing, 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 Institution in consideration of Institution's commercialization efforts on behalf of VA for each Subject Invention.

1.16 "Pooled Amount" means Net Revenues aggregated by Institution cumulatively over the Term (as defined in Section 7.1 below) for all of that Institution's Subject Inventions.

**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 Institution 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 received a complete disclosure from inventor.

2.2 If BOARD 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 BOARD'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 BOARD.

2.3 VA grants Institution the exclusive right to prepare, file, prosecute, and maintain patent application(s) and patents covering any Subject Invention on its behalf. Institution 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 BOARD and Institution full Power of Attorney for all patents and patent applications regarding any Subject Invention.

2.4 Institution 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.

2.5 BOARD 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.

2.6 Notwithstanding any other provision of this Agreement, BOARD 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 BOARD'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 BOARD.

2.7 BOARD may decide to bail Property Rights as a more efficient commercialization method than patenting. If BOARD so decides, then BOARD will follow the guidelines issued by the U.S. National Institutes of Health (see http://ott.od.nih.gov/New Pages/Rtguide\_final.html) on such commercialization approach, where applicable to the Subject Invention.

**3. LICENSING**

3.1 VA grants BOARD the exclusive 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. VA agrees not to license to any third parties any Subject Invention or Property Rights unless this Agreement is terminated in accordance with Article 7 (Termination) and there are no License Agreements in effect or under negotiation. VA also agrees to not pre-commit rights in or to any Subject Inventions or any related Property Rights under this Agreement to a commercial research sponsor or other entity through prior agreements made by VA, without prior written approval from Institution.

3.2 BOARD 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, BOARD 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 BOARD 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 BOARD 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 BOARD 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 BOARD 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 BOARD or its Licensee; or (iii) BOARD 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 BOARD, 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 BOARD, 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.

**4. REVENUES**

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

4.2 Net Revenues. Institution agrees to pay to VA an amount equivalent to 50% of the Pooled Amount less payments made by Institution to VA for previous Fiscal Years. Institution's obligation to VA shall begin after Institution recoups all Expenses for each Fiscal Year.

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 Institution 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  
Technology Transfer Financial Management Office (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 Institution 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 Institution shall submit in confidence to VA, at the address identified in Article 8, a semi annual report, not later than January 31 covering the period through the prior June 30 and, not later than April 30, covering the period through the prior December 31, 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 Institution or BOARD 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. BOARD and Institution, 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 BOARD 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

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. BOARD 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 BOARD 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, BOARD, 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 BOARD will control the suit if brought jointly by VA and BOARD. 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. BOARD's agreement in this paragraph is subject to the statutory duties of the Texas Attorney General.

**7. TERM AND TERMINATION**

7.1 Term. This Agreement shall extend from the Effective Date 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. BOARD 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 BOARD and/or Institution 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 BOARD 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 BOARD '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 Institution'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 BOARD '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 BOARD.

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.

**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 Institution's contact person listed in Exhibit A.

To VA:  
  
Director (122)  
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) 408-3679  
Fax: (202) 275-7228

To Institution:  
  
See Exhibit A.

With copies to BOARD:

Board of Regents  
Office of General Counsel/Intellectual Property Section  
The University of Texas System  
201 West 7th Street  
Austin, Texas 78701  
Phone: (512) 499-4462  
Fax: (512) 499-4523

**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 Texas, 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. BOARD and Institution shall have all defenses available to them under Texas 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 (a) BOARD, (b) the Intellectual Property Section Manager of the Office of General Counsel, The University of Texas System, (c) Institution, and (d) the VA, Director, Technology Transfer Program, Office of Research and Development. After written decisions are issued by these officials, BOARD 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 BOARD 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 BOARD 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.

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 BOARD 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 Institution 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 BOARD 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 BOARD 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.

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

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| **U.S. Department of Veterans Affairs**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ John R. Feussner, M.D. Chief Research and Development Officer  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **The University of Texas M.D. Anderson Cancer Center**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Leonard A. Zwelling, M.D., M.B.A. Vice President for Research Administration  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **The University of Texas Health Science Center at Houston**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ T. Kevin Dillon Vice President and Chief Financial Officer  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **The University of Texas Southwestern Medical Center at Dallas**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Robert J. Alpern, M.D. Dean, Southwestern Medical School at Dallas  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **The University of Texas Medical Branch at Galveston**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Garold G. Breit Assistant Vice President for Technology Management  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **The University of Texas Health Center at Tyler**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Michelle Hargis Director of Grants Administration  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **The University of Texas Health Science Center at San Antonio**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Francisco G. Cigarroa, M.D.President  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |

