

INTERINSTITUTIONAL AGREEMENT

This Agreement is dated and effective as of _____ ("Effective Date"), and is by and between **[INSERT NAME UNIVERSITY ONE]** (hereinafter "ONE"), having an administrative office at _____, and **[INSERT NAME UNIVERSITY TWO]** (hereinafter "TWO"), having an administrative office at _____. ONE and TWO are each referred to as a "Party" or collectively as the "Parties." In consideration of the mutual premises set forth below, ONE and TWO agree as follows with respect to their respective rights and obligations with respect to the technology identified below.

1. Certain faculty, staff, or students of ONE and TWO have jointly invented technology entitled, **["INSERT TECHNOLOGY TITLE"]**, covered in U.S. Patent Application Number and entitled **["INSERT PATENT TITLE"]**, including any continuations (other than continuations-in-part), divisionals, and reissues, as well as all foreign equivalent patent applications and Patent Cooperation Treaty (PCT) filings, and all patents issuing therefrom (ONE reference, TWO reference) (collectively, the "Technology"). ONE inventors are obligated to assign all of their right, title, and interest in the Technology to ONE, and TWO inventors are obligated to assign all of their right, title, and interest in the Technology to TWO. ONE and TWO are co-owners of an equal, undivided interest in Technology. Each of ONE and TWO represents to the other party that, to the best of its knowledge and belief, there are no inventors other than as described above and that all inventors of which such party is aware are subject to the assignment requirement specified above.

2. The parties agree that ONE will be responsible for filing patent application(s) on the Technology. ONE will use the law firm of **[INSERT NAME OF PATENT COUNSEL]** ("Patent Counsel") for this purpose, and will have Patent Counsel treat both ONE and TWO as its client on this matter. ONE will instruct Patent Counsel to address and deliver all correspondence regarding the Technology to both ONE and TWO in a timely manner and to allow TWO to review and provide comment thereon. TWO will cooperate with Patent Counsel in all reasonable ways, including obtaining the signature of its inventors on relevant documents and requesting that its inventors review all patent applications, office actions, and similar materials concerning the Technology. It is the intention of the parties that the names of both ONE and TWO appear as assignees on the face of any patent(s) issuing on the Technology. The parties will consult with each other with respect to the filing of any foreign equivalents of the United States patent application(s) before making such filings.

3. The parties agree that ONE shall have the right and obligation to seek commercial licensees for the Technology and to negotiate licenses of the Technology on terms to be approved by TWO. TWO shall not enter into any licenses of the Technology other than as arranged by ONE. If TWO becomes aware of a licensing opportunity for the Technology, it shall notify ONE. ONE shall keep TWO reasonably informed of ONE's efforts to enter into licenses regarding the Technology and shall provide TWO on a timely basis with copies of all term sheets, draft license agreements and similar materials it prepares or receives in respect of the Technology. Prior to the negotiation of any license agreement by ONE, and during such negotiations as necessary, ONE and TWO shall consult in good faith to establish the mutually acceptable terms under which such license agreement shall be concluded. All agreements concerning the license of the Technology shall require the signature of both ONE and TWO to be effective.

4. With respect to any license agreement for the Technology (or any portion of the Technology) that is entered into by ONE and TWO, ONE shall (a) collect all "Gross Income (as defined below) paid pursuant to such license agreement, and (b) account to TWO for TWO's portion of all Net Income" (as defined below) so received and pay such portion of Net Income to TWO as required below.

"Gross Income means all consideration actually received by ONE with respect to licensing the Technology to third parties. "Net Income" means Gross Income less any unreimbursed, out-of-pocket expenses incurred by ONE (i) in the preparation, filing, prosecution, and maintenance of the patent application(s) or patents included in Technology or (ii) in the marketing and licensing of the Technology. ONE shall pay TWO an amount equal to **[INSERT NUMBER]** percent (#%) of Net Income ("SHARING ARRANGEMENT"). Payment shall be made quarterly in arrears by check made payable to **[INSERT NAME OF UNIVERSITY TWO]** and sent to the address provided in Section 12.

Should patent or licensing expenses be incurred prior to receipt or in excess of Gross Income, TWO shall reimburse ONE for such expenses in proportion to TWO's share of Net Income under the SHARING ARRANGEMENT within sixty (60) days of receipt of a notice that there is an expense that cannot be satisfied from

available Gross Income. ONE shall provide TWO with reasonable evidence of patent and licensing expenses when it submits any such notice.