**EXHIBIT A**  
Pertinent Contact Information for Each Institution

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| --- | --- |
| Melinda Mathis, MPA Director, Sponsored Agreements & Budgeting Office of Research Administration **The University of Texas M.D. Anderson Cancer Center** 1515 Holcombe Boulevard, Box 307 Room B8.4453 Houston, TX 77030  phone: 713-745-3468 fax: 713-794-4535 email: mmathis@mdanderson.org | Leah Hurley V. P. for Legal Affairs Office of the V. P. for Legal Affairs **The University of Texas Southwestern Medical Center at Dallas** 5323 Harry Hines Boulevard Dallas, TX 75390-9008  phone: 214-648-7986 fax: 214-648-8805 email: leah.hurley@utsouthwestern.edu |
| David E. Kusnerik Associate Director, Technology Management Office of Technology Management **The University of Texas Health Science Center at Houston** P. O. Box 20036 Houston, TX 77225  phone: 713-500-3283 fax: 713-500-3275 email: david.e.kusnerik@uth.tmc.edu | Michelle Hargis Director of Grants Administration Office of Grants Administration **The University of Texas Health Center at Tyler** 11937 US Hwy 271 Tyler, TX 75708-3154  phone: 903-877-7756 fax: 903-877-5769 email: michelle.hargis@uthct.edu |
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horizontal rule

**EXHIBIT B**

**The University of Texas System Regents' Rules and Regulations  
Part Two, Chapter XII, Section 2**

See: http://www.utsystem.edu/ogc/intellectualproperty/2xii.htm

horizontal rule

**EXHIBIT C**

Sample Calculation of Net Revenues (§ 1.12)

Assumptions:  
a. Five joint VA/Institution Subject Inventions.  
b. Five patent applications filed; each having $10 Expenses per Subject Invention (Institution paid all Expenses, e.g., $50.00; thus VA owes Institution $25.00 to make Institution whole).  
c. Only Subject Invention #1 starts to make money.

Calculation:  
$100.00 Gross Revenues from Subject Invention #1  
minus 15.00 15% Administration Fee to Institution  
minus 5.00 Expenses for Invention #1 to Institution  
equals 80.00  
minus 40.00 Inventors Share (50%)   
equals 40.00 Net Revenues split 50 - 50 (see Section 4.2) after Institution recoups all Expenses

This means: $20.00 goes to Institution and $20.00 goes to VA but VA owes Institution $25.00 for its equal share of Expenses:

$25.00 amount VA owes Institution for its equal share of Expenses  
minus 20.00 amount Institution owes VA for VA's share of Pooled Amounts  
equals 5.00 VA still owes to Institution

NOTE: Since Subject Invention #1 is the only invention making money, then in this scenario, Net Revenues equals Pooled Amounts.

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**EXHIBIT D**

*VA-WOC APPOINTEE INTELLECTUAL PROPERTY AGREEMENT*

This agreement is made between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and the Department of Veterans Affairs (VA) in consideration of my without compensation (WOC) appointment by the VA Medical Center at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (VAMC) and performing VA-Approved Research (as defined below) utilizing VA resources. This agreement is not intended to be executed by WOC appointees exclusively performing clinical services, attending services, or educational activities at the VAMC.

1. I hold a WOC appointment at the VAMC for the purpose of performing research projects, evaluated and approved by the VA Research and Development Committee (VA-Approved Research),at that VAMC.

2. By signing this agreement, I understand that, except as provided herein, I am adding no employment obligations to the VA beyond those created when I executed the WOC appointment.

3. I have read and understand the VHA Intellectual Property Handbook 1200.18 (Handbook) [available at www.vard.org], which provides guidance and instruction regarding invention disclosures, patenting and the transfer of new scientific discoveries.

4. Notwithstanding that I am an employee or appointee at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, I will disclose to VA any invention that I make while acting within my VA-WOC appointment in the performance of VA-Approved Research utilizing VA resources at the VAMC or in VA-approved space.

5. I understand that the VA Office of General Counsel (OGC) will review the invention disclosure and will decide whether VA can and will assert an ownership interest. Every effort will be made to issue a decision within 40 days of receipt of a complete file. OGC will base its decision on whether VA has made a significant contribution to the invention, to include my use of VA facilities, VA equipment, VA materials, VA supplies, and VA personnel, as well as assessment of the potential of the invention.

6. If VA asserts an ownership interest based on my inventive contribution, then, subject to Paragraph 7 below, I agree to assign certain ownership rights I may have in such invention to the VA. I agree to cooperate with VA, when requested, in drafting the patent applications(s) for such invention and will thereafter sign any documents, recognizing VA's ownership, as required by the U.S. Patent and Trademark Office at the time the patent application is filed.

7. VA recognizes that I am employed or appointed at the entity named in paragraph 4 and have obligations to disclose and assign certain invention rights to it. If that entity asserts an ownership interest, VA will cooperate with it to manage the development of the invention as appropriate.

8. If a Cooperative Technology Administration Agreement (CTAA) exists between the VA and the mentioned entity in paragraph 4, this Agreement will be implemented in accordance with the provisions of that CTAA.

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| \_\_\_\_\_\_\_\_\_\_\_\_\_ Date | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature |
| \_\_\_\_\_\_\_\_\_\_\_\_\_ Date | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ACOS for Research |

Form Approved by OGC for Use October 1, 2001