Upon giving the other party not less than one hundred twenty (120) days notice, either party may elect to cease its contribution to the costs of preparation, filing, prosecuting and maintaining any patent application or patent included in the Technology. At its sole election, the other party may then elect to pay all such costs and fees as may be necessary to file or prosecute the patent application or maintain any patents resulting therefrom, in which case, ONE and TWO shall negotiate in good faith to amend (i) the term relating to the right to market and license Technology under Section 3; and (ii) the SHARING ARRANGEMENT in a manner that reflects the other party's sole participation in covering the costs of patenting. In the event of suspected infringement or creation of an interference involving patents or patent applications included in the Technology, ONE and TWO will meet to discuss an appropriate litigation or interference strategy.

5. Each party shall be solely responsible for paying its affiliated inventors, and their corresponding colleges, schools or departments such share of the income received pursuant to any commercial license as is customary under such party's policies and practices. Each party shall be solely responsible for giving the agencies or entities sponsoring the research performed by its inventors leading to the creation of the Technology any notices, required license rights and the like as may be required by such sponsor's funding agreements.

6. This Agreement does not restrict either party from acquiring an interest in technology that can compete in the marketplace or otherwise with all or any part of the Technology. The parties agree that each party may so proceed in their efforts to commercialize competitive technologies as, in their sole judgment, each deems appropriate. Furthermore, this Agreement in no way restricts either party from cooperating with or receiving cooperation from other public and private agencies, organizations, and individuals with respect to any of the normal activities of either of the parties.

7. Unless sooner terminated pursuant to this Section 7, the term of this Agreement shall extend for so long as any patent covered by the Agreement remains unexpired or any patent application remains pending in any patent office. Should ONE cease using reasonable efforts to conclude a license agreement as provided in Section 3, TWO may then terminate this Agreement upon thirty (30) days written notice. The following Sections shall survive any expiration or termination of this Agreement: 2, 4, 5 and 10-15. In addition, any license among both parties and licensees of the Technology shall survive termination.

8. Neither party shall be liable for failures or delays in performance hereunder owing to compliance with the laws of the United States of America or any other governmental authority or to any other cause beyond the actual control of such party.

9. The Agreement may not be assigned by either of the parties hereto.

10. NEITHER PARTY TO THIS AGREEMENT EXTENDS ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE TECHNOLOGY. IN ADDITION, EACH OF THE PARTIES TO THIS AGREEMENT EXPRESSLY DISCLAIMS ANY WARRANTY THAT PRACTICE OF THE TECHNOLOGY WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER RIGHTS OF THIRD PARTIES. Neither party to this Agreement 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 10.

11. The relationship between the parties to this Agreement is that of independent contractors. Limited authority is granted to ONE under Section 3 to negotiate license agreements with third parties solely according to terms developed in consultation with TWO, and acceptable to both ONE and TWO. Such authority does not extend to the execution of license agreements with respect to TWO's rights in the Technology. Except with respect to this limited grant of authority to ONE, neither party shall be deemed to be an agent of the other in connection with the performance of this Agreement, and neither shall in any event have any right or authority to assume or create any obligation or responsibility on behalf of the other. ONE shall not make statements, representations, or warranties, or accept liabilities or responsibilities that are inconsistent with this Section 11.

12. Any notices, payments or other communications to be given under this Agreement by one party to the other shall be in writing and shall be given by United States registered or certified mail, return receipt requested, or nationally recognized overnight delivery service addressed as follows:

If to ONE: University One
Address
City, State Zip
Attn.:

If to TWO: University Two
Address
City, State Zip
Attn.:

or to such other individual(s) or address(es) of which the intended recipient shall have notified the sender by written notice given in accordance with the terms of this Section. Any notice not so given shall not be valid unless and until actually received, and any notice given in accordance with the above provision shall be effective when mailed.

13. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties. No supplement, modification, amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby.

14. The waiver by one party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

15. In the event that anyone or more of the provisions contained in this Agreement or in any other agreement or instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such agreement or instrument and such invalid or unenforceable provision shall be construed by limiting it so as to be valid and enforceable to the maximum extent compatible with, and possible under, applicable law.

IN WITNESS THEREOF, the parties hereto have caused their duly authorized representative to execute this Agreement intending it to take effect as an instrument under seal as of the Effective Date.

FOR UNIVERSITY ONE

FOR UNIVERSITY TWO

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____